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II

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

425th PLENARY SESSION HELD ON 15-16 MARCH 2006

Opinion of the European Economic and Social Committee on Tourism and culture: two forces for growth

(2006/C 110/01)

On 14 July 2005 the European Economic and Social Committee decided to draw up an opinion, under Rule 29(2) of its Rules of Procedure, on *Tourism and culture: two forces for growth*.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2006. The rapporteur was Mr Pesci.

At its 425th plenary session, held on 15-16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 135 votes to one with three abstentions.

1. Introduction

1.1 Tourism contributes substantially to the EU's economy, accounting for 5.5 % of GDP (with this figure varying from 3 % to 8 % according to the Member State) thanks to the activity of over two million businesses employing approximately nine million people. Tourism is also a powerful driving force for other sectors of the economy, including industry (particularly fashion-related sectors), transport, agri-food, trade and other types of services.

1.2 Over 80 % of European tourism is generated by individuals and families, while the rest is business tourism derived from companies. European families dedicate about an eighth of their personal expenditure to tourism-related consumption.

1.3 Europe is still the most popular tourist destination in the world. Indeed, flows of tourists to the European Union are constantly increasing from Russia, China and India, where economic development is rapidly giving more of the population access to this kind of consumption.

1.4 Despite these initial encouraging facts, strong competition from new emerging economies affects the European tourism sector more and more each year. The aim of this own-initiative opinion is to draw the European institutions' attention to the boost which culture can give tourism in Europe, and to call on them to promote and protect Europe's cultural heritage.

Unlike other industrial sectors, this heritage cannot be relocated or reproduced, and it could thus be a trump card in the face of competition from other areas of the world.

1.5 As part of the process of drawing up this opinion, a number of meetings were held with the heads of the various Commission directorates-general concerned with the issue of tourism and culture and with European Parliament representatives. In addition, a public hearing was held on 18 November 2005 at Paestum, one of the most evocative archaeological sites in Italy, in which many representatives of public institutions, international organisations (UNESCO), cultural associations and private tourist companies took part. The hearing was held in conjunction with the 'Eighth Mediterranean archaeological tourism fair', making it possible for representatives from countries on the southern side of the Mediterranean to participate as well.

2. New impetus for the Lisbon Agenda

2.1 The March 2005 European summit called upon the Commission, the Council and the Member States to relaunch the Lisbon Strategy for growth and employment and to take an active part in the attainment of its objectives: tourism and culture can clearly make a substantial contribution to both growth and employment. Indeed, as regards growth, tourism

looks set to be one of the fastest developing economic sectors in the coming years: an average annual growth rate of 3.1 % is expected between 2006 and 2015. In terms of employment, too, tourism is an industry which is well placed to make a significant contribution to combating unemployment. As the industry employs a large number of women, it can also help in the achievement of the Lisbon Strategy objective of raising the number of women in employment⁽¹⁾. Although European tourism is expected to double over the next 25 years, its growth rate is lower than the world average, and, in particular, lower than the growth rates of some regions of emerging countries. Appropriate initiatives are necessary from all the institutions if the EU's tourism sector is to expand still further and be restored as the fastest-growing tourism sector in the world.

3. Cultural tourism

3.1 One of the fastest growing areas of the tourism sector is cultural tourism — tourism connected with art and nature, art heritage cities and areas with a particularly high concentration of historical assets and local traditions. This opinion aims not to address all culture-related issues but to assess the potential contribution of culture to tourism.

3.2 In this specific segment of the tourism sector, the European Union is particularly fortunate in that it has a greater concentration of cultural assets than any other area in the world. Indeed, 300 of the 812 UNESCO World Heritage sites of cultural and natural heritage recorded in 137 countries are located in the 25 EU Member States. The figure rises to 331⁽²⁾ if the four candidate countries (Bulgaria, Croatia, Romania and Turkey) are taken into account. The second European Cultural Tourism Network annual conference revealed the very significant fact that the flow of visitors to Europe from China and India is entirely due to the interest that people from those countries have in European cultural and architectural heritage. The EU and the Member States must therefore invest in preserving their wealth of cultural heritage and promoting cultural tourism.

⁽¹⁾ According to ECTN (European Cultural Tourism Network) data, cultural tourism brings direct benefits for three areas defined by the Lisbon Strategy: Area 8 – more jobs; Area 9 – labour force; and Area 10 – education. The ECTN, which was set up in 2003 to promote cooperation between the various sectors of cultural tourism, is a project cofinanced by the European Union.

⁽²⁾ This is the distribution of UNESCO (United Nations agency responsible for culture) sites among the 25 EU Member States: Austria 8, Belgium 10, Cyprus 3, Denmark 4, Estonia 2, Finland 6, France 30, Germany 31, Greece 16, Ireland 2, Italy 42 (including the two Vatican City sites), Latvia 2, Lithuania 4, Luxembourg 1, Malta 3, Netherlands 7, Poland 12, Portugal 13, United Kingdom 26, Czech Republic 12, Slovakia 5, Slovenia 1, Spain 38, Sweden 14, Hungary 8.

3.3 Economic benefits aside, cultural tourism also has a key role to play in developing social and civil values and in fostering European integration and the dialogue between peoples and cultures. The development of the European identity hinges on a deeper knowledge of the countries, cultural traditions and 'differences' which make up the rich European tapestry. Today, as Europe faces something of an identity crisis, promoting European cultural values could convey optimism and confidence as regards the Union's future⁽³⁾.

3.4 Furthermore, particularly at this difficult time for multiculturalism, the EU must undertake to foster cultural and religious dialogue with other peoples, including by promoting cultural tourism. The EU's decision to make 2008 the *European Year of Intercultural Dialogue* is therefore particularly timely.

3.5 Developing cultural tourism, highlighting the historical and social context of European art heritage and enhancing environmental heritage will give tourists from all countries a genuine understanding of Europe's cultural history.

4. The European institutions' current undertakings

4.1 The European Union has for some time been active in the area of tourism and protecting and promoting cultural heritage, although it has never been able to finance tourist activities directly for lack of a legal basis. Now, at last, a legal basis has been provided for in the draft of the new Constitutional Treaty, although, regrettably, the Constitutional Treaty has yet to be ratified. The approach hitherto adopted by the EU with a view to maximising the potential of tourism has essentially been horizontal: sometimes the Structural Funds have been used to promote tourism and sometimes it has benefited from the knock-on effect of projects relating to other sectors, such as the environment or research. Although this may seem positive, the fact that it is difficult for DG Enterprise and Industry (tourism unit) to achieve effective coordination with the other directorates-general that are directly or indirectly concerned with tourism, is in danger of nullifying any beneficial effects of the various European initiatives for the sector.

4.2 With regard to the Structural Funds, in the period 2000-2006 the EU allocated approximately EUR 7 billion to projects directly or indirectly linked to the tourism sector and some EUR 2 billion to cultural projects (Interreg III, Leader+ and

⁽³⁾ Europa Nostra (the Pan-European Federation for Cultural Heritage, engaged in enhancing and safeguarding Europe's cultural heritage, bringing together 40 European countries and over 200 associations involved in safeguarding and enhancing cultural heritage) believes that European cultural heritage is a key element in developing and promoting the European identity and European citizenship.

Urban programmes). A total EUR 9 billion of funding was thus earmarked for tourism and culture, but it may not be properly exploited because the level of coordination in managing these two respective sectors financed by the Structural Funds leaves something to be desired.

4.3 Particularly successful EU initiatives to promote cultural heritage include the European Capitals of Culture (ECCs) project. A recent study ⁽⁴⁾ commissioned by DG Culture states that this programme has led in the year of the event to an average increase of 12 % in tourism in cities awarded the title of European Capital of Culture and in the following year to tourist flows which were still higher than the average for the years preceding the event. According to the same study, the growth potential generated by the event is still high but is worth exploiting more. To this end, DG Culture has drawn up a new proposal advocating the future adoption of new, clearer criteria for selecting the candidate cities, encouraging competition and emulation between them, stressing the need for cultural programmes to have a European dimension and be sustainable and, lastly, promoting the dissemination of good practice in the management of cultural events. The proposal also calls for the EU's contribution to the European Capital of Culture, currently set at EUR 500 000, to be trebled.

4.4 In early December 2005, the EP Committee on Budgetary Control, in line with the objective of promoting the potential of tourism and culture as much as possible, approved for the first time the appropriation of EUR 1 billion for the development of a project promoting *European destinations of excellence*.

4.5 For its part, the Commission's DG Enterprise and Industry has set up a Tourism Sustainability Group (TSG), which includes experts representing the institutions and different categories of operators, with the task of drafting proposals to the Commission for achieving sustainable tourism as a step towards drawing up an Agenda 21 for European tourism by 2007. The EESC agrees with the Commission and the European Parliament that sustainable tourism is the only form of tourism that should be promoted, and that alone.

4.6 Moreover, at the fourth European Tourism Forum, held in Malta on 20 October 2005, Commissioner Günter Verheugen announced the launch in early 2006 of a European tourism portal, which will provide access to the websites of national tourist organisations in order to promote European tourist destinations to the rest of the world more effectively.

⁽⁴⁾ Palmer/Rae Associates, International Cultural Advisors, 'European Cities and Capitals of Culture', study prepared for the European Commission, August 2004.

4.7 Lastly, the Commission's DG Enterprise has just launched a study on *The impact of cultural and sporting events on tourism-oriented SMEs*, while DG Culture has launched a study on the cultural economy in Europe.

5. The work of the Economic and Social Committee

5.1 Aware of the importance of the tourism sector for Europe, the European Economic and Social Committee has, for some time, been active in tourism-related areas such as tourism policy in the enlarged EU, tourism and socio-economic recovery of areas in decline, tourism and cooperation between the public and private sectors, tourism and sport, etc. ⁽⁵⁾

5.2 Together with the two papers referred to in point 4.7 and the opinions referred to in point 5.1, this opinion seeks to contribute to the formulation of future tourism policy guidelines at European level.

6. Raising the public's cultural awareness

6.1 The promotion of cultural values should primarily target the people living in an area, who must become more aware of the wealth of local historical, art and environmental heritage ⁽⁶⁾. Indeed, once familiar with local heritage, they can play a valuable role in preserving and promoting their area, supporting the work of the public authorities.

6.2 To encourage widespread cultural awareness, programmes need to be introduced in schools which inform young people about local historical, art and environmental heritage, together with initiatives which give young people a leading role in exploiting it ⁽⁷⁾.

⁽⁵⁾ The tourism-related subjects addressed by the EESC include: *Tourism policy in the enlarged EU*, *The contribution of tourism to the socio-economic recovery of areas in decline*, and *Tourism policy and cooperation between the public and private sectors* (rapporteur: Mr Mendoza Castro); and *Tourism and sport: the future challenges for Europe* (rapporteur: Mr Pesci).

⁽⁶⁾ The initiative of the municipality of Antwerp in Belgium, which gives all Antwerp's residents free entry to the city's museums, is worth noting.

⁽⁷⁾ In Italy, for instance, a number of interesting initiatives have developed in this field: each year in early spring, the Fondo Ambiente Italiano promotes the opening of monuments which are little-known or usually closed to the public, and asks local schoolchildren to become 'tour guides for a day' and take visitors on guided tours of them.

7. The segments of cultural tourism

7.1 If cultural tourism is to be promoted effectively and appeal even to the 'culturally indifferent tourist', the various segments need to be analysed and developed, and trends and opportunities for further development identified. The main segments of cultural tourism are: art heritage, exhibitions, shows and other events, food and wine and rural tourism, film tourism and cultural theme parks.

7.2 Art heritage

7.2.1 The most traditional segment of cultural tourism is 'physical' art heritage, consisting of historic city-centres, museums and archaeological sites. The priority for this segment is to encourage greater integration between the management of cultural assets and the management of tourist facilities so as to encourage tourists to 'exploit' this heritage. The approach must be one of integrated 'cultural tourism' facilities, to encourage the integrated management of combined arts-and-environment facilities, even where these are owned by different public authorities or private individuals, or to promote opening-hours and pricing policies which make the sites as accessible as possible and generate more revenue so that management costs can be covered. Moreover, cultural heritage needs to be 'brought to life', for instance by mounting temporary exhibitions in museums, palaces or castles of historic interest, with particular focus on the promotion of contemporary art.

7.2.2 There have been interesting schemes such as, for example, the 'tourist passes' introduced by a number of European cities which combine transport services and access to museums and archaeological sites.

7.2.3 'Cultural districts' are particularly suited to smaller centres of art heritage, which integrate tourist and cultural services in regions made up of a number of similar districts, combine public and private funding, and are promoted as a single entity. Moreover, the EESC believes that it would be beneficial for regional tourist organisations to work together to develop and create cultural districts, including across borders.

7.2.4 Moreover, 'networks' ⁽⁸⁾ or itineraries of cultural sites should be set up in different countries, such as networks of castles or palaces of historic interest, archaeological sites (such as the Magna Grecia network of cities) ⁽⁹⁾ or networks of

particular types of museums, including 'enterprise museums', or trans-European itineraries ⁽¹⁰⁾ such as the Via Francigena. These networks and itineraries should be identifiable by means of a single mark and be properly signposted, and their components should be promoted together. The reception facilities provided should also be the same, where possible.

7.3 Exhibitions, shows and other events

7.3.1 Another major segment of cultural tourism is events: exhibitions, concerts, festivals and other special events. Over the past 10 to 15 years, cultural events have become powerful driving-forces in promoting tourism. Increasing numbers of fans, particularly young people, travel to visit major exhibitions, to attend concerts and festivals and to take part in special events such as the 'White Nights' which are becoming popular in many cities such as Paris, Versailles, Brussels, Rome, Vienna and Warsaw.

7.3.2 To enhance this segment, infrastructure needs to be created or adapted to provide sites suitable for exhibitions and festivals; planning is also necessary in the field of advertising and information campaigns. The European Union could facilitate the creation of a single calendar of cultural events, promote cooperation between different countries and cultural institutions and, lastly, encourage initiatives in countries which have less experience and fewer traditions in this field, particularly the ten new Member States.

7.4 Food and wine customs and rural tourism

7.4.1 A third major segment of cultural tourism is linked to food and wine customs in the different countries: this is a segment of 'material culture' which has become increasingly significant in recent years and has generated a genuine cultural and economic movement promoting typical local products ⁽¹¹⁾.

⁽¹⁰⁾ There are many extremely interesting examples, including:
— the European Route of Brick Gothic, a project which spans seven countries (Sweden, Denmark, Germany, Poland, Lithuania, Latvia and Estonia), 26 cities and two regions;
— the European Route of Jewish Heritage, a programme awarded the 'Major Cultural Route of the Council of Europe' diploma by the Council of Europe (5 December 2005).

⁽¹¹⁾ Initiatives to promote typical products include the international 'Slow Food' association, founded by Carlo Petrini, which currently has 83,000 members, offices in Italy, Germany, Switzerland, the United States, France, Japan and the United Kingdom and local groups in 122 different countries. Slow Food opposes the standardisation of taste, defends the need for consumer information and protects cultural identities linked to food and gastronomic traditions. Among the most distinctive European tourist routes promoting typical products are the Malt Whisky Trail in Scotland, which is the only trail in the world entirely devoted to malt whisky, the Trappist beer route in Belgium and the Netherlands, and the oyster routes in Brittany.

⁽⁸⁾ An interesting example is the Network of fortified towns. The county of Kent (United Kingdom), the Nord-Pas de Calais department (France) and the province of Western Flanders (Belgium) have linked 17 places of historic interest together in a network, thereby promoting the rich shared heritage of the area.

⁽⁹⁾ As proposed at the public hearing at Paestum on 18 November 2005 by a number of regional councillors responsible for tourism in the Campania Region and Greece.

7.4.2 Here, too, the creation needs to be encouraged of 'food and wine itineraries' that include art and cultural attractions, promoting an integrated package of cultural visits, food- and wine-tastings and experiences of rural life, thus combining the history of art with an experience of typical food and wine traditions from a particular region or area.

7.4.3 The European Union could promote a European guide to food and wine itineraries and rural tourism, focusing in particular on cross-border itineraries which combine the traditions of two or three countries: this would help to highlight the common roots underlying many traditions and 'differences'.

7.5 Film tourism

7.5.1 A fourth segment of cultural tourism which is emerging as a substantial source of tourist flows is linked to film and television-serial productions. Many regions are seeing the number of tourists increasing as more and more people visit sets and places which have played host to successful films and TV productions. Thus, for instance, Alnwick Castle in Northumberland (North of England), which was the setting for the films based on J. K. Rowling's Harry Potter novels, created a tourist flow of EUR 13 million per year almost overnight, making it one of the top tourist destinations in the UK. The same thing happened in Italy at Agliè Castle in Piedmont, where the television serial *Elisa di Rivombrosa* was filmed: the average number of visitors per week to the castle increased from 100 to 3 500. Moreover, the effect of fame even applies to films which are still at the production stage: the small city of Lincoln in England where the film *The Da Vinci Code*, based on the best-seller of the same name by Dan Brown, is being shot has already attracted large numbers of tourists, while tour agencies have sprung up in Paris running tours solely of the places described in Brown's novel.

7.5.2 According to a survey carried out in August 2005 in the UK, 27 % of adults and at least 45 % of young adults between the ages of 16 and 24 are influenced when deciding where to go on holiday by films they have seen in the cinema or on television. That is why VisitBritain, a body promoting British tourism, follows film productions very closely and publishes very detailed movie maps on its website showing all the places where new productions are being filmed, how to get there and the tourist facilities available.

7.6 Cultural theme parks

7.6.1 A fifth segment of cultural tourism could be linked to the creation of historical and art theme parks which supplement visits to museums, historic city-centres and archaeological sites. The parks, which could be built near famous tourist

attractions, should be an auxiliary facility to help visitors understand properly the history in which they are being 'immersed' ⁽¹²⁾. Similar parks could be built in major European cultural districts ⁽¹³⁾ and the EU could encourage the building of this 'info-tainment' (information and entertainment) infrastructure, which could be an additional attraction for tourists.

8. Use of new technology

8.1 New information and communication technology has many contributions to make to the exploitation of cultural heritage for tourism purposes: creation of websites and satellite and digital television channels, use of audio and video clips for latest-generation mobile phones, reconstructions of monuments and sites of historical and artistic interest using virtual reality techniques ⁽¹⁴⁾.

8.2 New technologies could be applied in this particular area to encourage sustainable tourism and protect the most popular art heritage sites which are in danger of being damaged by mass tourism: information technology could provide new ways of scheduling, monitoring and sorting tourist flows, and environmental factors (such as humidity in museum rooms) which can damage works of art could be controlled automatically. In addition, the use of on-line-booking and visit-by-appointment systems could encourage people to visit sites which can only accommodate a small group of tourists at a time.

8.3 Lastly, modern technology has a valuable contribution to make in helping to create structures and systems that overcome architectural barriers, which are all too often an insurmountable obstacle for the less agile. This must not be overlooked.

8.4 The European Union, which stated in its Seventh Framework Programme for Research and Innovation that the results of research could be used to benefit the tourism sector and

⁽¹²⁾ The Malta Experience is an interesting example: an hour-long film relates the history of the island from its very beginning and the story of the peoples who have inhabited it, giving even the youngest visitors a proper understanding of the history surrounding them.

⁽¹³⁾ For example, a virtual park on ancient Pompeii could be built near the archaeological site of Pompeii, representing daily life in Roman times and maybe reconstructing the eruption of Vesuvius which destroyed the town. A similar park could also be built in Waterloo (Belgium), to give tourists a better understanding of how one of the most famous battles in history was fought.

⁽¹⁴⁾ During the seminar on Cultural tourism: a challenge for European integration, organised by the Luxembourg Presidency in April 2005, a number of interesting examples were given of the application of new technologies, including the use of palm-top computers to provide a constant flow of information on the area a visitor is passing through (this was in relation to pilgrims travelling along the Via Francigena).

encourage access to cultural heritage, could facilitate the practical implementation of initiatives of this kind, maybe drawing up a list of available technologies and a map of best practices at Community level which could provide useful information for operators in the various countries.

8.5 The use of technology is essential to promote cultural tourist destinations both within and outside the EU. Here, too, the initiatives under way in the different countries should be recorded. The European Union could, moreover, supplement the European tourism portal with a satellite TV channel promoting tourism in Europe to countries outside Europe.

9. Governance of cultural heritage and staff training

9.1 An effective system of exploitation of cultural heritage for tourism purposes raises the issue of governance of cultural assets. Some of these are public property (state or local authority), while others belong to religious or non-profit organisations or are privately owned. The situation is particularly sensitive in a number of new Member States, where the forced nationalisation of previous decades has created uncertainty as regards property rights and caused a considerable drop in the level of conservation of much cultural heritage.

9.2 Models of governance should therefore be adopted which, while respecting the current ownership structures of artistic and cultural heritage and providing the greatest possible protection and preservation guarantees, allow coordinated management of integrated cultural tourist facilities and encourage sharing of public and private investment, including by means of appropriate tax incentives.

9.3 The European Union could carry out a survey of systems of governance in the different European countries to assess their effectiveness and encourage dissemination thereof in other countries, or it could propose innovative tax and other systems fostering public-private cooperation in management.

9.4 Linked to governance is the issue of training: staff working in cultural heritage sites now, in addition to knowledge of art history, have to have management and marketing skills and be able to use new technologies, and those who have direct contact with tourists such as hoteliers, shopkeepers, public services staff etc., as well as having language skills, should be trained in *savoir faire* and to respect cultural differences among tourists. Here, too, the European Union could record the most cutting-edge training expertise in the sector in order to facilitate exchanges of expertise, benchmarking and the dissemination of best practices, with a view to encouraging high-quality tourism.

10. Integration of cultural tourism and other tourism segments

10.1 Effective management of cultural tourism can benefit other tourism segments too, such as seaside and mountain tourism and even business tourism and tourism for the older public.

10.2 The presence of art itineraries, exhibitions, concerts, festivals or venues for food- and wine-tasting could encourage tourists to select particular European destinations and could help these resorts to cope with competition from tourist destinations in developing countries, which, while more competitive in terms of natural resources and prices, cannot match the cultural attractions offered by their European counterparts.

10.3 Similarly, where business tourism is concerned, the opportunity to combine a business trip with cultural tourism may lead to the trip being extended by a few days (perhaps to include a weekend) or even becoming a family vacation in which a spouse or children are included.

10.4 Given that life expectancy is now much higher than in the past, cultural tourism meets the needs of an 'older' public which is choosing to spend an increasing amount of its leisure time learning about and familiarising itself with new cultures. This also ties in with the need to promote tourism during low-season periods of the year.

10.5 There is no doubt that the European Union can also act as a driving force in this endeavour to promote the integration of cultural tourism and the other tourism segments.

11. Conclusions and proposals

11.1 Given that culture can help to boost the development of tourism, especially since, as well as being a driving force for other sectors of the economy, tourism has a significant contribution to make to the achievement of the Lisbon Strategy goals of *growth* and *employment*, the main aim of this own-initiative opinion is, as stated above, to provide the European institutions with additional tools for promoting the sector, which is still dynamic but faces stiff competition from countries outside Europe.

11.2 Information and integrated advertising campaigns

11.2.1 If European cultural tourism is to be exploited effectively, more effective information and integrated advertising campaigns publicising Europe and European destinations are needed; at the same time, best practices need to be facilitated in the areas of protection, exploitation, governance and training. The European tourism portal will doubtless be very useful here, particularly if:

- Member States' tourist bodies do actually input effective, practical, regularly updated information into the portal in a uniform manner;
- it includes accurate information on, and advertising of, networks and itineraries of cultural tourism destinations within Member States and across Europe;
- it can also be used by operators in the sector as well to keep abreast of best practices in the field of management of cultural tourism systems and governance of cultural heritage and to keep in touch with new initiatives and events and up-to-date training for staff;
- it incorporates information input at European level, such as a European calendar of cultural events and exhibitions and a guide to food and wine circuits and rural tourism;
- coordination and synergy between the European tourism portal and the culture portal is ensured.

11.3 *Using competitions and reward systems to promote best practice*

11.3.1 The European Union could use competitions and reward schemes in its programmes in order to promote best practices in the management of cultural tourism services, particularly in the European Capitals of Culture programme ⁽¹⁵⁾ and the future European destinations of excellence programme. The EU could also provide advice for cities and regions which decide to apply for these two programmes, and grant them more substantial funding than at present and maybe fast-track Structural Funds appropriations for them. At national level, it would be worth encouraging healthy competition between the cities and cultural tourism destinations applying to take part in the two programmes by applying criteria defined at European level: governance systems, cooperation between public and private sectors, integration of tourist and cultural services, advertising and information campaigns publicising events, etc. for European Capitals of Culture; and sustainability, extension of the tourist season, decongestion, governance systems, cooperation between public and private sectors, integration of services, etc. for European Destinations of Excellence.

Brussels, 15 March 2006.

11.4 *Fostering intercultural dialogue*

11.4.1 Fostering intercultural dialogue, both within the EU (particularly with a view to the future accession of the four candidate countries) and between the EU and other areas of the world, must be a priority in cultural tourism programmes too. In this perspective, as has already been stressed, the decision to make 2008 the European Year of Intercultural Dialogue is extremely timely. Nevertheless, even before 2008 it would be useful to launch a series of projects targeting schools, for example, by extending international exchange programmes such as Erasmus to secondary school pupils and encouraging twinning between classes from different countries. Specific projects fostering intercultural dialogue could also be introduced for older people. Thus, 2008 would be a show-case year for current initiatives and could spawn further initiatives.

11.5 *Creating a European tourism agency*

11.5.1 Since the EU has no direct operational tourism instruments due to the regrettable lack of a legal basis, it could usefully take action to enhance coordination in the area of management, to promote current and future projects for the sector. The EESC would advocate the creation, as soon as possible and with due regard for the subsidiarity principle, of a European tourism agency which could act as a European tourism monitoring centre and provide the Community and the Member States with reliable and comparable data on tourism. This has already been proposed in the earlier own-initiative opinion on Tourism and sport: the future challenges for Europe.

11.6 *Encouraging policy coordination of cultural tourism activities*

11.6.1 The EESC welcomes the proposals made by Commissioner Günter Verheugen at the Fourth European Tourism Forum in Malta and by the recent European Parliament resolution ⁽¹⁶⁾ to entrust DG Enterprise and Industry with the task of coordinating the various Community initiatives affecting the tourism sector.

11.7 The EESC has called this opinion the *Paestum Declaration*, recalling the public hearing held last November at that fascinating Italian archaeological site.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹⁵⁾ Until 2005 the programme was based on intergovernmental agreements.

⁽¹⁶⁾ European Parliament resolution on new prospects and new challenges for sustainable European tourism.

Opinion of the European Economic and Social Committee on the Report on Competition Policy 2004

(SEC(2005) 805 final)

(2006/C 110/02)

On 17 June 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the: *Report on Competition Policy 2004*.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2006. The rapporteur was Mr Malosse.

At its 425th plenary session, held on 15 and 16 March 2006, (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 138 votes to one, with two abstentions.

1. Introduction

1.1 EU competition policy has for a long time been considered to be the flagship of European integration and an unquestionable achievement. During the debate on the Constitutional Treaty, however, the justification for a policy aimed at ensuring *free and undistorted competition* raised a number of questions. Following the reform of mechanisms for controlling cartels and abuses of dominant positions, the European Commission carried out a reform of state aid arrangements by means of an action plan. The presentation of the 2004 report gives the EESC the opportunity to conduct an overall assessment of the aims and methods of Community competition policy, in particular against the following background:

- the globalisation of trade;
- EU enlargement, with the greater disparities between levels of development that this entails;
- the way in which the European Union is falling further and further behind its main economic competitors in terms of growth and employment;
- the general public's legitimate concern for better governance, greater legitimacy for the policies that are implemented and greater involvement in decision-making.

1.2 Following an introduction to the political background by the Director-General of DG Competition, the report gives an overview of the Commission's activities on:

- cartels and abuses of dominant positions (Articles 81 and 82 of the Treaty) together with a number of judgments handed down by the Community courts and by national courts in the EU Member States;
- mergers, with a sector-by-sector evaluation;
- state aid control, including legislative and interpretive rules and a number of judgments handed down by the Community courts;

- enlargement, and bilateral and multilateral cooperation at international level.

2004, the year of Europe's enlargement to encompass ten new Member States, was marked by the entry into force of the reform of Community competition law, on 1 May.

2. Considerations on EU competition policy

2.1 The report underlines the link between competition policy and the revised Lisbon Strategy: competitiveness, growth, employment and sustainable development. The Commission wishes in this way to focus its action on key sectors for the internal market and the Lisbon agenda, with the emphasis on removing obstacles to competition in the recently liberalised sectors as well as certain other regulated sectors such as telecommunications, postal services, energy and transport. This link with the Lisbon agenda should be better explained and clarified.

2.2 The first question that needs to be asked is whether competition policy should reflect the political priorities of a given moment or instead adopt its own independent approach. The EESC favours the latter option for the following reasons:

2.2.1 Businesses, consumers and economic and social actors need a stable and predictable legal framework. If competition policy is forced to change according to the priorities of the moment, it will be a source of legal instability and consequently will not favour investment and employment.

2.2.2 Establishing free and undistorted competition is a fundamental aim in itself, not as part of an economic strategy, but in order to ensure that the single internal European market functions properly. Unless this happens, this market will lose all meaning as well as all the advantages it might bring to the European economy, such as stimulating demand, increasing supply, and the power of a market of 450 million consumers.

2.2.3 In today's enlarged Union, the disparities between the economic and social conditions in the different Member States are considerable. Against this background, competition policy is particularly important. In other words, establishing genuinely free and undistorted competition is crucial to ensuring that the economic and social actors, from the least developed countries as well as from the richest, are guaranteed equal opportunities and treatment and that the conditions for strengthening economic and social cohesion in the Union are met.

2.2.4 The independence of competition policy must be maintained and strengthened. It must also be linked to other EU policies, such as those aimed at supporting consumers, economic development, innovation, growth, employment and economic and social cohesion. The reforms that competition policy has undergone and will undergo in future must give it this outward-looking vision. With this in mind, the Commission must endeavour to strike a constant balance, in order to give consumers, businesses and the general interest of the Union the highest possible degree of protection. Consequently, guidelines for handling disputes should be drawn up on the basis of a number of imperatives, such as:

- continuing to apply competition rules strictly, on state aid in particular, in order to avoid bias towards national policies to support national flagship companies or companies holding a monopoly, which could stifle competition at national and European level, to the detriment in particular of small and medium-sized enterprises. Instead, support should be given to public innovation and research efforts, in order to favour large-scale projects which bring Europe together and to support the innovation potential of small and medium-sized enterprises. Similarly, job-creation policies should give preference to support for individuals, such as lifelong learning, childcare, mobility and combating all forms of discrimination, rather than direct aid that could distort competition;
- attacking new anti-competitive practices such as replacing public monopolies with private ones and de facto dominant positions held by one economic activity; e.g. distribution's dominant position in relation to producers and vice versa; Greater account must thus be taken of the specific characteristics of small and medium-sized enterprises, which are the motor for growth in Europe but whose efforts to start up and grow are often hampered by practices that discriminate against them, such as state aid, monopolies and dominant positions. What is needed more than anything is support for cooperation between SMEs and for groupings of such businesses, which often constitute the only way in which such companies can meet their competitors on a level playing field;
- ensuring that consumers really benefit from economies of scale and from the potential of the single European market.

2.2.5 Account must be taken of the specific characteristics of services of general interest, in particular in the health, social

protection and education sectors, whilst respecting the values of social justice and transparency, in line with national traditions and practices. Where public services of general economic interest are entrusted fully or partially to private actors, competition authorities must ensure that equal treatment for all potential actors and the efficiency, continuity and quality of the service are guaranteed. In this regard, the Committee welcomes the Commission's work, which has, since the Altmark judgment, consisted of clarifying the rules for financing public service obligations. This will make the management of SGEI more transparent.

2.2.6 More generally, the problem with Community competition policy is that it is based on the assumption that the single market operates in the best possible way — actors are given complete and free information, companies are free to enter and leave the market as they wish, there are as many markets as the actors concerned are able or wish to create, no increasing returns to scale, and no dominant positions. The reality is quite different, however, in particular as regards the behaviour of certain Member States, who continue to think nationally.

2.2.7 DG Competition should carry out economic and social assessments to follow up the cases on which it is working. It should also carry out impact studies of its most important decisions, at the economic level, including the Union's competitiveness in the world, at the social level and, lastly, in terms of sustainable development.

3. Comments on the implementation of competition policy in the EU in 2004

3.1 The report's presentation would be clearer and the system would be easier to understand if it included, in particular in the field of state aid, a list of decisions in which no objections were made to aid being granted, explaining why, in certain cases, the aid was not covered by Article 87(1). This table would form the framework of good practice for Member States when granting aid.

3.2 Furthermore, given that the defining event of 2004 was enlargement, it is to be regretted that the report provides relatively little information about the new Member States' implementation of Community competition policy. The Committee thus hopes that the 2005 report will provide more complete and up-to-date information.

3.3 Implementation of legislation against cartels

3.3.1 The report reveals that economic analysis has become an integral part of competition policy, which is something the EESC has consistently called for. In this context, changes in competition law (Articles 81 and 82) have been marked by a specific and pragmatic advance, consisting of better defining the market and of refining the approach regarding both horizontal and vertical practices.

3.3.1.1 Under Article 81(3) (exception from the prohibition on restrictive agreements), it can be seen that economic analysis has gained in particular from taking efficiency gains into account. Companies can thus demonstrate that they are making use of new technologies, more suitable manufacturing methods, synergies arising from integrating staff and economies of scale. They can also promote technical and technological progress through common research and development agreements, for example.

3.3.2 Leniency policy

3.3.2.1 As shown by the cases referred to in the report, leniency policy has been a success. It will be recalled that this mechanism is based on encouraging businesses forming a cartel to inform the competition authorities about this agreement, which in turn allows them to be exempted, in part or in full, from any fines incurred. To this end, the Commission and some Member States have established leniency programmes applying these conditions. These are of particular importance to businesses because, even if they have not colluded in a genuine cartel, they often discover that they have unwittingly created a *de facto* cartel, largely as a result of faxes or emails exchanged between their commercial agents and those representing other companies.

3.3.2.2 The report does not give enough emphasis, however, to a number of underlying problems: existing leniency programmes in the EU vary widely, both in terms of the basic requirements for receiving leniency and in terms of their procedures; furthermore, not all national competition authorities have set up leniency programmes; only 18 authorities (plus the Commission) have done so ⁽¹⁾.

3.3.2.3 Lastly, a request for leniency submitted to one authority does not apply to the others. This being the case, if the company concerned wishes to obtain immunity, it is obliged to apply to all the competent competition authorities. The EESC therefore considers that it is of crucial importance to upgrade the mechanism to cater for multiple requests from companies. The procedures in place must, therefore, be simplified so that a harmonised system can be implemented for 'informing' on a cartel, which would automatically stop all involvement in such an arrangement.

3.3.3 The European Competition Network (ECN)

3.3.3.1 According to the report, the initial results of the ECN appear to be satisfactory. The European Commission and the national competition authorities in all EU Member States cooperate with one another by informing each other of new cases and decisions through the network. Where necessary, they coordinate investigations, providing assistance and exchanging evidence.

3.3.3.2 This cooperation creates an effective mechanism to counter companies which engage in cross-border practices

restricting competition and helps to eliminate those that abuse market rules and cause considerable damage to competition and to consumers.

3.3.3.3 One fundamental issue concerns the confidentiality of information. This is guaranteed by a specific service, the ADO (Authorised Disclosure Officer), which allows one or more persons to intervene in the transmission of confidential information. These mechanisms have been implemented on several occasions since 1 May 2004, mainly with the Commission and apparently with success.

3.3.3.4 Although the economic players claim that the ECN has been a great success, the EESC nevertheless wishes to warn the Commission of the potential long-term problem — with there being many more cases to handle — of ensuring that confidential information is fully protected when it is exchanged.

3.4 Article 82 — Abuse of a dominant position

3.4.1 Article 82 of the Treaty prohibits the abuse of a dominant position by a company (in the form of imposing unfair prices, dividing up markets by means of exclusive sales agreements or loyalty rebates which discourage customers from using competing suppliers). Furthermore, merger control is subject to this provision whenever a merger involves an abuse which strengthens the dominant position of the company launching the operation. This interpretation of the article, which is an essential component of antitrust legislation, has been ambiguous in some respects, as can be seen from an analysis of companies' behaviour and the implications of their commercial practices. In other words, the concept of abuse of a dominant position has yet to be properly defined and consequently companies sometimes find it extremely difficult to know what they are or are not allowed to do. With regard to price abuses, such as predatory or discount pricing, a particular form of behaviour can have different effects; a very efficient competitor might be able to prosper in a market in which the dominant company maintains prices at a certain level, whilst a 'less efficient' competitor might find itself excluded from the market. Should competition policy protect this second category of company? Would it not be more productive to develop rules based on the principle that only excluding efficient competitors constitutes an abuse?

3.4.2 The Commission recently published draft guidelines concerning the implementation of Article 82, which meet with the EESC's approval. In so doing, the Commission wishes to establish a method for assessing some of the most common practices, such as tied goods and rebates and discounts likely to undermine competition ⁽²⁾. The EESC welcomes the Commission's efforts, which aim to direct maximum resources towards those practices most likely to harm consumers, in order to provide clarity and legal certainty, with a clear definition of what might constitute abuse of a dominant position. The

⁽¹⁾ Belgium, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovakia, Sweden and the United Kingdom.

⁽²⁾ DG Competition discussion paper on the application of Article 82 of the treaty to exclusionary abuses. Public Consultation, December 2005.

Committee hopes that the guidelines now under consideration will enable businesses in a dominant position to make a clear assessment of whether their behaviour is legal and points out that to complete the discussion, dialogue with the players concerned, (businesses, in particular SMEs, consumers, the social partners, etc.) must be guaranteed.

3.5 *Merger control*

3.5.1 The EESC welcomes the pragmatic development of setting up a 'one-stop shop' for notifications of proposed mergers and of providing much-needed clarification for the competitiveness test, bringing this further into line with the reality of the economic situation and making it more compatible with the rules in force in the main merger investigation systems across the world. Lastly, although it is still difficult in practice to prove the efficiency gains resulting from mergers, it is to be hoped that, against this healthier background, merger control may be of lasting benefit to European consumers.

3.5.2 With regard to relations between the retail giants and local shops, an enormous number of mergers has taken place in the last few years, reducing the market share of local businesses, to the benefit of the large retail sector. As a result of commercial practices that are sometimes highly restrictive, pricing policies, and discounts tied to the size of purchases, local businesses struggle to compete on price given the large margins available to the retail giants, which makes the latter even more attractive to consumers. Similarly, producers are also subject to sometimes excessive pressure. Lastly, the increased number of mergers must lead to the aims of competition policy being brought into line with those of consumer policy in order to ensure that market supply remains constant, that what is on offer is diverse in terms of positioning and the quality of the range. At the same time, no limits should be imposed on cooperation between small businesses as long as they do not have a significant market share in the sector concerned.

3.6 *The reorganisation of DG Competition*

3.6.1 The report expresses satisfaction at the reorganisation of DG Competition in response to public criticism of the Commission concerning a number of cases (Airtours/First Choice, Tetra Laval/Sidel and Schneider/Legrand).

3.6.2 Creating the post of Chief Competition Economist — to be assisted by a team of economists — appointing a group of experienced officials to take a fresh look at the conclusions of DG Competition's investigators into sensitive mergers and strengthening the role of the Hearing Officer in the merger control procedure are all measures that share a common goal: to make the merger investigation procedure more rigorous and transparent. The measures thus respond to the repeated calls of the EESC and are to be welcomed.

3.6.3 The EESC also approves of the appointment of a Consumer Liaison Officer to represent consumers vis-à-vis DG Competition but regrets that, almost a year after this appointment was made, the report does not provide any details on the real dialogue opened with European consumers. The EESC thus hopes that the 2005 report will provide practical information that will help to gauge the effectiveness of this dialogue. The Committee has also launched an own-initiative opinion on the matter.

3.6.4 Recent EESC opinions have highlighted the issue of the European Commission's resources, in particular for monitoring mergers, which are deemed to be too limited, given the funds likely to be mobilised by the players involved. This issue has yet to be resolved. It appears that DG Competition does not have enough qualified staff to examine cases involving certain states and, in particular, the new Member States. The Committee is concerned and puzzled at this lack of foresight in the Commission's human resource management and at its potential consequences and calls for remedial measures to be adopted as a matter of urgency.

3.6.5 Despite recent efforts to improve transparency, the Committee notes that there is no real policy for actively consulting the actors concerned; in fact, regarding the cross-sectoral cases that DG Competition has opened, the limited information on mergers provided on the Commission website cannot be considered to be an adequate means of gathering the informed opinions of civil society and of the various organisations concerned, as part of the process of good governance.

3.6.6 With regard to the publication of national judgments on the Commission's Internet site for competition, it must be noted that the stated aims of informing and educating have not been met (Article 15(2) of Regulation EC 1/2003). The system used on the Commission website only provides some of the information it is supposed to. Specifically, the new Member States do not — or rarely — post judgments handed down by their national courts. This impairs understanding of the way in which competition law is applied in those countries and obstructs the desired harmonisation of this law. Furthermore, these national judgments are available only in the language of the country of origin, which means that very few people, if any, read them even though they are of considerable practical importance due to the new problems that they highlight.

