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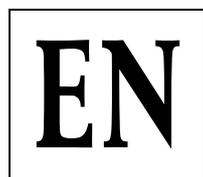
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I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

438th PLENARY SESSION HELD ON 26 AND 27 SEPTEMBER 2007

Resolution of the European Economic and Social Committee on 'Natural disasters'

(2008/C 10/01)

At the meeting of its Bureau on 25 September 2007, the European Economic and Social Committee decided to express its shock at the fires that raged in Greece during August, and to affirm its solidarity with the victims and with civil society.

At its plenary session on 26 and 27 September (meeting of 26 September 2007), the European Economic and Social Committee adopted the following resolution *nem con* with 192 votes in favour and one abstention.

Following various natural disasters in several Member States, the Committee discussed the need for the existing European civil protection mechanism to be equipped with sufficient resources to carry out the task of coordinating intervention in disasters occurring both within and beyond Europe.

In the light of recent events, the Committee wishes to restate the position it adopted in opinion CESE 1491/2005 (NAT/283), and urges the Commission in particular to ensure that the Community Civil Protection Mechanism operates effectively, by taking the following specific steps:

1. Requiring all the Member States to comply with Community civil protection standards, by means of an appropriate legislative instrument.

2. Equipping the Community Mechanism with the following tools:

- a satellite communications system,
- dedicated assistance teams for the Mechanism,
- a system for identifying available teams and equipment in the Union,
- regionalised operational bases, with full coordination between them,
- appropriate technical training for teams.

3. Adopting European legislation on civil and criminal liability, so that those causing such disasters can be prosecuted and punished.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

III

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

438th PLENARY SESSION HELD ON 26 AND 27 SEPTEMBER 2007

Opinion of the European Economic and Social Committee on the 'Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts'

COM(2006) 618 final

(2008/C 10/02)

On 24 October 2006 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 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 18 July 2007. The rapporteur was **Mr Pegado Liz**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 131 votes to 1 with 6 abstentions.

1. Summary

1.1 With this Green Paper and as a follow-up to a range of initiatives aimed at establishing a European judicial area, the Commission is launching a consultation on the possibility of creating a Community legislative instrument to make the enforcement of monetary claims more efficient, by ensuring that sums of money in a debtor's bank accounts in any Member State are frozen at the outset of proceedings.

1.2 On the basis of this Green Paper, which cannot be considered without also reading and analysing the Working Document appended to it ⁽¹⁾ and the commissioned Study on which it is based, it appears that the Commission envisages proposing an optional regulation that defines the legal system for a European attachment order in the form of a preventive seizure of bank accounts, regardless of the nature of the debt or the status of the parties involved. However, there is some conceptual inconsistency in the definition of the objective and subjective scope of the measure, and the translations of the Commission document into some languages are particularly unreliable.

1.3 There has been no study of the impact of such a measure, and the comparative law studies on which it is based only consider 15 of the 27 EU Member States. In such circumstances the Committee, whilst sharing the Commission's concerns, does not consider that the need for such a measure is sufficiently proven in terms of subsidiarity and proportionality: an equivalent result could perhaps be satisfactorily achieved simply by altering two provisions of the Brussels I Regulation.

⁽¹⁾ SEC(2006) 1341.

1.4 Nor does the Committee find any logical justification for limiting the scope of an initiative of this nature to the preventive seizure of sums of money deposited in bank accounts. The Committee suggests that its scope should be extended to cover a debtor's other moveable assets and, with any necessary changes, attachment after an enforcement order has been granted. The Committee also considers it crucial to ensure that this measure is accompanied by an initiative on the transparency of bank accounts, on the obligations to provide information and on the requisite confidentiality and data protection rules.

1.5 The Committee agrees with the Commission that, should the introduction of such a measure be deemed absolutely necessary, the appropriate instrument would be an optional regulation for freezing a debtor's bank accounts in Member States other than the one in which the creditor lives or where his business is based.

1.6 On this basis, and in order fully to comply with the Commission's request for an opinion, the Committee puts forward a detailed set of technical and legal recommendations for defining what it considers to be the most appropriate system for the initiative, specifically as regards court jurisdiction, the conditions under which the order can be granted, the limits on the amounts that can be seized, exemptions, guarantees for the protection of the debtor and of third-party holders of joint accounts in which they share equal liability or accounts in which liability is proportional, appeals and deadlines, the system of legal costs, obligations and responsibilities of the banks where the accounts in question are held, and the rules of national or international private law that might also apply.

2. Gist of the Green Paper

2.1 With this Green Paper, the Commission is launching a consultation among interested parties on how to improve the enforcement of monetary claims. It proposes the creation of a European system for the attachment of bank accounts as a possible solution.

2.2 The Commission starts by identifying existing enforcement problems in civil procedures in the 'European judicial area' resulting from the fragmentation of national rules in this area, and acknowledges that Regulation (EC) 44/2001 (Brussels I) ⁽²⁾ 'does not ensure that a protective remedy such as a banking seizure obtained *ex parte* is recognised and enforced in a Member State other than the one where it was issued'.

2.3 In the Commission's opinion, this shortcoming could potentially distort competition between businesses, depending on the effectiveness of the judicial systems of the countries in which these businesses operate. It could thus form an obstacle to the smooth operation of the internal market, which requires uniform efficiency and speed in the recovery of monetary claims.

2.4 The Commission thus puts forward the proposal to create a 'European order for the attachment of bank accounts which would allow a creditor to secure a sum of money due to or claimed by him by preventing the removal or transfer of funds held to the credit of his debtor in one or several bank accounts within the territory of the European Union' and offers a detailed analysis of a possible legal framework for this, the parameters of which it sets in the form of 23 questions.

3. Context of the initiative

3.1 This initiative rightly fits into a broader set of measures that the Commission has adopted with the laudable aim of creating a European judicial area that provides legal support for the completion of the

⁽²⁾ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I), in OJ L 12 of 16.1.2001. The EESC opinion on this matter was drawn up by Mr Malosse (CES 233/2000 of 1 March 2000, in OJ C 117 of 26.4.2000).

internal market ⁽³⁾, in particular following the transformation of the Brussels Convention into a Community Regulation ⁽⁴⁾ and the Regulation creating a European Enforcement Order ⁽⁵⁾.

3.2 There is some truth in the Commission's practical comments on the problems in enforcing judgments in the different countries of Europe and on the differences in the regulations governing these judgments resulting from a lack of EU-level harmonisation of the enforcement process, with the consequences that it has correctly highlighted ⁽⁶⁾. It must also be said that these consequences will only have worsened with the recent accession of 12 new Member States. In this Green Paper, however, the Commission omits the crucial scrutiny of its initiative in relation to the principles of subsidiarity and proportionality.

3.3 This is not to say that the same result, or a result having a similar effect, could not have been obtained simply by amending one or two provisions in the Brussels I Regulation (notably Articles 31 and 47), extending its scope while retaining the existing system. This would have had clear benefits in terms of simplification ⁽⁷⁾.

⁽³⁾ Amongst others, these include the:

- Commission communication entitled 'Action plan on consumer access to justice and the settlement of consumer disputes in the internal market', 14 February 1996 (COM(96) 13 final).
- Commission communication entitled 'Towards greater efficiency in obtaining and enforcing judgments in the European Union' (COM(97) 609 final in OJ C 33 of 31.1.1998).
- Green Paper on access of consumers to justice and the settlement of consumer disputes in the single market (COM(93) 576 final).
- Green Paper on alternative dispute resolution in civil and commercial law (COM(2002) 196 final of 19.4.2002).
- Commission Recommendation of 12 May 1995 on payment periods in commercial transactions and the relevant Commission communication in OJ L 127 of 10.6.1995 and OJ C 144 of 10.6.1995 respectively.
- Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests in OJ L 166 of 11.6.1998.
- Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions, in OJ L 200 of 8.8.2000.
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I), in OJ L 12 of 16.1.2001. The rapporteur for the EESC opinion on this subject was Mr Malosse (CES 233/2000, 1 March 2000, in OJ C 117 of 26.4.2000).
- Regulation (EC) No 805/2004 of 21 April 2004, creating a European Enforcement Order for uncontested claims, in OJ L 143 of 30.4.2004. The rapporteur for the EESC opinion on this subject was Mr Ravoet (CESE 1348/2002, 11 December 2002, in OJ C 85 of 8.4.2003).
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, in OJ L 174, 27.6.2001. The rapporteur for the EESC opinion on this subject was Mr Hernández Bataller (CESE 228/2001, 28 February 2001, in OJ C 139 of 11.5.2001).
- Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters (OJ C 12 of 15.1.2001).
- Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160 of 30.6.2000). The rapporteur for the EESC opinion on this subject was Mr Ravoet (CESE 79/2001, 26 January 2001, in OJ C 75 of 15.3.2000).
- Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children, *idem*. The rapporteur for the EESC opinion on this subject was Mr Braghin (CES 940/1999 of 20 October 1999, in OJ C 368 of 20.12.1999).
- Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters; *idem*. The rapporteur for the EESC opinion on this subject was Mr Hernández Bataller (CES 947/1999 of 21 October 1999, in OJ C 368 of 20.12.1999).
- Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, (OJ L 174 of 27.6.2001). The rapporteur for the EESC opinion on this subject was Mr Retureau (CESE 227/2001 of 28 February 2001, OJ C 139 of 11.5.2001).
- Regulation (EC) No 1896/2006 of 12 December 2006 (OJ L 399 of 30.12.2006) creating a European order for payment procedure. The rapporteur for the EESC opinion on the draft regulation (COM(2004) 173 final of 19.3.2004) was Mr Pegado Liz (CESE 133/2005 of 22.2.2005, in OJ C 221 of 8.9.2005).
- Proposal for a Regulation establishing a European Small Claims Procedure (COM(2005) 87 final of 15.3.2005). The rapporteur for the EESC opinion on this subject was Mr Pegado Liz (CESE 243/2006 of 14.2.2006)

⁽⁴⁾ Regulation (EC) No 44/2001 of 22.12.2000. The rapporteur for the EESC opinion was Mr Malosse (OJ C 117 of 6.4.2000).

⁽⁵⁾ Regulation (EC) No 805/2004 of 21.4.2004, based on proposal COM(2002) 159 final, 27.8.2002. EESC Opinion CESE 1348/2002 of 11 December 2002, rapporteur: Mr Ravoet (OJ C 85 of 8.4.2003).

⁽⁶⁾ Specifically in its Communication entitled Towards greater efficiency in obtaining and enforcing judgments in the European Union (OJ C 33 of 31.1.1998)

⁽⁷⁾ These two articles are extremely broad, which means that the interpretation to adopt should be that derived from case law, specifically the Denilauer case (Judgment C-125/79 of 21.5.1980, p. 1553) on Article 31. Issues concerning time-limits, exequatur mechanisms, the conditions for proceeding with a case (the need to prove 'fumus bonis iuris' and 'periculum in mora'), the means/guarantees of defence and the amounts that can be seized/exemptions could be subject to the two Articles referred to above, extending the measure's scope and thus meeting the aims of the Commission proposal.

3.4 The Commission has not yet carried out a preliminary impact assessment, which should take account not only of the 15 Member States whose situation was analysed in the study on which this Green Paper was based⁽⁸⁾, but of all of the current Member States. It must be accompanied by a proper assessment of measures aimed at ensuring greater transparency regarding debtors' assets and the essential access to information on their bank accounts (with due respect for the protection of banking secrecy), because only by considering all these factors can a correct assessment be made of the initiative in terms of (a) the need for its existence, (b) its scope and (c) the rationale for it.

4. General comments

4.1 The Committee has divided its comments into two categories:

- a) General comments on substantive issues concerning the nature and scope of the provision, and
- b) Specific comments on procedural issues.

4.2 Preliminary issue: terms and concepts

4.2.1 As the Green Paper is likely to be followed by a legal instrument (probably in the form of a Community regulation), the terms used to identify the concepts that will define the nature of the ensuing procedural order must be extremely rigorous and technically and legally precise in every Community language.

4.2.2 The current situation is that in at least five language versions⁽⁹⁾, the terms used by the Commission to identify the type of measure it is contemplating are ambiguous and not necessarily equivalent. This could lead to technical or legal confusion as regards the legal nature of the provision. The Commission should therefore act swiftly to ensure the accuracy of the translations, in order to avoid uncertainty arising solely from the use of incorrect terminology⁽¹⁰⁾.