3.7 *State aid control*

The European Council of March 2005 stated the aim of continuing working towards a reduction in the general level of State aid, while making allowance for any market failures.

3.7.1 On 7 June 2005, the European Commission presented an action plan for state aid, on which the EESC delivered an opinion ⁽³⁾, to which the reader is referred. Our examination of the 2004 report does, however, give rise to the following general comments:

⁽³⁾ OJ C 65, 17.3.2006.

3.7.2 It is crucial to improve transparency concerning information given to companies receiving individual aid (such as the date of notification and the reasons given by the Member States). This transparency is all the more necessary because the risk that illegal aid will be recovered weighs heavily on businesses, in particular on small and medium-sized enterprises, even very small companies, even if the notification procedure has been engaged by their own Member State!

3.7.3 The national authorities responsible for assessing whether or not aid meets the required criteria do not always have the necessary knowledge to carry out an economic analysis as part of the notification procedure: regional or local authorities often grant aid for job-creation or the environment, for example, without undertaking a thorough market-share analysis and this imposes considerable financial uncertainty on companies, should the aid prove to be illegal.

3.7.4 In examining aid for restructuring or rescue, it is a fact that Community policy focuses mostly on the economic consequences for the competitors of a beneficiary of state aid and, in particular, on resources for 'compensating' them. Indeed, out of concern to prevent distortions of competition occurring, the Commission imposes certain restrictions on beneficiary companies, such as restricting the percentage of market share in a given geographical area, as happened in the Thomson Multimedia case, or obliging the beneficiary to forge partnerships with its competitors.

3.7.5 The EESC deplores the fact that this concern conceals another, equally crucial aspect: the effects of these actions on the end consumer (the customer as taxpayer), with the Commission not considering carefully enough whether state aid will or will not prevent a fall in prices, a wider choice of products and services or even higher quality. Consumers' interests lie at the heart of competition policy, however, and the right to state aid must necessarily be subject to the same requirements for rigour, in the form of long-term analyses, as cartels or mergers.

3.7.6 In general terms, the EESC wishes to express its unease at distortions of competition that could arise from differences in the way state aid is granted in the different Member States. Above all, the EESC is concerned at the often highly discriminatory nature of state aid. States often rally round to invest in and rescue large companies, whilst neglecting small and medium-sized enterprises (which actually account for four out of five jobs in the Union) and give certain sectors or types of business preferential treatment. This situation does nothing to encourage entrepreneurship and contributes to paralysing the economic climate, which is not sufficiently dynamic and conspires against new entrants to the market.

4. Proposals for a stronger competition policy

The EESC's analysis thus leads it to make the following recommendations:

4.1 Technical aspects

4.1.1 The Commission should pay particular attention in its forthcoming reports to the effects of enlargement and even devote a specific chapter to taking stock of changes in legislation and in the way the implementation of Community law is monitored.

4.1.2 To improve legal security, simplifying the leniency system would appear to be crucial. Given the sensitive nature of the information that must be provided and the constraints imposed by having to conduct the same procedure with the different authorities concerned (a cartel can affect a number of Member States), a reform undertaken by means of mutual recognition or even a 'one-stop shop' would be appropriate.

4.1.2.1 It would also be highly desirable for national leniency programmes to be brought closer into line with one another by means of a flexible and indirect harmonisation that could take the form of best practice.

4.1.3 As part of the current review of Commission policy on abuse of a dominant position, on the basis of the draft guidelines, a number of questions must be clarified in order to refocus assessment of such abuses on their harmful effects on the consumer. The Commission must clarify what is to be understood by 'dominant position', and especially what constitutes an abuse and what the different types of abuse are. It must ultimately draw a clearer dividing line between legitimate competition based on performance and abusive competition that undermines the way in which competition operates and thus attacks consumers.

4.1.4 As regards merger control, in order to assess how useful taking into account the efficiency gains has been, the Commission report could in future look at what has been happening in the operations concerned and the effects on consumers.

4.1.5 To ensure a fairer balance between production and distribution and within distribution itself (ensuring that businesses in rural areas, disadvantaged urban areas or sparsely-populated regions do not disappear altogether), a study should be carried out on the competition, commercial regulation or aid measures to small businesses, so as not to prevent potential players from accessing the market and to enable SMEs to benefit from state aid.

4.1.6 It would be useful if forthcoming reports could contain a description listing any links between the Consumer Liaison Officer and consumer organisations when examining cases: if necessary, could these organisations have delivered an opinion or forwarded information to the Commission on mergers, cartels or abuses of a dominant position? It is crucial to show that the work of the person responsible for consumer relations is effective.

4.1.7 In order to improve the system of publishing judgments handed down by national courts, it would be useful to set up a network of correspondents entrusted with the task of compiling legal rulings in order to make the current system more effective in real time. This measure would need to be given more substantial human and financial resources.

4.2 Political and economic aspects

4.2.1 Improving analysis of the most serious distortions

4.2.1.1 Assessing how competition policy works must help to determine whether it genuinely favours *free and undistorted competition* in the EU and to measure the effectiveness of the fight against de facto monopolies and abuses of a dominant position, their impact on the creation of new businesses and on entrepreneurship. The Commission should not impose limits on agreements between SMEs, so that they can combat competition from large integrated groups and should provide more resources so that the most serious distortions can be combated effectively.

4.2.1.2 Where the liberal professions are concerned, following its communication of 9 February 2004, the Commission published a report on competition in this sector ⁽⁴⁾, setting out the progress that had been made on removing unnecessary restrictions on competition such as price regulation, rules on advertising, entry barriers to the profession and reserved tasks. The EESC calls on the Commission to honour its commitment and reiterates the point of view expressed with unanimous support in its opinion on the report on competition policy 2003, which states that introducing mechanisms that are more favourable to competition will help the liberal professions to improve the quality and range of their services, which will directly benefit consumers and businesses.

4.2.2 Combating the partitioning of the market and drawing up economic and social impact studies

4.2.2.1 The EESC considers that competition-related issues should be studied in the context of the EU's overall cohesion and that the question should be raised as to whether behaviour that is still too nationally-focused (state aid, whether direct or 'disguised', to national flagship companies, aid to attract investment, discriminatory behaviour, the continuing presence of de facto monopolies and abuses of a dominant position, etc.) does not partition the market or hinder closer links between the

Union's economic players. Accordingly, the Commission must also carry out economic and social analyses of the overall impact of its policy decisions and call on the Council and the Member States to ensure that changes take place in behaviour and practices which result in a partitioned market, adversely affecting the interests of all economic and social players.

4.2.3 Ensuring the best information and the broadest consultation

4.2.3.1 The EESC offers its services to the Commission to discuss ways of ensuring greater transparency — within the limits imposed by the need to respect business confidentiality — with regard to the actors affected by competition policy: businesses, economic and social partners, consumers and other civil society actors. With regard to mergers in particular, consideration should be given to ensuring that the latter are more actively involved, through a consultation procedure and hearings, which would satisfy the concern for good governance and participatory democracy. More generally, a local information network should be established, better to publicise the priorities of competition policy and to inform companies and consumers of their rights and obligations. This would be based on DG Enterprise's Euro Info Centres and on all of the networks of chambers of commerce and industry and of consumer organisations. Making this information available efficiently and on an ongoing basis is of vital importance, in particular in the new Member States and the candidate countries.

4.2.4 Ensuring that competition policy as a whole is consistent with other Union policies

4.2.4.1 Competition policy is crucial to ensuring that the European internal market operates effectively. Its failings underline the urgent need to ensure the completion of the single market and to bring an end to practices that tend automatically to carve up the market. This policy on its own will not be enough, however; there must be coordination with all of the Union's policies, in order to ensure the success of the revised Lisbon strategy and the efficacy of consumer protection policy. In any event, a blueprint for economic and social cohesion must be drawn up for the Union, giving competition policy a specific role and providing a new legitimacy, ensuring equal opportunity of access for all to the single market, so that consumers, businesspeople and employees genuinely benefit from the advantages of the world's largest market.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽⁴⁾ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions COM(2004) 83, of 9 February 2004, (SEC(2005) 1064).

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council on the financing of European standardisation

(COM(2005) 377 final — 2005/0157 (COD))

(2006/C 110/03)

On 16 September 2005 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2006. The rapporteur was Mr Pezzini.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 140 votes to one with one abstention.

1. Conclusions and recommendations

1.1 The Committee welcomes the Commission's proposal to establish an explicit, clear and transparent legal framework for the financing of European standardisation, given the important role that the regulatory system plays in the proper functioning of the internal market, the competitiveness of European industry, and the role of European technical standards in supporting Community legislation and policies.

1.2 The Committee reiterates that European standardisation is, and must remain, a voluntary activity, exercised by and for the benefit of interested parties, with the specific task of developing standards and other standardisation products that can meet their needs.

1.3 The Committee urges the Council, the European Parliament and the Commission to take a more proactive approach to European standardisation policy. It must be considered as one of the European Union's key policies to help implement the recently reinvigorated Lisbon Agenda; it must also help to create a true 'culture of standardisation' in both European and national institutions and businesses, as this is a strategic element at national and international level.

1.4 The Committee believes it is essential to ensure the full participation of all stakeholders in an enhanced European standardisation system, and particularly the participation of NGOs, SMEs and consumer and environmental protection organisations, by ensuring that support — including financial — is provided for training qualified practitioners.

1.5 The Committee stresses that European standardisation is vital for the operation and consolidation of the internal market, particularly through the 'new approach' directives in the areas of health, safety and environmental and consumer protection, and to ensure interoperability in many areas, particularly in transport and telecommunications. Moreover, since European standardisation facilitates the free movement of goods and services in the internal and global markets, it ensures that business competitiveness is enhanced.

1.6 Given that the European standardisation system is a strategic and essential resource, the Committee believes that sound and sustainable management of financed activities must be ensured, as must the ability to pursue the common cooperation objectives and the administrative and financial conditions necessary to preserve the independence and neutrality of the system and to enhance its operational efficiency and standards production.

1.7 The Committee believes that, for the five-year period in question, the proposed figure is insufficient to cover the entire European standardisation system and that it should be increased beyond the current 2 % threshold in order to ensure that standards can be freely produced and disseminated, thereby enabling it to meet the needs of both the enlarged EU-25 and the EU candidate countries.

1.8 The Committee stresses the importance of:

- ensuring maximum transparency and certainty in financing the main European standards organisations by clearly defining the permissible costs for the infrastructure and procedural services offered by European Standards Organisations (ESOs) for producing standards, i.e. the products prepared by the technical committee experts;
- simplifying and speeding up funding procedures, thus ensuring the eligibility of unit, standard-rate costs, thereby avoiding complex financial reporting, given that this often eats up about 30 % of the sums released;
- introducing, for services such as those provided by ESOs, procurement procedures which genuinely reflect an equal partnership between ESOs and the European Commission, i.e. between the services provider and user; in any case, this must not affect the voluntary standards produced, which remain the property of standardisation organisations.

1.9 ESOs provide the infrastructure and services that are needed to produce standards but they do not produce them themselves; this is the technical experts' task. In the Committee's view, this should be highlighted as an important point to be included in the recitals.

1.10 The European Commission's proposed total of EUR 134 million for the period 2006-2010 would appear to be barely sufficient.

2. Reason

2.1 The Committee has always called for a more extensive use of European standardisation in EU policies and legislation in order to extend, in line with the needs of both society and businesses, the expansion of standardisation into new areas such as services, information and telecommunications technology, transport and consumer and environmental protection.

2.2 In particular, there is greater awareness among business leaders and other stakeholders of the benefits of standardisation for business: this awareness is reflected in the strengthening of the key European standards bodies (CEN, CENELEC and ETSI) and the full participation of all stakeholders in the standardisation process, SMEs in particular.

2.2.1 Given these bodies' potential contribution to the achievement of the Lisbon objectives, the Committee calls for organised civil society to be well represented on their executive boards.

2.3 With a view to increasing the presence and participation of the various civil society players in the standardisation processes within CEN, CENELEC and ETSI ⁽¹⁾, these are carried out with the full participation of bodies such as ANEC, ETUI-REHS, NORMAPME and, most recently, ECOS ⁽²⁾, which was set up in November 2002.

2.4 The Committee has, on several occasions ⁽³⁾, called for a review of the current legal framework on standardisation so that it can respond to the latest developments and challenges in European standardisation and simplified legislation, which would be more in line with the principle of 'better lawmaking' ⁽⁴⁾, the approach taken by *Industrial Policy in an Enlarged Europe* ⁽⁵⁾ and the internal market strategy priorities for the period 2003-2006 ⁽⁶⁾.

⁽¹⁾ CEN = European Committee for Standardisation. CENELEC = European Committee for Electrotechnical Standardisation. ETSI = European Telecommunications Standardisation Institute.

⁽²⁾ ANEC represents consumers; ETUI-REHS (formerly TUTB) represents employees; NORMAPME represents small and medium-sized enterprises. ECOS is a consortium of environmental organisations.

⁽³⁾ OJ C 48 of 21.2.2002 and OJ C 74 of 23.3.2005.

⁽⁴⁾ COM(2002) 278 final.

⁽⁵⁾ COM(2002) 714 final.

⁽⁶⁾ COM(2003) 238 final.

2.5 The Committee has also come out in support of a stable financial framework for European standardisation, on a solid legal basis. Similarly, it must be ensured that Member States and the Commission co-finance standardisation procedures, European infrastructure and measures to improve synergies between ESOs, in order to enhance efficiency in the European standardisation process and in promoting international standards.

2.5.1 Greater involvement of Member States' representatives could lead to better, more specific production of standards geared to stakeholders.

2.6 A European technical standardisation culture is vital to ensure an efficient and balanced internal market for the EU-25. It is therefore important to ensure that structures are developed at EU level which can respond effectively to:

- the requirements of the 'new approach',
- market interoperability needs,
- competitiveness constraints and opportunities, which are increasingly important in international markets.

2.7 The total number of European standards produced in 2004 by CEN was approximately 1 200 and about 400 were produced by CENELEC: this has brought the total number of European standards adopted by the two committees to 15 000.

2.8 The Committee believes that the elements that have contributed to this success must be consolidated and, if necessary, further developed. The new legal framework, which is based on Articles 95 and 157 of the Treaty and which regulates the financing of standardisation processes must not, in the Committee's view, invalidate the fundamental nature of the standardisation process, which must remain free, voluntary and consensual.

2.9 Moreover, the Committee is aware of the importance of streamlining, consolidating and securing a long-term financial framework for the main European structures, not least in relation to the increasing use of technical standards over the last few years.

2.9.1 There is, in fact, a growing interest in avoiding new barriers to trade through a standardisation system capable of fostering the competitiveness of products, services and European industrial processes, with a view to developing the economic, social and environmental aspects of development, in line with the Lisbon strategy.

2.10 So far there is no legal reference at European level that explicitly regulates the financing of a technical standards system or enables the Commission to financially support, via additional resources, all standardisation work.

2.10.1 As is widely known, these processes cover a spectrum ranging from information and communication technology to transport; from environmental and consumer protection to the safety of food processes and products; from pre-normative and co-normative research to the services and new deliverables ⁽⁷⁾ sector.

2.11 Moreover, the central structures of CEN, CENELEC and ETSI must be better coordinated and consolidated, particularly following the accession of the new Member States and in view of future EU enlargements.

2.12 Whereas national standards organisations can be financed via direct contributions on products and services, Community institutions depend only on membership fees and additional funding from the EU and EFTA, which, for various reasons, seem to be inadequate to ensure an effective, solid European standards system.

2.13 In its Conclusions adopted in 2002, the Council called on the public authorities to acknowledge the strategic importance of standardisation and to make a clear commitment to that end, particularly through a specific contribution with a view to maintaining effective and efficient standardisation infrastructure.

2.14 In December 2004, the same Council took note of the Commission's initiative to reform the institutional framework and propose a new legal basis for the financing of European standardisation ⁽⁸⁾; it therefore called on the European Commission, the Member States and the European and national standards organisations to consider ways of optimising the European standards system, with a view to making the best use of available resources and exploring other options to ensure viable financing of standardisation in Europe ⁽⁹⁾.

2.15 The Commission has drawn up several proposals ⁽¹⁰⁾ on the possible scenarios as regards financing of the European standards system:

- the non-intervention option;
- an option whereby it is fully financed by industry and stakeholders;

⁽⁷⁾ **New Deliverables:** technical specifications that are subject to faster, streamlined consensus procedures, providing a rapid reduction in market uncertainty without using longer, more laborious formal standards. They are valid for a limited period and are used by the Information Society. They are developed under the CEN Workshop Agreements.

⁽⁸⁾ Council Conclusions of 21.12.2004.

⁽⁹⁾ Recommendation (b) 2 of the Council Conclusions of 21.12.2004.

⁽¹⁰⁾ SEC(2005) 1050 of 19.8.2005 (Ex ante evaluation).

- an option whereby it is fully financed by the Member States and national standards organisations;

- an added value option, with financial support from the European Community.

2.16 A shortcoming of the arrangement whereby full financing is provided by industry and other stakeholders would be that it would focus almost exclusively on the production of market driven technical standards, i.e. it would be geared to improving European competitiveness on the global market.

2.16.1 The advantage of this type of funding would be that it is willingly provided by businesses and reflects the needs of the market without being influenced by external factors. At the same time, however, it could have a profound impact on the protection, and particularly balanced protection, of all the interests represented, and those of SMEs in particular.

2.17 The option whereby full financing is provided by the Member States, via the ESOs which are members of CEN, CENELEC and ETSI, could weaken the level of European coordination and coherence of the European standards system.

2.17.1 On the other hand, this option could, to a large extent, satisfy the principles of subsidiarity and proportionality laid down in the Treaty.

2.18 Greater Commission involvement would give a high level of European value added to technical standardisation, thereby leading to the abolition of non-compliant national standards and improving the operation of the single market, not least in terms of economies of scale for the output of European industry.

2.18.1 The European Commission could influence the standardisation process and steer it towards a Community standpoint, with potential gains in terms of visibility, consistency and effective support for its policies.

2.19 With regard to costs, recent studies ⁽¹¹⁾ have shown that the annual costs of the CEN/CENELEC/ETSI standards system amount to about EUR 700 million, distributed as follows:

- 26 % for the ESOs' institutional costs;
- 2 % for the management costs borne by the CEN Management Centre (CMC);
- 72 % for the cost of the national experts' participation in various standards committees.

⁽¹¹⁾ Ronald Berger & Partners GMBH, December 2000.

2.20 As regards revenue, currently, the main sources of funding are the following:

- 2 % from EU/EFTA contributions;
- 8 % from national government contributions;
- 90 % from industry and stakeholder contributions.

2.21 Currently, financial support for European standardisation is based on several acts which, for the most part, do not contain explicit, specific provisions on financing conditions. These acts provide the basis for the European Commission to ask the European standards organisations (CEN, CENELEC, ETSI) to draw up European standards in support of its policies.

2.22 Financial support for European standardisation is governed by the partnership relations established between the European Commission, EFTA and the European standards organisations, which are also specified in the General Guidelines for Cooperation signed on 28 March 2003.

2.23 The financing of European standardisation mainly involves:

- annual performance contracts with the ESOs to improve the operation of their central secretariats as regards consistency, efficiency, quality and visibility;
- improving the quality of European standardisation by having recourse to external consultants to evaluate draft harmonised standards, and by translating the final version, if necessary;
- services for developing European standards or other standardisation products, which are to be drawn up in support of Community policies and legislation;
- the promotion and profile of the European standardisation system and European standards;
- technical assistance and cooperation involving third countries and international cooperation.

2.23.1 Similarly, standardisation helps in reducing the technical barriers to international trade through the WTO Agreements, such as the TABD (Trans Atlantic Business Dialogue) and the MEBF (Mercosur European Business Forum), and by transposing European standards into international standards: ISO, IEC, ITU.

3. Specific comments

3.1 In the Committee's view, in order to retain the essential characteristics of the European standardisation process and to

ensure that it remains voluntary, consensus-based and market-driven, it would be useful to insert a new recital as follows:

'the standardisation process must remain voluntary, consensus-based and market-driven. These characteristics must be retained and enhanced through the new Community legal basis for the financing of European standards in line with the Action Plan for European Standardisation adopted by the Commission in October 2005; the action plan must be updated annually with the consent of ESOs and stakeholders.'

3.2 The Committee believes that the rapid pace of technological development does not justify the industry's involvement in boosting the spread of consortiums and forums for the creation of technical specifications outside the official process of European standardisation. This would in fact weaken the key elements of European standardisation: participation open to all experts, particularly small businesses; the transparency of the entire process; and extending the basis for voluntary consensus. It therefore feels that it is important to include the following new recital:

'The new legal basis for financing must ensure that standardisation is more effective and stronger, with a view to meeting, as part of a transparent, open and voluntary process, the requirements of the new deliverables: technical specifications, reports and guides. The ESOs should be allowed to monitor these deliverables ⁽¹²⁾ in order to ensure that the demands of all stakeholders, particularly those which are less structured and smaller in size, and the legitimate requests of consumer organisations, are met.'

3.3 In the Committee's view, it would be advisable to amend the current 4th recital in order to show that the objective to be attained is not only to provide a legal basis **'for the Community's financing of all the European standardisation activities required to implement its policies and legislation'** but also to enhance the European standardisation process, as this is a key element underpinning the competitiveness of European industry, consumer protection and the protection of the health and welfare of European citizens:

'This Decision must provide an explicit, complete and detailed legal basis for the Community's financing of all the European standardisation activities required to implement its policies and legislation and to enhance the European standardisation process itself, as it is a key element underpinning the competitiveness of European industry, consumer protection and the protection of the health and welfare of European citizens'.

⁽¹²⁾ Cf. footnote 7.

3.4 The Committee believes that it should be more clearly emphasised that ESOs do not produce technical standards but that they provide a European infrastructure service through which standards can be developed by experts representing the participating stakeholders; a new recital should therefore be inserted after the 8th recital as follows:

‘European standards organisations essentially provide infrastructure services for the production of technical standards, which result primarily from a consensual approach to technical standards production by stakeholder representatives’.

3.5 The Committee suggests that in Article 3(1) of the Proposal for a Decision — *Standardisation activities eligible for Community financing* — two new points g) and h) be inserted after point f) as follows:

3.5.1 As stated in point 1.4 above, training of stakeholders on standardisation issues is particularly important. Article 3, new point g):

‘the training of stakeholder representatives, particularly for small businesses, the services and distribution sector and less structured organisations, both in terms of the general and the technical standardisation process, with a view to enhancing the capacity for ‘co-producing’ European and international standards’.

3.5.2 In order to ensure increasing participation of the numerous civil society stakeholders in standardisation processes, it is essential to improve networking between them. Article 3, new point h):

‘enhancing the interdisciplinary coordination of methods, procedures and policies; interactive European computer networks allowing national and regional standards organisations to communicate’.

3.6 *Financing arrangements*

3.6.1 The work carried out by standards organisations is on a par with activities of general economic interest, since it produces services that are vital for health, the environment and sustainable development.

3.6.2 The Committee believes that the activities of the central secretariats of European standards organisations could be financed through both ‘grants for actions’ and ‘operating grants’⁽¹³⁾ and by launching calls for tender (procurement) in line with public procurement procedures. Essentially, a more flexible approach is needed.

3.6.3 Article 5. *Financing arrangements*, point 5. As regards the framework partnership agreements between the ESOs and the European Commission (ex. Article 5), the Committee believes that it would be advisable to ensure that these contracts are the result of a genuinely equal partnership and are not dictated unilaterally. It would also be useful to reduce red tape and administrative supervision, avoiding burdensome certification and auditing procedures of costs incurred, by introducing flat-rate systems, which would cover 100 % of all marginal costs.

3.7 *Environmental aspects*

3.7.1 In addition to the primary objectives of standardisation, i.e. facilitating trade, improving the quality of life, health standards and the safety of industrial processes and services, environmental protection must also be given particular attention.

3.7.2 The Integrated Product Policy, which focused on the ‘environmental life cycle’⁽¹⁴⁾, provides a template here. The analyses of environmental aspects at enterprise and ‘site’ level have already been integrated into EN/ISO 14001, which has been adopted as a European standard. The other standards of the ISO 14000 (environmental management systems) category have also been introduced into European practice: ISO 14020, environmental labels and declarations; ISO 14030, environmental performance assessment; ISO 14040, LCA (Life cycle assessment).

3.8 *Management, implementation and monitoring arrangements*

3.8.1 The Committee considers that Article 6(2) should be amended in line with the amended 4th recital.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹³⁾ COM(2005) 377, Article 5(2).

⁽¹⁴⁾ COM(2003) 302 final.

Opinion of the European Economic and Social Committee on the Green Paper on the Enhancement of the EU Framework for Investment Funds

(COM(2005) 314 final)

(2006/C 110/04)

On 12 July 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *Green paper on the enhancement of the EU framework for investment funds*.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2006. The rapporteur was Mr Grasso.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 138 votes to one with four abstentions.

1. Introduction

1.1 The Commission's green paper is an extremely important strategy document in the quest to achieve full integration of EU financial markets. It is well known that the economic development and growth of European countries is closely linked to the development and integration of financial markets, the latter also representing the full achievement of the third phase of European Union.

1.2 Leaving aside the academic debate as to whether financial development precedes or follows economic development, it would seem important to emphasise that with regard to the dualistic, bank- and financial market-oriented approach that characterises the 'Anglo-Saxon' model (and that of the US in particular) as compared to the 'European model', current legislative trends and **the direction of the Union seem to indicate a desire to continue to work towards full integration of the two approaches** in our economic system.

1.3 Financial markets and institutions perform for society the fundamental task of bringing together units that are running a deficit and those that are running a surplus, complying with ground rules based on efficient allocation of resources and rationality. Furthermore, it must be remembered that fair competition — and competition between firms — occurs in capital and credit markets before it does in the material goods market.

2. The UCITS market in the EU and the need for harmonisation

2.1 European regulation of managed savings, in general, and of UCITS (Undertakings for Collective Investment in Transferable Securities) in particular, revolves around the core Directive 85/611/EEC, which in recent years has supplied the regulatory framework within which the sector has developed. Although

the EU has not yet completely removed the regulatory barriers to cross-border localisation and product marketing, the UCITS market operates in a harmonised regulatory context.

2.2 The UCITS market appears to be growing at an unstoppable pace. In recent years, managed net assets have seen two figure growth. According to figures from the 'European Fund and Asset Management Association, Investment Company Institute, and other Mutual Fund Associations', from 1996 to 2005 the market that comprises the EU, the Czech Republic, Hungary, Poland, Norway and Switzerland recorded a compound annual rate of 14.5 %, increasing from approximately EUR 1 450 billion to more than EUR 4 900 billion of net assets.

2.3 The publication⁽¹⁾ of the annual figures for the number of funds and total fund capital globally shows that the phenomenon is clearly on the increase both in terms of numbers and volumes managed.

2.4 Whilst it appreciates the difficulties, the EESC believes it is very important to resolve the problem of fiscal convergence in order to increase the growth potential of UCITS. The sector's internationalisation strategies can be influenced by entrance barriers and exit barriers. Exit barriers are created when non-resident fund holders are taxed according to fund host country legislation; entrance barriers are created by the legislation of the fund holder's country of residence.

2.5 In Europe UCITS fiscal discipline appears almost everywhere to be inspired by the principle of neutrality of investment in funds compared to direct investment; **nearly all European countries operate — either formally or substantially — the no-veil (fiscal transparency) model, in which investor income is taxed directly**. The transparency model applies the principle of *capital export neutrality* and, where income from funds has not been taxed at source, investors are taxed based on the residence principle.

⁽¹⁾ Source: European Fund and Asset Management Association, Investment Company Institute and other Mutual Fund Associations.

3. Comments on the *General assessment* section

3.1 In the European financial industry, UCITS are, on average, less than one third of the size of their US counterparts; as a result fund management does not fully benefit from economies of scale, reducing net returns to end-investors.

3.2 However, although the Commission's key objective is to define a framework for product financing, the EESC feels that **if investors are to benefit, there must be full regulation of the financial system** (i.e. regulation of both products and services).

3.3 The Green Paper highlights the increased operational risk that the outsourcing of certain functions may entail, which may possibly result in conflicts of interest: the EESC feels **this is a valid concern, which should be followed up with appropriate legislation.**

3.4 Whenever a process is segmented and delegated to different organisations, the problem is not so much to do with the technical arrangements for making the subdivision than with the balance with which the (new) market that regulates buyer-vendor relations develops. Let us take, by way of example, the financial analysis industry. Under current practice, financial analyses are not bought and sold independently; instead, they are incorporated into other services, usually of an operational nature. Thus, for example, a bonds broker tends to distribute analyses of individual bonds in exchange for operational continuity based on commission levels that also include the cost of the analysis.

3.5 Information (analysis) is thus disseminated according to a market logic that is typical of that for a 'public good': the amount of information needed is provided and the price is the sum of the prices paid by the various buyers; only a few of these buyers, however, actually pay anything. The effect is destabilising, to say the least: analysis is underpaid, thus providing an incentive to make economies of scale when producing analyses, with an inevitable reduction in quality and also an incentive to take advantage of cost benefits deriving from conflicts of interest (see, for example, the British FSA's intervention on 'soft commission' between brokers/dealers and asset managers). The EESC considers that rules must be established to avoid — as far as possible — confusing the price setting mechanisms used in the financial capital risk intermediation industry with those used in the investment risk intermediation/transformation industry.

4. Responses to the green paper's questions

4.1 *Question 1: Will the above initiatives bring sufficient legal certainty to the implementation of the Directive?*

- A. Eliminate the uncertainty surrounding the recognition of funds during the transition from UCITS I to UCITS III,
- B. Simplify the notification procedure for passporting funds,
- C. Promote implementation of Commission's Recommendations on the use of derivatives and the simplified prospectus,
- D. Clarify the definition of 'assets' which can be acquired by UCITS.

4.1.1 To answer the question it is necessary to **distinguish between 'product' financing and 'service' financing**. The aim of the former is to establish the practical instruments for bringing providers and receivers of financial capital together; the latter aims to identify the instruments that are best suited to the requirements of fund investors or providers, and indicate — where no suitable product exists — what the missing features are.

4.1.2 The conversion of financial systems from a 'bank-centred' to a 'market-centred' approach changes the role of the financial intermediary, who increasingly frequently has to intermediate risk as well as financial capital. Risk intermediation is profitable as long as the intermediary is able to handle the risk at a lower cost than the investor. It is therefore legitimate to wonder whether a legislative system that aims for total reduction of risk is more effective than one intended to provide adequate levels of efficiency for risk intermediation.

4.1.3 It should be borne in mind that even in efficient financial market contexts, the overall risk of an investment would ideally be split into two parts: **'payoff risk' and 'informative risk'**. The former measures the effective volatility of an investment's payoff. The latter measures the difficulty of correctly assessing the payoff risk (due mainly to a lack of information on the part of the economic operator). It must be appreciated that the risk premium calculated by the economic operator derives from both types of risk and that the links between the two types are not characterised by simple addition but by correlations of varying degree.

4.1.4 In light of the above, the EESC would answer in the affirmative, but only insofar as this applies to *product financing*. With regard to service financing there is a need to allow greater freedom in the provision of investment services, for example, by removing the current restrictions on financial promotion, which do not take full account of the principle of *home-country-control*.

4.1.5 There is a clear concern underlying this, i.e., the need to **prevent evasive behaviour** on the part of those aiming to set up promotional networks exploiting the more favourable conditions pertaining in certain EU countries. The EESC believes that this logic is fundamentally flawed: the fact that evasion is possible means that the conditions have not been effectively harmonised.

4.1.6 The EESC therefore feels that *free movement* should be increased within the service financing industry as an incentive towards the standardisation of the application by individual countries of EU directives on investment and transferable securities (including UCITS III).

4.2 *Question 2: Are there additional concerns relating to day-to-day implementation of the Directive which need to be tackled as a priority?*

4.2.1 Regulatory convergence must, however, be accompanied by measures to coordinate the fiscal rules that apply to the sector. Different national systems still coexist in the European market, as they do in all other areas of finance, and these are compounded in some sectors by rules deriving from bilateral agreements to avoid double taxation.

4.2.2 This patchwork of fiscal regulation leads to distortions of competition, **double taxation, and scope for arbitrage**, fraud and tax evasion. In this respect, the national regulatory framework needs to be more efficient, given the growing internationalisation of the market.

4.2.3 Individual Member States possess a formidable promotional and protectionist instrument: taxation. Given that the tax implications of UCITS originating in other EU countries are open to various interpretations, less favourable tax arrangements can be applied, thus creating a kind of entrance barrier. The Committee is aware that tax harmonisation cannot be considered an easily attainable objective in the short term, partly due to the requirement for unanimity in this area. **We would therefore propose that consideration be given to framing an EU taxation system for investment products in terms of both levying and collecting.**

4.3 *Question 3: Would an effective management company passport deliver significant additional economic advantages as opposed to delegation arrangements? Please indicate sources and likely scale of expected benefit.*

4.3.1 The passport and *simplified prospectus* seem suitable measures for overcoming criticisms regarding market fragmentation and barriers to full mobility of capital and market completion **and for beginning to establish sufficient legal certainty**; the EESC also believes it is essential to work towards

eliminating the uncertainty surrounding the recognition of funds launched during the transition from UCITS I to UCITS III.

4.4 *Question 4: Would the splitting of responsibility for the supervision of the management company and the fund across jurisdictions give rise to additional operational risks or supervisory concerns? Please describe sources of problem and steps that would have to be taken to manage such risks effectively.*

4.4.1 The EESC realises that within the EU there are two financial models: that of the UK and that of continental Europe, and it will be difficult to converge them in the short term. However, the EESC hopes that the new rules will ensure that **the convergence process can be facilitated by having a single regulator**, since it believes that the introduction of legislative obstacles to prevent institutions from picking and choosing which regulatory system to avail of would only serve to perpetuate the current imbalanced situation.

4.4.2 The EESC is convinced that splitting responsibility for supervision of the fund management company and of the fund between two Member States increases supervisory concerns, and risks reducing operational efficiency. **The Committee therefore recommends that responsibility towards the investor should lie with the fund that is based in the investor's home country, even when the management company is based abroad.**

4.5 *Question 5: Will greater transparency, comparability and attention to investor needs in fund distribution materially enhance the functioning of European investment fund markets and the level of investor protection? Should this be a priority?*

4.5.1 To enhance the functioning of fund markets and the level of investor protection it is not enough to regulate only the product side of financial instruments. The EESC suggests that, if investors are to make informed choices, due attention must be given to their needs in the fund distribution phase, making it more transparent.

4.5.2 Information provided to investors must take some account of the home environment and culture in which the investors are based. The enlargement of the European Union to include countries which up until 15 years ago were not participating in the market economy raises the issue of whether there should be a uniform information requirement. The EESC believes that consideration should be given to this, bearing in mind on the one hand, the need for a regulatory framework which is as simple and uniform as possible, and on the other, the different economic and financial cultures that still exist between some Member States.

4.6 Question 6: Will clarification of 'conduct of business' rules applying to firms which retail funds to investors contribute significantly to this objective? Should other steps (enhanced disclosure) be considered?

4.6.1 The EESC believes that clarification of 'conduct of business' rules for distributors can only be a good thing. We must not underestimate, however, the problems arising from the day-to-day implementation of the directive, with regard to risk management and fee transparency, which are not always easy to resolve.

4.6.2 Consider, for example, the technical issue of benchmark accounting. This can take on totally different meanings depending on whether the manager is aiming to *beat the benchmark* or *meet the benchmark*; the particular delegation process — where the same technical instruments are used — requires exposure to different levels of risk, assuming that to beat the benchmark it is necessary to allow managers to vary their allocations, thereby assuming additional degrees of risk.

4.6.3 In this context, we would propose the introduction of regulations aimed at bringing greater transparency to the process (rather than the quantity) of portfolio investment rotation: gross performance being equal, high levels of rotation bring higher transaction costs, reducing the net performance for the client. This is a particularly pressing issue, especially if part of the transaction costs are to be borne by the managers themselves.

4.7 Question 7: Are there particular fund-specific issues that are not covered by ongoing work on detailed implementation of MiFID conduct of business rules?

4.7.1 The MiFID directive can provide an important regulatory basis, particularly in seeking to attain high transparency standards in the distribution of UCITS.

4.7.2 **The MiFID directive does not, however, lay down transparency rules for the negotiation of bonds**, which can be far from transparent. The EESC therefore feels that the MiFID Directive cannot be seen as the instrument that rounds off the legislative framework governing UCITS by remedying all of its shortcomings.

4.8 Question 8: Is there a commercial or economic logic (net benefits) for cross-border fund mergers? Could those benefits be largely achieved by rationalisation within national borders?

4.8.1 European funds are still relatively small-scale: in 2004 the average was USD 195 million, compared to the American average of USD 628 million in the same year. This impacts on the chances of achieving economies of scale, then on returns

and, last but not least, on the profitability of the company that manages the fund.

4.8.2 It is widely known that one of the financial effects of the process of economic globalisation is a reduction of the absolute level of risk, which is associated with a readjustment of the levels of systematic (increasing) and specific (decreasing) risk. While admittedly **cross-border mergers can increase economies of scale** they should only be **implemented on a limited basis, in the case of products where such mergers can be a driver of success**, or rather to all sectors of fund management where efficiency is more important than effectiveness. In sectors where effectiveness is lacking, however, no benefit can be derived from agglomeration.

4.9 Question 9: Could the desired benefits be achieved through pooling?

4.9.1 Pooling asset management in the case of funds that are very similar in nature clearly leads to economies of scale and is an instrument already used by management companies for improving fund management efficiency. With cross-border pooling, however, investment funds run into the various tax and legislative problems previously discussed. The EESC therefore considers that it cannot be an alternative means of circumventing the legislative and institutional difficulties impeding the consolidation of the investment fund industry.

4.10 Question 10: Is competition at the level of fund management and/or distribution sufficient to ensure that investors will benefit from greater efficiency?

4.10.1 The answer to this is *no*, as the US experience has revealed. Investment funds have existed on the American market for the past sixty years: despite the spectacular increase in the number and size of funds available, the costs borne by the funds and by investors have, on the whole, almost doubled⁽²⁾. This has resulted in a distinctly unsatisfactory performance when measured against the benchmark: while over the period 1945-1965 the benchmark outperformed funds by an average of 1.7 % annually, in the period 1983-2003 this gap increased, reaching 2.7 % per annum.

4.11 Question 11: Which are the advantages and disadvantages (supervisory or commercial risks) stemming from the possibility to choose a depositary in another Member State? To what extent does delegation or other arrangements obviate the need for legislative action on these issues?

4.11.1 The option of choosing a depositary in a different Member State from that in which the fund management company is based could **increase competition among depositaries**, reducing the costs borne by the fund.

⁽²⁾ Bogle J.C. (2005), 'The Mutual Fund Industry 60 Years Later: For Better or Worse?', *Financial Analysts Journal*, January/February.

4.11.2 This could also mean an increased supervisory risk if there is not sufficient cooperation and convergence between the regulatory authorities.

4.11.3 Though they are considerable, depositary fees are lower than other costs, such as, for example, distribution expenses. The EESC would suggest that the benefits and risks of a legislative initiative in this regard should be weighed up carefully.

4.12 *Question 12: Do you think that on-going industry-driven standardisation will deliver fruit within reasonable time-frames? Is there any need for public sector involvement?*

4.12.1 Standardisation, automation and the computerisation of order-placing and fund liquidation are fundamental prerequisites if distributors are to expand their range of products and increase competition.

4.12.2 This, however, would require significant changes to be made to the rules and standards governing operating and IT procedures, incurring significant costs for operators. It should be remembered that in continental Europe fund management companies and distributors are often part of the same group. In a context such as this there is presumably little incentive for operators to bear the costs involved in increasing competition at the distribution level. It is possible, therefore, that public sector involvement could accelerate this process.

4.13 *Question 13: Does heavy reliance on formal investment limits represent a sustainable approach to delivering high levels of investor protection?*

4.13.1 The effectiveness of strict codes of conduct regarding risk management has always been a matter of intense debate in the world of economics, especially in light of the varying benefits deriving from past experience since the Bretton Woods exchange-rate agreements. This results from the diverse nature of economic risk in relation to time: in the short term, fluctuation in the face of restriction creates risk, while conversely, in the long term, risk is also created where something remains rigid while the system evolves. As a result, introducing rigidity by means of formal limits would be beneficial in the short term, but would create substantial risks in the long term.

4.13.2 A point should also be made in relation to recent studies on the so-called behavioural finance sector: the actions and decisions of individual economic agents tend to be strongly influenced by the level of risk involved. As the level of risk increases, behaviour becomes increasingly reactive and vice versa; consequently, the EESC takes a negative view of any legislation that introduces excessive rigidity and which could have a twofold effect in the long term: the instruments would pose a greater operational risk and economic operators would

become less reactive, with an outcome that remains to be established, but it would certainly be negative. **On the other hand, awareness of 'real loss' of capital could be the most effective impetus to its protection.**

4.13.3 This development entails further distortion of the markets: the creation of expectations that if the risk has a favourable outcome, the investor benefits, whereas if it produces negative results, this will be absorbed by the market.