⁽⁸⁾ For a fuller understanding of the content of the Green Paper, account should be taken not only of the Commission Working Paper (SEC(2006) 1341) of 24.10.2006 but also of Study No JAI/A3/2002/02, in its updated version of 18.2.2004, by Prof. Dr. Burkhard Hess, Director of the Institute of Comparative and Private International Law at the University of Heidelberg, which can be found at: http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm.

⁽⁹⁾ Those with which the rapporteur is most familiar. Unfortunately he is not proficient in the other 15.

⁽¹⁰⁾ The English term 'attachment', even in its technical/legal sense, is ambiguous, since it could refer to what in Portuguese is called either 'penhora' or 'arresto'. Even in English, given the legal nature of the measure, it would have been better to use the term 'arrestment' or 'freezing order', in order to make a distinction between this and the concept of 'garnishment'. Furthermore, only the Italian translation — 'sequestro conservativo' — correctly expresses the preventive and restraining nature of the measure; the French term 'saisie', with the additional explanation that it could be 'granted by a court in summary proceedings', fulfils the requirement; the Spanish term 'embargo' appears inadequate to express the purpose of the measure. **In any event, in Portuguese, the use of the word 'penhora' is entirely wrong and should be replaced with 'arresto'.**

4.2.3 From an analysis of the proposed conditions (the need to prove '*fumus boni iuris*' and '*periculum in mora*') and purpose (freezing or blocking sums deposited in bank accounts until the final judgment and enforcement in civil proceedings to recover monetary assets — obviously those of a civil or commercial nature and not those resulting from criminal proceedings), it seems fair to conclude that this is a **protective order in the form of a preventive seizure**.

4.3 Scope of the measure⁽¹¹⁾

4.3.1 The Committee also questions limiting the scope of the protective measure to 'bank accounts'.

4.3.2 An attachment of monetary assets, which of necessity must be universal, should apply to all of the debtor's assets up to the amount ordered to be seized. A protective remedy such as the one proposed could target other assets of the debtor for possible seizure, including debt securities, shares, debenture bonds and other entitlements and claims on third parties and not only money deposited in certain bank accounts or accounts in other types of financial institution. There is no reason to assume that it would be excessively complicated to broaden the measure's scope to cover, at the very least, moveable property that does not need to be registered and also a debtor's claims to money (including shares, debenture bonds, rental and other income, monies owed by third parties, etc.), i.e. moveable property directly linked to a bank account.

4.3.3 Furthermore, there does not appear to be any justification for limiting the scope of the Community instrument to the preventive seizure of bank accounts: it could usefully be extended, with any necessary changes, to cover attachment of these assets after an enforcement order has been granted, given that the same type of difficulty regarding the seizure and disappearance of goods (which form the justification for the measure) could also occur then.

4.3.4 The Commission should thus properly assess and justify the value and cost of a measure that only covers the preventive seizure of money held in a debtor's bank accounts.

4.4 Timing of the request for an attachment order

4.4.1 The question of the timing of the application for a protective order is automatically resolved by its very nature, as set out above. In accordance with the best legal practice, it should be possible to apply for a protective order at any point in the legal process to which it relates, and more specifically prior to the start of the principal action, as a preparatory and preventive procedure, as this is where it is of most practical use.

⁽¹¹⁾ In the Committee's view, this should be confined to civil and commercial debt.

4.4.2 Account must clearly be taken of the obvious specific characteristics of the regime, depending on whether the protective remedy is effected before the main action is raised or a decision upholding the claim is obtained, before or during an enforcement proceeding, or whether or not an appeal has been launched in higher courts against the order granted in first instance or, lastly, when the enforceable right does not take the form of an order (a letter, promissory note, cheque or other enforceable document).

4.5 Jurisdiction of the court

4.5.1 To a certain extent, the question of the court's jurisdiction to consider and grant the protective order is also resolved by the above. The court that has jurisdiction is obviously the one that is responsible for dealing with the main case, from the time when the action/enforcement has already been effected.