4.14 *Question 14: Do you think that safeguards — at the level of the management company and depositary — are sufficiently robust to address emerging risks in UCITS management and administration? What other measures for maintaining a high level of investor protection would you consider appropriate?*

4.14.1 The EESC would propose intervening in the short term, possibly by means of formal and strict regulations, but only with a view to breaking cartels; if this were to happen the market would become more mature, and thus, would no longer require tight restrictions. Accounting is one area of particular interest: all too often the timeframes set by accounting obligations are completely inconsistent with those pertaining to product financing (too short), so that the accounts show little evidence of the temporal diversification pertaining to certain investments.

4.14.2 In order to enhance investor protection, the EESC suggests considering setting up a **special guarantee fund**, to which fines imposed by the supervisory authorities could also contribute. Clearly, this fund should not cover market risks originating from UCITS investments; it should help to compensate investors who have lost out when intermediaries have not played according to the rules.

4.15 *Question 15: Are there instances resulting in a distortion of investor's choice that call for particular attention from European and/or national policy-makers?*

4.15.1 Investment funds compete against financial products such as **unit-linked policies**, perceived as comparable by investors, despite the fact that they are governed by a very different legal framework.

4.15.2 This can distort investors' choices with negative repercussions on cost and risk levels in the investments concerned. The EESC believes that this problem cannot be addressed with reduced competition or by easing the restrictions and guarantees imposed on investment funds. We would call instead for an upward adjustment of standards so that financial products that are perceived as being a direct alternative to investment funds are subject to regulatory requirements that are comparable to those pertaining to such funds.

4.16 Question 16: To what extent do problems of regulatory fragmentation give rise to market access problems which might call for a common EU approach to a) private equity funds; b) hedge funds and funds of hedge funds?

4.16.1 In order to clarify the terms of this question and the issue raised in the previous question it is necessary to preface our response as follows. **The Commission needs to clarify its definition of transferable securities.** Clarification is needed to dispel doubts as to **whether or not this term implies a liquid instrument.** It seems that these two concepts are being used interchangeably, in an attempt to divest the concept of transferable securities of any connotation of being an alternative investment or a UCITS-substitute. We believe that this misunderstanding could have serious consequences, as it could lead to the confusion of two quite different theories regarding financial markets: efficiency and completion.

4.16.2 A financial market is efficient when investment transaction costs can be borne by it; a financial market is complete when it comprises all possible investments.

4.16.3 Private equity and hedge funds must be judged primarily in terms of their effectiveness (capacity to select the best investments) before being considered in terms of efficiency (capacity to achieve economies of scale regarding costs). For this reason, the issue of fund size is less relevant: thus, problems regarding effectiveness (capacity to move quickly on the market without influencing its performance) and the containment of systemic risk (consider the rescue of the LTCM fund in 1998) suggest that it would be preferable not to incentivise excessive expansion in the size of funds.

4.17 Question 17: Are there particular risks (from an investor protection or a market stability perspective) associated with the activities of either private equity or hedge funds which might warrant particular attention?

4.17.1 A feature of these investments, in addition to the payoff risk, is their major **informative risk**. It is right to regulate this risk, particularly in order to contain the risk of fraud, but it would be a mistake to try to reduce it excessively. Indeed, if these funds were to become fully transparent, there would be a risk of invalidating manager skills, which in fact underpin the production of returns that are only tenuously linked with the market.

4.17.2 The Committee does not believe that the way forward should consist in a utopian attempt to clarify a complex process, but rather to inform the 'average' investor that alternative investments require highly specialised knowledge, without which expert advice should be sought.

4.18 Question 18: To what extent could a common private placement regime help to overcome barriers to cross-border offer of alternative investments to qualified investors? Can this clarification of marketing and sales process be implemented independently of flanking measures at the level of fund manager etc.?

4.18.1 The establishment of a common private placement regime for qualified investors could be a major fillip to the development of private equity funds in the European Union.

4.18.2 Qualified investors must by definition be in possession of the technical skills and assets management ability required to make high risk investments such as in private equity. It must therefore be assumed that they are able to assess the ability and credibility of managers. Moreover, given that private equity funds provide a de facto diversification of risk, there should be no need for any flanking measures that might lead to over-regulation of management company activity.

4.19 Question 19: Does the current product-based prescriptive UCITS law represent a viable long-term basis for a well-supervised and integrated European investment fund market? Under what conditions, or at what stage, should a move toward principle-driven, risk-based regulation be contemplated?

4.19.1 There are several examples of the shortcomings inherent in the current approach. For example, ETF (Exchange Traded Funds), which combine the positive features of a fund (considerable diversification) with those of shares (can always be traded on the market). The directive encourages use of this instrument by allowing it — given its UCITS status — to benefit from the passport. On the other hand, it poses restrictions on another UCITS holding it, as it would then be treated as a stock certificate.

4.19.2 In the light of, *inter alia*, alternative investment thinking and given the importance of not focusing solely on product finance but also on services finance, the Committee considers that a move towards principles-based regulation would be welcome. At the same time, it believes that the review of the regulatory framework should be done gradually and attempt to strike the right balance between providing adequate consultation time and completing the review promptly.

5. Future challenges

5.1 As has been shown, **the European UCITS system still appears to be fragmented**, with relatively small businesses compared to the U.S. and apparently still sluggish cross-border collaboration and flows. This is not something that is likely to enable any significant economies of scale or — consequently — cost reductions to be made.

5.2 Furthermore, the excessive concern, also voiced in the green paper ⁽³⁾, regarding the definition of assets that can be acquired by UCITS, obliging funds to invest in liquid financial instruments in particular, would prevent participation in non-regulated markets.

5.3 **It would therefore be advisable to consider making private equity operations a possibility.** This would be consistent with the objective of opening SME capital up to risk capital operations and therefore to private equity.

5.4 The European economic system is strongly characterised by **small and medium enterprise, which often appears undercapitalised** because it resorts mostly to banks.

5.5 This undercapitalisation **is often accompanied by excessive indebtedness — especially short-term debt** — with a large amount of commercial debt and credit, linked to the fact that businesses from the same sector of industry are highly interdependent. This is also the consequence of a type of ownership that is typical of family capitalism in that the entrepreneur's assets and the firm's capital are often combined.

5.6 These business problems and the need to achieve more general 'productive system' objectives on a European scale make it essential to find solutions to the financial problems experienced by SMEs. These objectives are threefold, and can be summarised as follows:

- encourage an enterprise culture that can open SME capital up to risk capital from third parties and financial organisations;
- encourage innovation as an instrument of competitiveness in globalised markets;
- provide support for business continuity (and inheritance), understood as a process that must not cause any 'discontinuity' that might compromise the life of the business.

5.7 The Committee hopes that, on the basis of the above considerations, the European legislator will extend his attention to the important field of private equity, while venture capital is still underdeveloped in Europe.

5.8 The Committee believes, moreover, that the current discussion of the regulatory framework for investment funds must also provide the opportunity to **take a closer look at the development of socially responsible finance, which does not sacrifice social development and environmental protection issues to the profit motive.** In 2003 ethical funds

accounted for approximately 0.37 % of all assets managed by European UCITS. A comparison with the American market, where in the same period 11.3 % of all assets managed by UCITS belonged to ethical funds, shows that socially responsible finance still has very high growth potential in Europe.

5.9 In order to encourage faster development of socially responsible finance, the Member States might envisage tax incentives involving partial de-taxation of earnings from these investments following a practice — already provided for in some Member States — that allows voluntary contributions to socially useful organisations to be tax deductible. Furthermore, tax concessions should be available to funds profits that are reinvested in socially useful organisations.

5.10 Given the innovative nature of this proposal, the Committee hopes it will be examined in further detail and a feasibility study carried out in the light of current best practice.

- 5.11 The medium- and long-term challenges are essentially:
- to consider the new products that financial innovation inevitably 'creates', in particular the alternative investments that are increasingly essential for 'financing innovation' for SMEs;
 - to overcome, including by means of mergers, the problems posed by European funds being too small, with uncompetitive operating costs; at the same time, to help the information and analysis market 'break through';
 - to 'complete' the market, with 'product finance' and 'service finance' being regulated.

5.12 Proper information on risks and related products and manager credibility on transaction amounts and arrangements are all factors which — above and beyond the necessary rules — are able to endow the market with confidence, fairness and behavioural rules. These are crucial factors for market efficiency and for effectiveness in allocating resources.

5.13 Consequently, harmonising tax rules, encouraging mergers, enabling joint management of funds (pooling), encouraging competition in the management and distribution of products and services, abolishing the need for the fund manager and the depositor to belong to the same Member States, avoiding high 'transaction costs' connected with fragmented subscription and reimbursement procedures, will bestow on the market a greater degree of efficiency and effectiveness.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽³⁾ COM(2005) 314 final, p.5, point 4.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions — eAccessibility

(COM(2005) 425 final)

(2006/C 110/05)

On 13 September 2005 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 February 2006. The rapporteur was Mr Cabra de Luna.

At its 425th plenary session, held on 15-16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 142 votes to 2 with 3 abstentions.

1. Reasons

1.1 There is an urgent and pressing need to ensure the market in accessible ICT goods and services pursues a path of interoperability and compatibility both across the European region as well as globally.

1.2 The ICT industry are beginning to wake-up to the untapped market of disabled consumers as well as an ever growing population of older consumers who could benefit considerably from accessible features in the design and production of goods and services in this sector.

1.3 EU Member States are increasingly acting both together and independently to address the digital divide and to promote eInclusion and eAccessibility through both legislative and voluntary measures. It is imperative that there is EU level coordination on this matter to reverse existing market fragmentation, to ensure avoidance of further fragmentation in the market and to avoid past mistakes whereby there was a lack of accessibility in mainstream ICT and a mis-match between assistive technologies and mainstream goods and services which isolated many potential consumers from the market. Such mistakes have had the additional negative effect in wider economic terms in particular by perpetuating the social exclusion of many persons and inhibiting their access to the labour market.

1.4 The European Commission communication on eAccessibility presents the main priorities to consider and address in order to avoid market fragmentation but rather to promote greater convergence and economic growth in this sector.

2. Background to the eAccessibility Communication

2.1 The Commission Communication on eAccessibility is intended to contribute to the principal strategic framework on

a European information society as set down in the i2010 Communication ⁽¹⁾ published in June 2005.

2.2 The main objective of the Communication is stated as being to promote a more consistent approach to eAccessibility initiatives in the Member States and by industry.

2.3 This Communication details both the benefits provided to disabled persons by new technology as well as the problems and the new barriers being created in the development of such technologies.

2.4 The Communication expresses concern about the existing fragmented market in accessible technologies and the danger that a lack of harmonisation and interoperability in this market will further accentuate the problems.

2.5 Three approaches are identified in the Communication as a means to address the issue:

- the promotion of accessibility requirements in public procurement;
- accessibility certification;
- better use of existing legislation.

3. Disabled people and the information society

3.1 It is increasingly well understood that the advances in information communication technology (ICT) must incorporate the needs of all persons in society, in particular those most vulnerable to social exclusion, to address the problem of the digital divide and an entrenched two-tier society.

⁽¹⁾ COM(2005) 229 final.

3.2 Access to information by disabled persons must be recognised first and foremost as a rights issue. Disabled people, who make up 10 % of the EU population, have the same rights as non-disabled people to access to goods and services and this includes ICT goods and services.

3.3 There are also important economic reasons for Governments and industry to seriously address this issue. By addressing and finding solutions to the challenges faced by disabled persons to accessing ICT it will be to the advantage and to the benefit of **all** users in particular to the benefit of a growing population of older persons, children and persons with temporary disabilities.

3.4 Disabled persons constitute a heterogeneous group of people. At the same time it is fair to say that the main impairment groups facing accessibility difficulties in ICT are: persons with cognitive and learning disabilities, persons with sensory disabilities (deaf and hard of hearing, blind and visually impaired persons, deafblind persons, persons with speech disabilities) and persons with physical disabilities.

3.5 Disabled persons have benefited in many ways from advances in ICT — both in the respect of mainstream technologies and in respect of assistive technologies; for example:

- the advantages of SMS texting for deaf persons, bearing in mind that it still does not offer real-time communication;
- the availability of speech or magnification software for blind and partially sighted computer users;
- and voice recognition systems.

3.6 However, at the same time new barriers are being created; for example:

- The development of new computer technology has dramatically reduced blind peoples' ability to use personal computers — while 99 % of PCs could be used by blind users in 1990, only 1/3 are accessible today due, for instance, to the increased use of visual commands over the years ⁽²⁾.
- The increased complexity of mobile phones and increased use of visual display commands creates barriers for disabled persons as well as for non-disabled consumers.

⁽²⁾ Source: European Blind Union.

- There exist different text telephony systems operating in Europe, none of which are compatible one with the other. Deaf and hard of hearing persons are unable to communicate in real-time across Europe and internationally using existing telecommunications systems.

- Digital television, an increasingly important technology for interactive communication and public information, is less accessible for disabled persons than is analogue television. Digital television is a technology which relies heavily on visual displays, visual commands and it is extremely complicated to use and could exclude a further 4.4 % of television viewers because it is less accessible ⁽³⁾.

- The European Commission communication itself provides a number of examples of challenges to be faced in respect of interoperable ICT devices and systems.

4. The economic and business case for eAccessibility & eInclusion

4.1 The Lisbon strategy emphasises the need to secure the social and economic inclusion of all persons via employability. However, if information communication technologies are not designed in an accessible way disabled persons will be continually and increasingly excluded from the mainstream labour market. Full and effective implementation of eAccessibility principles and practices are essential to the economic inclusion of disabled persons as well as the social inclusion of disabled persons. Adherence to eAccessibility principles also means adherence to environmental safety requirements (such as addressing the incompatibility of electronic and noise interference experienced by persons wearing hearing aids when using mobile telephones). On average, the participation rate of disabled people in the EU workforce is under 35 %, compared to 70 % for workers without disabilities. And the Commission has estimated that around 2 to 3.5 million people with disabilities could potentially be integrated in to the labour force if positive measures are taken to properly address the barriers to their inclusion ⁽⁴⁾. Economic inclusion of disabled persons will benefit society and the economy of Europe at large — shifting away the dependency of many disabled persons.

⁽³⁾ Digital Television For All A report on usability and accessible design for the UK's Digital Television Project by the Generics Groups.

⁽⁴⁾ European Commission report 'Active Labour Market Programmes for People with Disabilities' (2002).

4.2 While a growing number in the ICT industry need to realise the economic and business advantages to be made by addressing the needs of disabled and older users in the design of products and services, awareness of these advantages should be promoted more actively and further across the industry. There is a particular need to educate the industry personnel, both at management level, technicians and front-line staff, about accessibility requirements and features in order to better address the growing needs.

4.3 Disabled persons make up 10-12 % of the European population. Furthermore, Europe is facing important demographic change. Most significant will be the impact of an ageing population in Europe. By 2050 34.5 % of Europe's population will be over the age of 60 years old.

4.4 Disabled persons, persons with temporary disabilities and older persons combined make up 30 % of the European population ⁽⁵⁾. Furthermore accessible technology would benefit the wider consumer population at large including children and those unfamiliar with new technologies and wider socially excluded groups. One example is real-time text communication, which has the potential for a market which extends much more widely beyond the disability community.

4.5 Disabled persons and older persons are an untapped market which industry needs to take better advantage of and to market its goods to such consumers in a way it does not do at present. A German study has revealed that 48 % of persons over 50 years old consider that their age group was not adequately addressed by ICT products and services ⁽⁶⁾. Furthermore, a recent study undertaken by Microsoft identified that 50 % of the population aged over 59 years would benefit considerably from accessibility features in ICT technologies. Accessible and design-for-all technologies has led to job creation within the sector itself, in particular among SMEs which have paved the way for innovations in accessible technologies and advancement in new fields and professions.

5. General comments

— The EESC welcomes the European Commission communication on eAccessibility which sets out important proposals and commitments in the field of, public procurement, certification and legislation. This eAccessibility communication provides an important reinforcement to the i2010 Communication on the European Information Society for Growth and Employment.

— The EESC calls on the EU institutions to bring the actions proposed in the eAccessibility communication to the very centre of the European strategic framework on information

society. The aims and objectives to promote eAccessibility and eInclusion will be given much more prominent attention in the i2010 actions.

— The EESC recognises that there are many individuals and families who are denied continual access to telephone services because of their limited income. In addition, ICT equipment and services (such as access to the internet) can be prohibitively expensive for these people — including disabled people and older people; the EESC calls on Member State Governments to provide economic support to facilitate access to ICT goods and services by vulnerable and socially excluded groups in society.

— The EESC is aware of, and very much welcomes, the work in progress by the Inclusive Communications Committee (INCOM) and TCAM ⁽⁷⁾ working groups on Disability chaired by the European Commission. These respective working groups have brought together all the relevant stakeholders to set down key priorities and areas for action in respect to eAccessibility — access to both goods and services.

— The EESC recalls that the promotion of mainstream eAccessibility and disabled people to goods and services has been referred to and supported in a number of EESC Resolutions; notably:

— The EESC opinion on the Proposal for a Council Decision on the European Year of People with Disabilities 2003 COM(2001) 271 final — 2001/0116 (CNS), CES 1064/2001.

— The EESC 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 eEurope 2002: Accessibility of Public Web Sites and their Content COM(2001) 529 final, CES 1546/2001.

— The EESC opinion on the Integration of Disabled People in Society (CES 853/2002).

— The EESC opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Equal opportunities for people with disabilities: A European Action Plan COM(2003) 650 final, CESE 311/2004.

— The EESC opinion on the Proposal for a Regulation of the European Parliament and of the Council concerning the rights of persons with reduced mobility when travelling by air (CESE 730/2005).

⁽⁵⁾ OECD-ECMT Study 'Improving Transport for People with Mobility Disabilities' 1999, dates before UE-15.

⁽⁶⁾ Study reference www.seniorwatch.de.

⁽⁷⁾ Telecommunications Conformity Assessment and Market Surveillance Committee (TCAM).

6. EESC general comments on the main proposals of the Communication

6.1 *Harmonised standards and interoperability*

6.1.1 The EESC shares the concern of the European Commission regarding the lack of harmonised solutions in the field of eAccessibility. Given the global nature of the ICT industry it is essential to ensure against European fragmentation due to the existence and development of separate Member State solutions. However, in order to provide the greatest possible economies of scale and the greatest choice to consumers, it is also essential to avoid global fragmentation by the introduction of unique regional requirements.

6.1.2 The EESC considers that the ICT industry is increasingly becoming aware of the untapped market among disabled and older consumers in Europe and internationally but this awareness must be more strongly promoted and supported.

6.1.3 The EESC fully supports the development and implementation of European standards for accessibility which are open, consensual and objective. These standards must also, at the same time, recognise the global situation and complement international standards. Lack of complementarity of European and international standards will lead to confusion and frustration for both the disabled consumer and the industry.

6.1.4 There has to be active user involvement in the standardisation process and support must be made available to ensure representative disability organisations can be represented in the decision making processes on the drawing up of European accessibility standards.

6.1.5 The EESC considers that the European Standardisation Organisations should be required to consider eAccessibility issues in the development of all standards.

6.2 *Public procurement*

6.2.1 Introducing accessibility requirements into public procurement tenders has been shown to be a very effective means to promote the mainstreaming of design for all and accessible technologies as well as in promoting employment and growth. Use of public procurement to advance accessibility approaches is a means whereby industry have a real incentive to bring this approach to the centre of their mode of operation. Furthermore, the EESC calls on the new Commission initiative, eProcurement to promote on-line purchasing, to be made fully accessible to disabled persons (consistent with the aims and objectives of eAccessibility) and to avoid incidents of mishandling or corruption.

6.2.2 The revision of the EU Directives on Public Procurements promote the opportunity to include accessibility as a criteria in the public purchase of ICT equipment and services. It is important to remember that public procurement makes up 16 % EU gross domestic product i.e. EUR 1 500 billion and, of this, the ICT sector makes-up 6 % EU GDP. The European public sector ICT average spending is 0.8 % of GDP which is EUR 76 billion. With this level of investment it is essential that public purchases ensure a long-term sustainable purchasing policy whereby ALL members of society have access to the goods and services being provided. Such a policy of eInclusion is essential to the effective function of local economies and in the promotion of the well-being and independence of members of the community.

6.2.3 The EESC, therefore, fully supports the European Commission proposal to go forward with the European Standardisation bodies to develop European accessibility requirements for public procurement of products and services in the ICT domain. However, it is essential that any such requirements are balanced between user needs, industry requirements and that they are usable by public authorities and do not lead to fragmentation within the European and, as much as possible, the global market.

6.2.4 Furthermore, in the case of future revisions of the EU public procurement Directives⁽⁸⁾, the EESC would welcome a strengthening of the provisions to the Directive to include mandatory requirements on accessibility in public purchasing.

6.3 *Certification and third party testing versus self-declaration*

6.3.1 There is a need for the ICT industry to more clearly communicate to the consumer the accessibility and design-for-all features of its mainstream goods and services.

6.3.2 The EESC considers interesting the European Commission proposal to explore certification and self declaration schemes and to encourage transparency and better recognition of eAccessibility, as well as through the consideration of adequate certification schemes for an eAccessibility mark for goods and services that are compliant with standards on eAccessibility.

6.3.3 EESC considers the forthcoming investigation and data gathering on the different options will assist to clarify the best way forward. In particular, we welcome the forthcoming EU conference(s) and initiatives on this issue.

⁽⁸⁾ Directive 2004/18/EC and Directive 2004/17/EC.

6.4 Use of legislation

6.4.1 The European Commission correctly draws attention to existing EU legislation that can be used to promote and enforce eAccessibility.

6.4.2 Voluntary commitments made by industry are to be very much welcomed and encouraged. Such voluntary commitments demonstrate the level of interest and attention on the part of industry to address accessibility in the design of goods and services. At the same time, voluntary commitments alone have not proved to be sufficient to ensure adequate implementation of accessibility requirements to address access barriers which disabled people experience to mainstream technologies. Voluntary commitments should be complemented by legislative initiatives also including the field of public procurement.

6.4.3 It is important that EU commitment to eInclusion and eAccessibility is explicitly recognised and taken up horizontally in all other relevant EU initiatives.

6.4.4 For instance, the existing legislation in public procurement and electronic communications is also strongly supported by EU non-discrimination legislation in the field of employment which provides some important opportunities to advance the access needs of disabled people.

- There must be regular and comprehensive monitoring at both Commission and Member State level of how effectively legislative commitments in the eAccessibility field are being implemented on the ground.
- There should be examination of how to improve the existing legislation in forthcoming legislative reviews in order that eAccessibility provisions can be strengthened and extended. There is a need for explicit support and promotion of eAccessibility in the EU Regulations for the Structural Funds and in the EU Framework Programme on Research (2007-2013).
- There is a need for the EU institutions to introduce stronger and more comprehensive legislation on access to goods and services for disabled persons, also in respect to information communication technologies, in order for the EU to ensure respect for social and human rights of disabled persons and the right of disabled persons to equality of access to goods and services.
- There is a need for the strengthening and broadening of scope of accessibility provisions in the package of EU electronic communications Directives.

6.4.5 The Directive on Universal Service ⁽⁹⁾ at present covers access to public pay phones and publicly available telephone services such as emergency services and directory enquiry services. The EESC regrets that the Directive does not cover, within its scope either mobile telephones or broadband. The scope of the Universal Service Directive should be extended to cover both mobile phones and broadband ⁽¹⁰⁾. Furthermore, equal access to networks and services must be assured through fair tariffs and, where necessary, social tariffs.

6.4.6 Many disabled persons continue to face severe useability and access problems in relation to mobile communications. There is a need for real-time interactive mobile communication for deaf and hard of hearing persons, persons with speech difficulties and deafblind persons; interactive communication through mobile communications to be received on an equal basis with non-disabled persons — meaning in respect to useability and quality of service and equipment, choice, availability and price.

6.4.7 There is the need to address the problem of interoperability of existing systems used by persons with sensory disabilities. Disabled persons must be able to make a real time call across Europe and internationally without difficulty.

6.4.8 The internet is increasingly being used as a public service and communication tool but there are still important access problems which disabled people experience when trying to use the internet. One example of accessibility problems in relation to broadband: New voice services such as Voice Over Internet Protocol (VOIP) are already offering broadband-based 'telephony' services, a cheap service very attractive to users, especially for international calls. However, there is no guarantee that the VOIP will provide access to emergency services or directory enquiry services. This needs to be addressed.

7. EESC specific proposals

In view of the aforementioned objectives and issues the EESC considers the following concrete proposals would make a useful contribution to achieving the overall objectives:

⁽⁹⁾ Directive 2002/22/EC.

⁽¹⁰⁾ The EESC notes that Pay-As-You-Go mobile telephony has made an important contribution to widening access to telephony services to persons on low incomes, and has arguably done better in this respect than national carriers.

7.1 *Harmonised standards and interoperability*

7.1.1 The EESC calls for the European Standardisation Organisations to be required to consider accessibility when developing all ICT standards.

7.1.2 The EESC calls for EU standards and legislative commitments to be adopted to bring about the harmonisation of disability accessibility requirements notably in respect to the following areas:

- access to emergency services incorporating IP networks;
- development of real-time communication in particular for deaf and hard of hearing persons;
- access to interactive digital television;
- the need to interconnect accessible service provision with access and useability of equipment.

7.2 *Certification and third party testing versus self-declaration*

7.2.1 The EESC supports the Commission proposal to examine the idea for a certification scheme and product labelling and Self Declarations of Conformity together with the mandatory or voluntary nature of these processes and supports the involvement of all interested stakeholders, especially including representative disability organisations. These findings to be made available by the European Commission to the EESC during the year 2007.

7.3 *Public procurement*

7.3.1 The EESC urges EU Member States to fully transpose the Directives on Public Procurement into National law without delay and to ensure strong provisions on requirements for disability access are included in the framework of national law.

7.3.2 The EESC calls on all public authorities to include accessibility criteria in their tendering process.

7.3.3 The EESC calls for mandatory provisions on accessibility to ICT goods and services to be included in the future revision of public procurement Directives. Thereby, it should be legally prohibited for public authorities to use software, hardware or other ICT products and services which do not conform to existing accessibility standards.

7.3.4 In respect of the standardisation mandate to CEN, CENELEC and ETSI in support of European accessibility requirements for public procurement of products and services

in the ICT domain, the EESC calls on EU Member States to produce a plan of action on the implementation of how to apply the European standard to best effect at national level consistent with a common and coherent approach.

7.4 *Mainstreaming*

7.4.1 The EESC calls for explicit recognition of the importance of eAccessibility and design for all and ergonomic approaches to ICT to be made across all relevant EU legislative and non-legislative proposals, in particular in key EU documents on the information society and in respect to the Structural Fund Regulations, the funding instruments for the new accession countries and in the 7th Framework Programme on Research.

7.5 *Web Accessibility*

7.5.1 The EESC calls on all EU Member States to formally adopt, unchanged, Version 2 of the Web Accessibility Initiative Guidelines and to fully incorporate the Version 2 across all public websites.

7.5.2 The EESC calls for the application of the 2nd level of consent of Version 2 of the W3C-WAI Web Content Accessibility Guidelines, which implies the higher accessibility level, to be applied to all web resources.

7.5.3 The EESC notes and calls for the urgent need to develop and make easily available authoring tools⁽¹⁾ on accessibility which web designers can use to ensure W3C-WAI WCAG 2.0 compliance of their websites. These tools should conform with version 2 of the W3C WAI Authoring Tool Accessibility Guidelines ATAG.

7.6 *Legislation*

7.6.1 The European Commission must undertake stronger action to ensure the Member States implement and meet their obligations to disabled users under the existing electronic communications Directives. It is apparent from the responses received by the Commission to the INCOM questionnaire on the Electronic Communications Package, that Member States have not adequately respected these commitments.

7.6.2 Where Member States are not implementing their obligations under EU law, the EESC calls on the European Commission to launch infringement proceedings towards the Member State(s) concerned to ensure full compliance.

⁽¹⁾ The term 'authoring tool' refers to the wide range of software used for creating Web content.

7.6.3 The EESC calls for forthcoming revisions to the EU legislation on electronic communications to considerably strengthen the accessibility provisions and to make such provisions mandatory.

7.6.4 The EESC calls for the publication of a comparative report, by the European Commission, of the status of Member States' activities in respect to eAccessibility and for legal action to be taken where Member States' have not met their commitments under the respective electronic communication Directives.

7.6.5 The EESC calls for strengthening and broadening of scope of accessibility provisions in the EU Electronic Communications Directives on services and equipment. In particular:

- for the scope of the Universal Service Directive to be extended to cover mobile communications and broadband technologies;
- for the RTTE Directive to be revised to include mandatory requirements on accessibility to electronic equipment.

7.7 *The new strategic framework for the European Information Society*

7.7.1 The EESC notes that the European Commission strategy for the European Information Society⁽¹²⁾ requires Member States to report annually on their achievements and how they are to implement their national reform programmes.

7.7.2 The EESC calls on the Member States to include a specific section on eAccessibility and eInclusion in their annual reporting and for the European Commission to support this call.

7.7.3 The EESC calls on the Member States to set clear and explicit targets and timetables for implementation of eAccessibility provisions in the national action plans.

7.8 *User involvement*

7.8.1 The EESC calls on EU decision makers to ensure full and equal consultation and systematic involvement of disabled

users from representative disability organisations, in the development and design of goods and services and in the development of standards. Additional resources must be provided by the EU institutions to ensure disabled users are able to participate adequately in the process.

7.9 *Education & Training and a Design-for-all curriculum*

7.9.1 The EESC calls on Governments and industry to develop and support measures to promote ICT education and training of disabled persons, and certain older persons within the framework of lifelong learning as well as among other excluded groups in order they may have better and easier, cheaper and better access to such technologies.

7.9.2 Awareness raising measures, such as the promotion of a European Design for All Curriculum have a great potential to improve understanding and the integration of accessibility into ICT.

7.9.3 The EESC calls on the European Commission, all Member States and industry to actively promote and incorporate a design-for-all curriculum into all education and training programmes in the ICT field.

7.9.4 The EESC calls on industry to ensure systematic in-house or external training of its personnel on accessible design.

7.10 *EESC in-house actions*

7.10.1 The EESC is committed to 'getting its own house in order' and ensuring it will respect the principle and practice of accessibility in public purchasing in its public procurement activities.

7.10.2 The EESC will examine the extent to which improvements must be made to ensure full and equal access by disabled persons to the EESC website, computer software systems and ICT equipment.

7.10.3 The EESC will introduce internal procedures to ensure that all documents are issued in an accessible format.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹²⁾ COM(2005) 229 final.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation amending Regulation (EC) No 2037/2000 of the European Parliament and of the Council, as regards the base year for the allocation of quotas of hydrochlorofluorocarbons with respect to the Member States that acceded on 1 May 2004

(COM(2004) 550 final — 13632/05 Add. 1 + Corr. 1)

(2006/C 110/06)

On 16 November 2005 the Council decided, under Article 175(1) of the Treaty establishing the European Community, to consult the European Economic and Social Committee on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 February 2006. The rapporteur was Ms Cassina.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 139 votes to two with six abstentions.

1. Summary and conclusions

1.1 The EESC welcomes the amendment to Regulation (EC) No 2037/2000 (Article 4(3) (new point (i))); the addition of the European Parliament, as co-legislator, to the title of this regulation; and the proposed change to its legal basis.

2. Content and evaluation of the proposed changes

2.1 The proposed amendment of Regulation (EC) No 2037/2000 entails adding new letter point (i) to Article 4(3), stipulating that a new base date for allocating hydrochlorofluorocarbon quotas applies to the Member States which joined the EU on 1 May 2004: these will no longer be allocated on the basis of the 1999 quotas but on that of the average of the market shares in 2002 and 2003.

2.1.1 This change to the base date is in response to a purely trade-related imperative, preventing the exclusion of businesses

present on the market only after 1999 and having minimal impact on the distribution of the total allocation of quotas, the quantities of which remain unchanged: there are thus no environmental consequences. The change to the base date also ensures that any future challenges on the basis of alleged breaches of the principles of 'non-discrimination and legitimate expectations' can be met.

2.2 The EESC notes and welcomes the addition of the European Parliament, as co-legislator with the Council, to the title of the regulation in question.

2.3 Lastly, the EESC approves the change of the legal basis of the Regulation itself from Article 57(2) of the Treaty of Accession to Article 175(1) of the EC Treaty, in line with Addendum 1, Corrigendum 1 and the agreement reached by the Working Party on the Environment on 21 October 2005.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

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

(2006/C 110/07)

On 16 September 2004, the European Economic and Social Committee, acting under Rule 29 of the Implementing Provisions of the Rules of Procedure, decided to draw up an additional opinion on *The social dimension of culture*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 February 2006. The rapporteur was Mr Le Scornet.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 137 votes to 3 with 6 abstentions.

1. Summary

1.1 The objective of this additional opinion is to propose various operational follow-ups and tools for the opinion on *the social dimension of culture* adopted by the EESC on 31 March 2004.

1.2 It endeavours to define the concept of a social dimension of culture, with reference to three key words — familiar to our Committee which studies them in depth on an ongoing basis — are 'knowledge-based economy', 'economic globalisation' and 'civil society'.

1.3 It does not pursue the ideas put forward in the first opinion concerning the setting up of new structures such as observatories, laboratories and task forces.

1.4 However, it does call on the Commission to specify the qualitative and quantitative indicators justifying its assertion that the current range of Community tools suffice to measure:

- changes in cultural and artistic employment within the EU, the qualitative and quantitative effects of those changes on employment in general, growth and social cohesion, as well as recognition and participation for everyone, including in particular those social groups and categories that appear to be most deprived;
- the extent to which intercultural dialogue has developed, not just in mechanical terms (number of exchanges, initiatives of all kinds), but also in a more substantive way, given the Committee's concern about the rise of the phenomena of exclusion, racism (even in countries such as the Netherlands or France where it seemed that policies aimed at inclusion and/or multiculturalism had created stable models), decoupling of individual and general interests, and fragmentation rather than convergence.

1.5 The opinion suggests that the Commission should present a very detailed report on this phenomenon and this objective, not least since 2008 has been designated the year of intercultural dialogue. The EESC is willing to play a very active role in the drafting of such a report.

1.6 The opinion therefore proposes launching a new cultural debate on culture, particularly since the current debate

still appears to be excessively fixated on issues of patrimony and on conserving heritage rather than on creativity, ongoing processes, and new departures of the imagination; nor does the debate yet reflect the cultural ferment characteristic of social, economic and environmental developments.

1.7 The opinion expresses the hope that the work of the Dublin Foundation will be brought more forcefully to bear in these areas. It proposes that, whenever the EESC deals with subjects where there is an implied need for 'cultural revolutions', 'changes of mindset' or 'shifting away from inherited paradigms', there should be at least one paragraph devoted to specific analysis of these ideas.

1.8 The opinion emphasises the extent to which the method of good or best practice could, if not used in a merely rhetorical way — as is often the case — be a major tool for dialogue, exchange and transfer of knowledge and culture.

2. Introduction

On 31 March 2004, the Committee, acting on a referral from the European Parliament, adopted an opinion on *the social dimension of culture*.

2.1 This opinion put forward a number of ideas:

2.2 to affirm the **EESC's cultural role**, despite the lack of formal competences conferred on our institution in this field to date;

2.2.1 to work towards gradually setting up a **European observatory of cultural cooperation**, which, together with the European Parliament, could draw up its own annual report;

2.2.2 to achieve **closer cooperation between the European Parliament and the EESC** which, in addition to facilitating the establishment of the above-mentioned observatory, could also make it possible to set 'an annual objective of promoting at least one truly shared cultural value';

2.2.3 to launch a **laboratory of cultural change** in the social, economic and environmental fields;

2.2.4 to set up a European 'task force' to encourage cultural and artistic exchange in areas of conflict.

2.3 The present additional opinion is warranted by the fact that the earlier opinion had to be drafted quickly. Towards the end of its term of office, the European Parliament had asked us to launch a process and an EESC-EP partnership. Our Committee's enthusiasm for continuing its work has been heightened by the fact the very conception of the cultural dimension within the EU institutions seems to have given a twin boost.

2.3.1 Initial statements by Commission president José Manuel Barroso to the effect that the 'moment of culture' was at hand, that 'in the hierarchy of values, the cultural ones range above the economic ones' ⁽¹⁾, were very encouraging and marked a vital turning point. For us, this was the first boost.

2.3.2 The second boost has come from our very own Committee, following its unanimous adoption of the programme presented by its president, Ms Anne Marie Sigmund, who has made this subject a central priority of her term of office.

2.3.3 However, these efforts remain tentative, since the programme presented by the new Commission does not actually translate this turning point into practice. It does not even explicitly refer to the new emphasis on culture! In accordance with standard procedures, the 2007-2013 programme for culture presented by the Commission has not been referred to our organisation for an opinion. It is not therefore the task of this opinion to comment on it other than to point out that the programme does not take spontaneous account of the 'social dimension of culture', and that the programme's funding is well below what the European Parliament would like to have seen allocated. Even in terms of the place of culture among the priorities of the EESC's programme, it would be an exaggeration to claim that specific action has already been taken.

2.3.4 Moreover, the role of culture and its social dimension in particular in the regeneration of the European Union remains ill-defined in the current context of the reflection period decided on by the Council following the rejection of the Treaty establishing a Constitution for Europe in France and the Netherlands (a treaty which included culture as one of the objectives of the European Union [(Article I-3.3)], envisaged modifying decision-making processes in the field of culture and in many areas would have overcome the paralysis imposed by the unanimity requirement [(Articles I-17 and III-280)], and given the modest scale of the compromise which was reached on the financial perspective.

⁽¹⁾ Speech at the *Europe and culture* conference, Berlin, on 26 November 2004.

3. We must continue to explore the concept of the social dimension of culture, and establish key points which could be incorporated into all European policies.

3.1 The EESC opinion on *the social dimension of culture* initially approached the subject from three main angles:

- a new 'culture' of interactions between economic, social and environmental practices;
- the effects of changes in the world of work on the structure of society and cultural values;
- a new culture of democracy.

3.2 This additional opinion aims to help find the essential points, the 'key words' capable of meshing these initial reflections as simply as possible into current Community policies.

3.3 *The first key word is the 'knowledge-based society'.*

3.3.1 As was noted in our opinion on *the social dimension of culture*, the universal tendency to intellectualise all the aspects of work, including the 'work' of consumption, and the increased role played in this context by relational, stylistic and creative criteria, are and will continue to be at the heart of the differentials of competitiveness, attractiveness, mutual respect and entrepreneurship between the various geo-cultural regions of the planet. Europe must — and is in a position to — take the 'creative economy' as a reference point.

3.3.2 That is why the EESC opinion highlights, among other things, the issue of work and employment in the fields of culture and the arts, and of a culture-based economy, and it is in these areas that the Committee would like to see better use being made of the work of the Dublin Foundation. It would be useful to analyse how the forms assumed by cultural and artistic work are given shape by a more creative assessment of work as a whole and reflect the knowledge-based economy.

3.3.3 Our Committee does not resignedly accept the gulf between 'high culture' and the cultural dimension of technical, economic, social, health and environmental matters — areas which are still much too far removed from one another. Through its ongoing work, among other things, on lifelong learning and the shaping of a 'learning' society, our Committee is resolutely striving to help bridge that gulf.

3.3.4 The enormous need for activity and employment which is both secure and flexible in the fields of communication, mediation, knowledge, art and representation in all its various forms, and knowledge about knowledge, runs into the problem of employment models which, paradoxically, can accentuate inflexibility and insecurity.

3.3.5 The rigidity of traditional hierarchies of recognition accorded to various occupations may also impede the emergence of new occupations. More generally, it should be noted that there is a failure to genuinely translate intangibles into economic results, and insufficient mobility of artists and other cultural practitioners — and their works — across Europe. The shortcomings in terms of compiling and exchanging cultural innovations, which would save continually having to reinvent the wheel, should also be noted.

3.3.6 The success of the Erasmus and *Television without Frontiers* programmes, the European contribution to regenerating devastated areas, the revival of major urban centres thanks to artistic activity, and the lasting gains experienced by the European Capitals of Culture are already an initial indication of what is meant by the 'social dimension of culture'. Although the EU's remit is limited to backing up national policies, it is nevertheless often a key player in helping facilitate numerous cultural events and activities; thus, its role is that of a catalyst. Ongoing input of information into a 'knowledge' database could have a considerable multiplier effect.

3.3.7 Equally, the losses in terms of earnings and networking activity sustained across the entire social and economic fabric when festivals and cultural events are discontinued, even temporarily, demonstrate the holistic contribution which artistic, cultural and mediation activity and employment — and the free movement and cross-fertilisation thereof — make to sustainable development.

3.4 *The second key word is 'economic globalisation'.*

3.4.1 In the EESC's view, the mediocre results of the Lisbon strategy relative to its ambitious objectives have mainly to do with neglect of the human, cultural and participatory factor. In a 'globalised economy', promotion of a European culture which no longer separates or prioritises economic, social and environmental factors is the only way for Europe to halt or even reverse the detrimental development lag between it and most other areas of the world.

3.4.2 In many European countries, and also in other parts of the world, there can no longer be any doubts concerning the economic weight of cultural and creative sectors, confirmed by numerous reports, studies and quantitative assessments. Many businesses and hence jobs have been created in these sectors over the last few years. One cannot overlook the trend here for the creation of small, micro- and one-person businesses, a development which has complex social implications.

For example, networks have to be put in place, given that tasks often have to be pooled due to the small size of the companies concerned. This means that the players concerned need communication, negotiation and presentation skills, as well as expertise on contract law, licensing rules, etc.

Small companies often face major challenges, due to a partial or sometimes total lack of such skills and knowledge, which are essential for all modern businesses; at the same time, they frequently lack the financial capacity to seek professional support, although other small and medium enterprises have become highly effective in these areas.

As for social policy, it must find solutions for social protection issues (for example, sickness, pensions and unemployment insurance) arising from new business structures and new forms of employment.

3.4.3 Another social dimension arises from the fact that businesses in 'new' economic sectors such as the creative industries are often isolated, given that they operate in fields which are still characterised by a total or partial lack of reference values, model contracts, sectoral indicators, etc. This aspect too is important for the future development of the creative industry and it should be reflected in an appropriate way, especially given that, due to increasing globalisation and the need to face up to international competition, such basic information is vital for economic progress.

3.4.4 Given that the European Union must itself redefine its goals, it is all the better placed to understand how economic globalisation is influencing and will continue to influence the emergence of new global cultural values. This also reflects the fact that the European Union is no longer, and can no longer be, a club, a restricted federation of 'advanced' countries with a relatively high degree of economic, cultural and spiritual homogeneity. The EU has fully opened itself up to Protestant, Orthodox, and Muslim cultures, is launching negotiations on Turkish accession — an enlargement, which if it actually happens, will be wholly unprecedented — and is placing its relations with its immediate neighbours on a systematic footing. It is now also having to re-think its place and its particular role in a globalisation process which has also seen the rules of the game change at a rapid pace ^(?).

3.4.5 A 'cultural Europe' born of nation states that were past champions at waging war, colonising and empire-building is now perhaps the most appropriate expression of Europe as a 'great power' with the capacity to export, disseminate and 'professionalise' a 'culture of peace', civility and excellence. This represents a return to the very idea that was the driving force behind the European venture — the desire to spread the values and practices of peace, interaction and exchange, rather than domination and hierarchy across the world.

^(?) Not only has there been a rapid rise of 'continent states' such as China, India, Russia and Brazil (a process which was expected, even though one could hardly have imagined the pace at which it is happening), but the nature of this process is different to what was expected (overturning the traditional global division of labour with manufacturing industry located outside the 'advanced' European economies), and there is also a disturbing rise in environmental 'risks' and cultural clashes.

3.5 The third key word is 'civil society'.

3.5.1 The fact that the EESC, whose formal remit has not been explicitly expanded to include culture has, at its president's instigation, adopted an overall action plan that gives **priority to culture** ⁽³⁾, is a key political statement.

3.5.2 This could even be seen as a kind of affirmation of culture, in defiance of the hegemony of a way of thinking which sees everything strictly in terms of economic benefits or output, or even of social and environmental issues. This affirmation is all the more valuable for having been initiated by European social and economic actors, representing organised civil society across the board, in the fields of production, consumption and redistribution.

3.5.3 This evolving European culture, which the current historic enlargement process is re-uniting, is the product of a remarkable history and a unique form of development ⁽⁴⁾. It is all the more important to be aware of its potential to overcome a phenomenon which cannot be concealed or under-estimated: the fact that 'the public in the Member States shows little interest or curiosity, or is simply indifferent, to the cultures of other EU countries' ⁽⁵⁾. Incentive policies (EU 'cultural' programmes) can of course have a significant impact on this state of affairs, but only a holistic vision of culture and full recognition of its social dimension will suffice to fully remedy the problem.

3.5.4 The wide range of issues involved in the task of devising a true social and cultural democracy would merit thorough discussion with social movements, cultural networks and the social partners — not just between institutions. One of the major challenges to be met is undoubtedly that of establishing a cooperation ethic and technology among all the partners concerned, in order to work constructively towards a global set of cultural values founded on non-violence.

3.5.5 Our societies can no longer afford not to recognise and involve all their actors and all their environments. It has been made clear both by the European Year of Disabled People and EESC opinions and initiatives on this subject — and also on all other subjects linked to various forms of discrimination and severe poverty — that they will be judged on the place and role they give to the most disadvantaged and marginalised members of society. The aim is not only to give everyone their due place, but also to ensure that the cultural impact of their fight against poverty infuses humanity and provides an opportunity to revamp modern humanism. Should not the traditional models of hierarchical command and 'assisted dependence' (cf. the various forms of welfare state) now give way to a model

involving the active participation of each person, i.e. 'empowerment' of all the economic, social, family and cultural players? This means that, in the new democratic mindset required and facilitated by a globalised economy, 'civil society' can, despite not having any direct claim to power, no longer be presented as a subordinate factor or counteracting influence. To ensure a stable future and protect itself from arbitrary developments, civil society must promote its values of solidarity and preserve the capacity and guarantee for 'thinking collectively'.

4. Working towards proposals and further exploration of the concept of the social dimension of culture

4.1 The EESC notes that, for the time being at least, its institutional partners (European Commission, Parliament) and to some extent the Committee itself view the establishment of new structures such as 'observatories', 'laboratories', and 'task forces' as either useless, premature, or unrealistic.

4.2 For the European Commission and, it seems, the Parliament, the networking of structures such as the various existing observatories could yield real results in terms of European cultural cooperation without requiring new instruments to be devised.

4.3 However, the EESC would ask the Commission to formulate quantitative and qualitative indicators, and to clarify existing indicators, thus enabling objectives for the advancement of intercultural dialogue, for the mobility of artists and artworks, and for the transfer of knowledge and ideas between hitherto highly compartmentalised fields, to be discussed, shaped and evaluated.

4.4 For the EESC, this is not just a matter of ex-post monitoring of quantitative progress towards such objectives. Indeed, the proliferation of intercultural contacts and events in an enlarged Europe and in a more developed single market, particularly in terms of services, can only intensify.

It is also important to know whether measurable growth in cultural consumption and tourism exchanges automatically translates into gains in terms of enhanced knowledge, more outward-looking attitudes and culture. It would be well not only to quantify and describe, but also to seek to understand the proliferation of phenomena such as exclusion, racism (even in countries such as the Netherlands or France where it seemed that long-term policies aimed at integration and/or multiculturalism had created stable models), decoupling of individual and general interests, and fragmentation rather than convergence.

⁽³⁾ Programme adopted by the EESC at its plenary session on 15 and 16 December 2004.

⁽⁴⁾ A survey by the Dublin-based European Foundation for the Improvement of Living and Working Conditions revealed that 80 % of Europeans (in the 15 Member States at the time of the survey) were satisfied with their lives, a finding which helps to confirm the hypothesis that a coherent and qualitative European way of thinking and a specific European way of life do in fact exist.

⁽⁵⁾ Study on the Mobility and Free Movement of People and Products in the Cultural Sector. Olivier Audiard, April 2002, Paris X University.

4.5 Moreover, everyone is aware that many national cultural policies, even those which benefited from determined and coherent management over decades by EU Member States, have had very little impact on inherited social class systems.

4.6 That is why the EESC is so strongly in favour of the European Union becoming a forum for reflection and discussion on the cultural policies of each Member State — a forum for a new process of cultural reflection on culture. Preparations for the year of intercultural dialogue (2008) should be an opportunity for the Commission to present a very detailed document on the actual breadth of such dialogue, the persistent or new obstacles which it encounters, and new ideas which could help genuinely deepen it. The EESC is willing to play a role in the drafting of such a report, for example from the perspective of the social dimension of culture, and also from that of the cultural dimension of social issues, for example in terms of intergenerational relations.

4.7 This additional opinion also proposes the following:

4.7.1 sustained 'cultural hygiene' on the part of our Committee: whenever an opinion deals with subjects where the cultural aspect is of key importance, a section of the opinion could explicitly discuss this aspect. Rather than referring in abstract terms to the necessity for cultural revolutions, changes of mindset and shifts away from inherited paradigms which have since become obsolete, the conditions required for cultural transformations of this sort should be discussed in as specific terms as possible.

4.7.2 closer attention to the open method of coordination and the use of 'best practice'. Should not concepts and proce-

dures be 'tightened up' so that they can acquire a much more specific operational capacity? This would help to ensure that identification and transfer of knowledge and cultural changes lead to more efficient, cost-effective and convergent reforms which can be clearly explained, thus enabling their appropriation and replication.

4.7.3

determination on the part of the European Economic and Social Committee — which is an ideal forum for encounters between national, professional, social and societal cultures — to launch a search in specific sectors for areas of activity where there is scope for exchange of practices, for example between the healthcare and educational sectors; these are sectors where there are close parallels between cultural changes — both those which are already underway and those which are desirable. Such changes could help to establish new ways of controlling complex systems, and offer scope for more encounters, exchanges and sharing. For example, promoting multidisciplinary team work can help to create common ground between various professions, which by nature are isolated from one another. Such interaction could help to overcome compartmentalised and blinkered attitudes in individual disciplines. It could also enable progress in one field to benefit other areas of activity more rapidly and extensively than is usually the case. Finally, it would establish a systemic culture, in which economic, social and environmental aspects are no longer divorced from one another, as a cultural unity for Europe is in its diversity and in improving the living conditions of its peoples.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the Economic and Social Committee on JEREMIE (Joint European Resources for Micro-to-Medium Enterprises)

(2006/C 110/08)

On 20 December 2005 Margot Wallström, member of the European Commission, asked the European Economic and Social Committee, on behalf of the European Commission, to draw up an opinion on the joint initiative: *JEREMIE (Joint European Resources for Micro-to-Medium Enterprises)*.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 February 2006. The rapporteur was Mr Pezzini.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 142 votes to one with two abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee welcomes the Commission document presenting the JEREMIE programme ⁽¹⁾ (Joint European Resources for Micro-to-Medium Enterprises) with keen interest.

1.1.1 The Committee is grateful to Danuta Hübner, Commissioner responsible for regional policy, as well as DG Regio and the EIF, for the efforts they are making in developing this delicate programme and for the support they have given to the Committee's work.

1.1.2 The EESC has always supported Commission initiatives to facilitate access to credit for micro-enterprises and SMEs, being convinced — as is the European Parliament — that aspect has always represented a weak point for smaller businesses.

1.1.3 Strengthening small businesses represents a fundamental element in the Lisbon strategy, since it ties in with innovation, generates stable employment and contributes to the ongoing training of the workforce.

1.1.4 In numerous opinions, and especially those drawn up since 1982 ⁽²⁾, the EESC has highlighted the efforts made by the Commission, DG XXIII ⁽³⁾ in particular, to help businesses improve their links with the credit system, particularly banks.

⁽¹⁾ JEREMIE: *a joint REGIO-EIB group initiative for supporting improved access to finance for SME and micro-enterprise development in the regions* (Document 2 of 21 November 2005), presented at the Conference on *Financing growth and cohesion in the enlarged EU*, held in Brussels on 24 November 2005.

⁽²⁾ 1982: European Year of SMEs and the Craft Industry.

⁽³⁾ In the wake of the problems which emerged in 1982, the Commission also set up a Task Force, headed by Commissioner Cresson, to gear European policies to the needs of SMEs. In the course of the second half of the 1980s, the Task Force became DG XXIII.

1.1.5 The EESC has also emphasised the need for the broad-based involvement of the social partners in all enterprise-related problems and, in particular, those concerning credit, since they have a considerable impact on social well-being and development.

1.2 Throughout the 1990s, DG XXIII ⁽⁴⁾ sought to act on credit problems, working in close contact with organisations representing the crafts sector and SMEs. The successive European Conferences of Crafts and Small Businesses (SME) ⁽⁵⁾ and the numerous preparatory meetings (an average of 10 in the run-up to each conference, attended by hundreds of small businesses) have:

- helped to finalise European Investment Bank (EIB) action in the form of investment in SMEs;
- laid down the preconditions for the creation of the European Investment Fund (EIF) ⁽⁶⁾;
- brought about legislation on payment periods;
- prompted the Luxembourg Extraordinary European Council to uphold and relaunch employment in Europe, in part through specific credit initiatives for small enterprises ⁽⁷⁾;
- enabled the Commission, with the direct involvement of the EIB and the EIF, to launch the *Growth and Employment Initiative (1998-2000)*, based on the measures decided on in Luxembourg;

⁽⁴⁾ Now the Directorate-General for Enterprise and Industry (Enterprise DG).

⁽⁵⁾ Held in Avignon in 1990, Berlin in 1994 and Milan in 1997.

⁽⁶⁾ See footnote 28.

⁽⁷⁾ On 20 and 21 November 1997, the Luxembourg Extraordinary European Council, whose agenda contained a single item — employment — launched three practical initiatives to help businesses stay competitive in the markets, and called upon the Commission to put forward proposals that would boost the business sector and promote employment in that field. The three initiatives were: the ETF Start-Up Facility, the JEV (Joint European Venture) and SME-Guarantee Facility.

- made it possible for the multiannual programmes for enterprise and entrepreneurship, in particular for SMEs, to be drawn up, with special emphasis on loans. The fourth such programme (2005-2005), which has been extended to cover the whole of 2006, was adopted on 20 December 2000;
- laid the groundwork for the establishment of the Competitiveness and Innovation Framework Programme (CIP) ⁽⁸⁾, which is geared to SMEs and has clearly-defined aims;
- explained to SMEs the need for them to form networks in order to achieve economies of scale, greater market penetration capacity and, lastly, the critical mass needed for both innovation processes and to build up their leverage with financial institutions. Much remains to be done regarding networking.

1.2.1 On the basis of the experience outlined above, the EESC believes that it would be appropriate, not least in view of the new programming for 2007-2013 and the Lisbon objectives, to provide more information on the new programmes, especially those aimed at micro and small enterprises, by holding meetings in the Member States with representatives of the social partners and civil society.

1.2.2 However, in spite of the interventions and efforts organised over the last 20 years, many regions in the EU-25, especially the most disadvantaged ones, lack a project capable of coordinating and fine-tuning the many loan instruments currently in existence.

1.2.2.1 Close to four million businesses — 20 % of those in existence — judge that poor access to finance is a serious barrier to their growth ⁽⁹⁾.

1.2.2.2 Only a few tens of thousands of undertakings have been able to use Community financial instruments ⁽¹⁰⁾, revealing the yawning gap between the way the issue is presented and the practical results. This prompts consideration of the practical possibilities of intervening with systems which can boost the involvement of financial institutions and amplify the results.

1.2.2.3 The EESC is aware of the need to step up efforts to improve the information on credit opportunities provided by the Commission, the EIB, EIF, EBRD and national and regional authorities. Micro and small enterprises are very often excluded — in part, moreover, through their own fault — from channels of information.

⁽⁸⁾ C.f. COM(2005) 121 final.

⁽⁹⁾ Consultation document on the Community programme on enterprise and competitiveness, 2006/2010, DG Enterprise, 2004, point 46, <http://europa.eu.int/yourvoice/consultations/index.htm#open>.

⁽¹⁰⁾ Ibid., point 118.

1.3 JEREMIE could therefore be put forward as a 'smart' tool for coordinating and rationalising existing opportunities.

1.3.1 The JEREMIE initiative falls within the scope of the *Cohesion Policy in Support of Growth and Jobs: Community Strategic Guidelines*. The Committee's position on this may be summarised as follows:

- it is necessary to support non-grant instruments such as loans, secured debt financing for subordinate debt, convertible instruments (mezzanine debt) and risk capital (e.g. seed capital and venture capital);
- grants should be used to build and maintain infrastructures that facilitate access to finance (e.g. technology transfer offices, incubators, 'business angels' networks, investment readiness programmes);
- guarantee and mutual guarantee mechanisms should also be supported, in particular to facilitate access to micro-credit by SMEs. The EIB and EIF ⁽¹¹⁾ could provide valuable input in this regard;
- there must also be outreach to specific groups such as young or female entrepreneurs, or those from disadvantaged groups, including ethnic minorities;
- it is particularly important to work closely with the EIF in view of the expertise it has developed over a number of years, in order to give SMEs the required support, while developing the European risk capital market at the same time;
- the use of debt securitisation ⁽¹²⁾ should be supported and expanded in order to boost the lending capacity of credit consortia.

1.3.2 The Committee emphasises the importance of Commission support for the JEREMIE initiative not only outwardly, but also through internal coordination between services managing actions to support micro, small- and medium-sized enterprises, by setting up a 'JEREMIE focal point' to serve as a unit informing and coordinating between the various actions in order to optimise the results.

1.3.3 The EESC believes that the Commission should provide a report every two years to the European Parliament, the Council, the Committee of the Regions and to the European Economic and Social Committee on the progress and efficacy of the programme, with a view to extending this important experience to other sectors.

⁽¹¹⁾ See also footnote 29.

⁽¹²⁾ An arrangement under which a party's own risk capital may be sold to other parties, thereby increasing the original party's capacity for granting loans to SMEs. See also footnote 56.

1.3.4 Lastly, the Committee recommends that full compliance with the principles of economy, efficiency and transparency be ensured in tendering and selection procedures, management of the regional holding funds and accreditation of the financial intermediaries charged with project management. In particular, full compliance with the relevant Community legislation must be ensured, even in cases of exclusive rights. It must be possible to impose penalties, dismiss inefficient holding funds and revise the lists of accredited financial intermediaries.

2. Reasons

2.1 The EESC has repeatedly underlined the role — not only economic, but also social — played by small businesses in their respective Member States, and has drawn specific attention to this in several opinions, including those issued in 1992 ⁽¹³⁾, 1997 ⁽¹⁴⁾, 2001 ⁽¹⁵⁾ and 2003 ⁽¹⁶⁾, together with others on the European Charter for Small Enterprises ⁽¹⁷⁾.

2.1.1 Micro and small businesses perform an essential role in the European economy. They number some 25 million, represent 99 % of all businesses and employ nearly 95 million people, providing 55 % of all jobs in the private sector ⁽¹⁸⁾.

2.1.2 These figures highlight the importance and the role of SMEs in the Lisbon strategy, as well as the need to establish a strong partnership with the representatives of the social partners, in order to be in a position to generate new forms of cooperation ⁽¹⁹⁾. Their purpose is to put into practice the social and economic values underpinning Europe's social market economy ⁽²⁰⁾.

2.1.3 The main problems affecting the start-up and development phases of micro and small businesses are, in order of importance:

- financial and credit considerations,
- slow and costly bureaucracy,
- labour market-related features (definition of occupational profiles and reinforcement of occupational training, necessary for the workforce's capacity for change, and in order to increase companies' business scope and job opportunities).

⁽¹³⁾ *SMEs and craft industries*, OJ C 332 of 16.12.1992.

⁽¹⁴⁾ *Craft industries and small- and medium-sized enterprises*, OJ C 158 of 26.5.1997.

⁽¹⁵⁾ OJ C 221 of 7.8.2001.

⁽¹⁶⁾ *The role of micro and small enterprises in Europe's economic life and productive fabric*, OJ C 220 of 16.9.2003.

⁽¹⁷⁾ OJ C 48 of 21.2.2002.

⁽¹⁸⁾ Observatory of European SMEs, 2003/7, EU-25.

⁽¹⁹⁾ C.f. for example experiments with bipartite entities throughout Italy and other European countries.

⁽²⁰⁾ See the EESC opinion on the *Partnership for implementing the Structural Funds*, OJ C 10 of 14.1.2004, p. 21.

2.1.4 Access to credit is therefore a precondition for setting up a business, and is a fundamental requirement for the growth and development of micro and small businesses, who feel the restrictive effects of the credit system more clearly and more strongly than large companies.

2.1.5 Direct contact with businesses and their problems, and an understanding on their part of the opportunities provided by the credit system — especially those located in the areas where the businesses are operating — is the only way to harness the positive effects of credit. This will prevent excessive inflexibility in funding arrangements and the ensuing increase in risk, with regard *inter alia* to developments concerning the Basle Agreements. Businesses must therefore find their own financial balance and identify the necessary tools.

2.1.6 Self-financing plays a key role, even if small companies can rarely achieve their own investment plans with this instrument. The following are necessary in 90 % of cases:

- launching information and consultancy initiatives to facilitate the choice of type of capital between the available alternatives (risk capital, debt instruments or mezzanine finance);
- selecting the financial tools and methods to use.

2.1.7 Among these instruments, risk capital is often mistrusted by small enterprises. Only 5 or 6 % of the myriad micro ⁽²¹⁾ and small ⁽²²⁾ businesses (90 % of which are individual companies or partnerships) make use of venture capital. If take-up is not to remain negligible, new forms of venture capital must be devised which can also apply to individual companies.

2.1.8 The priorities identified to bridge the gap between finance and small enterprises can be summarised as follows:

- ensuring that higher quality services are provided by credit agencies;
- promoting a greater role for credit agencies in providing consultancy throughout the life of the enterprise, to encourage transparency and the publication of company accounts. Small businesses in particular need this assistance, to become corporate enterprises, or to prepare to use venture capital, and, for some of them, to be floated on the relevant trading index ⁽²³⁾;

⁽²¹⁾ 23 million in EU-25, SME Observatory, 2005.

⁽²²⁾ 1.8 million, SME Observatory, 2005.

⁽²³⁾ In Italy, the SME index is called STAR.

- reducing the ties to security required for granting loans. This means better incentives for using the instruments provided by financial engineering. An example of such good practice would be the credit consortia which exist in many European countries. Although subject to obtaining a bank loan, these instruments should be encouraged and supported, and JEREMIE can make a key contribution here;
- bringing the cost of money into closer line with the standards applied to large companies ⁽²⁴⁾.

2.1.9 The analyses and evaluations of needs and potential, under the JEREMIE preparatory phase, should be carried out in individual EU regions with the real involvement of the relevant economic and social partners, as part of an effective and responsible partnership.

2.2 The regional dimension

2.2.1 The degree of difficulty in gaining access to loans, outlined above, varies according to the level of economic and market development. The convergence regions ⁽²⁵⁾, which have the greatest need of credit instruments in order to boost employment through entrepreneurship, are in fact those where access to credit is most difficult, and where interest rates are higher than those applied in more developed regions ⁽²⁶⁾.

2.2.2 EIB loans, granted in rotation ⁽²⁷⁾ to trustee banks to be divided among SMEs at variable, but limited, rates ⁽²⁸⁾, are used primarily by banks operating in developed regions, where competition between banks is greater and granting EIB loans is a means of keeping loyal customers.

2.2.3 Since there are few banks, especially of the cooperative or popular credit type, in the less developed regions, there is less competition in the banking sector and little awareness of small operators: as a result, it is rare that the valuable instruments provided by the EIB are used in such regions.

⁽²⁴⁾ Avoiding the use of cross-selling.

⁽²⁵⁾ There are 254 NUTS II level regions in the EU-25. Of these (approximately 100 convergence) have income levels of less than 75 % of the Community average.

⁽²⁶⁾ Interest rates in the less developed regions are, on average, 3 % higher than those in more developed regions (source: Artigiancassi, Italy).

⁽²⁷⁾ Usually for renewable amounts of EUR 30 or 50 million.

⁽²⁸⁾ Generally one percentage point above Euribor 6 months.

2.2.4 In short, if efforts are not made to reverse this trend, in part by the financial mediation of those tools which JEREMIE can deploy alongside the more conventional EIB and EIF ones ⁽²⁹⁾, the poorer regions will be condemned to continuing long-term poverty.

2.2.5 In order to provide loan back-up, especially in the convergence regions, a JEREMIE desk could be organised at the EIF with the task of supporting guarantees on bank loans with surety instruments, via credit consortia or other bodies which are active in the less advantaged regions in particular.

2.3 The social dimension of credit and financial engineering

2.3.1 The problem of access to credit for micro-businesses, as well as SMEs, puts the spotlight on a number of market shortcomings:

- financial institutions are responsible to their boards for their management: the boards, unsurprisingly, are often reluctant to grant loans to small, unknown enterprises with non-existent or sketchy accounts and thus potentially at risk of insolvency;
- bank officials are often unfamiliar with 'business risk' and feel more comfortable granting loans when collateral (real estate or personal sureties given by relatives or third parties) is in place. Personal sureties are very — perhaps too — common, especially for loans granted to women or young entrepreneurs;
- dividing the overall amount of credit among a very large number of small businesses is far more costly to the banks, in terms of manpower and administrative burden, than managing loans for much larger amounts granted to a small number of large, well-known companies with extensive real estate;
- competition between financial institutions, which helps to enhance what is available on the market, is strong in the rich regions but weak in the convergence regions, i.e. exactly where a wider range of products at lower rates would be most useful in meeting the requirements of local — often small-scale, less powerful — entrepreneurs.

⁽²⁹⁾ The EIF (European Investment Fund) was set up in 1994 with two objectives: (1) to support the European networks, and (2) to facilitate access to credit for SMEs. The EIF shareholders are: the EIB, the European Commission and a large number of European banks. In recent years in particular, support for micro and small businesses has been a hallmark of the EIF (c.f., amongst others, the SME Guarantee programme, which — together with JEV and ETF Start-Up — stemmed from the 1997 Luxembourg European Council).

2.3.2 The aim therefore is to make up for market shortcomings with actions which:

- are compatible with state aids;
- can be used with financial engineering, through funds provided by EIF-managed multiannual programmes ⁽³⁰⁾,
- are already part of the CIP,
- are provided by the Structural Funds, and
- are all to be coordinated by JEREMIE.

2.3.3 The Lisbon strategy was relaunched at the March 2005 European Council, and the governments and economic and social partners were urged to act in three priority areas:

- making knowledge and innovation engines of sustainable growth;
- making the EU an attractive area in which to invest and work;
- boosting employment and entrepreneurship in order to develop cohesion.

2.3.4 The Member States' expenditure on supporting employment and job creation is sometimes considerable, but is justified by the social results ⁽³¹⁾. In the event of a universal loan of EUR 20 000 to half of the EU-25's SMEs — i.e. some 12 million businesses — the probable losses due to insolvency ⁽³²⁾ would not exceed EUR 6.5 billion, representing 0.07 % of EU-25 GDP; at the same time, granting loans across the board would enable most enterprises to consolidate their position and to innovate with regard to their processes and products.

2.3.5 If loans were granted through the intermediary of loan consortia, capable of absorbing 50 % of insolvencies, the losses would be shared equally (50-50) between the relevant consortium and bank.

2.3.6 A culture of accepting that credit has a social function enables the necessary financial engineering tools to be developed with a contribution from public funds, European funds and solidarity funds contributed to loan consortia by businesses themselves, either when registering with a consortium or in the form of a percentage of bank interest ⁽³³⁾.

⁽³⁰⁾ The EIF is currently managing three projects: (1) initial help for undertakings in the start-up phase; (2) ETF Start up (European Technology Facility for technologically advanced businesses), contributions to company funds, mezzanine investment (3) SME guarantees (loan guarantees, micro-credit, own funds, debt securitisation).

⁽³¹⁾ *Sviluppo Italia*, the official body concerned with job creation in the south of Italy on behalf of the Italian State, has calculated the average cost of creating one job to be EUR 40 000.

⁽³²⁾ Average insolvencies for micro and small enterprises are no higher than 3 % of the loans granted.

⁽³³⁾ Generally 0.50 %.

2.4 *The function of loan consortia, financial engineering and JEREMIE*

2.4.1 Granting large numbers of small loans, as required by business start-ups and by European micro and small enterprises, is subject to:

- the availability of funds at reasonable cost on the money market;
- credit institutions being organised in such a way as to be present throughout a given territory, with offices close to businesses;
- a culture which attunes bank officials to the needs of small entrepreneurs;
- the possibility of risk-sharing with other partners (financial engineering);
- the ability to keep management costs down, in order to reduce the interest rates applicable to the loans granted.

2.4.2 Some solutions to these problems can be found in existing instruments, which should however be put to better and more extensive use:

- EIB funds, where they have been used, have proved to be a highly useful tool in facilitating access to credit for micro and small businesses. Those banks which have asked to become 'EIB trustees' have obtained loans, on a rotating basis, at an advantageous rate ⁽³⁴⁾. The reduced spread granted to banks (115 business points) has meant that only banks operating in rich regions, with strong competition, have used this form of financing which is helpful for businesses, but relatively unprofitable for banks. This has not occurred in the convergence regions, confirming the view that poorer areas enjoy fewer development opportunities than richer ones.
- Cooperative credit bank arrangements are more common in regions with a high level of economic development. This factor is a further serious obstacle to access to credit in regions which are lagging behind. JEREMIE could help to devise, sustain and introduce forms of credit using financial engineering tools and involving sectoral organisations in those regions where training processes and the credit system are the foundations of development.

⁽³⁴⁾ On average, 15 business points lower than Euribor 6 months, with the obligation to grant the loan to businesses at a rate on average no higher than 100 business points (one point) above Euribor 6 months.

— In order to foster a culture of awareness of small enterprises, it is very important to support the efforts of sectoral organisations, especially those engaged in social dialogue, so that they can help apply to the more disadvantaged regions those positive experiences which have often been tried out previously in the richer ones. JEREMIE could also offer itself as an active partner in this kind of action.

— Credit consortia — in those countries where they exist — are a key element for both carrying out financial engineering and for fostering a culture aware of credit's social function, which contributes to making Europe as a whole a social market economy, the keystone of which is employment ⁽³⁵⁾. If JEREMIE can rationalise and amplify what the EU is already doing through EIB and EIF activities, it can save many of the businesses which are currently forced to close down every year (20 %).

— The risk evaluation carried out by credit consortia and the ensuing cover of 50 % of the insolvencies concerning the loans granted provides practical relief for the banks from some of their burdens, reduces the scale of risk and in consequence moderates the lending interest rate ⁽³⁶⁾.

2.5 The function of multipliers in credit management and the function of JEREMIE

2.5.1 Over the last few years in particular, the multiplier instrument has been analysed and used by both credit consortia and banks to boost credit possibilities ⁽³⁷⁾. Rigorous analysis of the insolvencies picture, especially in the convergence regions, allows the multiplier to be adjusted to match the local situation. The percentage of insolvencies of course rises in the most disadvantaged regions, where it can reach 10 %, while in the richer regions, the failure rate for micro and small businesses is of the order of 2.5 %.

2.5.2 JEREMIE can realise its potential primarily in the convergence regions, providing credit consortia with personal guarantees and facilitating securitisation processes, in order to increase credit opportunities and offset the weakness of the multiplier.

⁽³⁵⁾ Research by the *Osservatorio imprese* (business observatory) shows that the rate of business failures stands at close to 20 % a year, and that the main cause of failure can be traced to credit-related problems (management, extension, need for innovation).

⁽³⁶⁾ Around 2 %.

⁽³⁷⁾ The multiplier allows possibilities of granting loans to be increased, in proportion to the estimated percentage of insolvencies in a given territory and to the percentage of guarantees attached to the loans. If, in the territory, historical analysis of loan-related insolvencies shows a rate of less than 5 %, then it is possible, with a fund of EUR 1 million, to grant loans to a number of people, of up to EUR 20 million, since the million euros available means that insolvencies can be absorbed: 5 % of 20 million, i.e. one million. In this case the multiplier is 20. If the guarantee granted by the credit consortium covers 50 %, with the other 50 % being the bank's responsibility, the multiplier rises to 40, i.e. with one million loans, divided appropriately, can be granted to the value of EUR 40 million.

2.6 JEREMIE and the CIP

2.6.1 The Competitiveness and Innovation Framework Programme (2007-2013) ⁽³⁸⁾ brings together various Community measures and programmes, including the following:

— measures to strengthen the competitiveness of European industry ⁽³⁹⁾, and the multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises ⁽⁴⁰⁾,

— the Financial Instrument for the Environment (LIFE) ⁽⁴¹⁾,

— the multiannual programme for the monitoring of the eEurope 2005 action plan ⁽⁴²⁾,

— the multiannual Community programme to stimulate the development and use of European digital content on the global networks ⁽⁴³⁾,

— general rules for the granting of Community financial aid in the field of trans-European networks ⁽⁴⁴⁾,

— guidelines for trans-European telecommunications networks ⁽⁴⁵⁾,

— the multiannual programme 'Intelligent Energy — Europe' ⁽⁴⁶⁾.

2.6.2 There should also be an analysis of the financial instruments included in the Fourth multiannual programme (MAP) (2000-2005), extended until 31.12.2006, with a budget of EUR 531.5 million ⁽⁴⁷⁾, which is to be incorporated into the CIP and come under the JEREMIE strategy.

2.6.2.1 The MAP is organised around three pillars:

1st pillar: business development policy;

2nd pillar: Euro-Info-Centre (EIC) network;

3rd pillar: financial instruments.

⁽³⁸⁾ COM(2005) 121 final of 6 April 2005.

⁽³⁹⁾ OJ L 167 of 6.7.2005.

⁽⁴⁰⁾ OJ C 333 of 29.12.2000, as amended by OJ L 268 of 16.8.2004.

⁽⁴¹⁾ OJ L 192 of 28.7.2000, as amended by OJ L 308 of 5.10.2004.

⁽⁴²⁾ Decision No. 2256/2003/EC.

⁽⁴³⁾ Decision No. 2001/48/EC.

⁽⁴⁴⁾ Regulation No. 2236/95.

⁽⁴⁵⁾ OJ L 183 of 11.7.1997 as amended by OJ L 200 of 30.7.2002.

⁽⁴⁶⁾ OJ L 176 of 15.7.2003.

⁽⁴⁷⁾ C.f. INT/261 2005, rapporteur: Mr Pezzini.

2.6.2.2 An analysis of how the MAP financial instruments have operated reveals which have given the best results and which may consequently be incorporated into the JEREMIE strategy. These instruments are by far the largest item of expenditure under the fourth MAP: in 2003, for example, they accounted for 67 % of the programme's total budget⁽⁴⁸⁾. Resources are distributed within these financial instruments as follows:

— SME-Guarantee⁽⁴⁹⁾: 90 %⁽⁵⁰⁾;

— ETF Start-up⁽⁵¹⁾: 10 %.

2.6.2.3 These instruments were previously used, in 1998-2000, under the programme of initiatives for growth and employment, alongside others:

— SCA (Seed Capital Action), under the MAP 1997-2000 CREA (*C*apital-*R*isque pour les *E*ntreprises en phase d'*A*morçage, risk capital for start-up enterprises) pilot action;

— JEV (Joint European Venture), which started in 1997 and finished on 29 December 2004⁽⁵²⁾.

2.6.2.4 Neither SCA nor JEV have yet yielded much by way of results.

2.6.2.5 Approximately 178 000 SMEs had availed of the SME-Guarantee instrument by the end of 2003⁽⁵³⁾ (136 000 under the growth and employment programme, 32 000 under the credit guarantee programme and 10 000 with the micro-credit programme).

2.6.2.6 During the same period, some 240 000 SMEs⁽⁵⁴⁾ had benefited from the ETF Start-up programme.

2.6.3 JEREMIE could therefore continue disseminating experience with these two financial instruments, increasing the number of beneficiary SMEs, especially in the convergence regions.

2.6.4 It should be borne in mind that only 0.81 % of European SMEs have, during these years, benefited from joint DG Enterprise, DG Economic and Financial Affairs and EIF interventions.

2.6.5 It is, however, important that JEREMIE should explore new paths, including those envisaged by the new programmes, in the following areas in particular:

⁽⁴⁸⁾ C.f. Conclusions and recommendations, page 6, footnote 15 above.

⁽⁴⁹⁾ SMEG, SME-Guarantee.

⁽⁵⁰⁾ Source: EIF annual report.

⁽⁵¹⁾ ETF: European Technology Facility, Start-up Scheme.

⁽⁵²⁾ Decision 593/2004/EC of 21 July 2004.

⁽⁵³⁾ Source: Fourth EIF report, first quarter 2004.

⁽⁵⁴⁾ Ibid, access to mezzanine finance.

— SME-Guarantee, a mutual guarantee mechanism, already discussed in connection with credit consortia;

— mezzanine credit⁽⁵⁵⁾ accessible via SME-Guarantee: this is of great importance to entrepreneurs since it does not require them to cede/transfer part of the capital and can be useful when transferring the company;

— securitisation of risk funds⁽⁵⁶⁾ of banks and credit consortia;

— establishment of SBICs (small business investment companies programs) such as those set up in the USA in 1958, which offer holdings and long-term credit and operate commercially on the basis of a licence granted by the Small Business Administration.

2.6.6 The EESC is however convinced that these interventions suffer from a major problem of information and training: the solution should involve the financial institutions, and organisations representing employees and workers, governed by the principles of corporate social responsibility and the social purpose of credit.

2.7 JEREMIE and tendering and accreditation procedures

2.7.1 It is in the Committee's view vital that Community legislation on public service tendering be complied with in full, in order to guarantee that the JEREMIE initiative succeeds.

2.7.2 In any case, the Commission's JEREMIE department and/or the EIF must guarantee that the tendering procedures comply with the principles of economy, efficiency, impartiality, equal treatment and transparency. The contract documents, drawn up in advance by the Commission, must in particular contain among the eligibility criteria for companies or consortia wishing to take part, the following:

— successful conduct of the relevant activities for at least five years;

⁽⁵⁵⁾ Mezzanine credit is based more on beneficiary companies' expected cash flow than on real guarantees. It can work in two ways: (1) subordinate debt (loans at a fixed rate or index-linked rate); (2) equity kicker (the lender/investor is entitled to a percentage share of the increased worth of the property to which the loan refers). Mezzanine finance mature at between four and eight years.

⁽⁵⁶⁾ Debt securitisation works by ceding part or all of the amount owed to a credit consortium (or bank) to specialised financial institutions in order to enable credit consortia in particular to boost the credit guarantees they can offer to undertakings.

- compliance with the CEN technical standards for the services provided;
- possession of the necessary technical-professional and economic-financial capacities, measured by objective and non-discriminatory criteria.

2.7.2.1 In the event of holding fund/2007-2015 operational programme agreements, there must be provision for penalties, revocation and dismissal of a holding fund on the grounds of inefficiency, irregularity or serious failures to fulfil obligations. Management should be monitored at two-yearly intervals, with the support of regional economic and social partners, with transparent procedures for the publication of reports, which should be forwarded to the central national authorities, the European Parliament, the EESC and the Committee of the Regions.

2.7.3 Financial entities or consortia established in another Member State or in one of the countries which has signed the agreement on public contracts, as set out in the Annex to the WTO Agreement must be allowed to qualify under the same conditions as those applied to national participants, on the basis of documents complying with the legislation of the countries in question, which demonstrate that all the requirements for qualification are met.

2.7.4 These provisions should also apply to the accreditation procedures for intermediary credit institutions: these must be subject to systematic performance monitoring arrangements, defined in conjunction with representatives of the relevant economic and social partners, and also to a periodic accreditation review. In all cases, replacement of part of the accredited elements must be ensured every three years.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Draft Commission Regulation (EC, Euratom) amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

(SEC(2005) 1240 final)

(2006/C 110/09)

On 12 October 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned Draft Commission Regulation.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 February 2006. The rapporteur was Mr Burani.

At its 425th plenary session, held on 15-16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 146 votes to one with one abstention.

1. Conclusions

1.1 The EESC congratulates the Commission on its complex, meticulous work on simplifying administrative procedures; however, it notes a certain **discrepancy between the statement** made at the beginning of the Explanatory Memorandum ('the following draft ... deals with *technical* amendments which can be introduced under the current Financial Regulation') **and the actual scope of many of the amendments.**

1.1.1 Many of the 'technical' amendments concerning relations with businesses and the public are 'political' in nature and

scope: greater transparency, streamlining procedures, faster responses and greater confidence in the social partners are signs of welcome progress in public governance.

1.2 At the same time the EESC stresses the **need for caution**: the desire to benefit the social partners must take into account the fact that there must be a limit to flexibility for treasury administrators — i.e. *potential losses* must be set against *actual savings* in that difficult but necessary exercise known as **risk assessment**. This exercise may be very unpopular with administrators but it is the only sensible path to take.

2. Background

2.1 The proposal lays down **implementing rules** for Financial Regulation No 1605/2002, which is currently in force. In order to shorten implementation times, it also takes into account a number of technical amendments made by the new Proposal for a Council Regulation on the Financial Regulation⁽¹⁾ which is in the process of being adopted. The EESC has already issued an opinion on the latter document⁽²⁾.

2.2 As in its earlier opinion, the EESC refrains from commenting on strictly technical accounting aspects, which can be addressed more effectively by technically qualified EU bodies with direct experience in the matter. Instead, as in its earlier opinion, it focuses on rules which could affect third parties (civil society organisations) which enjoy relations with the European institutions.

2.3 Three of the technical accounting principles — unity, annuality, unit of account — remain essentially unchanged and are just slightly amended or clarified. As regards the fourth principle — **sound financial management** — the proposal is based on existing criteria but clarifies the content of an *ex ante* evaluation and provides clearer guidelines on the scope of *ex ante*, interim and *ex post* evaluations, taking into account the *proportionality* principle. The EESC is very pleased to note the Commission's intention to 'redirect' the priorities of the evaluation, 'in order to focus on proposals with a *real impact on business and citizens*'.

2.4 Again mindful of the expectations of business and the public, and concerned to ensure that public funds are used sensibly, the Commission stresses that pilot projects and preparatory actions should be subject to an *evaluation* if they are to be continued as a programme. However, in order to simplify procedures, where projects or actions have already been evaluated, as in the case of joint actions undertaken by the Commission and the Member States, such evaluation should not be duplicated.