4.5.2 The court of the State in which the bank accounts are held should **also** have jurisdiction, however, if the order is requested **before** the action/enforcement is initiated. In this case, however, it must be ensured that, as soon as the main action/enforcement is proposed, responsibility for the protective order that has been granted passes to the court that has jurisdiction in the main case. Even if it comes under another national jurisdiction, the latter court should accept this without requiring a process of recognition ⁽¹²⁾.

4.6 Conditions for granting the order

4.6.1 There is an inherent need to ensure that the **conditions** which the Commission quite rightly identifies in point 3.2 of the Green Paper — '*fumus boni iuris*' and '*periculum in mora*' — are met. Nevertheless, if a court order or other type of enforceable right has already been granted, only proof of '*periculum in mora*', in other words, of the urgent need for a seizure order, will be required.

4.6.2 A further condition for granting the order could be proof that the creditor has made reasonable efforts to recover the debt with the debtor's agreement and without seeking redress through the courts.

4.6.3 The absence of a requirement for a **prior hearing** of the debtor is essential if the order is to be effective. However, this could go hand in hand with the **provision of a guarantee, to be set by the judge**, at a level sufficient to cover any loss or damage if the measure is set aside in the main proceedings or at appeal (if this does not have suspensory effect), provided that the measure is decreed before a definitive order exists or is obtained.

4.7 Amount to be secured and exemptions

4.7.1 The amount to be secured by the order must not exceed the sum that has been allegedly due and not repaid, plus

⁽¹²⁾ Cf. Court of Justice ruling in *Van Uden Maritime B.V.* of 17.11.1998 — Case C-391/95 (European Court Reports 1998, page I-07091).

that of the default interest (whether contractual or legal) incurred up to the time the enforcement order is applied for.

4.7.2 In the context of precautionary proceedings, which are inevitably provisional, and given the seriousness of freezing sums held in bank accounts, the Committee does not consider it legitimate to include any other sums, specifically to cover future interest payments, lawyers' fees, bank charges, legal costs, etc.

4.7.3 The Committee is aware that implementing this type of system could give rise to additional costs for banks. It does not consider it legitimate, however, to include these costs in the sums to be frozen in any bank accounts held by the alleged debtor. It should be left to national legislation to lay down arrangements for bank charges and for recovering these from creditors who use this procedure. These charges should be added to the settlement of court costs, which will be determined at the end of the process.

4.7.4 The Community instrument should also set the parameters for delimiting exemptions from execution, to enable the debtor (if the debtor is a private individual and not a business) to meet his and his family's basic needs, which could be jeopardised by the enforcement order.

4.7.5 After the protective order is granted, the bank should inform the court of any limitations on compliance with the seizure order, depending on the nature of the debtor's account (current account, savings account, mortgage account, etc.), the nature of the income or earnings paid into it (wages, professional fees, salaries, pensions and annuities, social security payments, etc.) and the nature of the expenditure associated with the account (mortgage, car repayment, rent, consumer credit, feeding the family, etc.), in accordance with the law of the country in which the bank account is held and insofar as the bank is in possession of such information.

4.8 Third-party accounts

4.8.1 By the same token, there appears to be no justification for broadening the scope of the protective order to cover bank accounts held in the name of third parties. In cases where it is not possible accurately to identify what proportion of the money in the account belongs to the debtor, it should be assumed that each holder has an equal share.

4.8.2 It is also unacceptable that several accounts should be attached to cover the same amount, although admittedly there is no easy solution when accounts are held in different countries: each court that has jurisdiction could be asked to grant the order, unaware that the same order has been requested elsewhere. The problem would continue until all proceedings are managed centrally by the court that has jurisdiction to hear the main case.

4.8.3 It therefore seems advisable, in conjunction with this initiative, to lay down clear **obligations to provide information** on the party applying for the attachment and on the banks subject to the protective order, as well as the duty for the banks and courts in the different Member States to cooperate, whilst fully respecting the rules on confidentiality, data protection and banking secrecy, as is rightly stated in the study underpinning the Green Paper.

4.8.4 It could be laid down, for example, that sums seized are reduced *ex-post* and within a specified short period of time, as soon as the information is obtained from the different banks, if more than one is involved.