3. General comments

3.1 Of course, the comments made by the EESC in its above-mentioned opinion on the Proposal for a Regulation apply to the implementing rules as well. Although the simplified procedures and more flexible criteria for applying the rules are to be welcomed, it would not be acceptable if it were to become the norm to consider every sum below a pre-established threshold as negligible. In other words, the EESC agrees that the thresholds below which simplified procedures are to be used should be raised, but that does not mean that a more relaxed attitude can be adopted or that the level of control of expenditure can drop under the pretext that any material damage would not, in practice, affect the budget as a whole.

3.2 Without wishing to refer to the abused and over-invoked principles of public morality, the EESC points out the danger of adopting a less vigilant attitude towards the legality of expenditure transactions concerning amounts considered to be 'low', particularly in the case of calls for tender and grants. The public must not receive the impression that, because procedures are being streamlined, it will be possible to find unlawful ways of obtaining funds from public authorities: a perception of this kind would be a blow to Europe's image.

3.3 The EESC believes that careful scrutiny of OLAF reports by the Commission's accounting authorities would reveal whether existing and forthcoming simplifications are sound and where any weak points are: the information on exposed fraud cases could provide useful pointers.

4. Specific comments

4.1 The new Article 85(a) concerns **appeals by third parties against a Commission decision** imposing a fine, constraint or penalty: to protect the Community's interests the accounting officer has to require the petitioner to provisionally lodge the amounts concerned or else provide a **financial guarantee** (in technical terms, surety). The guarantee must stipulate that — should the appeal be turned down — the guarantor will pay the amount requested by the authority immediately, unconditionally and without the need for prior prosecution of the debtor. Technically, this is surety which must be redeemed at the first request, along the lines of the estoppel principle used by many tax authorities and customary in calls for tender.

4.1.1 The EESC has no particular objections to this kind of guarantee. It merely notes that surety which is to be redeemed at the first request is more burdensome than normal surety and that commissions are proportionate to the length of validity of the guarantee. In view of the burden incumbent on the petitioner, the **procedures for examining appeals** should be made moderately more expeditious than they are at present. Although it does not directly concern the Financial Regulation or its implementing rules, this aspect, which is regretted by certain social partners, warrants close analysis in the context of administrative authorities' relations with third parties.

4.2 The new Article 90 lays down, *inter alia*, that where **procurement and grants linked to sectoral programmes** are concerned, adoption of the annual work programme is considered as the **financing decision** necessary for the expenditure to be included in the Community budget. Although this is an internal accounting measure, it may well speed up the procedures for allocating funds and the EESC therefore believes it could benefit creditors or beneficiaries.

⁽¹⁾ COM(2005) 181 final.

⁽²⁾ OJ C 28 of 3.2.2006, p.83.

4.3 Article 129 is designed to simplify the **management of contracts** with a value below specified thresholds. Hence, where the amounts concerned are relatively small, the authority is authorised to use a '**negotiated procedure**' (or, to be more accurate, private treaty), after consulting a number of candidates, specifically:

- for contracts with a value less than or equal to EUR 60 000: five candidates;
- for contracts with a value less than or equal to EUR 25 000: three candidates;
- contracts with a value less than or equal to EUR 3 500 may be awarded on the basis of a single tender.

In practice, the new provision does not introduce any new elements but merely raises the thresholds laid down by the previous rules.

4.3.1 Articles 130 and 134 also introduce a **number of simplifications**. Article 130 states that, for contracts with a value below EUR 60 000, the contracting authority may **limit the documents relating to the invitation to tender 'to what is strictly necessary'** (on the basis of its own criteria and under its own responsibility, of course). Article 134 provides that the documentary evidence of eligibility to take part in the call for tenders may be replaced by a **declaration on the candidate's or tenderer's honour**, without prejudice to the authority's right to request the evidence supporting that initial declaration at a later date.

4.3.2 Another simplification introduced by Article 134 is the **waiver of the obligation to submit documentary evidence** if such evidence has already been submitted to that or another contracting authority for another purpose no earlier than six months previously. In this case, too, the documentary evidence is replaced by a declaration on the candidate's or tenderer's honour.

4.3.3 Article 135 also makes concessions concerning the documentary proof of candidates' or tenderers' **financial, economic, technical and professional capacity**. The article stipulates that the authority may, on the basis of their assessment of the risks, decide **not to require this proof**. The facility is, however, limited to contracts with a value equal to or less than EUR 60 000 where the beneficiary of the contract is the authority itself or to contracts with various different values (depending on the case) where the beneficiary is a third party. Another restriction is the stipulation that, where it is decided not to require proof, no pre-financing or interim payment may be made: this is a guarantee for the authority but an important consideration for the other party, who may decide to submit the documentary proof anyway to avoid what could be a considerable expense.

4.3.4 The EESC endorses all these provisions making the procurement process — which is costly for both candidates

and the authority — less burdensome where *relatively* modest amounts are concerned. However, it points out the need for great care to be taken to prevent any abuse: the more flexible the procedures, the greater the temptation to abuse them.

4.4 The implementing rules regarding **grants** appear to be sympathetic to the concerns of the social partners, taking into account — as far as can be inferred from the provisions as a whole — the specific nature of beneficiaries. As an initial measure, Article 164 provides that, for grants with a value of less than or equal to EUR 25 000, the authorising officer may require **greatly simplified documentary evidence**: the EESC endorses this procedure although it notes both the **heavy responsibilities** incumbent upon the authorising officer and the danger that, in certain cases, the benefit of simpler rules will be cancelled out by an — understandable — reluctance to take these responsibilities on.

4.5 Various other provisions **facilitate or provide access to Community funds** for various types of institutions. To this end, where **bodies with a de jure or de facto monopoly** are concerned, Article 168 merely requires an informal investigation, to be recorded in the form of a reasoned declaration by the authorising officer. Article 162, which provided for operating grants — which do not decrease with renewal — for bodies pursuing an **aim of general European interest**, extends the list of possible beneficiaries to bodies involved in research, innovation or the promotion of citizenship. Article 172 enables authorising officers to accept **co-financing in kind** (such as voluntary work) as contributions from the institutions receiving funding.

4.5.1 The EESC welcomes all of these provisions but points out once again that more flexible rules will bring greater risks for the Community budget and more responsibilities for authorising officers, and require tighter controls.

4.6 There are number of other provisions **simplifying procedures**. All educational establishments will now be exempt from the **verification of financial capacity** (Article 176), whereas in the past only secondary schools and higher education establishments benefited from this provision. For grants with a value of less than or equal to EUR 25 000, the authorising officer may draw up a less detailed grant agreement (Article 164). Moreover, under Article 173, the **obligation to submit proof of an external audit** will not apply to grant agreements with a value of less than EUR 750 000, agreements for an action with value of less than EUR 100 000 and agreements with a number of beneficiaries who have signed a document accepting joint and several liability.

4.6.1 The EESC understands why the Commission wants to simplify procedures as much as possible and, in principle, agrees with it. However, it fears that it may be going too far. It is one thing to exempt parties from submitting costly and sometimes unnecessary documentation, but it is quite another

to waive the obligation for grant recipients to declare the state of their finances, when the thresholds set — particularly for the cases covered by Article 173 — are far too high. The aim should always be to strike the **right balance between the expected benefits** (savings in time and money for both the Commission and the public) and **the potential costs** (loss of public money, calculated in terms of the probability and size of the risk).

4.7 The criterion of **caution and risk assessment** mentioned in point 4.6.1 above has, moreover, already been adopted with regard to **pre-financing**: a **guarantee** (surety or other form of guarantee) is **required** as a general rule for *all* pre-financing with a *value equal* to the grant, and for any pre-financing *exceeding 80 % of the amount of the grant and above EUR 60 000*.

4.7.1 The EESC believes that the above provision is based on the sound principle of caution as referred to in point 4.6.1, but wonders whether these criteria might not also have been applied to genuine grants (e.g. the cases cited in point 4.6),

given that, **in terms of actual risk, the difference between pre-financing and grant** is very often — with a few, sometimes significant exceptions — more administrative than real.

4.8 Article 165 introduces a criterion which is entirely acceptable but has not always been applied in the past: where the recipients of grants are **bodies which pursue an aim of general European interest**, the Commission is **entitled to recover the percentage of the annual profit** corresponding to the Community contribution to the budget of the bodies concerned. This provision only applies in cases where the rest of the body's budget is **financed by Member States' authorities** which are themselves required to recover their share of the profits.

4.8.1 The EESC fully endorses this provision but finds it difficult to believe that the text as it stands can be intended to imply that the Commission should not also be entitled to recover profits in cases in which the rest of the budget is financed not by public authorities but by private entities.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on Regrowing raw materials — development outlook for producing materials and energy

(2006/C 110/10)

On 14 July 2005 the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an opinion on *Regrowing raw materials — development outlook for producing materials and energy*.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 February 2006. The rapporteur was Mr Voss.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 95 votes to 19, with 15 abstentions.

1. Conclusions and recommendations

1.1 The relaunch of the Lisbon strategy has established sustainability as a primary objective of EU policy. The EESC believes that this own-initiative opinion on regrowing raw materials could act as a spur to progress in key areas:

- a sustainable, environment-friendly raw materials base with jobs in Europe's regions;
- making Europe a dynamic, knowledge-based economic space with high-potential technologies responding to rising global demand;

— the increasing demands for sustainable solutions in the context of security and development policy;

— security of supply and diversification of raw materials in the EU;

— sea change in the use of raw materials as a strategy for protecting the climate, whilst, at the same time, safeguarding biodiversity.

1.1.1 Even against the background of an increasing use of regrowing raw materials, economical and efficient use of raw materials will continue to represent the key challenge for the future development of all sectors.

1.1.2 The Committee recognises the high level of effectiveness in terms of employment of establishing a regrowing raw materials industry in the regions; it also recognises the need to develop an appropriate policy to provide employees and users in all areas connected with the production and use of regrowing raw materials with the requisite skills and further training.

1.2 The Committee realises that many different units in the Commission are addressing this issue from their own perspectives, but it regrets the lack of a clear **coordinating point** or task force for this EU policy area. It therefore calls on the Commission to carry out a reorganisation to give the policy for regrowing raw materials a clear sense of direction.

1.3 The **decoupling** of direct payments under the Luxembourg agricultural reform agreement of 2003 and the EAFRD Regulation, as well as the future approval of sugar beet as a regrowing raw material, provide an important basis for wider cultivation in Europe.

1.3.1 When it comes up for review in 2006, modifications should be made to the energy plant premium in respect of the following points:

- possibility for applications for the premium also to be made in the new Member States which use the simplified CAP procedure,
- separate possibility of obtaining the premium for locations not eligible for the payment as a result of the transformation process,
- administrative simplification,
- amount of the premium.

1.4 The Committee expects high allocations to be set when earmarking aid from the **Structural Funds** for this sector's economic development.

1.5 The 6th Framework Programme largely neglected **research and development** in the sphere of technologies for regrowing raw materials. The EESC therefore calls for specific actions in the 7th Research Framework Programme for the development of regrowing raw materials and their material applications, as well as funds for developing energy from biomass. This will require a considerable increase in funding.

1.6 The Committee points out that, at the present time, it is **not the volume of supply** of regrowing raw materials which

are or could already be produced which is the limiting factor in the development of this sector. It is rather the **level of processing technologies** in respect of the products which could be marketed which is lagging behind.

1.7 The Committee welcomes the EU **Biomass Action Plan**, but regrets that it does not cover the production of materials but only of energy from biomass, and awaits assessment of the Action Plan and moves to establish national and regional action plans.

1.7.1 In the case of renewable sources of energy, particularly biomass, most EU Member States are failing to adequately exploit potential resources, because the general legal conditions are inadequate. The Committee therefore calls upon the Commission and the Council to produce a more effective policy in this regard.

1.8 The Committee explicitly supports EU **target-setting** for the share of renewable raw materials sources. It recommends 4 x 25 for 2020, or 25 % of electricity, heating, fuels and new materials, such as compound materials, natural fibre reinforced plastics, or other petrochemical products.

1.9 The Committee stresses the crucial importance of developing and implementing effective **market launch measures** for all applications (electricity, heating, fuels, and materials production). The energy-saving laws of certain Member States could serve as models of success here. It is important for measures to have the necessary flexibility to provide security for investors and incentives to employ new technologies, whilst taking account of differing background situations with regard to, for example, technology and economies of scale.

1.10 As regards identifying **policy approaches and political obstacles**, the opinion addresses several other points: emissions and waste legislation, the packaging and end-of-life vehicles directives, tax law, standards and the organisation of the market in fibre plants. The REACH Regulation on chemicals provides new perspectives for biomass-based procedures. Complex political and administrative obstacles exist in the 25 Member States owing to differences in policy implementation and systems. The Committee calls on the Commission to identify political obstacles and propose solutions.

1.11 The Committee sets out cultivation **requirements** with respect to **competition for land use** with food plants, energy and the ecobalance, as well as nature, environmental and landscape protection. It proposes the introduction of an accreditation scheme under which the origin of products and the processing they have undergone are indicated.

1.12 **On the international front**, the opinion points to opportunities for the EU to export technology. At the same time it calls for the WTO rules governing the international trade in biomass fuels to take into account, in particular, food sovereignty, and environmental and social standards.

1.13 The Committee will address the European Commission's Biomass Action Plan in a separate opinion.

2. Explanatory statement (background and overview of the situation regarding a regrowing raw materials base)

2.1 **Aims of EU policy:** In the context of relaunching the Lisbon strategy and applying sustainability criteria, forward-looking stimuli to progress are lacking in the following key areas:

- a sustainable, environment-friendly raw materials base with jobs in Europe's regions;
- making Europe a dynamic, knowledge-based economic area with forward-looking technologies responding to global demand;
- the increasing demands for sustainable solutions in the context of security and development policy;
- the achievement of greater economic independence by ensuring supplies of raw materials and by means of raw-material diversification on a European level;
- switch-over of basic raw materials as a means of climate protection, whilst at the same time safeguarding biodiversity.

The aim of this own-initiative opinion is to set out important aspects from the perspective of civil society.

2.2 **Definition:** Regrowing raw materials are defined as materials produced by agriculture, forestry and fishing that are also put to use in the non-food or non-feed sectors. This area thus embraces all substances created by photosynthesis and subsequent biological processes, i.e. stored solar energy. Biomass can be used as a material or as energy.

2.3 **History:** Production of regrowing raw materials is one of the main agricultural activities in addition to production of food and feedstuffs. These agricultural products began to be displaced with the Industrial Revolution. It was not until the middle of the twentieth century that petrochemical products replaced biomass-based products to a substantial degree. With traditional knowledge supported by new technologies and creative science, a wide range of new applications are available today in the spheres of energy, pharmaceuticals, chemicals, the construction industry and transport.

2.4 **Global resource policy framework:** The economies of the EU Member States are acutely dependent on fuel and raw materials imports from all over the world. Increasing consumption of and dependence on fossil raw materials, including crude oil and natural gas, though also coal, is becoming unsustainable and has many negative effects

2.4.1 The lack of innovative developments and investment with a view to achieving a sea change in the use of raw materials in the industrialised countries can be put down to the pursuit of one-sided policies. The dramatic side-effects of dependence upon fossil fuels do not comprise only ecological damage and global climate change; external and security policy risks also arise.

2.4.2 The consequences of global climate change, energy price hikes and a lack of efficient alternatives are further aspects of the misguided developments which have brought about, *inter alia*, poverty in the developing states.

2.4.3 EESC documents have dealt in considerable detail with the drama of climate change, the worldwide difficulties in implementing the Kyoto Protocol and the high expectations and limited results of the Montreal climate change conference. Everywhere and every day, calls are being made for European and international solutions to be found.

2.5 **Regrowing raw materials** are a continually renewable source of raw materials and energy. By contributing towards a positive eco-balance, they can reduce pressure on the environment, in particular damage caused by CO₂ enrichment. They provide potential for regional economic and value-added chains. They help to create and keep jobs in rural areas in the EU; in these areas and in the upstream and downstream sectors of both agriculture and forestry they can stimulate new economic dynamism. They can make crop rotation more flexible, thereby helping to safeguard biodiversity. By virtue of their innovation potential, they have a wide range of applications and offer a broad substance base for chemical products.

2.6 National policies in the EU respond to the changing raw materials situation

Many European countries have renewable energy laws to promote feed-in of electricity produced on a renewable basis. The feed-in price will be set higher on the basis of various technological and economic criteria. This leads to wide production and marketing of new technologies, and cost reduction as a result of extensive business experience and perfected technologies. However, as is clear *inter alia* from Commission Communications COM(2005) 627 and 628, there is considerable work to be done in many European countries to provide effective incentives for development and market launch.

2.7 Worldwide policies: Renewable raw materials are becoming increasingly important in various cultures and countries, especially in rural regions. Political and economic initiatives include the ethanol programme in Brazil, and trials with jatropha (an oil plant) in the arid regions of India and Africa. But there are also some alarming trends in South East Asia and South America, for example, where forested areas are being destroyed to satisfy the increased worldwide demand for fuel oils. This has a very adverse effect on more than just the climate. The United States is planning a long overdue shift in its energy policy. It wants to produce 20 % of fuel and 25 % of chemicals from biomass by the year 2030. The president and Congress are now establishing the biomass sector as a cornerstone of the US economy by means of the energy security law.

2.8 Renewable raw materials in the work of the EU: the subject is being addressed from different perspectives by over ten different DGs in the European Commission. The most important work is being done in the Agriculture DG and Transport and Energy DG. But Enterprise, Industry, Development, Research, Regional Policy, Trade, Competition and Taxation are also involved in this area. And the European Environment Agency in Copenhagen is making a substantial contribution.

2.8.1 EU initiatives for developing regrowing raw materials include:

- Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources;
- Directive 2003/30/EC on the promotion of the use of biofuels;
- Directive 2003/96/EC on taxation of energy products and electricity;
- Directive 98/70/EC on quality of fuels;
- European Commission White Paper calling for a doubling of the share of renewables by 2010;
- reform of the market organisation in fibre plants;
- use of set-aside land in the EU since 1992 for cultivating non-food raw materials;
- Luxembourg agricultural reform agreement: set-aside with cultivation option maintained, decoupling in principle allowing free choice of plants without loss of direct payments, and new coupled aid for 1.5 million hectares of energy crops;

- the EAFRD Regulation (rural development) also provides for promotion of this policy area;
- Structural Funds;
- 6th Research and Development Framework Programme.

Most recently, the Commission issued the following on 7 December 2005:

- Biomass Action Plan (COM(2005) 628);
- Communication from the Commission: The support of electricity from renewable energy sources (COM(2005) 627).

The European institutions are currently making decisions on the following:

- EU strategic guidelines on rural development;
- recognition of sugar beet as an energy crop under the new sugar market reform;
- 7th Research and Development Framework Programme;
- Commission Communication on biofuels (2006);
- REACH chemicals directive (with new prospects for the use of regrowing raw materials, particularly to substitute other materials).

3. General comments

3.1 The EESC would, however, stress that the basic significance of regrowing raw materials has to do with the sustainability of national economies. It also notes that the energy value of key agricultural products is now higher than their food or feed value. Without intending to start a debate about values, the energy price now often determines the minimum level of prices for agricultural products. This opens up new alternative options in the field of material and energy applications and, in particular, makes it necessary to develop and introduce new technologies.

3.2 Integrated land use: The EESC recognises that there is competition for land based on different demands: food; the need to safeguard biodiversity; nature and environmental protection; feedstuffs and non-food raw materials. This competition differs considerably from region to region and this trend is set to continue. The amount of land available for these crops likewise differs to a large extent from region to region.

3.2.1 **Productivity gains** and declining food consumption in the EU are expected in the medium term to release a further 13.7 million ha of the 104 million hectares of arable land. To this should be added the amount of land presently being 'set aside' under the CAP. Current consumer patterns for processed animal products mean that a large proportion of Europe's arable area is, at the same time, required for feedstuff production.

3.2.2 But from Europe's point of view, land and forest areas are also limited. Europe is the world's biggest importer of foods and feedstuffs. The EESC is very concerned about the global **loss of arable land**. Each year some 7 million hectares of agricultural land is lost worldwide, and 25 % of all cultivated land is classified as endangered. In 1970 there were still 0.18 hectares per capita available, but today the figure is just 0.11 hectares. This situation is exacerbated by the major uncertainties brought about by declining global yields and shortfalls in yields brought about by climate change.

3.2.3 The Committee concludes that there is a need to pay considerable attention not just to bringing about increased yields but also, and in particular, to the efficient use of lignocellulose plants, such as grasses and woods, and agricultural by-products, such as straw. By-products of substance cycles, e.g. manure in biogas plants, should still be used for energy production. New, exacting demands should be made in respect of the development of more efficient processing and conversion technologies. It is in these areas that the greatest challenges are now arising; these challenges must be taken on board as an integral part of EU R&D policy.

3.2.4 The Committee notes that **the new Member States of central and eastern Europe** have a high proportion of agricultural land. They also receive a large share of Structural Fund allocations. This provides a good basis for EU and national policy to establish investment and innovation incentives for regrowing raw materials. The EESC calls urgently on the EU, and in particular on the Member States, to ensure that appropriate legislation and planning measures provide for significant Structural Fund resources to be earmarked for regrowing raw materials.

3.2.4.1 In some Member States the restructuring process has left large tracts of agricultural land unused. The Committee draws attention to the fact that their cultivation is less competitive as payments cannot usually be claimed for them under the CAP. The Committee urges the Commission, the Council and the Member States to explore the possibility of targeting Structural Funds in order to enable this type of land to be used in such a way as to bring structural benefits and promote employment in the regions.

3.2.4.2 The energy plant premium (45 euros/ha) for 1.5 million ha, decided upon as part of the Luxembourg agricultural reform agreement of 2003, comes up for review already by the end of 2006. The EESC calls upon the Commission to consider whether the amount of the premium is adequate. The EESC takes the view that the current procedure for applying for the premium is too bureaucratic and proposes that administrative adjustments be made as a matter of urgency. As things stand, no applications for the premium may be made in the new Member States which have opted for a simplified CAP procedure (8 out of the 10 new Member States). As part of the adjustments to be made with effect from the end of 2006, the EESC calls for these Member States, too, to be given the possibility of having access to this area payment. As regards the amount of the premium, a separate adjustment should be made for those locations which, as a result of the transformation process, are not entitled to receive payments.

3.3 Regional value-added — creating new jobs

3.3.1 In order to strengthen the local economy in rural areas, the EESC believes it is necessary for initial processing stages in particular to remain local as far as possible. Decentralised technologies provide great potential for developing and strengthening the regions in this respect, the aim being to reduce transport costs for biogenic raw materials and increase value-added in the region by refining and processing substances locally. Such regional economic cycles maintain jobs in agriculture, as well as creating new ones in downstream sectors.

3.3.1.1 A 5 % rise in the share of renewable fuels by 2010 would create between 250 000 and 300 000 jobs — mostly in rural areas — in the biomass field alone, assuming 70 % to 90 % of it was produced in Europe. Labour intensity in the biofuel sector is 50 to 100 times greater than that of fossil fuels, in electricity from biomass 10 to 20 times greater and in heat production double. In this latter sector, a very large number of additional jobs would, however, be created as a result of the conversion and construction of heating systems; in many regions the greatest impact on jobs is therefore likely to occur in the field of heat production. The Mitre Synthesis Report of 2003 established that, if the EU were to adopt an ambitious raw material strategy based on renewable sources of energy, almost 2.5 million net additional jobs would be created by 2020 in EU-15 alone. It was forecast that two thirds of those new jobs would be created in the biomass sector. The Committee therefore highlights the major employment potential of the biomass sector, provided that appropriate incentives are put in place to take account of the higher costs that can be anticipated. Strongly forward-looking, but stable, conditions must be provided for.

3.3.1.2 These favourable prospects for employment will also benefit rural regions in particular. There is, on the one hand, a new need for highly skilled employees, particularly in the fields of R&D. The numbers involved are estimated at around 400 000. There is also a need for employees having lower or fewer initial qualifications. Overall, there is a need for a wide range of new training and qualification measures for both producers and users in all fields.

3.3.1.3 The Committee also draws attention to the fact that in the areas of research, universities, industry, crafts, agriculture, administration, media and consumers, there is a need to step up the provision of training and further training in respect of renewable raw materials.

3.3.2 With a view to structural change in rural regions, as for example under the current reform of the market organisation for sugar, the Committee urges that available commercial and industrial potential be harnessed and geared towards the use of regrowing raw materials. EU restructuring funds are a suitable instrument for supporting adjustment and the Structural Funds for redeveloping production sites. The EESC regrets that use of Structural Fund resources is not conditional on innovative and employment-friendly plans for such sites.

3.4 Use of regrowing raw materials in cascade systems

Regrowing raw materials can be used to produce both materials and energy. Alternative uses must observe the cascade principle. Use for materials production is therefore to be considered ahead of use for energy. 80 % of oil and 59 % of biomass is currently used in the processing systems. Under the cascade principle, the order of use would be as follows: foods; production of materials of appropriate quality; secondary raw materials, raw materials for energy production or even feedstuffs (oilseed cakes); low-energy raw materials with lignocellulose breakdown; fertiliser.

3.4.1 Use of regrowing raw materials to produce materials

The EESC sees many potential applications for regrowing raw materials in the production of materials. Between 1996 and 2003 the quantity of natural fibres used in the German motor-vehicle industry increased from 10 000 t, to 45 000 t. Wood and natural fibres are used to make building materials, allowing bio-construction and energy savings. Biodegradable lubricants based on plant oil help to reduce environmental damage.

Regrowing raw materials provide basic ingredients for washing and cleaning products, varnishes and textiles. In car manufacturing the use of wood and natural fibres enhances recycling properties, and the weight of the materials used can be reduced. Long-lived and short-lived plastics based on regrowing raw materials also open up completely new perspectives for waste recycling, since so-called biodegradable materials can be composted and — as a better option from an energy standpoint — thermically, or thermically and electrically (through biogas plants) processed. The main ingredients of biodegradable materials are starch plants and sugar, oil and lignocellulose. The amount of such materials used worldwide has increased since 1995 to reach a total of 350 000 t., deriving almost exclusively from regrowing raw materials.

3.4.1.1 In the Committee's estimation, the building industry offers many opportunities for developing new applications of wood. This should also be looked at very carefully in forestry planning. Although a range of products has already been developed ready for sale in the above applications, the processing technology required for this also needs to be developed.

3.4.1.2 The Committee believes that implementation of the chemicals directive will provide a basis for the further development of biomass-based chemistry, which is only in its infancy and therefore requires intensive research. When problematic substances are identified in the course of the REACH process, alternatives should be developed and this could be a promising research field for regrowing raw materials. Between 1991 and 2005 the percentage of regrowing raw materials used in the German chemical industry increased from 8 % to 10.4 % (this figure relates only to the chemical and pharmaceutical industries and excludes the paper-making industry and the natural fibre processing industry).

3.4.1.3 The Committee stresses the following goals in developing biomass-based product lines:

- more efficient use of materials and energy;
- replacing fossil raw materials and other finite raw materials;
- avoiding damage to the environment;
- harnessing biodegradability;
- reducing weight through light construction;
- tapping the advantages of bio-construction;
- achieving safety at work.

3.4.1.4 Development of the different product lines is currently hampered by the fact that in many cases it has not been possible to reduce costs. Reasons for this are lack of funding for production and market launch, and inadequate spending on research and development. In addition, these raw materials suffer a tax disadvantage in some countries. The Committee therefore suggests that the marketability and competitiveness of raw material applications be accelerated by setting utilisation requirements similar to feed-in rules for electricity.

3.4.2 Heating

The Committee considers heating production from renewable sources to be crucially important in relation to climate policy. Around 60 % of final energy consumption is accounted for by this sector. Only products and raw materials having low-energy properties are required in this context. The EESC is disturbed to see that 35 % of the wood grown annually in the EU's forests remains unused (excluding Natura 2000 areas), even taking account of the necessary proportion of waste wood. Significant additional aspects to be borne in mind in this context are the fact that less waste wood means less risk of forest fires and the fact that stepping up the utilisation of forests will give incentives to regional economies. The replacement of crude oil and natural gas in the heating market is technologically well-advanced and economically much easier than in other sectors, and is precisely for this reason an essential aspect of environmental and economic policy. Nevertheless, the use of biomass for heat production is growing only very slowly.

3.4.2.1 Unlike the electricity and fuels sectors, legislation is lacking on the use of renewables in heat production. In order to promote biomass-based heat production at European level, the Committee calls for further legislative measures to support renewable heat production and use. The EESC takes the view that measures similar to the feed-in rules for electricity could stimulate action.

3.4.2.2 At present around 56 million EU citizens are connected to district heating networks, 61 % of them in the new Member States. The EESC calls for Structural Fund resources to be targeted at extending and overhauling these systems to operate on regrowing raw materials. In the process, the use of cogeneration should be particularly promoted.

3.4.2.3 Since there is a long time horizon for investment in heating technology, co-generation, district heating and supply systems, the Committee sees a need for far more short-term measures, even in the 'old' EU Member States. There is an urgent need here not just for information but also for administrative readjustments.

3.4.2.4 The different forestry and property law regimes in the Member States impede individual households' access to waste wood from forests. Red tape should be minimised here, in particular given the new demand situation.

3.4.3 Fuels

3.4.3.1 About 30 % of EU energy consumption is accounted for by transport. Plant oil, biodiesel, ethanol and synthetic fuels made from biomass offer alternatives to oil. The EESC notes that progress in implementing the biofuels directive is very sluggish. The aim is 5.75 % of market share by 2010, and 2005's figure of 1.4 % falls substantially short of the 2 % benchmark. The Committee explicitly supports the target areas set out in the Intelligent Energy Europe (IEE) programme (Decision 1230/2003/EC):

- legislation, fiscal regimes and standards/norms for fuels;
- improving supply chains;
- market demand for alternatively propelled vehicles;
- accompanying measures.

3.4.3.2 At the present time, with a view to increasing ethanol production in Europe, calls have been made in the WTO negotiations for import quotas for ethanol to be set accordingly. This is the only way to ensure that this new economic sector, which seeks to provide a replacement for petroleum, also has the chance to develop in the EU.

3.4.3.3 Both the European Commission and the Member States are planning to replace tax breaks with fixed additive quotas as an instrument for promoting the introduction of renewable fuels. The EESC is concerned that many of the investments already made in this new economic sector would thus be jeopardised, and calls for more policy certainty. It also notes that regionally adapted investment is only possible if tax breaks are used as an instrument to promote biofuels.

3.4.3.4 Even assuming an optimistic prognosis, not more than a mere 35 % of current fuel consumption can be replaced by plant-based fuels at some time in the future. Second generation biomass-to-liquid (BTL) fuels still require a considerable amount of further technological development and development with regard to market readiness. In the context of these forecasts, it is also pointed out that a given area can be earmarked only once for a particular use. The Committee emphasises that a more efficient transport policy and substantially lower fuel consumption must remain priority objectives in order to safeguard our economic future.

3.4.4 Electricity

3.4.4.1 Over the next thirty years; power station capacity of 200 000 MW in electricity output will have to be replaced in Europe. This will require investment of at least EUR 200 billion, to lay the foundations for future energy production. The Committee also sees an opportunity here to develop more cogeneration systems by adjusting the size of power stations. In this way energy efficiency may be increased considerably.

3.4.4.2 Waste wood, manure, biowaste and other animal and plant waste materials have so far been used as biomass in the electricity market. The share of biomass in power generation is growing only slowly. Unless biomass is used more, the aims of the directive on the promotion of electricity produced from renewable energy sources (EC 2001/77) will not be achieved.

3.4.4.3 Since the electricity supply system represents a bottleneck, fixed feed-in conditions can be effectively established. The EESC considers the following factors to be important: reliable returns on innovative investment, feed-in prices differentiated according to production costs and available technology, five-year review to adjust feed-in prices to new investment with more efficient technologies, a bonus scheme for new technologies, geothermal energy, small and more local units. A bonus scheme based on raw materials used would also make sense. The Committee believes that grassland and follow-up crops and by-products such as straw should be rewarded through a bonus scheme, as should also the utilisation of by-products such as oilseed-cakes and spent grain.

3.4.5 Targets

EU targets exist for certain sectors where regrowing raw materials are used, such as biofuels and electricity production from renewable energy sources. These should be updated to reflect current price trends on fossil fuel energy markets. The Committee believes that the European Union should also set common targets and a common framework for action in relation to the utilisation of regrowing raw materials as materials and for heat generation.

3.4.5.1 The Committee favours a **target** of 4 x 25 for 2020. In terms of future biomass use, this means that 25 % of electricity supply, 25 % of heating supply, 25 % of fuels and 25 % of materials produced from crude oil products, such as plastics, would be covered by regrowing raw materials and renewable energies. The current level of consumption of fossil raw materials should serve as a basis in this context. Even in the event of a shift to renewable resources based on these targets, the efficient use of all resources is a crucial prerequisite for economic development. This means that substantially more efficient use

of materials and energy in the EU is essential if these objectives are to be widely met.

3.5 Identifying political obstacles to the development of product lines

There are complex political and administrative obstacles in the 25 Member States as a result of differences in policy implementation and different legal frameworks. Certain key areas are therefore mentioned below which should be checked for unjustified, development-impeding effects on the use of regrowing raw materials at both EU and Member State levels.

3.5.1 Plant fibres

Country quotas for long or short fibres discourage investment. As regards the structure of processing subsidies, the Committee agrees with the findings of the study carried out by Ernst & Young for the European Commission on the common market organisation for flax and hemp. This study recommends maintaining the subsidy for short fibres and turning it into a subsidy for all fibres. To ensure strong growth of the natural fibres sector the Committee calls for more predictability in this area of the market organisation.

3.5.2 Building materials

Authorisation provisions under building regulations must be adapted so as to favour the use of regrowing raw materials as a building material, in view of the benefits which they offer both as products and from a recycling point of view. In particular, the Committee calls on the European Commission to establish to what extent legal provisions prevent the use of these materials in the construction sector and to present proposals for improving the situation.

3.5.3 Emission and waste rules

In many places, emission rules — especially for small incineration plants — and waste legislation governing the production of electricity from biomass and biodegradable materials further inhibit the introduction of potential applications for regrowing raw materials. The Committee calls for an environment-friendly framework to be defined allowing the intensive, environmentally sustainable marketing of these products or increased use of biomass. The same considerations apply in the case of the observance of the air quality directive. The Committee also calls for changes to the end-of-life vehicles directive to meet the goal of improved recycling and further urges that, in this same sector, the issue of energy efficiency, in particular, be examined in relation to new materials, light-weight construction and recycling properties.

3.5.4 Tax legislation

As regards approximating fiscal regimes in Europe, the Committee calls for tax systems to be better geared to environmental and resource concerns. The aim must also be to dismantle tax privileges for fossil raw materials. On the other hand, consideration should be given to reducing VAT, for instance on natural fibres. Another example is bringing down VAT on the use of regrowing raw materials in district heating systems.

3.5.5 European standards

Even if there are legal rules governing processing standards, there is a need for an ongoing review of the process of adapting and improving standardisation systems to take account of new biomass materials and technologies and there is also a need to press ahead with this process. The aim should be to safeguard, in particular, the positive balance as regards the origin of products by taking action in respect of process standards. In this context the Committee highlights the need to introduce an accreditation scheme. By way of an example, in the context of the carbon balance, the clearing of a rainforest to make way for palm oil production would result in a negative carbon balance for a period of 30 years. Furthermore, European standardisation systems must be expanded to take account of the positive product and recycling properties of biomass.

3.6 Policies to increase the use of regrowing raw materials in the EU

The Committee expresses concern over the current lack of progress towards achieving a more effective EU energy policy and raw materials policy.

The Committee is critical of the fact that a very large number of Commission units deal with regrowing raw materials independently of one another. Because this policy area is so important, the Committee calls for a coordination unit or task force to be set up in the Commission. Ambitious objectives, as set out in point 3.4.5.1, are essential.

3.6.1 Biomass Action Plan

3.6.1.1 The EESC welcomes the Commission's Biomass Action Plan for the EU. National and regional action plans must be drawn up on the basis of this plan. It is necessary to check whether the objectives are achieved. The Committee welcomes the fact that the Action Plan addresses the issue of the potential of biomass as a source of heating; this potential remains largely unexploited. The Committee does, however, regret that the Biomass Action Plan is only concerned with using biomass to produce energy, and therefore calls for the plan to be extended to support use as a raw material and research into new applications, and to promote public relations and consultative activities. From the point of view of economic policy it is necessary to launch a business start-up initiative for regrowing raw materials in order to strengthen the position of

SMEs in particular given the difficulty of attracting risk capital. The Committee deplores the fact that, when dealing with international trade, the Action Plan fails to propose a change in market access conditions commensurate with the problems facing world trade.

3.6.1.2 The Commission's communication on the support of electricity from renewable energy sources (COM(2005) 627 final) states that the potential, particularly of biomass and biogas, continues to be untapped due to the inadequate legislative framework in most EU countries. Feed-in systems with cost-based prices have proven very effective in the market launch of renewable energies. The EESC expects the Commission to draw on this report to come up with far-reaching measures.

3.6.2 Research and development

3.6.2.1 The Committee is yet to be persuaded that a substantial part of the 7th Framework Programme for Research and Development really is devoted to biomass use. More comprehensive research programmes are needed for both energy and materials production from regrowing raw materials. The EESC points out the links that need to be made with other research areas — such as materials research, chemical research and nanotechnology. Adoption of the REACH regulation provides a further reason for promoting research activities in the biomass-based chemicals sector.

3.6.2.2 Without the fundamental change in the matrix of the new Research and Development Framework Programme called for by the EESC, the necessary sea change in the EU's approach to raw materials will be hampered. The volume of supply of regrowing raw materials produced from the land is not the limiting factor at present. The problem is rather lagging progress as regards the technological level of further processing and conversion technology right up to the production or marketing of the products in question. Research in this field needs to be stepped up.

3.6.3 Structural funds

The Committee expects a minimum of Structural Fund allocations in the next financing period to be earmarked for investment in regrowing raw materials.

3.7 Protection of the environment, nature and landscape: ensuring biodiversity

The Committee thinks that expanding the use of regrowing raw materials should not encroach on other environmental objectives. It therefore recommends that the following principles be observed:

- cultivation of regrowing raw materials should be subject to the same principles of good professional practice as food production;

- even after having been used for growing non-food raw materials, which must be done according to the procedures set out in points 3.2 to 3.2.3, the land concerned must remain suitable for food production;
- regrowing raw materials should be cultivated on land that is already being used for agriculture and on set-aside land, including, for example, areas which reform has left temporarily uncultivated, and their cultivation must not lead to a reduction in permanent pasture;
- production should ideally be in regional or local cycles so as to reduce transport, whose negative impact on the environment is well documented;
- ecologically valuable land should be reserved for nature conservation and managed in accordance with conservation goals;
- there should be a focus on promoting and cultivating regrowing raw materials that demonstrate a good ecobalance.

These principles should also underlie national and international accreditation standards.

Observation of these principles can ensure that the production of renewable raw materials constitutes a win-win situation for economic development and the environment by 'joining up objectives which belong together'.

Brussels, 15 March 2006.

3.8 *The international dimension of developing regrowing raw materials*

With conflicts looming about raw materials such as oil, the development of regrowing raw materials in the European Union also has a foreign and development policy and peace-promoting dimension.

3.8.1 Ensuring the supply of food to all sections of the population must be the priority in every country. The Committee therefore urges that the cultivation and export of biomass fuel should on no account jeopardise a country's **food supply**. **WTO rules** should also be qualified in this respect. The governments concerned must be able to establish the necessary policy framework to guarantee the country's food sufficiency. The Committee likewise sees the need to include labour-law standards and environmental standards in the WTO's non-tariff rules governing international trade in renewable raw materials. The Committee supports the setting-up of an International Agency for Renewable Energies (IRENA) and calls for greater transparency in the international raw materials sector.

3.8.2 The EESC notes that **the EU economy is dependent on the development and export of innovative technologies** ⁽¹⁾. Innovative processes and products from regrowing raw materials provide the basis for making the EU a world leader in relation to technologies of the future. The political framework for the development of regrowing raw materials is thus of key importance for economic growth within the European Union.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹⁾ EESC opinion, OJ C 241 of 28.9.2004, pp. 44-48.

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which were supported by more than a quarter of the votes cast, were rejected:

Point 1.8

Delete point.

The Committee explicitly supports EU **target-setting** for the share of renewable raw materials sources. It recommends 4 x 25 for 2020, or 25 % of electricity, heating, fuels and new materials, such as compound materials, natural fibre reinforced plastics, or other petrochemical products.

Reason

The proposed targets of 4 x 25 by 2020 are too ambitious and do not take into account the interests of energy-intensive production sectors such as the paper or chemicals industries.

Voting

For: 43

Against: 66

Abstentions: 14

Point 3.4.5.1

Recast as follows.

The Committee favours a **target** of 4 x 25 for 2020. In terms of future biomass use, this means that 25 % of electricity supply, 25 % of heating supply, 25 % of fuels and 25 % of materials produced from crude oil products, such as plastics, would be covered by regrowing raw materials and renewable energies. The current level of consumption of fossil raw materials should serve as a basis in this context. Even in the event of a shift to renewable resources based on these targets, tThe efficient use of all resources is still a crucial prerequisite for economic development. This means that substantially more efficient use of materials and energy in the EU is essential if these objectives are to be widely met.

Reason

The proposed targets of 4 x 25 by 2020 are too ambitious and do not take into account the interests of energy-intensive production sectors such as the paper or chemicals industries.

Voting

For: 44

Against: 70

Abstentions: 12

Opinion of the European Economic and Social Committee on Wood as an energy source in the enlarging Europe

(2006/C 110/11)

On 11 July 2005, the European Commission, on behalf of Commissioners Olli Rehn, Mariann Fischer Boel and Andris Piebalgs, and in accordance with Article 262 of the Treaty on the European Union, asked the European Economic and Social Committee to draw up an opinion on *Wood as energy source in the enlarging Europe*.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 February 2006. The rapporteur was Seppo Kallio.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 130 votes in favour and six abstentions.

1. Conclusions

1.1 The European Economic and Social Committee (EESC) considers that use of wood as a fuel is largely a question of harnessing unused renewable energy potential⁽¹⁾ in Europe and cutting emissions of the greenhouse gas carbon dioxide. It is also important to bear in mind the role of forests in safeguarding the public interest (protection function and biodiversity). Increased use of woodfuels also makes unexploited raw material available for industrial processing. Using wood energy helps to combat climate change, improve the EU's low level of energy self-sufficiency and enhance security of supply, all of which are objectives of EU energy policy. However, wood can make only a limited contribution to solving energy problems. In addition, other alternative energy sources need to be developed and steps taken to increase energy savings, including heat insulation of buildings. Wood binds atmospheric carbon dioxide while it is growing. One cubic metre of wood binds on average 800 kg of carbon dioxide. Fundamentally, high forestry stocks are thus highly significant for the long-term sequestration of carbon in the forest. Good forest management and ensuring forest growth help to boost carbon stocks. Increased use of wood energy would replace non-renewable energy reserves and at the same time reduce fossil fuel emissions. The use of wood for energy purposes contributes to more effective forest management and higher forestry stocks in the long term.

1.2 The EESC also considers that the increased use of wood-fuel requires a long-term strategy based on the removal of regulations that prevent and restrict its wider use. A level playing-field must be created for the use of wood energy by removing tax and aid arrangements that favour fossil fuels. A European specification and classification for quality of solid wood fuels — CEN/TS 14961 — has been published.

1.3 The EESC believes that it is important that sustainable use of timber should increase in every country and that the fuel market be opened up to the industry's by-products, timber obtained from the forest for energy production and processed woodfuels. Fuel production and use is often closely associated with the forestry and timber product industry. An international market has also emerged for novel types of woodfuels in the form of pellets, briquettes and bio liquid fuels. In order to develop the woodfuel market economic instruments are required that also enable new operators to enter the market. Economic instruments can help to increase demand for and supply of wood. A carbon dioxide tax on fossil fuels and a low VAT rate on woodfuel would boost demand for wood energy. Investment aid can be used to increase energy producers' demand for woodfuel. In addition, more needs to be done to promote publicity about woodfuels, training, and research and development activities. Economic instruments should be focused particularly on activity outside the emissions-trading sector. Transfer of technology and good practice and the creation of a communication strategy could be especially important forms of support in the new Member States.

1.4 The EESC considers that harnessing and mobilising this unexploited resource requires operators that can survive financially in a properly functioning market. In countries where the market is undeveloped it must be possible to help operators survive financially by providing them with temporary aid, e.g. from the Rural Development Fund. It is vital to support forest-owners' organisations, local entrepreneurs and small industry.

1.5 The EESC would like to see efforts made to increase demand for woodfuels by means of environmentally-oriented economic instruments that treat different users equally and encourage the use of wood fuel in all market segments: domestic heating with firewood and processed woodfuels; heating of large individual buildings; plants producing district heating and electricity for villages, municipalities and towns; naturally, within the forestry industry; and in other industrial

⁽¹⁾ Directive 2001/77/EC, OJ L 283, 27.10.2001, p. 35, Article 2(b).

plants using heat and electricity that have local and regional access to woodfuel. The use of larger quantities of wood as an energy source should take place only when all heat insulation possibilities have been used and a heating plan involving other alternative energy sources (such as solar energy) has been drawn up.

1.6 The EESC feels that special initiatives are needed to launch business activities involving the production of woodfuels, heating with woodfuel and electricity generation in almost all the Member States, but in the new Member States and accession countries in particular, where forest holdings are small and there is a low degree of organisation among private forest owners and low use of forestry resources. The barriers to entry are often too high. Lowering them would increase business activity and stimulate the creation and development of new markets. The EU Structural Funds should be actively used to initiate business activity and create local and regional markets.

1.7 The EESC considers that all biomass fuel should be treated equally. The competitiveness of wood among biomass fuels must not be jeopardised by instruments in other EU policy areas. With current technology, wood biomass is suitable for producing all types of energy, and also as a raw material for transport fuel.

1.8 The EESC considers that agreements and provisions that limit freedom of movement and other trade obstacles for wood-based fuel within the European Union should be abolished. Wood can play a significant role in stimulating competition in the energy sector. In particular it can compete with other sources of energy at local and regional level.

1.9 The EESC notes that there is a lack of awareness of the potential and use of woodfuel resources in the European Union. Stocktaking of wood energy resources must be improved in all present and future Member States as this information constitutes the basis for sustainable development. In this a differentiated approach is needed. Thus in the large central European deciduous forest areas an adequate wood potential should be left standing to ensure the variety of forest species. There is not enough information about forestry resources that cannot be used by the industry because of their location. These resources should therefore be clearly defined, classified and standardised so as to avoid distortions within the timber trade in the EU. National inventories of woodfuel poten-

tial and monitoring of its use are needed, and the opportunities it offers should be investigated more closely on a uniform basis. This would make it possible to set operational objectives and to measure the results of different instruments.

1.10 The EESC considers that increased use of wood as fuel is important in some regions in the control of forest fires caused by humans in cultivated conifer monocultures. More intensive use — especially for energy production — probably could help to reduce the risk and occurrence of forest fires.

1.11 Research on selecting effective species and ecotypes, intensive cultivation methods and shortened production cycles should be integrated into the programme for exploiting wood as an energy source. The plantation aspect of forestry should be developed. The search for effective methods of obtaining wood energy should not adversely affect the maintenance of biodiversity or cause any problems for local and regional water resources management. The EESC feels that it is necessary to develop combustion technology and the technology and logistics needed to use woodfuel from forests. Lasting results can be achieved by supporting research and development, information dissemination and technology transfers. Common European standards must be established for small solid-fuel boilers, so that competition is not impaired.

1.12 The EESC believes that more information should be provided about the potential uses of wood energy. This applies to the whole sector, from use of pellets in private homes to large industrial and municipal plants, where wood chips and by-products are used. In many modern combined heat and power plants co-firing with other solid fuels is possible.

1.13 Use of wood-based fuels, by-products of the forest industry and logging residue (crowns, branches, stumps and low-grade timber from thinnings) would boost the profitability of sustainable forestry and the competitiveness of the forestry sector without significantly endangering the forest industry's raw-material supplies or jobs in the forestry sector or wood-based industries. Increased use of wood energy would also make an important contribution to the forestry sector's ability to meet the Lisbon Strategy targets.

1.14 For the production of wood as an energy source use should also be made of areas which are excluded from agricultural use (afforestation as 'energy woods').

2. General

2.1 The European Union does not have a common energy policy. In recent years decisions have been taken concerning the market in electric energy (96/92/EC⁽²⁾) and natural gas (98/30/EC⁽³⁾), security of supply, greater use of renewable energy forms and environmental issues connected with energy production. There has been a failure to achieve a uniform level of taxation of carbon dioxide emissions from fossil fuels that would appreciably encourage use of renewable energy.

2.2 The 1997 White Paper⁽⁴⁾ sets the target of increasing the use of renewable energy from 45 Mtoe in 1995 to 135 Mtoe in 2010. The objective was set for the EU15 and corresponds to an increase in the proportion of renewable energy from 5.2 % to 12 % by 2010. The proportion was 6 % in 2001. At best, it could reach 10 %, but in the worst case scenario it could be 8 %. This shows that the measures taken have not been sufficient to put energy development on the right track with sufficient speed. A communication from the Commission⁽⁵⁾ made a similar assessment.

2.3 The 2000 Green Paper 'Towards a European strategy for the security of energy supply'⁽⁶⁾ expressed a strong desire to reduce the need for Europe to import energy and to increase self-sufficiency. Self-sufficiency is currently about 50 %, which — from a strategic point of view — is too low.

2.4 Directive 2001/77/EC⁽⁷⁾ on the promotion of electricity produced from renewable energy set a renewable electricity target for the internal market of 22 % by 2010. Evaluations of measures taken and follow-up of results show that the figure will only be 18 %-19 % by the target date. There has been a clear increase in the proportion of electricity produced from biomass. However, there is considerable variation between countries.

2.5 Directive 2003/30/EC⁽⁸⁾ on the promotion of the use of biofuels sets a target of 5.75 % of all fuels by 2010. The intermediate target was 2 % by 2005 but the outturn was only 1.4 %.

2.6 The directive on taxation of energy products and electricity (2003/96/EC⁽⁹⁾) enables Member States to exempt wood-fuels from taxation or to apply a lower tax rate. This makes full

or partial tax exemption for biofuels possible, and the overall tax can even be lower than statutory minimum levels. Tax exemption can be granted for at most six years at a time. Tax concessions cannot be granted after 31 December 2012 and under the directive the tax concessions granted cease to apply by 2018.

2.7 A directive on emissions trading in the EU (2003/87/EC⁽¹⁰⁾) was adopted in the autumn of 2003. The so-called 'link' directive (2004/101/EC⁽¹¹⁾) was adopted in September 2004 and makes it possible to trade emission rights in development projects outside the European Union (CDM — Clean Development Mechanism) or between industrial countries (JI — Joint Implementation).

2.8 In December 2005, the Commission issued a communication entitled *Biomass Action Plan*⁽¹²⁾, which is intended to accelerate and enhance the use of bioenergy in the Member States.

2.9 Most biomass exploited for energy production is used to produce heat. A directive to promote the use of biomass in heat production should be drawn up.

2.10 The best way to achieve energy efficiency is to produce electricity and heat together in the same plant. Cogeneration is particularly important in the production of district heating and in efforts to increase the use of biomass as fuel. Directive 2004/8/EC⁽¹³⁾ deals with the promotion of cogeneration of heat and power.

2.11 The European Union's 7th Research Framework Programme (2007-2013) is currently being prepared. The European forestry sector has established a 'Forest-based sector technology platform', whose research programme also provides for major investment in research and development in the field of wood energy.

2.12 Competition in the energy market has developed very differently in the various parts of Europe. This is true of both production and distribution, especially within the electricity sector, but also applies in many cases to the sale of fossil fuels. Competition within the energy sector is unsatisfactory. As a local and regional fuel, wood could generate more competition on the market.

⁽²⁾ Directive 96/92/EC, OJ L 27, 30.1.1997, pp. 20-29.

⁽³⁾ Directive 98/30/EC, OJ L 204, 21.7.1998, pp.1-2.

⁽⁴⁾ COM(97) 599 final, 26.11.1997.

⁽⁵⁾ COM(2004) 366 final, 26.5.2004.

⁽⁶⁾ COM(2000) 769 final, 1.12.2000.

⁽⁷⁾ Directive 2001/77/EC, OJ L 283, 27.10.2001, pp. 33-40.

⁽⁸⁾ Directive 2003/30/EC, OJ L 123, 17.5.2003, pp. 42-46.

⁽⁹⁾ Directive 2003/96/EC, OJ L 283, 31.10.2003, pp. 51-70.

⁽¹⁰⁾ Directive 2003/87/EC, OJ L 275, 25.10.2003, pp. 32-46.

⁽¹¹⁾ Directive 2004/101/EC, OJ L 338, 13.11.2004, pp. 18-23.

⁽¹²⁾ COM(2005) 628 final, 7.12.2005.

⁽¹³⁾ Directive 2004/8/EC, OJ L 52, 21.2.2004, pp. 50-66.

2.13 New operators within the energy sector, and in particular small operators who want to supply electricity to the grid on the same terms as others, find it difficult to compete. The situation varies considerably across Member States.

2.14 On 30 September 2005 the European Parliament adopted a resolution setting the objective of increasing the proportion of renewable energy to 20 % by 2020. The resolution acknowledges that renewable energy does not have free access to the market. It argues that administrative measures that hamper the growth of renewable energy should be abolished. It further proposes that the external costs of fossil fuel use should be included in the energy price, that support for harmful conventional energy forms be phased out and that taxes that are a burden on renewable energy be abolished.

2.15 Citizen organisations in Europe actively coordinate their stance towards renewable energy through environmental labelling for electricity. Wood, as a renewable natural resource, meets the requirements for sustainable energy production. Harnessing energy from wood improves the basis for sustainable forestry. From a sustainability viewpoint it is important that felling should not outpace growth. Sustainable forestry is based on and safeguarded by the decisions taken by the conference of forestry ministers of the MCPFE (*Ministerial Conference on the Protection of Forests in Europe*) on sustainable forestry in Europe. Sustainable forestry is also safeguarded by forest certification schemes. Under the criteria for sustainable forest management adopted at the Lisbon meeting of forestry ministers, the extraction of biomass from forest areas for energy purposes must protect the soil's carbon supply and fixing cycles. The processes of evolution, nutrient supply and maintenance of physical-chemical conditions in soil must therefore be guaranteed. At this stage it is necessary to concentrate on sustainably increasing the use and production of wood. At the same time efforts should be made to develop good methods of harnessing wood energy. In many EU countries there are also good examples of labelling schemes for wood energy which guarantee that energy production is controlled and inform consumers about respect for environmental criteria.

2.16 Forestry resources in Europe (stem volume in cubic meters without residuals) increased by approximately 30 % when the 10 new Member States joined the EU in 2004. The EU's total forest and woodland area currently amounts to 140 million hectares and there is about 22 million hectares in the accession countries. Commercially exploited woodland area in EU Member States (i.e. forests available for wood supply — woodland areas where statutory, economic and environmental protection constraints do not significantly affect timber production) totals 117 million hectares and there are a further 19

million hectares in the accession countries. The net annual increment (growth) of the growing stock (gross increment less natural loss of trees) in the EU is 560 million m³. In 2002 fellings amounted to 350 million m³, of which 41 million m³ was traditional felling for firewood. Net imports of roundwood into the EU amount to about 25 million m³. Together, industry and households use 62 % of the annual increment, of which more than 7 % is traditional firewood for use in the home. A good 10 % of total growth is in protected forests or otherwise outside commercially exploited areas.

2.16.1 This means that almost 30 % of growth is still unexploited, and EU forest stock is therefore still growing, as it has been for the past 50 years. Part of this unused timber (170 million m³) is low-grade timber, which can only be used for energy production. Of this amount, 30 million m³ can be used as energy wood, in addition to other raw-material use. Each year 173 million m³ of logging residue and other wood from felling suitable for energy production are left in forests. Taking into account technical, economic and ecological constraints, an estimated 70 million m³ of this amount, in the form of felling residue and stumps, could be used.

2.16.2 By-products of the forestry industry (black liquor, bark, sawdust, etc.) and recovered wood offer the greatest potential and are already exploited effectively in many countries, particularly in the context of an integrated forest industry. Use of by-products and recovered wood for energy purposes could amount to 30-50 % of roundwood use (equivalent to 100-167 million m³ of roundwood).

2.16.3 This implies that the EU's sustainable energy wood potential is about 267 million m³; part of the industrial by-products included in this amount is already exploited. This amount of wood is equivalent to 50 Mtoe of energy. Thus EU forests have an unused wood energy potential of at least 100 million m³. The amount of by-products is increasing along with expanding use of roundwood in the forest industry. Small quantities of energy wood can be obtained in conjunction with cultural landscape management. The FAO/UNECE Timber Committee is currently developing arrangements for monitoring use of woodfuels and testing a data collection system in ten countries.

2.16.4 In 2001 only 101.3 Mtoe of total energy consumption of 1,668 Mtoe in the EU (EU25) was produced using renewable energy forms. In most countries — all except four — biomass accounted for the largest proportion of renewable energy. In eleven countries, the proportion was over 75 %. The proportion was particularly high in the other new Member States, except Malta and Cyprus.

3. Greenhouse gases and use of wood as a substitute

3.1 The main indirect cost of fossil energy sources is climate change. Carbon dioxide is the most important greenhouse gas. Some countries have tried to address carbon dioxide emissions by imposing a CO₂ tax. Sulphur, nitrogen oxide and particulate emissions also create external costs. Woodfuel is carbon dioxide-neutral, i.e. it does not increase net emissions into the atmosphere. Wood contains little sulphur and nitrogen compared with other fuels, and the main source of its particulate emissions is its traditional small-scale use.

3.2 The wellbeing of today's planet rests almost exclusively on the use of non-renewable natural resources. This is particularly true of energy production and use of energy that is largely the product of fossil fuels such as lignite, coal, oil, oil shale and natural gas.

3.3 Energy use is the main cause (59 %) of greenhouse gas emissions in the world. The main emission due to energy use is carbon dioxide, whose air concentration level has continued to increase over many decades.

3.4 The use of fossil fuel also causes emissions of other substances that harm the environment, e.g. sulphur dioxide, nitrogen oxides and particles of various sizes. Use of wood as a replacement fuel reduces these emissions. Woodfuels replace energy production based on fossil fuels, which have a notably more harmful environmental impact.

3.5 Using wood in various products is an effective way of decreasing CO₂ emissions, as preparation of wood products usually requires considerably less energy than competing materials. Wood as a material is a substitute for non-renewable natural resources. The competitiveness of wood products in relation to energy-intensive products such as steel and concrete is improving as a result of emissions trading.

3.6 Using renewable energy instead of fossil fuel can help to cut greenhouse gas emissions. The scale of the reduction depends on the fuel and production methods that are replaced with renewable energy. Different fossil fuels have different CO₂ emission coefficients. From the point of view of cutting emissions, it is particularly important to use energy production methods where the unit cost of emissions is low.

3.7 Using fossil fuels simply for electricity generation is a poor environmental solution. Many industrial processes have

major heat, steam and electricity requirements, so it is especially appropriate to generate electricity in connection with industrial processes.

3.8 The mechanical and chemical forestry industries use wood primarily to make wood and paper products. The process gives rise to various types of by-products that are highly suitable as fuel for energy production. Modern chemical and sawmill industries are generally net producers of energy, i.e. they can produce more energy than they use themselves. By-products that are not needed for their own energy production can be sold on the biomass fuel market.

3.9 The most important by-product from pulp mills is lignin-containing black liquor, which can be used to produce electricity and heat. Black liquor is also likely to be used in the future as a raw material for vehicle fuel. This will require further research and development. Ethanol from lignocellulose, gasification and subsequent production of synthetic diesel are other likely sources of energy.

3.10 The new Member States offer considerable potential for expanding the forestry industry and using wood as a raw material for production of wood-based products and energy.

3.11 Biomass fuel markets are usually local or regional markets, owing to, for example, transport costs. Processing furniture or sawmill industry by-products to produce pellets, bio-oil from pyrolysis or briquettes, for example, could easily open up new, wider markets. Distribution networks should therefore be boosted and guaranteed in order to facilitate consumption by the public. The new CEN classification makes distribution and trade easier.

3.12 Forest fires are a serious problem particularly in Mediterranean countries such as Portugal, Spain, France, Italy and Greece. They also pose a minor risk in northern European countries. Managing these areas and collecting materials that increase the risk of forest fires reduces economic losses. The cause of forest fires are legion, but three leading causes should be singled out: forest condition — felling residue must be removed in order to lower the fire risk; people's behaviour; and lack of monitoring and extinguishing systems. Forest fires are major natural disasters and every effort must be made to prevent and combat them, both in Member States and the EU.

4. International politics and development

4.1 In 2005 the energy market was hit by higher oil prices and a deficiency in oil product processing capacity. At the same time, electricity prices have generally risen. One reason for this is trading in emission rights, the overall impact of which is, as yet, impossible to gauge. In addition, deregulation of the electricity market has not progressed very far.

4.2 The international political climate is a key factor when it comes to increasing use of renewable energy forms. The European Union has, in accordance with the Kyoto Protocol (entered into force on 18 February 2005), undertaken to cut CO₂-emissions by 8 % compared with 1992 levels. This reduction has been shared out between the Member States according to each country's ability to cut emissions. The EU's emissions trading scheme is one component of the European Union's climate strategy, and is only partly linked to the Kyoto Protocol.

4.3 Emissions trading within the European Union started on 1 January 2005. The initial period covers the years 2005-2007 and only applies to CO₂. Internal distribution within the EU depends on the EU15 as a whole succeeding in cutting emissions; failing this, each EU15 Member State will have to ensure it manages to achieve the 8 % reduction like other countries. Some Member States have even more ambitious requirements for 2008-2012. The post-2012 international situation is unclear. Some individual EU Member States have announced different objectives for the European Union as a whole and for themselves individually.

4.4 The European Union has no common forestry policy, but Member States pursue their own national forest programmes and policy. The EU Council of Ministers approved an EU forestry strategy in 1998. Forestry strategy is underpinned by the subsidiarity principle, according to which forestry policy is basically a Member State competence. In March this year the Commission issued a communication on the implementation of the forestry strategy⁽¹⁴⁾, stressing that promoting wood energy brings added value to EU sustainable development policy. The EESC issued an opinion⁽¹⁵⁾ endorsing the Commission's communication in October 2005. At the moment, the Commission is working on an action plan for sustainable forestry in the European Union, which is due to be completed in 2006.

⁽¹⁴⁾ COM(2005) 84 final, 10.3.2005.

⁽¹⁵⁾ CES 1252/2005 OJ C 28, 3.2.2006, pp. 57-65.

4.5 Since 1998 the European Union's forest area has increased by 20 % and the number of private forest owners from 12 to 16 million. In most of the new Member States the State is still a major forest owner. It is essential to improve the capacity of the private forestry industry in new and future Member States. Wood markets are poorly developed in many countries. Forest-based economic activities in these countries are still at a modest stage of development but the prospects for improving forestry are good, provided that the countries concerned formulate effective and efficient forest policy. In addition, efforts should be made to increase interest in producing energy wood. Energy wood production requires the extensive mobilisation of the entire forestry sector, especially at the beginning of the production chain.

4.6 There are many small forest holdings in the EU. Action should be taken to promote the organisation of small forest owners and cooperation between them so as to foster forestry and efficient wood energy production. The EU could contribute to this by helping forest sector organisations to increase their skills and capacity.

4.7 The development of competing energy forms often takes place in monopoly-like conditions where it is very difficult to create properly functioning local and regional markets for woodfuels.

4.8 The fuel market is global and electricity can also be transmitted across borders in large quantities. In spite of this Europe is not — and cannot become — fully self-sufficient in energy production. To improve the European Union's energy supply, greater focus will have to be put on objectives aimed at increasing the proportion of energy produced within the EU and reducing dependence on imports.

5. Woodfuels and their promotion

5.1 Wood plays an important role in energy supply in countries with large tracts of woodland. Since only just over 50 % of forestry potential is exploited industrially, efforts will have to be made to harness by-products from logging and to tap into this unused potential for energy production. From the point of view of sustainable development, renewable wood energy is always preferable to production based on fossil raw materials. It also helps to underpin good, sustainable forest management practices, particularly when regenerating forest and thinning young forest stands.

5.2 Wood is a renewable raw material and wood products also act as carbon reservoirs. Recycling of wood products continues to grow.

5.3 At the end of their various recycling processes, wood products can be used to produce energy. Similarly, all forestry and wood industry by-products can be used as raw material for energy production. Thus the forestry industry and energy production are a formidable, environmentally friendly combination.

5.4 Wood is a suitable fuel for energy generation needs in private houses, blocks of flats, district heating schemes and industry. Electricity is most efficiently generated in conjunction with district heating or industrial heating and steam production ('combined heat and power', or CHP).

5.5 The imposition of a carbon dioxide tax would be a good way of making wood energy more competitive on the energy market. In addition, the use of wood energy could be increased through support for fuel production, for example by granting forest owners aid for logging costs associated with projects which do not compete with the supply of raw materials to industry. However, it is essential that such a tax does not lead to a reduction in forestry stocks, as otherwise the function of forests as CO₂ sinks would be diminished. This measure should be complemented by tax breaks for forest owners who increase forestry stocks and thus contribute to the absorption of CO₂.

5.6 Instruments that promote wood as fuel boost demand for wood raw materials that can also be processed to make wood-based panel products for the construction industry. Heat is only generated locally where the need for energy arises, and so the mechanical forest industry, which can also make use of recovered wood, should be developed in an integrated way with energy production.

5.7 The forest industry has a permanent advantage in that production plants already possess logistic resources that can also be deployed for acquisition and use of woodfuels.

5.8 The competitiveness of wood energy can also be achieved through tax concessions, e.g. by lowering value add tax on wood pellets, retail firewood or on electricity produced with wood.

5.9 In order to provide for rapid uptake of, for example, electricity generation using wood as fuel, competitive prices could be paid to electricity producers. Plants planning to use

wood as fuel must be given the chance to assess the availability of renewable wood supplies and the profitability of investment in electricity generation.

5.10 In order to boost the use of renewable energy sources in electricity markets, some Member States have introduced support schemes based on quotas and feed-in tariffs (firm fixed prices for renewable energy). In many countries these schemes are essential for promoting the use of wood energy. Eco-labels for renewable electricity and especially for electricity produced from wood could help to promote the use of wood energy.

5.11 In the initial stage investment aid should be provided for wood energy production plants and for machinery and other technical equipment needed for production because of the high cost of establishing such plants.

5.12 Aid is also needed for research and development. This applies particularly to forestry management, technology, energy production and use of woodfuels. Prognoses and scenarios that ensure the overall sustainability of forests, inter alia in their biodiversity role, must be developed for forestry management. There is also a need for research on harnessing pulp industry by-products to produce more processed liquid fuels, such as those used for vehicles.

5.13 Use of wood as a fuel can also be boosted by setting stricter limits on, for example, sulphur emissions. Similarly, use of woodfuel can be promoted by taxing emissions, ash or other waste resulting from the use of other fuels.

5.14 Markets for woodfuels and especially firewood are local but increased use of wood energy in the EU would create jobs in the market for machinery and equipment as the equipment needed for the mechanised recovery of timber from forests is similar in all countries. Special machinery and equipment are also needed to produce pellets, briquettes and other processed woodfuels. Energy production requires a large number of boilers and other high-value equipment that offer major growth potential. Increased use of wood energy would also open up major opportunities for exporting technology to other parts of the world.

5.15 Comprehensive information campaigns are needed for technology transfers and dissemination of knowledge between EU countries. This could also be carried out by various independent organisations. Campaigns could be financed wholly or partly with public funds.

5.16 Optimum use of economic instruments is best achieved by means of national decisions, with the European Union playing a coordinating role.

6. Employment and rural development

6.1 Wood is an important renewable natural resource that is harnessed to promote rural development and create jobs. The direct net impact on employment is estimated at over 1 000 person-years of employment per 1 million cubic meters of wood, and the total impact, including the multiplier effect, at 1 500-2 000 person-years of employment ⁽¹⁶⁾. These figures do not include firewood for home use.

6.2 When imported fuel is replaced with woodfuels, a fuel cost consisting of foreign capital is replaced with local work and other local or regional inputs. The overall impact depends on the extent to which imported fuel can be replaced with locally or regionally produced woodfuels.

6.3 Replacing imported fuel with woodfuels provides employment above all for the local rural population. Businesses are small and can only grow if skills are improved and investment support is provided. Development of logging companies and business models is critical to increasing the use of wood and wood for energy production.

6.4 Household firewood use is still relatively important in rural areas in new Member States with extensive forest resources and where exploitation for industrial purposes is fairly low. Exploitation of wood energy is also a useful complement to the by-products of small-scale sawmill operations.

6.5 To enable Europe's millions of small forest-owners to be actively involved on the wood energy market, market-oriented cooperation must be promoted, e.g. through associations and joint undertakings. This is widely considered to be the key to exploiting the 'dormant' potential of wood. Better cooperation, particularly at the beginning of the wood production chain, and between the various operators would also be helpful. In particular, organisations of forest owners are not well-developed in many of the new Member States and the accession countries. In many of the old Member States, organisations of forest owners and other organisations have proved to be the most effective way of training forest owners and motivating them to market renewable wood energy on the timber market. Effective cooperation can bring considerable cost savings in the procurement of wood for use as a raw material.

6.6 A significant number of new jobs can also be created in the machinery and tools industry when there is greater recourse to woodfuels and more processing.

Brussels, 15 March 2006.

The president
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹⁶⁾ See the list of sources in the appendix.

Opinion of the European Economic and Social Committee on EU-China relations: role of civil society

(2006/C 110/12)

By letter dated 7 February 2005, the UK Presidency requested the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on the *EU-China relations: role of civil society*.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 February 2006. The rapporteur was Mr Sharma, co-rapporteur Mr Etty.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 93 votes to two with three abstentions.

1. Background

1.1 This exploratory opinion is at the request of the UK presidency. The development of a strategic partnership with China is one of the priorities of the British presidency. Commissioner Mandelson has also highlighted the need to build relations with China based on human rights and the notion of a more developed plural civil society.

1.2 The EU is based on values common to all its Member States, which it affirms and promotes in its relations with the rest of the world. These values include the respect for human dignity, freedom, democracy, equality, the rule of law and human rights. On the basis of these values the EU endeavours to build partnerships with third countries and international, regional or worldwide organisations which share the principles of universality and the indivisibility of human rights and fundamental freedoms.

1.3 Europe has a major political and economic stake in supporting China's successful transition to a stable, prosperous and open country that fully embraces democracy, free market principles and the rule of law.

1.4 China has experienced extremely rapid economic growth and social structural change that has contributed to a rising income for sections of the population, but which has been accompanied by increasing inequalities in living, environmental, health and working conditions as less advantaged groups have been left behind. The absence of channels through which the aggrieved can legitimately and effectively articulate their rights and aspirations has led to a rising tide of social unrest which threatens the hopes of the Chinese government, fully shared by the EU, to build a prosperous and harmonious society.

1.5 The Committee has previously expressed the view that a strong and independent civil society makes a major contribution to good governance and to political, economic and social stability. Its contacts with civil society outside the EU, in devel-

oped as well as developing countries, confirm this conviction. The Committee has therefore advocated the development of free, independent and representative non-governmental organisations of employers, workers, farmers, consumers, environmentalists, cooperatives, etc. It calls for legislation guaranteeing the rights of these organisations and for ratification and implementation in law and practice of international instruments covering these rights. These fundamental points of view underlie the Committee's strong interest to cooperate with the established, as well as the emerging, civil society in China. The Committee will try to involve the European Federations of the organisations represented in it on this.

1.6 The aim of this opinion is to examine the nature, the function and the operational framework within which Chinese civil society organisations operate and to make recommendations to enable EU and Chinese civil society improve relations between the EU and China. Before briefly discussing the main issues, the Committee wishes to point out that its observations will be made in a spirit of mutual respect. If it comes to international standards by which the EU Member States as well as China are bound, violations of these standards cannot be considered as the internal affairs of a country. In such cases, respect for the standards in law as well as in practice is a responsibility shared by the international community.

2. General remarks

2.1 Non-Governmental Organisations (NGOs)

2.1.1 The position of NGOs in China

2.1.1.1 NGOs have only developed in China since the beginning of reforms in 1978. By the end of 2004, there were 289 476 registered NGOs in China. It is not known how many of these are strong enough to allow them to act as partner organisations for EU bodies. In addition, an estimated 3 000 to 6 500 foreign NGOs are currently operating in China.

2.1.1.2 The Chinese definition of NGOs includes organisations in both social and economic spheres, therefore trade and industry associations are considered NGOs. The Committee considers that employer's federations and trade unions are an important part of organised civil society, although they are not NGOs in the strict sense of the term.

2.1.1.3 Chinese NGOs are divided into 'social organisations', which are membership organisations, and 'private non-enterprise units', which are non-membership, non-profit social service organisations, such as private schools and hospitals.

2.1.1.4 There are eight big national social organisations which are often referred to more specifically as 'people's organisations' or 'mass organisations'. These organisations, which include the All-China Federation of Trade Unions (ACFTU), the Communist Youth League (CYL), and the All-China Women's Federation (ACWF), were in fact created by the state and perform administrative and other functions on its behalf. The ACFTU, the CYL, and the ACWF function as the Communist Party's labour, youth, and women's department respectively. Calling such organisations NGOs is therefore misleading.

2.1.1.5 In order to exist legally Chinese NGOs must be approved and registered by the Ministry of Civil Affairs or its local branches in order to exist legally. The registration of NGOs is governed by three regulations:

- Regulations on the Registration and Management of Social Organisations (1998);
- Provisional Regulations on the Registration and Management of Private Non-Enterprise Units (1998);
- Regulations on the Management of Foundations (2004).

2.1.1.6 Current regulations make it difficult for some NGOs to register. This is mainly for two reasons:

- NGOs are required to find a 'professional management unit' to act as its supervisory agency. Only after obtaining the approval of its supervisory agency can an NGO apply for registration with Civil Affairs departments. The supervisor must be a state organ or an organisation authorised by such an organ. It must also be 'relevant' to the activities proposed by the NGO, i.e. it must have responsibilities in the same field in which the NGO operates. For example, a literary society should be supervised by the Bureau of Culture, not the Education Commission. On the other hand, state organs are under no obligation to accept applications for sponsorship from NGOs in their fields. For example, the Bureau of Culture can refuse to sponsor any literary society that wishes to register.

- NGOs with similar remits are not allowed to coexist in the same geographic area. For example, if there is already an association of disabled people in Beijing, then no new association of this kind will be allowed to register in Beijing.

2.1.1.7 As a result of these rules, many grassroots NGOs have been unable to register, either because they fail to find government agencies that are willing to act as their professional management units, or because other NGOs with similar missions have already been registered in the geographical area where they intend to base their operations. In order to exist legally, some NGOs have registered with Industry and Commerce Bureaux as businesses instead, even though they engage in public-benefit activities and are non-profitmaking.

2.1.1.8 Some NGOs also choose not to register at all. Although non-registration makes them illegal, many such organisations have been left alone by the government, mainly because the government considers their activities harmless. However, their non legal status means that such NGOs are particularly vulnerable to periodic government efforts to 'clean up and rectify' the NGO sector. There is considerable evidence that the Chinese authorities have been intervening more actively to monitor and control the activity of such NGOs in the past year, in the belief that unauthorised non-governmental organisations are actually or potentially anti-governmental organisations and may prove to be a destabilising force.

2.1.1.9 The Committee understands that a new regulation on NGOs is currently being drafted. It will, for the first time, require all foreign NGOs also to register.

2.1.1.10 A distinction is often made between 'government-organised' and 'popular' NGOs in China. The former (GONGOS) are initiated by the government and receive government subsidies. Their staff are often on the government's payroll, and their leadership positions are usually held by retired government officials. By contrast, popular NGOs are initiated by individual citizens and receive no government subsidies. Their staff are not government employees and they do not have officials occupying their top management positions.

2.1.1.11 GONGOS sometimes have better connections to the government. Because of such connections, the government may place more trust in GONGOS and adopt a more hands-off approach, thereby allowing them more de facto autonomy. GONGOS also have better access to the government and more opportunities to participate in decision-making.

2.1.1.12 The vast majority of popular NGOs seek to work together with the government instead of emphasising their independence. After more than two decades of market reform, the Chinese government has reduced its direct control over economic and social activities, however, it still holds considerable sway in these spheres. Without a certain degree of endorsement and support from government agencies and officials, no NGO can function properly. Gaining access to the government is the only way NGOs can be effective, therefore Chinese NGOs in general value access and influence over independence from the government in the knowledge that the government still has the power to control them, and will use it if they cross certain limits.

2.1.1.13 In managing NGOs, the Chinese government is torn by conflicting goals. On the one hand, it encourages the growth of NGOs, in order to pass on to them certain functions which it used to perform itself under the planned economy model. For example, it hopes that NGOs can share its burden of social welfare provision and help mobilise societal resources to supplement government social spending. On the other hand, the government is wary of NGO activism developing into social movements which may challenge it politically and cause instability. As a result, over the last two decades, the government has launched several 'clean up and rectification' campaigns to consolidate its control over NGO activities whenever it felt that its control had slipped. Despite these periodic campaigns, the trend of civil society growth and expansion has not been halted, as testified by the continued increase in the number of NGOs.

2.1.1.14 In official publications, the Government has stated that it is facilitating the work of hundreds of foreign NGOs, active in more than twenty different fields in China, by granting them legal status.

However, it has also shown a strong preoccupation with foreign-based NGOs and their Chinese partner organizations. Several Chinese NGOs have reported that they have been target of intensified control. They have also drawn attention to the fact that environmental and gender issues are now being considered by the authorities to be 'sensitive'.

2.1.1.15 The Government's main justification is that social stability and the creation of a 'harmonious society' are absolute priorities. The same reasons have been given for the arrests of dissidents, and censorship of the internet. The Committee notes that Western companies have sold China security tools and firewalls to control and restrict freedom of expression and information. Some of these companies have gone so far as to sign pledges of 'self discipline', promising to follow Chinese censorship laws.

2.1.1.16 It is striking that, although corruption is widespread and also a topical item in China, local NGOs have not begun to tackle this issue so far.

2.1.1.17 Academics are important contacts for NGOs, both those based abroad and Chinese. Foreign NGOs, but also the European Commission, frequently cooperate with them and support their research activities.

2.1.1.18 Hong Kong continues to have a thriving NGO community active in providing services as well as in advocacy. In both areas it is maintaining contacts with NGOs in neighbouring areas of mainland China.

2.2 *The present role of civil society in EU-China relations*

2.2.1 Both the EU and China have declared that they wish to promote interactions between their respective civil society organisations. China's EU Policy Paper of 2003 states that 'People-to-people exchanges and those between non-governmental organisations of China and the EU should be encouraged'.

2.2.2 Although exchanges between civil society organisations in the EU and China have taken place, such exchanges have not yet had any major impact on bilateral relations. In EESC's Opinion on EU-China Relations prepared in 2003, several recommendations were made on strengthening civil society dialogues. For example, point 4.7 suggested that 'The EU should support and enhance dialogue between organised civil society, economic and social interest groups in China and the EU on issues such as social justice (poverty reduction, gender, greater participation, environmental protection, etc.) and that it should include dialogue on issues such as human rights, good governance and minorities' policies'.

2.2.3 Point 4.14 proposed that 'Future visits of the Economic and Social Committee in China should not only be used to strengthen contacts with the China Economic and Social Council, but also to renew and to widen contacts with the NGO community in China, (and in particular with the free and independent among them) working in areas such as health-care and environmental protection, along the same lines as during the visit of July 2002'.

2.2.4 So far, no substantial progress has been made on these points. During the EESC visit to China in October 2005, the presidents of the EESC and CESC signed an addendum to the Joint Declaration by Presidents of 2002. The addendum proposes the establishment of a mechanism of annual meetings to intensify civil society contacts between the EU and China. It also proposes to ask the next EU-China summit to request the setting-up of an EU-China Civil Society Round Table.

2.2.5 These proposals represent concrete steps to strengthen EU-China civil society linkages. They have the potential of enabling civil society to play a more significant role in EU-China relations 'including the SAR Hong Kong and Macao'.

2.2.6 Workers and trade union rights, tripartism, and industrial relations

2.2.7 In China legislation on workers and trade union rights is much more restrictive than the regulations on NGOs. The European Commission, the European Parliament and the Committee itself have repeatedly drawn attention to these restrictions, which violate international labour standards, to which China and the Member States of the EU are both bound. In particular China regularly violates international standards the ILO Conventions 87 and 98 on Freedom of Association and on Collective Bargaining.

2.2.8 The Chinese government claims that there is comprehensive legislation covering workers and trades union rights, however there is a serious gap between legislation and prevailing practice. The Chinese government has very recently acknowledged this. A Committee of the Chinese People's Congress has studied the situation in 200 enterprises and concluded that in 80 % of these companies workers rights as laid down in the legislation are seriously violated. The problems are most acute in light industry, in building and construction and in the mining sectors.

2.2.9 In the Committee's view a full discussion of the role of civil society in EU-China relations must include a discussion of these difficulties. It is important that the Committee expresses its views on them and makes proposals for EU-China cooperation in this area which should contribute to improvements. These proposals should be studied and discussed in the framework of the EESC-CESC cooperation.

2.2.10 As a member of the ILO, China must respect the rights laid down in Conventions 87 and 98. These rights are incorporated in the Declaration of Philadelphia, which is part of the ILO Constitution. Violations of these rights by Member States that have not yet ratified Conventions 87 and 98, can be discussed within the ILO supervisory system, more specifically in the Governing Body's Committee on Freedom of Association. The basis of assessments made by this Committee is the extensive case law on freedom of association and collective bargaining, developed over several decades and universally considered to be the result of objective, impartial and independent legal analysis.

2.2.11 China has been criticised repeatedly during the past few years, sometimes strongly, for violations of the rights laid in Conventions 87 and 98. The major point of discrepancy between China's trade union legislation and Convention 87 is the trade union monopoly granted to the All China Federation

of Trade Unions (ACFTU). The Convention does not rule out the existence of one single trade union representing the interests of workers, if that is the wish of the workers, that is completely in line with the ILO standard. What is in conflict with the Convention is the establishment of a trade union monopoly, by law, which outlaws efforts of workers who want to set up an alternative organisation outside the ACFTU framework.