4.9 Guarantees for the debtor's protection

4.9.1 It is crucial that protection of the debtor is guaranteed, providing him/her with the **means to contest the enforcement order within a reasonable timeframe** — which the Committee suggests be at least 20 calendar days — in order to demonstrate:

- a) the non-existence, either total or partial, of the debt;
- b) the absence of '*periculum in mora*';
- c) that the amount seized is incorrect;
- d) that the vital needs of the debtor or those of his/her family (in the case of a private individual) are jeopardised by the measure.

4.9.2 To this end, provision should be made for the debtor to be notified by the court that has jurisdiction as soon as it is ascertained that sufficient funds are present in the account to freeze the amount allegedly owed. The bank in question should give the same information to the debtor as soon as the account is frozen, in line with the conditions set by the court.

4.9.3 The Community instrument should also set out the **means of protection and the grounds or reasons for a challenge/appeal**, harmonising these at the Community level, in order to ensure that situations are treated equally in any competent jurisdiction and that means of protection are identical. An important question will be to determine the nature of the appeal (whether or not it is suspensory) and the court that has jurisdiction to hear it, when the court granting the order and the court hearing the main action come under different national jurisdictions.

4.9.4 It is also important that a **time-limit** for raising the main claim or an application for *exequatur* is set, starting from the day on which the creditor is informed of the enforcement of the order. The Committee thinks that a deadline of 60 calendar days would be reasonable, irrespective of the judgment granting a protective order.

4.10 The Community instrument and its nature

4.10.1 In its Green Paper, the Commission is unclear as to what legal instrument it intends to use to implement its initiative. In view of the desired aims and as a means of ensuring that procedures are identical in the different Member States, the EESC considers that the instrument should take the form of a **regulation**, as already applies to other similar instruments in the context of the European judicial area.

4.10.2 A different but closely related issue concerns its scope. If the measure is deemed necessary, the Commission could — as it has for other, identical instruments — make the procedure applicable only to cross-border cases and make it **optional** (the '28th regime'), allowing creditors to choose between a harmonised Community instrument and the existing option of using the applicable provisions of private international law.

4.11 Costs

The EESC suggests that the rules governing costs follow those already set out in Article 7 of Regulation (EC) No 805/2004, with any changes that are needed ⁽¹³⁾.

5. Specific comments

5.1 With regard to issues of form alone, the Committee agrees that the *exequatur* procedure should be abolished for a judgment granting a protective order, whatever court has jurisdiction.

5.2 The Committee also considers that the rules on the court notifying the bank and the alleged debtor should not entail unnecessary formalities, provided that they ensure the authenticity of the instrument and the identity of the debtor. The rules already set out in Regulation (EC) No 1348/2000 seem appropriate here ⁽¹⁴⁾. The identification of the accounts to be frozen should also be as complete as possible, so as to avoid a generic seizure order.

5.3 The Committee also considers that the order issued by the court should be enforced by the bank under the terms set by the court, whilst safeguarding any legitimate operations already under way, such as prior commitments guaranteed by letters, promissory notes or cheques, and obligations to preferential creditors such as the State, the social security authorities or employees. In any event, the bank should be answerable for the account's balance on the date of receipt of the seizure order and should ensure that the account is frozen automatically as soon as the order arrives, even via electronic means, if outside of working hours. The bank should face liability for any negligence in the disappearance of sums moved thereafter.

⁽¹³⁾ Article 7 states that: 'Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the Member State of origin'.

⁽¹⁴⁾ Regulation (EC) No 1348/2000 of 29.5.2000, in OJ L 160 of 30.6.2000.

5.4 The Committee agrees that banks should be required to immediately inform the court, by electronic or other means of communication, of how they have complied with the order.

5.5 Community law should not lay down rules for ranking creditors competing over the same bank account. The Committee favours the application of national legislation.

5.6 The Committee considers that the practical enforcement of the order should be governed by the law of the country that

has jurisdiction over this, in accordance with the applicable general rules on dispute settlement.

5.7 Lastly, the Committee would particularly draw the Commission's attention to the need to make provision for a mechanism for the translation of documents relating to the operation of the proposed system, along the lines of the mechanism established under Article 21(2)(b) of Regulation (EC) No 1896/2006 of 12 December 2006.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Simplification of the regulatory environment for the machinery sector'

(2008/C 10/03)

On 8 January 2007, European Commission vice-presidents Margot Wallström and Günter Verheugen requested the European Economic and Social Committee to draw up an exploratory opinion on the *Simplification of the regulatory environment for the machinery sector*.