2.2.12 The Trade Union Law also defines the political orientation of the single trade union by stipulating inter alia, that it shall uphold the leadership of the Communist Party of China. It furthermore prescribes the principle of 'democratic centralism' which, as practised in China is alien to any democratic organisation.

2.2.13 A law on collective bargaining does not exist in China. There are regulations for collective contracts which have rather a consultative than a negotiation character. 'Collective consultation' is considered to be the appropriate instrument for settling differences of interests between workers and employers. Nothing in these regulations reflects key components of ILO Convention 98 on the Right to Bargain Collectively, like the promotion of collective bargaining by the government and the principle that bargaining parties must not interfere in each others' internal affairs.

2.2.14 As regards the application of the right to organise, in practice, no independent trade unions are allowed in China, and all efforts to set them up are severely repressed. Initiators of such efforts face arrest, usually prison sentences and sometimes 're-education through labour' -camps or placement in psychiatric hospitals. Despite this repression, there is a clear trend in collective action taken outside the ACFTU, including organising activities. Independent activists and NGOs supporting workers seeking to defend their legal rights have played an important role in supporting the rule of law in China, but have come under increasing administrative and police pressure during 2005.

The People's Congress Committee report, referred to earlier, has noted with regard to the application in practice of the law of 1995 on collective contracts that in 80 % of companies in the private sector contracts are not in place as demanded by the law. If there is a contract, its validity is usually less than one year. Contracts contain more articles on workers' obligations than on workers' rights. The situation is slightly better in the state owned companies, according to the report.

2.2.15 An area of workers' rights which is frequently referred to in publicity on work place conditions where trade union activity is lacking is occupational health and safety. A well known example is the mining industry.

2.2.16 This is an interesting area for discussion and cooperation when exploring the role that civil society could play in EU-China relations. The issue of occupational health and safety is, of course, of a different nature than fundamental workers' and trade union rights. China has not ratified any relevant ILO Conventions, and many have not even been ratified by EU Member States. Obviously, the right to organise is relevant for the implementation of certain provisions of occupational health and safety policies.

2.2.17 Against this background, the Committee welcomes the decision of the Chinese government to appoint 100 000 worker safety representations in China's 24 000 coal mines and its willingness in helping to train them.

2.2.18 With respect to workers' and trade union rights, the Economic and Social Council of the United Nations noted in its reaction to China's first report on the implementation of the International Covenant on Economic, Social and Cultural Rights i.e. the following principal subjects for concern in addition to the prohibition of the right to organise and hazardous working conditions:

- discrimination in labour and occupation;
- the use of forced labour as a corrective measure without charge, trial or review;
- hazardous child labour;
- violations of rights of internal migrant workers;
- wages insufficient to provide a decent standard of living, particularly in rural areas, and the persistent problem of wage arrears, especially in the construction sector.

2.3 Employer rights organizations

2.3.1 ILO Conventions 87 and 98 not only protect the rights of workers but also employers' rights. Since the late 1990s, the China Employers' Confederation (CEC) is trying to develop some basic functions of a representative employer's organisation. So far, progress is slow though not because of government interference. Financial weakness, dominance by the large state owned enterprises and the absence of a system of industrial relations in which it could play a role are the main causes of its very limited role. Subsidiaries of foreign-based multinationals do not play any role in the CEC.

2.3.2 The CEC does not seem to be inclined to engage in fully-fledged representation of the interests of its members. It considers that the Party is capable of representing all the interests in China without contradictions, and by consequence it defines its role in modest terms: to guide members to follow the government's macro and micro regulations, to help solve specific problems and to ask for fair treatment when appropriate. The other major employers' organisation, the All China Federations of Industry and Commerce, holds the same views.

It is however interesting to note that a number of new organisations, for example, the All China Business Owners Federation represent the interests of 'new capitalists'. Also there are a number of socio-professional organisations representing academics and professional interests providing a close link between professionals and the government and provide a forum to meet and discuss ideas and progress.

2.4 Industrial relations and tripartism

2.4.1 Against this background, the Committee must reiterate its concern about ongoing and increasing social dissatisfaction and unrest. According to official figures, 2004 saw some 74 000 major workers' protests, involving more than 3.7 million people. In 2003, the government counted 58 000 actions. Since 1994, when there were 10 000, the figure has been constantly rising. Widespread social unrest is a major threat to stability. Apparently, the Party and the government still think that continued high economic growth and propose attempts to reduce the most glaring inequalities will to be acceptable to the Chinese workforce. As such they are having to walk a tightrope between rapid development and stability.

2.4.2 The Committee remains convinced that the early development of a modern system of industrial relations with free and independent actors is one of the crucial safeguards for stable economic transition. Genuine tripartite consultation in line with the definition of ILO convention No 144, which is based on the notion of autonomous workers and employers organizations, could be a cornerstone of such a system.

2.4.3 Under the present conditions, the role of a civil society in the process towards such a system can only be a very limited one.

On the employers' side, subsidiaries of foreign multinationals and the European Chamber of Commerce in Beijing could engage themselves more in that process. However, they have not shown great commitment so far. Perhaps the instrument of corporate social responsibility, in which the Chinese Government has shown some interest to date can play a role.

Trade unions in the EU are, generally speaking, reluctant to cooperate with the ACFTU as long as this organisation does not seem to be inclined to enter the area of representation of the interests of their members. There is an interest in supporting activities in China with respect to making workers aware of their rights, training them in areas like occupational health and safety, and providing them with legal assistance in court. Sometimes they cooperate with local NGOs. If such activities will lead eventually to the establishment of an adequate system of industrial relations, they are the first (and necessarily very cautious) steps on a very long road.

3. Conclusions and recommendations

3.1 It is clear that having an effective engagement between civil societies in the EU and China will not be easy. The two cultures and the political systems are very different and we do not, as yet, understand each other very well. While this is so there is the danger that China will respond to EU concerns by saying that our experience is not relevant to the situation; telling them that they should be 'more like us' will not work. However, engagement will be beneficial and must be undertaken.

3.2 The EU needs to enhance its understanding of the complexity of civil society development in China. While the emphasis on working with and support for genuinely independent civil society organisations in China is understandable and should continue to be maintained, the EU needs to appreciate that even popular (as opposed to government-organised) NGOs tend to have informal ties to the government and they attach more importance to access to the government than their own independence. The European Commission should continue to explore the potential of some of the 'mass organisations of state', like the All-China Women's Federation (ACWF) for the promotion of democracy, human rights, and the rule of law in China. In recent years, some new initiatives and innovative projects on these fronts have been launched by GONGOs, mass organisations, and their local branches.

3.3 It is therefore recommended that the EU adopts a multi-pronged approach, working simultaneously with different types of NGOs, engaging them in different ways which take into account their different strength and competence. It should also expand its contact with civil society organisations at regional and local levels.

The additional agreement on enhancing cooperation between the European ESC and the ESC of China seeks to intensify their working relations by establishing annual Presidential level meetings with the delegations of each side to be composed of representatives of various economic and social components of organised civil society. It also foresees a joint approach to ask the EU-China summit to set up a bilateral Round Table on the basis of existing cooperation between the European ESC and its counterpart in China. It is recommended that should this proposal be agreed that membership on the Chinese side include not only governmental organisations but should include significant representation from the civil society organisations together with a facility for delegates to meet with independent civil society organisations in the margins of Round Table meetings.

3.4 With regard to the rule of law in China, many civil society representatives who met the EESC delegation suggested that the enforcement of existing laws rather than the drafting of new laws should be a priority. Many problems and deficiencies in governance, human rights' protection, and democratisation can be attributed to the disregard for and non-compliance with existing legal provisions. In advocating improvements in

these areas, it is therefore recommended that the EU lay more emphasis on the need to respect existing laws. Asking the Chinese government to abide by laws which it has drawn up itself can add force to the EU's advocacy.

3.5 The EESC recognises that the Chinese government remains deeply concerned about maintaining political and social stability and fears that unrestricted NGO activities may lead to instability. It is recommended that the EU should continue to seek to stress to the Chinese government that stability and a vibrant civil society are not incompatible, as long as the rule of law is respected. It can do so by using its own examples, in particular those made by its new Member States in Central and Eastern Europe, to demonstrate to the Chinese government that a well-developed civil society can serve to improve governance and enhance stability.

3.6 Given the extreme sensitivity of labour issues in China at present, the Chinese government may not be ready to loosen control over labour organisations. Only if the key issue of freedom of association is systematically addressed in the international dialogue with China, can it be hoped that the government will relax its grip on trades unions.

3.7 Given the Chinese government's willingness to see the development of trade and industry associations; it is recommended that EU use this opportunity to help Chinese trade and industry associations to learn from the experience of their European counterparts. Eventually positive development in any segment of civil society could have a ripple effect on other segments.

3.8 Against the background of possible reduction in the EU's development assistance to China, both Chinese NGO leaders and representatives of foreign NGOs in China argue that the EU should at least maintain its current level of financial support to civil society organisations in China. At present there is very limited financial assistance to civil society organisations from the Chinese government, private sector sponsorship of NGO activities is also underdeveloped. It is recommended that the EU should therefore consider maintaining or even increasing its financial support to civil society organisations in China, but targeting it at actions which also promote fundamental and workers' rights. The EESC welcomes the programmes of support for the development of civil society in China provided and proposed by the Commission, and recommends that the EU should consider increasing its financial support to civil society organisations in China but would stress the importance of incorporating support for grassroots organisations by providing small grants on the basis of a simplified application process, including the provision of technical support for the preparation of such applications.

3.9 Equally important is continued EU support of capacity-building programmes for Chinese NGOs. It is recommended that the design of such programmes should be improved to suit the specific needs of Chinese NGOs and must include consulting with them.

3.10 Chinese civil society representatives also argue that the EU should use its influence to promote NGO-government and NGO-business partnerships in China. It should encourage the Chinese government to create channels for NGOs to voice their opinions on public issues to the government. This is an issue which the EU should take up. In its Opinion on EU-China Relations of 2003, the EESC stated that meaningful interest representation by NGOs could only take place on the basis of freedom of association (point 3.13). While freedom of association is currently restricted in China, there is still scope for increasing NGO participation in decision-making. The EU can show the Chinese government and NGOs how civil society organisations in Europe perform advocacy functions, monitor government performance and provide input into public policy so that China can take some positive lessons from the European experience.

3.11 Despite various restrictions on press freedom, the Chinese media have played a crucial role in fostering civil society growth in recent years. It is recommended that the EU explores ways of supporting a continued active role of the media in China; including possible exchange visits by journalists between the EU and China.

3.12 The EESC recognises that civil society in Hong Kong continues to play an indispensable role in defending democracy and human rights in Hong Kong and serving as an important source of inspiration and support for civil society in mainland China. It is recommended that contacts and cooperation with civil society in Hong Kong should be maintained.

3.13 It is recommended that the EESC should, and other relevant European civil society organisations, monitor and

encourage the Commission to follow up as appropriate, violations of fundamental rights with the European Parliament, and with the CESC.

3.14 The discussion of the right to organise and the right to collective bargaining should be central to the Committee's work with the CESC on human rights' issues.

The Commission must continue its dialogue with the Chinese government with a view to helping it to overcome its deep suspicion of 'Anti-government Organisations', the 'Solidarnosc-effect' and the 'coloured revolutions'. It should try to give a positive content to the 'labour cooperation of various kinds' which the Chinese government has identified as an important point in its proposals for Economic Cooperation and Trade in its 'EU Policy Paper' of October 2003. The structural EU-China dialogue on labour, employment and social affairs, agreed between Commissioner Špidla and the Chinese minister of Labour and Social Security, might provide a good opportunity for doing so. The Committee will try to use its own contacts with the CESC similarly.

3.15 The EESC will explore the role corporate social responsibility and international Codes of Conduct for Multinational Enterprises (in particular the OECD Guidelines) can play in the contribution of foreign companies to the development of a system of industrial relations in China.

It is recommended that special attention is paid to the role trade unions, employers' organisations and, where relevant, NGOs can play in the promotion of safer and healthier working conditions at the workplace.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union

(2006/C 110/13)

On 10 February 2005, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 February 2006. The rapporteur was Mr Zufiaur Narvaiza.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 98 votes in favour, no votes against and one abstention:

1. Introduction

1.1 Juvenile delinquency is currently an aspect of crime causing growing concern in European societies and has, since the last century, been under continuous scrutiny on an international scale. It should however be pointed out that young people's behaviour often has a greater impact than that of adults, especially if it is negative, thus prompting society to take a particularly adverse view of young offenders. It is also useful to note that in many cases the victims of juvenile delinquency are young people themselves. As a result, the importance that European society attaches to juvenile delinquency means that effective responses must be found, which will have to be built principally on a three-fold foundation: prevention, punitive-educational measures, and the social integration or re-integration of minors and young offenders.

1.2 The EESC believes that shaping a common strategy to combat juvenile delinquency should be amongst the European Union's objectives to which most attention is given: not only because it affects a particularly vulnerable sector of the population (minors and young people, frequently belonging to groups at risk of social exclusion), but also because taking preventive action for today's young offenders means not only seeking their social rehabilitation, but also preventing the adult crime of tomorrow. Although there are already a number of projects and European policies which may have an indirect impact on preventing juvenile delinquency (the European Employment Strategy adopted at the Luxembourg European Council of November 1997, the European Social Agenda adopted at the Nice European Council in December 2000, the European Youth Pact promoting active citizenship adopted at the Brussels European Council of March 2005, etc.), as well as a range of youth-related agreements and resolutions⁽¹⁾ which also

promote the normal process of integrating this sector of the population into society, there is a lack of instruments and measures geared specifically to juvenile delinquency.

1.3 It is no simple task to analyse the state of affairs in EU countries, as each country has its own definition of juvenile delinquency, based on different factors. For some countries, the concept covers behaviour by minors that corresponds to one of the types described in their legislation or criminal law code. In other countries, where the juvenile justice system is based on an educational or welfare model, the range of acts that are pursued under the justice system when committed by minors is extended to include acts which, if committed by an adult, would only be liable to proceedings through administrative or civil channels, or would not even lead to prosecution⁽²⁾. Furthermore, there are significant differences between punitive systems, in that some countries have drawn up laws on punishments for young offenders that include a specific punitive system, and others apply the same punishments to minors as adults while providing for certain limited and reduced punishments. In addition to this, there are differences between the ages of juvenile criminal responsibility: although there is greater agreement on the upper age limit (18, although it may be raised to 21 in some enlargement countries), the lower age limits vary significantly from age 7 to 16⁽³⁾.

1.4 Bearing in mind the limitations created by such differences, it should be pointed out that according to the comparative statistics of the EU Member States, juvenile delinquency accounts for an average of 15 % of all crime, although it can

⁽¹⁾ Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 14 December 2000 on the social inclusion of young people (OJ C 374 of 28.12.2000); Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council of 27 June 2002 regarding the framework of European cooperation in the youth field (OJ C 168 of 13.7.2002); European Commission White Paper on a new impetus for European youth (COM(2001) 681 final); Communication from the Commission to the Council on European policies concerning youth (COM(2005) 206 final).

⁽²⁾ This would apply to what are known as 'status offences' such as running away from home, sleeping rough, etc.

⁽³⁾ There is a closer alignment on the upper limit between EU countries, with the juvenile justice system fully applying in all cases up to the age of 18, although there are some countries which allow for application, to different degrees and according to the case, to young people up to 21 (Austria, Germany, Greece, Italy, the Netherlands and Portugal). Differences in the minimum age of criminal responsibility are more marked: 7 in Ireland; 8 in Greece and Scotland; 10 in England and Wales, and France; 12 in the Netherlands and Portugal; 13 in Poland; 14 in Austria, Estonia, Germany, Hungary, Italy, Latvia, Lithuania, Slovenia and Spain; 15 in the Czech Republic, Denmark, Finland, Slovakia and Sweden, and 16 in Belgium. It should however be borne in mind that in most cases, for those aged between 7 and 13-15, the measures provided are not truly penal or are less rigorous than those laid down for ages between 13-15 and 18-21, detention in centres in many cases being completely ruled out.

rise to 22 % in some countries. In any event, it should be noted that the so-called 'unrecorded' crime rate (the percentage or number of offences which is not notified to the official social control authorities, i.e. the police and the courts) consists mostly of crime committed by minors. This is mainly because the offences are generally not serious and because the victims are often minors themselves, and are less likely to contact the relevant authorities.

1.5 Regardless of the picture provided by the statistics at any given time, there is clearly a widespread perception among European countries that juvenile delinquency is on the rise, and that the offences concerned are becoming more serious. Under these circumstances, the public is calling for more effective control mechanisms, leading many countries to stiffen their youth legislation. This serves to underline the need for coordination and guidance measures in order to facilitate European-level governance of this phenomenon, and also for well-designed information policies to help put the over-dramatised perception of the issue, mentioned in the first point of the opinion, into proper proportion.

1.6 Without wishing in any way to detract from the importance of examining the causes of juvenile delinquency (which the following section addresses, albeit in summary form) or the need for a detailed examination of prevention policies (which are also mentioned throughout the present document, but which must in any case be designed to deal with the causes), **the principal aim of the present opinion is to analyse the situation of minors who, on account of their behaviour which infringes the criminal law, are subject to the various juvenile justice systems and the available intervention mechanisms to protect, re-educate and reintegrate them into society, with a view to preventing recidivist behaviour.**

2. Causes of juvenile delinquency

2.1 Many different reasons or circumstances can prompt a minor to commit a crime, and experts in the field have not reached any general consensus on these. However, based on the most widely accepted causes and focusing more closely on those linked to economic and socio-environmental factors (insofar as these will be of most interest in the context of this opinion), we can highlight the following causes:

2.1.1 A broken home, or even difficulty in balancing family life and work, both of which increasingly often result in a lack of attention and an absence of constraints and control for children. As a result, young people sometimes try to fill these gaps

by joining youth gangs focusing on some sort of common symbol (ideological, musical, ethnic, sports-related, etc.), but which are usually characterised by transgressive attitudes. They account for a large proportion of antisocial behaviour (vandalism, graffiti) or actual violence and other crime.

2.1.2 Socio-economic marginalisation or poverty, which also makes it difficult for the minor to integrate properly into society. This marginalisation occurs more frequently among young people from migrant families (unaccompanied child migrants being particularly vulnerable) and in certain 'ghettoes' in large cities. Such areas frequently suffer from a dehumanised urban environment liable to trigger feelings of distress and aggressiveness among their inhabitants.

2.1.3 Truancy and academic failure: at school, this already leads to labelling or social stigmatisation, which often paves the way for antisocial behaviour or delinquency.

2.1.4 Unemployment, which is at its highest among young people and often leads to situations of frustration and despair, creating a breeding ground for delinquent behaviour ⁽⁴⁾.

2.1.5 The broadcasting of violent images and attitudes by certain programmes via some media, or videogames for minors, which helps to create a system of values among young people in which violence is seen as acceptable behaviour.

2.1.6 Abuse of drugs and toxic substances which often causes the addict to commit crimes in order to support his/her addiction. Also, when suffering the effects of these substances or withdrawal symptoms, the usual inhibitions are lowered or removed. Excessive alcohol consumption (even if occasional) should also be mentioned here, as it plays a major role in vandalism and dangerous driving.

2.1.7 Personality and behaviour disorders, either in association with or independently of the factor outlined in the previous point. These usually conspire with other social or environmental factors to make young people act impulsively or unthinkingly, uninfluenced by socially accepted standards of behaviour.

⁽⁴⁾ C.f., in relation to this factor and the poverty referred to in point 2.1.2, the *Thematic Study on Policy Measures concerning Disadvantaged Youth*, currently being drawn up by the European Commission's DG Employment and Social Affairs, and coordinated by the Institute for Regional Innovation and Social Research (IRIS).

2.1.8 Shortcomings in the teaching and passing on of social and civic values — such as obeying rules, solidarity, generosity, tolerance, respect for others, critical self-awareness, empathy, high standards of work, etc., which are being replaced in our 'globalised' societies by more utilitarian values like individualism, competitiveness or hyper-consumption — which in certain circumstances can generate a degree of detachment from society.

2.2 This combination of factors occurs to varying degrees throughout the EU, in societies which are prosperous but where social breakdown has led to this kind of antisocial or deviant behaviour.

2.3 In order to prevent violent behaviour and tackle juvenile delinquency, societies must devise strategies which combine preventive measures with active intervention and punishment. Preventive and intervention-based measures must be designed to ensure the social integration of all minors and young people, principally through the family, the community, peer groups, schools, vocational training and the labour market.

Judicial and punitive measures or responses must always be based on the principles of lawfulness, the presumption of innocence, the right to defence, a scrupulously fair hearing, respect for privacy, proportionality and flexibility. Both the judicial procedure itself, and the choice of measure, as well as its subsequent implementation, should be underpinned by the **principle of the best interest of the child** ⁽⁵⁾.

3. The limitations of traditional juvenile justice systems

3.1 Conventional juvenile justice systems encountered many difficulties in responding and adjusting to the modern reality of delinquency. European criminal justice systems for minors were therefore very slow, inefficient and economically unviable: long waiting periods were common, and the re-offending rates among young offenders were very high. At the same time, the traditional sources of informal social control (school, family, workplace, etc.) became progressively weaker.

3.2 Some countries (particularly the Scandinavian countries) moved away from the paternalistic 'protection model', which emerged in the early part of the 20th century, and under which young offenders were considered to be socially ill (combining and confusing them with other unprotected minors), towards the 'educational' or 'welfare model', a social or community model geared towards juvenile delinquency but which, as it fell outside the judicial system, denied minors the requisite legal protection.

3.2.1 Since the 1980s, various international agreements and treaties relating to juvenile justice (United Nations Standard

Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), 1985; United Nations Guidelines for the Prevention of Juvenile Delinquency ('The Riyadh Guidelines'), 1990; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990; and Recommendation No R (87) 20 of the Committee of Ministers of the Council of Europe on social reactions to juvenile delinquency) have been driving a gradual change within juvenile justice systems in European countries, with the introduction of the 'responsibility model'. Of particular importance here is the Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989 and ratified by all EU Member States, for whom it is now a mandatory provision. Articles 37 and 40 deal with the present subject. Under the 'responsibility model', the legal position of the minor is strengthened and the juvenile justice system moves closer to the criminal justice system for adults, bestowing the same rights and guarantees on minors. The aim is to bring educational and judicial aspects together, applying a protective model and measures which are clearly educational in nature. In short, the model aims to 'teach responsibility'.

3.3 This model, derived from the above-mentioned international standards, has been progressively incorporated into the laws of the 25 EU Member States.

3.3.1 The responsibility model is based on the following principles:

- Prevention before crackdown: the best way to combat juvenile delinquency is to prevent the emergence of young offenders, and this requires suitable social, occupational, economic and educational assistance programmes (among which programmes to encourage and facilitate proper use of free time and leisure opportunities should not be overlooked).
- Reducing the use of the traditional justice system to the absolute minimum and establishing new justice systems especially geared to juvenile delinquency, leaving other situations which may affect minors (suffering from abandonment, abuse or maladjustment, for example) to other services (social welfare).
- Reducing punitive state intervention, at the same time implementing preventive strategies in the areas of child welfare services, social policy, the labour market, leisure provision and municipal policy in general, and similarly involving the community and other social groups more actively in settling conflicts and seeking viable alternatives, such as family, social workers, school, community, social organisations, etc.

⁽⁵⁾ Article 40 of the Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989.

- Minimising measures or punishments that deprive young people of their liberty, by restricting these to exceptional cases.
- Making the disciplinary response more flexible and diverse, with adaptable measures that can be tailored to the circumstances of the minor, in line with the conditions and progress made in treatment or in the application of the measure, as alternatives to detention.
- Giving young offenders the same rights and guarantees as adults in criminal proceedings (a fair and impartial hearing).
- Putting the official social control bodies involved in the juvenile justice system on a professional, specialist footing. In this context, specialised training should be provided for all those involved in the administration of justice for minors (police, judges, public prosecutors, lawyers and professionals who carry out the various sanctions).

4. New trends in juvenile justice

4.1 Alternatives do exist for dealing with juvenile delinquency, other than traditional detention arrangements. There is an international trend towards additional or complementary systems which allow minors to be treated more effectively and in a way that it is more beneficial to their personal and socio-professional development, while not excluding detention when unavoidable.

4.2 Good European practices in the field of juvenile justice fall into three main areas: prevention, educational treatment in the local community or centres, and socio-occupational integration.

4.2.1 Apart from prevention, which is discussed above, educational treatment should preferably be provided using resources or institutions belonging to the same social environment as the minors concerned, with the aim of equipping them with educational skills or requirements the lack of which caused them to come into conflict with the criminal law in the first place. These minors must be subject to thorough examination by specialists in a range of fields in order to identify educational gaps and determine how to provide them with skills which can reduce the risk of re-offending. Similarly, work needs to be done with the families, to ensure their cooperation and commitment in the process of educating and re-socialising these minors.

4.2.2 Furthermore, young offenders — together with other groups such as disabled people, ethnic minorities, the elderly, etc. — often belong to groups which are or may become socially excluded: their particular needs and difficulties, outlined above, mean that they require targeted help in achieving personal self-sufficiency. Otherwise, they are headed for failure and the ensuing inability to integrate into their environment,

increasing the risk of re-offending and eventually being caught up in the adult criminal justice system.

4.2.3 These young people therefore need to be helped and guided in the process of integration using a wide variety of different paths (integration in social, cultural and linguistic terms, for example). There is no single path which can guarantee the social integration of young offenders, and neither are there any foolproof mechanisms to ensure that a fully-integrated person may not commit antisocial acts. However, there is broad agreement in viewing employment as a key means for drawing young offenders into the sphere of economic and social integration and stability.

4.3 With regard to the development of juvenile justice systems, and reflecting the points made in 3.2 and 3.3 above, it should be noted that, in response to the concept of **retributive justice** (paying for damage caused), the justice system has begun to be seen as a **reparative or restorative system** as a result of shift of emphasis in criminological policy towards the victim (victimology) and restoring a role to victims in the penal process. Restorative justice offers a paradigm for an approach which encompasses the victim, the perpetrator and the community in seeking solutions to the consequences of the conflict caused by the offence. The aim is to encourage reparation for the harm done, to reconcile the parties and strengthen a feeling of collective security. Restorative justice seeks to safeguard the interests of, on the one hand, the victim (with the offender having to recognise the harm done to the victim and to try to provide redress) and, on the other, the community (with the aim of ensuring the rehabilitation of the offender, preventing re-offending and cutting the costs of criminal proceedings) together with the offender (who in this way is not drawn into the criminal justice circuit and whose constitutional guarantees are upheld).

4.4 For offenders, reparation has a specific educational impact in that it prompts them to reflect upon their own guilt by bringing them face-to-face with victims. This may deter them from similar behaviour in the future. It therefore represents an ideal model for the juvenile justice system since it produces little stigmatisation, is highly educational and is less punitive.

4.5 In short, in the last twenty years, the procedures, type of correctional measures and sentences have undergone significant changes in the field of juvenile justice. Non-punitive measures are gaining ground, such as community service, compensation and reparation, mediation with the victim or the community, professional, practical training or special treatment for drug addiction or for other types of addiction, such as alcoholism. This type of measure requires supervision and constant monitoring of the progress and achievements of the minor. These measures are being used more and more frequently, and often take the form of open or semi-open detention, supervision and constant monitoring, probation, electronic tagging, etc., or a combination of several measures. In spite of this, deprivation of liberty, in a detention centre or jail, continues to be a very commonly used method.

4.6 Conversely, the public impact of new phenomena which have been emerging, particularly in major European cities (organised crime, gangs of youths, vandalism in public places, violence in sport, bullying in schools, violence against parents, extremist groups and xenophobic behaviour, linkage between new forms of crime and migration, drug addiction, etc.), has in recent years led some European countries to **toughen up** juvenile criminal law, increasing the maximum sentences applicable and bringing in various forms of custody in secure detention centres, and even holding parents responsible for certain offences on the part of their children.

4.6.1 In this context, it is worth noting the reforms to juvenile criminal law introduced in the Netherlands in 1995 and France in 1996, together with the 1994 UK Criminal Justice and Public Order Act, which increased from one to two years the maximum sentence applicable to minors aged between 15 and 18, and introduced six to 24 month custodial sentences for minors aged between 12 and 14. 'Parenting orders' were also introduced, requiring parents of minors who have committed crimes or played truant to attend weekly courses for up to three months. Parents who repeatedly fail to fulfil their educational duties can be fined up to GBP 1 000.

4.6.2 The problem with measures of this sort is that they remove the burden of responsibility from minors who, according to the modern responsibility-oriented approaches of criminal law, should be the ones called upon to compensate or repair the damage caused. Moreover, in some circumstances, parents (especially those with few economic resources and, consequently, less opportunity to provide their children with care and supervision) can find themselves being unfairly punished if they are unable to produce evidence clearing them of any responsibility. What parents actually need is help in bringing up their children properly, rather than having blame undeservedly heaped on their shoulders.

4.6.3 Some countries are seeing a return to concepts that were considered outdated in the 1980s, such as detention in secure centres, which are also used to provide welfare assistance to unprotected minors. In other words, a return to mixing minors coming under the welfare system with those coming under the juvenile justice system.

5. Current treatment within the EU

5.1 Although the Council of Europe has already specifically addressed the issue of Juvenile Justice on various occasions

(particularly in the abovementioned Recommendation No. R (87) 20 of the Committee of Ministers of the Council of Europe on Social reactions to juvenile delinquency, and, more recently, in Recommendation Rec(2003) 20 of the Committee of Ministers on New ways of dealing with juvenile delinquency and the role of juvenile justice⁽⁶⁾), the same cannot be said of the EU institutions, which have only touched on the matter when dealing with other issues such as crime prevention.

5.2 The basic texts of the European Union and of the European Community provide two approaches to this subject: Title VI of the Treaty on European Union (TEU), on *Provisions on police and judicial cooperation in criminal matters*; and Title XI of the Treaty establishing the European Community (TEC), on *Social policy, education, vocational training and youth*.

5.2.1 Police and judicial cooperation in criminal matters should be governed by Articles 29 *et seq* of the TEU, which set out to provide citizens with a high level of safety within an area of freedom, security and justice. These provisions lay down channels for intergovernmental cooperation in criminal matters at police and judicial level, including aspects such as preventing and combating crime, whether organised or not. In this regard, on 30 April 2004 the Commission presented its *Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union*. The purpose of the Commission's consultation paper is to analyse whether the existence of different systems across the EU raises problems for judicial cooperation between the Member States, and to identify barriers to the implementation of the mutual recognition principle. The document makes no reference to juvenile delinquency or juvenile justice systems, but there would be no obstacle to applying the objectives — which are listed in the introduction — such as custodial and alternative sentences, together with mediation, to these aspects.

5.2.2 At this stage, it is also worth mentioning the AGIS framework programme⁽⁷⁾ adopted by the European Commission on 22 July 2002. The programme promotes police, customs and judicial cooperation and supports the work of professionals in order to help implement European policy in this field. A number of initiatives on mutual recognition of legislation and best practice in the area of juvenile delinquency and justice systems have been launched under the programme.

⁽⁶⁾ Other examples could include Resolution (66) 25 on the short-term treatment of young offenders of less than 21 years, Resolution (78) 62 on juvenile delinquency and social change, Recommendation (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families and Recommendation (2000) 20 on role of early psychosocial intervention in the prevention of criminality.

⁽⁷⁾ This programme continues and extends the work of the earlier programmes operating under Title VI: *Grotius II – Criminal*, *Oisin II*, *Stop II*, *Hippocrates* and *Falcone*.

5.2.3 In connection with Title VI TEU, mention should also be made of the Council Decision of 28 May 2001 setting up a *European Crime Prevention Network* ⁽⁸⁾, which covers all types of crime but focuses particularly on juvenile ⁽⁹⁾, urban and drug-related crime.

5.2.4 With regard to social policy, education, vocational training and youth, Article 137 TEC highlights the activities of Community bodies in order to further the integration of persons excluded from the labour market and the combating of social exclusion. Echoing the points made above, socio-occupational integration is without question one of the two key elements in preventing and combating juvenile delinquency. A large number of strategies, agendas, projects and programmes have been adopted in this sphere by successive European Councils and by the Community institutions, some of which are referred to in point 1.2 above. Prominent among these, on account of its closer links with young offenders, is the *Action Programme to Combat Discrimination* ⁽¹⁰⁾, which comes under Objective 1 of the European Social Fund.

5.3 For its part, the European Parliament has — albeit in outline form — scheduled various measures in the field of protection of minors and has adopted a number of resolutions, including the *European Charter of the Rights of the Child*, adopted by the European Parliament in Resolution A3-0172/1992 of 8 July 1992. Points 8.22 and 8.23 of the Charter lay down a series of safeguards for minors caught up in criminal proceedings, together with the principles and criteria which should govern any sanctions which may be imposed and the resources which should be brought to bear on dealing with young offenders.

6. The utility of a European frame of reference on juvenile justice

6.1 As pointed out above, juvenile delinquency is a concern for many European citizens. Furthermore, there is a clear awareness that this is a common problem for European countries, and that it would be useful for it to be dealt with by the EU institutions. This was reflected in the Eurobarometer of

2001 (the first to cover internal security in Member States). According to the survey, 45 % of European citizens feel that policy to prevent juvenile delinquency should be a joint matter for national authorities and EU institutions.

6.2 As pointed out earlier, the UN and the Council of Europe have already established a number of international standards regarding juvenile delinquency and juvenile justice systems. However, they have little or no binding force (with the exception of the Convention on the Rights of the Child, mentioned earlier), and simply bring together a series of minimum rules for the entire international community. Using these rules as a starting point, the EU — given its level of development and greater internal homogeneity — should actively aspire to improve upon internationally-established principles and make them more effective within its own territory.

6.3 Moreover, each of the EU countries could, when drawing up their policies for dealing with the various aspects of juvenile delinquency — prevention, justice, protection and integration — benefit from the experiences and best practices of the other Member States. All the more so since there is a growing similarity between the various causes and outward signs of juvenile delinquency in these countries (drug addiction, racist behaviour, sports-related violence, use of new technologies for criminal purposes, urban vandalism, etc.).

6.4 Similarly, factors arising from on-going European integration, such as the removal of border controls and free movement of persons, give further backing to the idea of common rules on the juvenile justice system: young people can move freely between Community countries, not to mention border regions, which extend for thousands of kilometres between the 25 Member States. Greater homogeneity and/or coordination between relevant national laws and policies could prevent or reduce some risks or new situations generated by this greater mobility (such as, for example, the possibility of a young offender living in one country being convicted for an offence committed in another EU country).

⁽⁸⁾ OJ L 153 of 8.6.2001.

⁽⁹⁾ An example of the work being carried out by the European Crime Prevention Network is *A review of the knowledge on juvenile violence: trends, policies and responses in the EU Member States*, Fitzgerald, Stevens and Hale, 2004.

⁽¹⁰⁾ An example its application to the juvenile justice system: in Spain the NGO *Fundación Diagrama* (a body which manages custodial sentences imposed by courts on young offenders in many of the country's autonomous regions) co-manages an operational programme with the regional authorities targeting young people who are serving, or have served, custodial sentences or measures imposed by the juvenile justice system. The aim of the programme is to mark out a personalised and comprehensive roadmap to entry into society and employment for these young people, beginning even before they are released from the detention centre. The programme is achieving significant results.

6.5 Furthermore, since countries often use their juvenile justice systems as a test bench for future reforms to adult criminal law systems, the coordination and approximation of juvenile justice systems could, in turn, help to bring national criminal law systems closer. As mentioned earlier, this objective is already one of the EU's aims, and significant progress has already been made (Eurowarrant, mutual recognition and implementation of sentences, etc.). In addition, in the field of

juvenile delinquency legislation is relatively recent (the oldest dating from the early 20th century), meaning that launching a process of alignment would not arouse as much reluctance or cause as many difficulties as it would in the adult criminal justice systems, that have a long history in which deep-rooted historical, cultural and legal factors have all played a part.

6.6 Similarly, it is important to recognize the effect that a Community frame of reference could have in limiting or preventing regressive trends in the treatment of juvenile delinquency and the juvenile criminal justice system that, as mentioned above, are apparent in certain EU Member States.

6.7 Clearly, from both the preventive/social angle and the repressive/judicial angle, the common phenomena in this area in EU countries underscore the need for a joint framework to deal with this issue. Indeed, the Council of Europe has called for this in its Recommendation Rec(2003)20, signalling *'the need for separate and distinct European rules on community sanctions and measures and European prison rules for juveniles'*.

7. Proposals on a European juvenile justice policy

7.1 The above points suggest the following **general lines of approach**:

7.1.1 All the EU Member States are, to varying extents, witnessing roughly similar phenomena which also require comparable responses: breakdown in the traditional instruments of informal social control (family, school, work), the emergence of ghettos in major urban centres where a significant proportion of the population is at risk of social exclusion, new forms of juvenile delinquency (violence at home and at school, youth gangs, urban vandalism), drug and alcohol abuse, etc.

7.1.2 The youth justice models of the EU Member States have gradually been converging since the 1970-1980s, following the appearance of the international legal instruments mentioned in point 3.2.1 above. The *responsibility* model, generally combined with *restorative* or *reparative justice*, is spreading. However, significant differences between Member States persist (prominent among them the age of juvenile criminal responsibility, as seen above).

7.1.3 A wide range of reasons, discussed in detail earlier in this document — similar socio-economic and political circumstances between the Member States, legal traditions which are sometimes very close and in others at least not irreconcilable, social policies impinging upon youth crime prevention which are already funded or supported by Community budgets —

plead in favour of progressive uniformisation of models and systems for prevention, protection, action and treatment regarding juvenile delinquency and juvenile justice.

7.1.4 Lastly, several other factors support the idea of increased approximation, coordination and exchange:

7.1.4.1 Action on juvenile delinquency and juvenile justice is not restricted to the judicial sphere (where the differing legal models and traditions may constitute an obstacle), but seeks to be interdisciplinary and multi-institutional, bringing together other branches of knowledge — such as the social and behavioural sciences — and widely varying institutions, authorities and organisations (national, regional and local administrations, different kinds of social services, police and court structures, non-profit organisations, private companies working through corporate social responsibility projects, family associations, economic and social players, etc.), who often operate in an uncoordinated manner.

7.1.4.2 The information society, technological progress, the opening up of borders and other similar factors are certainly contributing significantly to the spread of the phenomena mentioned in point 7.1.1 above ⁽¹⁾, although the simple 'copy-cat' effect of such behaviour should not be overlooked either (amplified by the broadcasting of events by the mass media): all these changes are occurring at breakneck pace, and European countries cannot afford to ignore them.

7.2 In the light of all the above, the EESC believes that the following steps should be taken to frame a Community policy on juvenile delinquency and the juvenile justice system:

7.2.1 Firstly, it is essential to have **up-to-date, comparable statistical data** on the state of juvenile delinquency in the EU-25, to provide a reliable picture of the problem, its real dimensions and how to tackle it, taking into account — amongst other variables — possible differences between young male and female offenders.

7.2.2 From the quality point of view, the Committee is convinced that there should be a series of **minimum standards or guidelines** between the Member States covering all aspects from the way the police and courts deal with young people in conflict with the criminal law right through to reeducation and resocialisation. These standards should take the principles laid down in the Convention on the Rights of the Child, especially Articles 37 and 40, and the international guidelines contained in the conventions cited in point 3.2.1 above, as a starting-point for further detailed developments and implementation.

⁽¹⁾ It is worth pointing to the apparently important role played in the disturbances in French cities in November 2005, of chat services, e-mail, blogs, mobile phones, etc.

7.2.3 The first step in preparing these minimum standards would be to gain the most detailed knowledge possible of the different situations and experiences in each of the Member States. There could be different ways of doing this, but one might be to gather information through surveys sent to all the Member States, and supplemented later by meetings of groups of experts and professionals in the field to exchange experiences and best practices. These meetings could be put on a stable footing, setting up an **expert network**, with membership and functions tailored to the specific objective in view. It would also be helpful for the Commission to publish a **green paper** on the subject, in order to target reflection and debate more accurately, and to reach as many institutions, organisations and individuals as possible.

7.2.4 In conjunction with the above measures, or at least as the next step in furthering mutual knowledge and convergence between juvenile justice models in the Member States, a **European observatory** on juvenile delinquency should be created. This would facilitate not only the study of the issue, but would also help to disseminate the results and provide advice and support for the appropriate authorities and institutions in their decision-making. In other words, it must be ensured that the results of these research and study efforts do not remain purely academic, but help in the adoption of practical policies and strategies ⁽¹²⁾.

7.3 Without prejudice to the above, and given that the various issues which touch upon juvenile delinquency and the juvenile justice system are dealt with individually by various **European Union policies** (freedom, justice and security; youth; education and training; employment and social affairs), there is a need for **operational coordination** between all the services and agencies involved so that juvenile delinquency can be addressed on an interdisciplinary and multi-institutional basis best suited to it, as indicated several times in the present opinion.

7.4 In view of the specific features of juvenile delinquency, together with its inherently dynamic and changing character, it is essential that all those working with the young people involved — judges, prosecutors, lawyers, police officers, offi-

cials, mediators, social workers, probation workers, etc. — receive the most specialist, and constantly up-dated, training possible. The Community institutions have a key role to play in this respect, through the instruments outlined above (expert networks, observatory, etc.) and others such as exchange programmes for professionals between Member States, networking, new distance training methods such as e-learning, etc. Community programmes should be introduced to try to provide these specific training needs. Moreover, any advances made in the field of juvenile justice in the EU would boost the status of this area of knowledge and encourage the development of specialist research in European universities, which must be brought into the entire process.

7.5 Similarly, given that the issue has an obvious social and civic dimension, care should be taken not to overlook all directly relevant civil society organisations and professionals in the process ('third sector' bodies, associations, families, NGOs, etc.), since they can contribute to shaping and subsequently implementing whatever programmes and strategies are introduced within the EU.

7.6 With regard to the social integration and re-integration of minors and young offenders — the third foundation mentioned in point 1.1 — any future Community policies will also have to take account of the role of trade union and employers' organisations and their specific channels for dialogue when mapping out paths towards the socio-occupational integration and re-integration of socially-excluded minors. All the relevant players must therefore be committed, since socio-occupational integration is one of the vital means of re-integrating these minors into society.

7.7 Lastly, the EESC is aware that if all these policies are to be carried forward, they must be matched by budget resources. The European Commission should therefore introduce budget lines to assist in protecting minors and preventing juvenile delinquency, and to deal with young offenders, through either existing projects or initiatives (such as those aimed at eliminating social exclusion and supporting young people's integration into society and employment) ⁽¹³⁾, or programmes specifically designed for the purpose.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹²⁾ A European Parliament Proposal for a Resolution (B5-0155/2003) for the establishment of a European juvenile delinquency monitoring centre was presented by a large group of MEPs as far back as 21 February 2003,.

⁽¹³⁾ Examples of such projects and programmes currently under way are AGIS, Daphne II, Equal and the Action programme to combat discrimination.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on i2010 — A European Information Society for growth and employment

(COM(2005) 229 final)

(2006/C 110/14)

On 1 June 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 January 2006. The rapporteur was Mr Lagerholm.

At its 425th plenary session, held on 15-16 March 2006 (meeting of 16 March), the European Economic and Social Committee adopted the following opinion by 141 votes to 1 with 5 abstentions.

1. Executive summary

1.1 The EESC welcomes the European Commission's communication on i2010 as an essential component of the framework of the future strategy for the Information Society in the EU. The EESC fully agrees with the three priorities set out in the proposal, which are the following: firstly, the creation of a Single European Information Space offering universal access and rich digital content; secondly, the improvement of performance in research and innovation in the domain of Information and Communication Technologies (ICT) and lastly, the promotion of an inclusive Information Society that enhances quality of life.

1.2 Since ICT is such an important part of the Lisbon process, the EESC wishes to emphasise the need to intensify efforts to both support and pressurize on the Member States — particularly those which are lagging behind — so as to speed up the pace of development and meet the preconditions for achieving the Lisbon strategic objective by 2010. Without dedicating considerable financial resources, especially to R&D in ICT, the goals set out in the Communication cannot be achieved. R&D and innovation policies are crucial both for the ICT industry as such, and the ICT users industry. The availability of a larger budget is vital but, of equal importance is the need to ensure the strongest impact of R&D projects on industry thereby guaranteeing the greatest benefits to European citizens.

1.3 The Communication rightly addresses convergence and interoperability issues, which constitute one of the most important aspects of the strategy for end-users. The EESC is convinced that the regulations should promote interoperability while maintaining a technological neutral approach and, despite the difficulties, resolve any possible contradictions between interoperability and neutrality. R&D and standardisation work in this field is, in the EESC's view, potentially very productive and should remain market-led and involve all relevant stakeholders.

1.4 The EESC emphasises that the bridging of the 'digital divide' is a prerequisite for ICT to make good on its inherent social and economic potential. Only when there is technical and legal access to information, universal and affordable access to broadband services, when there are adequate computer skills and when programmes are user-friendly, can the 'digital divide' be bridged. This also means that policy making should take into consideration the special needs of socially disadvantaged people, thereby ensuring an inclusive, equal Information Society. There is also a need to develop a culture of refining information and checking the authenticity of knowledge. So far the European Education System has not met these needs of the digital age. The EESC therefore recommends linking the i2010 strategy to improvements in Europe's education system in particular, by increasing funding. Only if the above conditions are met can we take advantage of the opportunities that the information society provides in terms not only of growth and employment, but also of personal development.

1.5 Moreover, the concept of universal and affordable access must be supported by a concrete technical step that consists of the upgrading and development of telecommunications infrastructure, which is the backbone of the Information Society. The EESC would also like to stress the importance of enhancing awareness with regard to security matters, since confidence in IT is a prerequisite for its frequent use and of particular relevance to the exploitation of the full potential of the Internet. In order to elevate awareness, public authorities at local, national and EU level should encourage cooperation with business in order to combat cyber-crime.

2. Introduction: Gist of the proposal

2.1 With this proposal (COM(2005) 229 final), the Commission intends to follow up the eEurope 2005 Action Plan ⁽¹⁾, which was the successor of the eEurope 2002 ⁽²⁾ Action Plan. The latter was launched in June 2000 to support the Lisbon Strategy, in order to make the European Union the most

⁽¹⁾ eEurope 2005: an Information Society for all COM(2002) 263.

⁽²⁾ eEurope 2000: eEurope 2002: Accessibility of Public Web Sites and their Content COM(2001) 529.

competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010. The forthcoming closure of the eEurope 2005 Action Plan, the new challenges provoked by ICT as it becomes more mature and global, as well as the mid-term revision of the Lisbon Strategy result in an urgent need to build up a comprehensive and holistic strategy to spur on the growth of the sector.

2.2 The Commission considers the ICT sector to be a powerful driver of growth and employment and as such playing a key role in European Union level policy making. At the same time the Commission admits that digital convergence of information society, media services, networks and devices constitute an important challenge for policy making since they require a proactive and integrated policy approach and policy convergence beside an aptitude to adapt regulatory frameworks in a rapid manner.

2.3 The Commission proposes a new strategic framework, i2010 — European Information Society 2010, laying out broad policy orientations. It promotes an open and competitive digital economy and emphasises ICT as a driver of inclusion and quality of life. A key element of the renewed Lisbon partnership for growth and jobs, i2010 will build towards an integrated approach to information society and audio-visual media policies in the EU.

2.4 Drawing on a comprehensive analysis of information society challenges and drawing on wide stakeholder consultation on previous initiatives and instruments ⁽³⁾, the Commission proposes three priorities. The first objective is to create a Single European Information Space offering affordable and secure high bandwidth communications, rich and diverse content and digital services respecting the principle of interoperability of devices and platforms. The second objective is to achieve world-class performance in research and innovation in ICT. Finally, the third objective is to influence the evolution of an Information Society in a way that it would become inclusive, provide high quality public services and promote quality of life.

3. General comments

3.1 In its opinion on the eEurope Action Plan ⁽⁴⁾, which is the predecessor to the proposed i2010 Action Plan, the EESC made several observations, including the following:

⁽³⁾ i.e. the eEurope initiatives and the communication on the future of European audiovisual regulatory policy - COM(2003) 784.

⁽⁴⁾ The rapporteur of the opinion was Mr Christoforos Koryfidis.

'The ESC welcomes the eEurope initiative and considers it to be the most important and ambitious effort by the European Union to date to familiarise its citizens with and adapt its businesses and its public bodies as rapidly as possible to the new conditions created by the digital age and the new economy. In the Committee's view, this initiative is more than a starting point for that familiarisation and adaptation process, however; it is a buttress for the relevant processes that are already developing, though slowly, in the market and in society' ⁽⁵⁾.

'The ESC is adamant that all the measures relating to stimulating Internet use, establishing an information society and achieving the Union's new strategic goal should focus on people and their needs, the European citizen, European society and the European economy. Provided it serves that principle, the establishment of the information society — as an antecedent to the knowledge-based society — will acquire real significance' ⁽⁶⁾.

'The ESC is aware of the scale and number of problems associated with the development of the action plan. In particular, the Committee foresees difficulties in covering the ground and gaps that have opened up as a result of Europe's tardy response to the new technological challenges' ⁽⁷⁾.

'For the ESC, the risk of individuals, groups or entire regions being excluded from the overall initiative is great and manifold, given that non-computerised access to universal services will gradually become obsolete as the provision of computer-based services develops. For this reason, the ESC agrees with those who support the view that the programme as a whole and the individual measures should include means of combating these risks' ⁽⁸⁾.

3.2 These and other ⁽⁹⁾ observations by the EESC, in conjunction with the Final Report and other Commission documents on the eEurope 2002 programme, have led the Committee to the following conclusions on the Commission communication on 'i2010 — A European Information Society for growth and employment'.

3.3 The EESC welcomes the European Commission's communication on i2010 as an essential exercise to frame the future strategy for the Information Society in the EU.

⁽⁵⁾ OJ C 123 of 25/04/2001.

⁽⁶⁾ *ibid.* (point 3.1.4).

⁽⁷⁾ *ibid.* (point 3.2).

⁽⁸⁾ *ibid.* (point 3.2.2).

⁽⁹⁾ cf. relevant EESC opinions including: OJ C 123 of 25.4.2001, OJ C 139 of 11.5.2001, OJ C 80 of 3.4.2002, OJ C 94 of 18.4.2002, OJ C 116 of 20.4.2000, OJ C 61 of 14.3.2003, OJ C 133 of 6.6.2003, OJ C 36 of 8.2.2002, OJ C 311 of 7.11.2001, OJ C 85 of 8.4.2003, OJ C 36 of 8.2.2002, OJ C 241 of 7.10.2002, OJ C 221 of 7.8.2001, OJ 133 of 6.6.2003 etc.

3.4 The EESC supports the Commission's intention to continue and enhance the eEurope initiative beyond 2005.

3.5 Over the last decade Europe has made much progress in exploiting new information technology, both in terms of IT uptake and maintaining a strong IT and telecoms industry. This has been enhanced by important political initiatives from the Commission, not least the eEurope 2005 Action Plan, which has been instrumental in this respect. However, much remains to be done to take full advantage and reap the benefits of the evolving information- and knowledge society.

3.6 The EESC shares the Commission's view that investment and research in ICT partly explains the productivity differences between the EU and the US, and that investing more in ICT can secure faster productivity gains in Europe too, and thereby enhance growth, employment and welfare.

3.7 Globalisation presents the EU with new challenges. China, India and South America are fast growing economies where the ICT industry is developing rapidly. In order to address this competition, the EU needs to develop robust strategies, not least in the field of ICT.

3.8 The importance of ICT to enhance EU competitiveness was highlighted in the Lisbon Strategy. The EESC welcomes the i2010 initiative as a component in achieving the Lisbon objective of making the EU *'the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion'* by 2010.

3.8.1 Since ICT is such an important part of the Lisbon process, the EESC would emphasise the need to intensify efforts, support and pressure on the Member States — particularly those who are lagging behind — to speed up the pace of development and to meet the preconditions for achieving the Lisbon strategic objective by 2010.

3.9 ICT is a 'General Purpose Technology' (GPT). A GPT enables the transformation of virtually the whole society as the GPT is disseminated in a myriad of applications often embedded. One other example of GPT for the 20th century was the combustion engine. When the car was invented, it was not the car industry that was the force providing the impetus behind the prolonged upswing in western economies in the 20th century but the infrastructure that we built to enable us to use the car — from roads and new service sectors to the fundamentally changed patterns of living and systems for the distribution of merchandise.

3.9.1 The introduction of new technology in itself does not as such create additional value or profit, this only happens when the work and production processes are reorganised.

Productivity gains often do not emerge until long after the innovation was introduced. The same applies to ICT. It must be understood that the full potential of ICT (a GPT) can only be realised through a widespread up-take of the technology by all stakeholders including businesses, employees, citizens and public authorities on all levels of government. The EESC emphasises that the bridging of the digital divide is a prerequisite for ICT to deliver its inherent potential.

3.10 The Commission communication particularly stresses the need for increased investment to strengthen the supply side. The EESC feels it would have been useful if the Commission had also looked more closely at the conditions that would enable such investment to be made. The EESC also believes that it is a question of innovation capacity and dissemination of technology.

3.10.1 If efficiency and productivity gains are to be achieved through new technology, work should be organised in a way that makes better use of the opportunities provided by the new technology. This will require changes to business management and the introduction of open and innovative working structures, through social dialogue. This would also give employees a wider range of responsibilities and job content. The Commission might have usefully discussed this dimension more in depth.

3.10.2 If we want to create a knowledge society and economy, we need to consider the application of ICT in manufacturing and services in the overall context of changing production and work conditions. An examination of examples of the successful application of ICT in companies reveals that these were always achieved in conjunction with the prior introduction of new forms of work organisation, with flat hierarchies, where trust is put in the experience and knowledge of employees, and expertise and decision-making tend to coalesce.

3.10.3 The Commission's strategy puts great emphasis on increases in investment levels to improve the supply side. A more explicit discussion of what framework conditions and user requirements are needed to turn such investments into successful innovation in the first place could have been useful.

3.11 The EESC feels that the Commission Communication should have addressed the issue of compiling statistics on the information society. The statistics instruments used thus far cannot be used for the new communications technologies and related sectors. Policy in this area requires standardised, internationally comparable statistics on the use and development of services and technology. Although there is no such discussion in the Communication, the EESC is aware and welcome that the Commission has taken initiatives to address these issues.

4. Specific comments

4.1 The EESC notes that the crucial factor for the achievement of the goals set out in the Communication is the upgrading and development of telecommunications infrastructure, which is the backbone of the Information Society. It is crucial when framing future policy initiatives to give the utmost importance to measures that promote investment and effective competition inside the different sectors and between all market players, within the framework of a level playing-field for all stakeholders. The EESC stresses, however, that special consideration must be given to the presence of dominant actors and other special competitive conditions that apply to the ICT industry, and particularly to firms that develop, produce and market software.

4.2 The EESC would stress the need for broadband to be rolled out at a pace that will not stymie use of advanced applications of new technology.

4.2.1 It is difficult to give a specific, generally accepted definition of broadband, but a somewhat limited definition is of course necessary if there is to be a meaningful discussion of its development. The Commission Communication should have elucidated this better. The EESC believes that, as a minimum, broadband should mean an asynchronous throughput of over 2mb per second, and that only in exceptional cases can 512 kbit per second be accepted as broadband.

4.3 The EESC welcomes the Commission's intention to review the electronic communications regulatory framework. This review is urgently needed in order to create more incentives for investment and innovation.

4.4 The EESC would emphasise that convergence exposes policy-makers to new challenges in the drive to increase IT uptake. Convergence means that users will be able to access the same content and services (e.g. voice, high-speed data and video) over a wide range of different platforms (ADSL, cable, satellite, PLC, 3G, etc.) to various end terminals ranging from traditional computer terminals, mobile phones and TV to integrated information technology elements in cars, household equipment and a variety of other applications. The benefits of convergence will depend on customers being offered quality content services and having access to high-speed connections.

4.4.1 It is important to acknowledge the rapid development of new applications and the introduction of disruptive technologies like smart tags and voice-over IP when framing new regu-

lations or standards. The EESC is convinced that the regulations should promote interoperability, the most important question for end-users, while keeping a technologically neutral approach, and despite the difficulties to solve any possible contradictions between interoperability and neutrality.

4.5 The ICT sector is itself in a state of major transformation which will enable it to meet these challenges, including expansion of broadband, technological change, evolving consumer patterns, new business models, and growing competition between different platforms.

4.5.1 The Communication rightly addresses convergence and interoperability. R&D and standardisation work in this field are, in the EESC's view, potentially very productive. The standardisation work should remain market-led, involve all relevant stakeholders and focus on users' needs. The EESC would refer to earlier experiences with, for example, the GSM standard, and the IP-protocol.

4.6 The move towards more integrated IP-based networks both in business as well as in the public sector, will have far-reaching implications for the interplay between stakeholders: enterprises, public authorities and citizens. Massive investment will be required from telecommunications operators to meet the convergence requirements, upgrade existing networks, simplify architectures and develop next generation networks. The EESC believes it is essential for the European information society that EU and national policy-makers ensure the appropriate climate for these major investments.

4.7 In the information society debate, security is central to the development of attitudes towards and trust in IT. The perceived security of and trust in digital transactions determines the speed with which enterprises are likely to exploit ICT in their business. Consumers' willingness to provide credit card numbers on a web page is greatly influenced by the perceived safety of the action. In addition, users' trust in ICT is an essential ingredient to the acceptance of eGovernment and to its rollout.

4.7.1 The security of information and computer-related crime is increasingly a major problem affecting businesses, administrations, employees and consumers alike. The EESC would stress that information society policy must be framed in such a way that confidence is enhanced and all players dare to exploit the full potential of the Internet ⁽¹⁰⁾.

⁽¹⁰⁾ Due consideration should also be given to the security solutions offered by the open source operating systems and softwares in the fight against piracy and intrusions in the networks.

4.7.2 As information networks become increasingly integrated, society is ever more dependent on 24/7 functioning of the system; consequently, functioning of the physical infrastructure is crucial when information- and network security is under discussion. It is important that the systems should include network redundancy.

4.7.3 For ICT users it is essential that computer-related crime is tackled, where possible, in an internationally harmonised way, and that enforcement of legislation is vigorously pursued, thereby demonstrating that such crime does not pay. Initiatives to combat computer-related crime must, however, be assessed to ensure they are not at the expense of industry or at the expense of fundamental rights such as the right to privacy. Such assessments are important, notably in the current debate regarding stricter data retention requirements ⁽¹⁾.

4.7.4 The security problem has been acknowledged by the Commission in numerous communications and recommendations, as well as through the establishment of the European Network and Information Security Agency. The EESC believes that a common environment should be created through the Agency where public and private sectors can work together to protect their information systems, taking into account the increasingly rapid changes in technology and without imposing inappropriate administrative or financial burdens.

4.7.5 The EESC believes that **enhancing awareness** is fundamental to increasing information and network security. In order to elevate awareness, public authorities at local, national and EU level should encourage more intense cooperation with business in order to combat cyber-crime.

4.8 In other respects, too, trust in e-transactions should be strengthened. The patchwork of directives and national laws on e-business and privacy does not add to the easy understanding of what is permitted and what is not. Especially since enforcing the law and passing sentences is still immature.

4.8.1 The EESC welcomes the Commission's proposal for an evaluation of the directives on e-business and privacy. Simplification is often possible, since this leads to transparency. Further harmonisation is sometimes useful, e.g. in the way Member States address spam in electronic communication.

4.9 However, it is not only security aspects and knowledge of existing rules that keep SMEs from benefiting fully from the potential offered by ICT development. An important factor is the lack of programmes that are sufficiently user-friendly. The

EESC believes that supporting the development of ICT products and services applicable for SMEs, e.g. through R&D support, standardisation and educational projects, could be a key factor in boosting EU competitiveness.

4.10 R&D and innovation policies are crucial both for the ICT industry as such, as well as the ICT users industry. It is not just important to have a larger budget available for R&D and innovation activities; it is also important to seek the highest impact and benefits for European citizens and industry from R&D projects. In this sense, involvement of the main players in R&D projects is essential, particularly those who have a bigger impact in the final application of the technologies: industries, manufacturers and service providers.

4.11 The independent 'Five-Year Assessment Panel of IST-RTD' concluded in its recent report that Europe's research and development in Information Society Technologies (IST) makes a vital contribution to efforts to become the world's most competitive knowledge economy, but Europe must step up this investment if it is to achieve 'critical mass' in these technologies. The report also highlights the need to reduce bureaucracy, which threatens to stifle research. The EESC shares this analysis.

4.12 The EESC believes that one of the central pillars in ICT-policy is public authorities' use of ICT in a broad sense. Public authorities are often demanding and capable users and buyers of ICT and are therefore a key policy instrument to achieve the objectives of the i2010 Action Plan. There are a whole set of different measures that can be envisaged ranging from electronic public procurement, using ICT for easing the administrative burden for enterprises (eGovernment), eHealth, eLearning and public spending on R&D.

4.13 It is important to heed the consequences of the 'digital divide' and of increased use of ICT. The impact will be economic, social and cultural. If the full potential of the information society is to be realised, businesses, citizens and employees must become more IT proficient. This is a matter of lifelong learning and skills development.

4.14 On the basis of its work to date, the EESC believes that one main concern in the bid to build a full and effective European information society is the lack of understanding, among much of the European public, of the role, value and potential of reliable information and knowledge in transforming the

⁽¹⁾ OJ C 68/16, 21.3.2006.

modern world of production and trade; and the fact that there has been no mass, systematic development of 'a culture of refining information and checking the authenticity of knowledge' ⁽¹²⁾; in other words, a culture that can deal with the confusion created by the greater volume of information and by the speed at which it moves today.

4.14.1 The EESC believes that these problems arise from the poor performance of European education systems in terms of responding to the needs of the digital age. It therefore recommends linking the i2010 strategy as closely and effectively as possible to improvements in Europe's education systems, in particular by increasing funding.

4.14.2 Doubling the proportion of the labour force undergoing digital training would certainly provide new impetus. This training should attract high-skilled and low-skilled workers in equal numbers. Both employers and employees have an important role to play here.

4.14.3 The public sector at various levels also has an important role to play in encouraging and integrating lifelong learning. This is clearly in line with the EU's overall policy objectives under the Lisbon process, which include sustainable development. At the same time, the unemployed must also have access to publicly supported IT training programmes in order to help them return to work.

4.14.4 In this connection the EESC would reiterate the stance it took in a previous opinion ⁽¹³⁾ and emphatically stress the need to create a more favourable climate for eLearning to become part of all education and training levels.

4.15 However, providing access for the socially disadvantaged is not just a matter of education initiatives. Many groups, owing to economic or geographic reasons or special needs (e.g.

the visually impaired or the elderly) are often excluded from modern communications. Overcoming these barriers is an important criterion in creating a successful, equal information society.

4.15.1 A further challenge is the creation of an inclusive European information area, which strengthens the participation rights of all citizens and supports cultural and linguistic diversity. In order to achieve this, the flow of information and innovation must be made democratic and unfettered access to information guaranteed. Given the digitization of the information area and new technical developments as regards monitoring and restricting the flow of information, there must be legal guarantees that information in the public domain remains accessible to all and that consideration is given to public interest in information protected by copyright. The ability to innovate can be strongly influenced by rules on the protection of intellectual property, from patents and copyrights to the protection of software and databases. Intellectual property protection rules in one hand, and individual access rights to culture and knowledge in the other hand, should be balanced in a way that allows a temporary protection for promoting innovation and investments, while allowing the widest possible access to information and knowledge, in line with the Lisbon strategy.

4.16 Only when there is technical and legal access to information, universal and affordable access to broadband services, when there are adequate computer skills and programmes are user-friendly, can the 'digital divide' be bridged. Only then can we take advantage of the opportunities that the information society provides in terms of growth and employment, but also personal development.

Brussels, 16 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹²⁾ This means the development within education of individual mechanisms for filtering information and checking its reliability OJ C 157 of 25.5.1998 (Paragraph 2.3.8).

⁽¹³⁾ EESC opinion on The European dimension of education: its nature, content and prospects (rapporteur: Mr Christoforos Koryfidis) OJ C 139 of 11.05.2001 (Paragraph 4.5). 'The ESC sees the eLearning initiative as the cornerstone of Europe's effort to bring its citizens into the digital age, and more specifically to promote Internet use, the networking of educational establishments and the development of virtual mobility. It therefore recommends removal as soon as possible of the obstacles standing in the way of effective development of the initiative, foremost among which are the cost and quality of the relevant electronic infrastructure, connection costs, digital content and the linguistic reality of the Internet.'

Opinion of the European Economic and Social Committee on Domestic violence against women

(2006/C 110/15)

On 14 July 2005, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on *Domestic violence against women*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 February 2006. The rapporteur was Ms Heinisch.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 16 March), the European Economic and Social Committee adopted the following opinion by 99 votes in favour, with two abstentions:

1. Conclusions and recommendations

1.1 Domestic violence by men against women, whether physical or psychological, is one of the gravest violations of human rights: the right to life and to physical and psychological integrity. Since the roots of such violence lie in the unequal balance of power between the sexes that still characterises our society, it affects women at all levels of society. As a result, the overall development of a democratic society is held back. That is why one of the most important functions of a European policy based on respect for fundamental human rights is to prevent such acts and to establish effective educational, preventive, law enforcement and support procedures.

1.2 The following comments are addressed to the EU Council presidencies and the Commission:

The safety and equal treatment of women, which are inherent fundamental human rights, must be basic conditions and minimum requirements for all countries that are, or wish to become, EU members. The EESC therefore urges the presidencies of the EU Council to continue energetically addressing the issue of domestic violence against women.

1.3 To the Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities:

- Although the main responsibility for combating domestic violence lies with the Member States, the EESC believes there is urgent need for a **pan-European strategy** given that the responses of individual countries vary widely.
- Since domestic violence against women not only reflects gender inequality but also creates it, the EESC calls on the Commission to draw up a comprehensive strategy to address the problem, based on existing treaty provisions.

- The starting-point for such a pan-European strategy should be a preliminary EU-wide study on the prevalence of domestic violence against women, its impact on individuals and society, and its financial costs.

Given that domestic violence mainly has to do with the issue of gender equality, and that the Directorate-General for Employment, Social Affairs and Equal Opportunities is responsible for this area, we propose that it should be asked to lead the effort to develop a pan-European strategy within the Commission.

1.4 Domestic violence against women can only be effectively addressed at the appropriate national level. Each Member State should therefore draw up a **national action plan** for combating domestic violence against women in the light of the planned pan-European strategy; this plan should envisage specific measures and deadlines for the practical implementation of the strategy with particular emphasis on the following (with timetables and information on resources available):

- national legal provisions, especially with respect to the police and legal systems;
- statistical assessment of domestic violence;
- measures to help and support actual and potential victims of domestic violence, especially from the point of view of *empowerment*. These should include specific measures relating to the employment market and the workplace;
- victims of domestic violence from specific population groups, such as immigrants or older women and very young women;
- preventive and punitive measures aimed at the perpetrators;

- all measures and ideas should be planned and carried out on a networked, inter-institutional and cross-departmental basis;
- given the key role of non-governmental organisations in preventing domestic violence against women, organising information campaigns and training courses, providing help and support for victims, and dealing with perpetrators, they should be supported financially and organisationally, without exempting governments from their responsibility for combating domestic violence;
- it is also important to ensure training of legal, law enforcement, educational, mental health, medical and welfare professionals whose task is to identify domestic violence at an early stage and provide adequate help to the people affected;
- appointment of national rapporteurs to collect, exchange and process information and statistics on domestic violence against women; and promotion of best-practice sharing between the Member States, accession countries and candidate countries;
- the national action plans and measures and ideas contained in them should be publicised through information campaigns.

1.5 To the Member States:

The EESC believes it is urgently necessary to monitor the implementation of the proposed measures. Particular attention should be paid to the willingness of victims and witnesses of domestic violence to report it, since this is an indication of trust in the police, the legal system in general and social services.

1.6 In order to grasp the extent of domestic violence against women, raise public awareness of the problem and devise effective institutional responses, data and statistics are needed at Member State level, though statistics can obviously never evince all the implications of a problem like domestic violence.

1.7 To the Commission, Eurostat, the recently established European Institute for Gender Equality and the Member States:

The EESC believes that reliable and comparable statistics on domestic violence should be compiled without delay in all the Member States, accession countries and candidate countries. Work should begin immediately on developing the necessary arrangements and provisions.

1.8 To the Member States and the EUCPN:

The EESC believes it is absolutely essential to find new solutions for combating domestic violence against women using preventive and punitive measures, and to provide for sharing of information between the Member States and at European level on projects and measures relating to *good practice*. It believes that using the national media to hammer home the message that the victim is not at fault could encourage them to speak out about the incidents they have had to endure, which is the first step towards empowerment. The Member States should endeavour to harness the media to provide information about rights, procedures and victim support facilities.

2. Explanatory statement

2.1 Extent, causes and effects of violence against women by men

2.1.1 Male violence against women has evolved over the past 40 years from a taboo subject, regarded as the private concern of the woman involved, into a social problem which is fiercely debated in the public arena and in the context of criminal policy. The women's and feminist movement has been (and is) a key player in this re-appraisal, drawing attention emphatically and repeatedly to the prevalence of male violence against women in the home and to the unsatisfactory response of official bodies and institutions.

2.1.2 Domestic violence against women is not a private problem of women, but one of social policy, and is related to the fact that women suffer structural disadvantages and discrimination in a society which is still dominated by men. The problem exists in all countries and all social classes, though to varying degrees. It affects women's ability to enter or return to the world of work and/or their ability to perform their working duties fully.

2.1.3 According to the 2002 World Health Organisation report 'Violence and Health' ⁽¹⁾, which analyses 48 studies on the prevalence of violence against women, between 10 % and 69 % of women (depending on the country and assessment method) have been physically attacked by their husband or partner. In Europe, the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth published a study in 2004 entitled 'The living Conditions, safety and health of women in Germany', which on the basis of various European studies arrived at figures for violence against women of between 7 % and 45 % ⁽²⁾.

⁽¹⁾ World Health Organisation (2002): World Report On Violence and Health (www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf).

⁽²⁾ German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2004): *Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland* (www.bmfsfj.de).

2.1.4 It is important to bear in mind when interpreting these statistics that: (1) they are extremely incomplete, and (2) their comparability, if any, is very limited. Data is based on different definitions of 'violence against women'; data collection methods and sample sizes diverge significantly; and, above all, women vary widely in their willingness to provide information about violence inflicted on them by their partners. However, it can be concluded from the available data that male violence against women exists in all countries of the world, including the Member States of the European Union, and that the extent (prevalence) of such violence is in all countries considerably greater than the statistics would indicate.

2.1.5 It is now undisputed that the type and extent of male violence against women depends on the existence of patriarchal power structures and the gender roles in the society concerned, which is largely determined by those structures. Male violence against women is a phenomenon whose immediate causes lie in social structures, in this case the inequality between men and women. Lack of gender equality also explains why this type of violence is not adequately studied and prevented, and its perpetrators prosecuted. This means that the social processes of equal rights and gender equality, and the recognition of equal rights and freedom for women, are of key importance in reducing such violence. Women's social status, their education and career prospects, economic/financial independence from their partner, and overall degree of social inclusion are decisive factors in enabling them to live an autonomous life with less risk of being subject to domestic violence.

2.1.6 There is also clear evidence that violence against women has considerable psychological, psychosocial and health implications, for instance in terms of its effects on the health-care system and the employment market.

2.2 *Relevance to the European Union of domestic violence against women*

2.2.1 A milestone on the road towards re-evaluating violence against women was the UN's Fourth World Conference on Women held in 1995 in Beijing (China), in which all the Member States of the European Union took part. Their representatives and the other conference participants adopted the Beijing Declaration and Platform for Action, in which they decided to take measures to prevent and eliminate violence against women ⁽³⁾.

⁽³⁾ The United Nations: Fourth World Conference on Women: Beijing Declaration and Platform for Action (www.un.org/womenwatch/daw/beijing/platform/index.html).

2.2.2 Although it is the responsibility of the Member States to implement these measures, efforts have been made at European Union level to support them in their task. The emphasis here has been on the issue of domestic violence against women, as well as trafficking in women (see also the report 'Beijing + 10 1995-2005', published by the European Women's Lobby 2004) ⁽⁴⁾.

2.2.3 Recent measures at European level include the planned implementation of a Council of Europe decision on the Warsaw Summit of 16 and 17 May 2005: 'The Council of Europe will take measures to combat violence against women, including domestic violence. It will set up a task force to evaluate progress at national level and establish instruments for quantifying developments at pan-European level with a view to drawing up proposals for action' ⁽⁵⁾.

2.2.4 A report on the current situation as regards combating violence against women and future measures, drawn up by the Committee on Women's Rights and Gender Equality, is being discussed by the European Parliament ⁽⁶⁾.

2.3 *Analysis and proposals of the EESC*

2.3.1 There is no question that there has been action at EU level in the past few years on the issue of domestic violence against women. Such violence is recognised as a problem in all the EU Member States, and programmes and measures have been introduced to raise awareness about domestic violence and to prevent and contain it. The accession countries have also recognised the problem and are trying to improve the situation ⁽⁷⁾.

2.3.2 Relevant information is only fragmentary, and it is virtually impossible to draw comparisons, since there are no common definitions that would allow in particular statistics to be drawn up on this form of violence, and no exact information exists on the measures that have been taken in each Member State to prevent, combat and punish domestic violence, let alone ways of judging their effectiveness.

⁽⁴⁾ European Women's Lobby: Beijing + 10. 1995-2005: Review of the implementation of the Beijing Platform for Action by the European Union. November 2004 (www.womenlobby.org).

⁽⁵⁾ CM-SUIVI3(2005)7; www.coe.int/t/dcr/summit/20050517_plan_action_en.asp.

⁽⁶⁾ See EP Report of 9 December 2005 (A6-0404/2005) on *The current situation in combating violence against women and any future actions*, drawn up by the Committee on Women's Rights and Gender Equality (2004/2220 (INI)).

⁽⁷⁾ See EP report of 24 March 2004 (A5-0182/2004) on *Women in South-eastern Europe*, drawn up by the Committee on Women's Rights and Gender Equality (2003/2128 (INI)).

2.3.3 In this opinion, domestic violence against women is defined as **violence against a partner**, i.e. psychological or physical (including sexual) violence within a marital or non-marital partnership, even if it occurs after a separation but is directly connected with the prior relationship. This type of violence is a process of control and domination that violates the partner's freedom, and their physical, mental and sexual integrity. Psychological violence ('emotional cruelty') in particular can have a considerable impact on the victim's ability to defend herself or to end the relationship. In most cases of domestic violence the perpetrators seem to be men and the victims women.

2.3.4 This violence affects not only the victims themselves, but also other family members, especially **children**. Children who become witnesses of domestic violence are always victims of psychological violence too. They also become victims of physical violence more often than other children. Domestic violence cannot be considered direct violence against children.

2.3.5 Violence against children, including and in particular that which takes place in the family context, is such an important issue that it should be addressed separately from the issue of domestic violence against women.

2.3.6 In the light of this situation, the following recommendations in particular have been discussed:

2.3.7 Documenting the legal basis for preventing domestic violence against women and prosecuting its perpetrators, and its implementation in the Member States

2.3.7.1 Current experience shows that the existence of legislation is crucially important in sensitising people to this type of violence, in preventing it and in combating it through appropriate action. A good example is the system developed in Austria (since the introduction of the Act on Protection Against Domestic Violence of 1 May 1997). Similar arrangements have now been adopted by several European countries ⁽⁸⁾.

2.3.7.2 It is important for the discussion in the European Union that there should be exact and up-to-date information about the legal provisions in each country, especially with regard to police procedures, judicial competence and in particular also the activities and interaction of other players, such as assistance and counselling services (NGOs).

⁽⁸⁾ Albin Dearing/Max Haller, *Das Österreichische Gewaltschutzgesetz*, Wien 2000. Maria Ullmann, *Der polizeiliche Umgang mit häuslicher Gewalt in Österreich*. In: Detlef Schröder/Peter Petzolt (eds.), *Gewalt im sozialen Nahraum I. Eine erste Zwischenbilanz nach Einführung des Gewaltschutzgesetzes*. Frankfurt 2004, pp. 7-23.

2.3.7.3 It is equally important to obtain reliable information on the implementation of legal provisions in practice. Information is available from the Member States indicating that the existence of legal provisions alone is not enough to effectively prevent and combat domestic violence against women.

2.3.8 Statistical trends and collection of data on domestic violence against women

2.3.8.1 The current situation with respect to statistical information is highly unsatisfactory: there are to date no valid, meaningful statistical data on violence against women that can be coordinated at EU level for purposes of comparison. The indicators devised during the Danish presidency have apparently not yet been applied.

2.3.8.2 Crime statistics from the individual Member States on this problem, if they are available at all, can at best be collected by **Eurostat**. The Directorate-General for Justice, Freedom and Security reports that Eurostat is currently developing an instrument for collecting comparable crime statistics. Neither **Europol** nor Interpol have addressed the issue to date. Efforts under the DAPHNE programme are very helpful in terms of improving the current situation, and should definitely continue.

2.3.8.3 Even if the ultimate objective should still be to produce comparable crime statistics on domestic violence, at present it would be more feasible to carry out **surveys/opinion polls** (or 'victim surveys') at national level based on comparable criteria. The EIDIV project (*European Indicators Database on Intimate Partner Violence*) funded under DAPHNE presents proposals for a harmonised European survey that would be comparatively simple and quick to conduct. Such surveys could also record the intervention and activities of **agencies** (NGOs).

2.3.8.4 Representative polls could also be carried out under **Eurobarometer** surveys. For instance, as part of the above-mentioned European Campaign Against Domestic Violence a Eurobarometer survey was conducted in which men and women were asked their views on domestic violence. We are informed that a new survey is planned for 2006.

2.3.9 The importance of preventing domestic violence against women

2.3.9.1 Preventing domestic violence against women is an imperative: however important it is to expose this violence and break the silence, to punish it for the crime that it is, and to help, protect and support the victims, it is infinitely more important that measures should be taken to prevent violence from happening in the first place.

2.3.9.2 In the context of a comprehensive, social prevention campaign, information and education are particularly important in establishing that violence by men against women must not be accepted in a modern democratic society. At a very early age both boys and girls must learn that boys and girls — and men and women — are equal, and have the same rights and the same opportunities. Gender equality must continue to be taught throughout school and during later life.

2.3.9.3 Domestic violence has considerable effects on children, who witness it and have to grow up in an atmosphere of violence. Children must therefore be helped early on to permanently leave the cycle of violence and learn non-violent ways of resolving problems.

2.3.9.4 Appropriate social, economic and legal measures should be used to ensure that the situations that are particularly conducive to domestic violence do not arise in the first place. These include poor material conditions, financial and economic dependence on a partner, lack of living space, and in particular alcohol and drug abuse. Poor social conditions can increase the risk of violence towards women, even if domestic violence against women occurs among all social groups.

2.3.10 Promoting intervention projects and cooperative groups: optimising help, work with perpetrators, and empowerment

2.3.10.1 Generally speaking, women who have become victims of domestic violence obtain little support in their social environment. Even organisations that should be involved have often failed to see the problem or do anything about it, as they consider it to be a private matter. The work of women's refuges has proved valuable; their help and support facilities should be maintained and further expanded. It is also important to further improve cooperation between various governmental and non-governmental organisations and bodies, e.g. through formal cooperative groups ('intervention projects').

2.3.10.2 Intervention projects and cooperative groups can initiate and achieve changes in perspective: men are involved in

the discussion and in activity to combat partner violence, treated as jointly responsible and no longer seen as just part of the problem, but also as stakeholders in the solution to this problem. Women who have become victims of domestic violence are no longer confined to their role of victim but experience empowerment. Non-governmental organisations (NGOs) play a key role in these activities.

2.3.10.3 Although it is impossible to be exhaustive, we wish to mention five further issues:

2.3.11 Paying more attention to the situation of migrant women

2.3.11.1 All the indications are that female migrant workers include groups which are more affected by the problem of domestic violence than comparable groups in the national population, and that these groups also receive less public and private support. There are many reasons for this, including the ongoing isolation of female immigrants, restricted access to the institutions of civil society, language barriers and sociocultural differences, as well as sheer ignorance of support structures. Women residing illegally in a country find themselves in a particularly difficult situation: their residence status and the lack of awareness of their rights prevent them from seeking help in cases of domestic violence, although they are just as entitled to such help as nationals and legally resident migrants.

2.3.12 Greater involvement of all legal, police, educational, mental health, medical and welfare professionals

2.3.12.1 National policies in this field should aim to make it possible for legal, law enforcement, educational, mental health, medical and welfare professionals to spot violence at an early stage. If the relevant professionals lack knowledge about the symptoms, forms, cycles and escalating stages of violence, it will be glossed over, processes will be overlooked, and inappropriate measures taken — perhaps with fateful consequences.

2.3.13 Review of access and contact injunctions

2.3.13.1 Under laws to combat domestic violence it is usually possible to issue contact and access injunctions. However, the objective of protecting victims from their violent partners may also be undermined by the visitation rights of (divorced) men to their children. Some Member States have already introduced legislation to cover such situations.

2.3.13.2 Many women victims of domestic violence still have to seek protection in shelters. Despite every effort made by such shelters, a stay there may still be psychologically damaging to the victims, particularly any accompanying children. For that reason, legal provision should be made to allow, as a matter of principle, perpetrators of domestic violence to be expelled from the home, leaving it for the sole use of the victims.

2.3.14 More consideration for the situation of older women as victims of domestic violence

2.3.14.1 Women's advisory services show that it is particularly difficult for older women to seek and obtain help when they are subject to violence. In this case, gender-specific role patterns may still be deeply entrenched. More attention should be paid to older women as a target group in public efforts to

combat domestic violence, in order to inform them not just about the help available but above all about their right to help.

2.3.15 Social inclusion of domestic violence victims generally and in the job market in particular

2.3.15.1 Domestic violence against women hinders their social inclusion generally and in the job market in particular, resulting in marginalisation, poverty, and financial and material dependency. The physical and psychological effects of violence may affect not just access to work, but also the workplace situation (absenteeism, psychological stress, change of residence etc). There is therefore a need for comprehensive solutions to this problem from labour market organisations, for example through agreements between employers and trade unions aimed at protecting and supporting female workers who are victims of domestic violence, as is the case in Sweden, for example.

Brussels, 16 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND