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 18 July 2007. The rapporteur was **Mr Iozia**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 138 votes to 2, with 3 abstentions.

1. Conclusions and recommendations

1.1 The European machinery industry is a key, cutting-edge industry for the European economy. In 2006, several hundred billion euro of turnover were generated by over 130 000 companies which export a third of their production. The machinery and electromechanical industry employs over four million workers within the EU, with high added value and levels of knowledge.

1.2 The machinery and electromechanical industry can contribute more than other industries to the achievement of the Lisbon goals by developing lifelong training, exchanging expertise and best practices and maintaining its ability to be competitive and penetrate world markets at the highest possible level.

1.3 The EESC supports the Commission's initiatives to strengthen the competitiveness of the sector and improve the reference legal framework with better and more effective regulation, taking into account the nature of the sector, which includes tens of thousands of small and medium-sized busi-

nesses. Better legislation, at least where this sector is concerned, does not mean no legislation, but providing a clear, stable framework whose rules are easy to implement and where administrative costs are kept to a minimum.

1.4 The EESC welcomes the Commission's decision to entrust to it this sensitive task of identifying, with the greatest possible consensus, areas of existing Community legislation which require simplification, in the wake of the activities which have stimulated legislative bodies to develop better, simpler legislation.

1.5 The EESC notes that various legislative initiatives are under way concerning the sector: the different interests involved — economic, social, environmental — need to be reconciled. The creation of the internal market must not jeopardise other, very important considerations such as health and safety in the workplace and consumer and environmental protection, in the context of the Lisbon goals. The EESC believes that a strategy integrating and coordinating the different initiatives is needed.

1.6 The EESC welcomes the Commission's proposals in the Communication of 17 February 2007 modifying the new approach and strengthening the role of Member States' market surveillance activities, which they sometimes under-resource. The EESC calls for more Commission staff to be assigned to coordination, monitoring and, in some cases, even checks on management of accreditation procedures, notification bodies' activities and the quality of their certification. It supports the creation of a 'platform for communication' between operators and Member States, which must act commensurately and consistently with the goals of the directives and Community policy, bringing about gradual convergence of market surveillance systems and models.

1.7 As regards standardisation activities, the EESC calls for all stakeholders to be enabled to participate from the outset in drawing up standards, strengthening the role both of technical committees, particularly at local level, and impact assessments, without excessive use of telematic consultation, which although a useful tool must not be the only means of consulting stakeholders, particularly in this case.

1.8 As regards 'harmonised' standardisation, the EESC feels that this should be made available free of charge or for a token amount, particularly to small and medium-sized enterprises, and points out the disparity between the treatment of firms which do not belong to the countries in whose languages the rules are published (English, French and sometimes German) and that of the others, which do not have to bear what can be huge translation costs.

1.9 The EESC stresses that all unnecessary administrative costs should be removed, substantially reducing the burden on the production system.

1.10 The EESC calls on the Commission to take into due consideration the need to encourage stable standardisation, incorporating suggestions from operators and key stakeholders. As regards the legal framework and the reference legal basis, the EESC recommends that, before issuing legislation, the Commission assess whether the same objectives could not be achieved by other means such as self-regulation or coregulation, as long as maximum transparency and fully-inclusive stakeholder participation can be ensured, and consistently consider the main aim of the standard and its content when determining the relevant Treaty articles to use as a legal basis.

1.11 The EESC calls for technical barriers to the completion of the internal market to be removed. Unnecessary national and local regulations are a genuine, insurmountable barrier to the free movement of goods.

1.12 The EESC recommends that future legislation always be preceded by a proper, careful, ex ante impact assessment, taking account of the degree of proportionality, and also be followed by very stringent, ex post monitoring to repair damage which would otherwise be irreparable for the future of the sector's companies.

1.13 European sectoral social dialogue will also have a key role to play in identifying all the common initiatives supporting job creation and development of competitiveness in the sector, with due regard for workers', public and environmental safety, which are sacrosanct principles. Corporate social responsibility practices will facilitate this ongoing dialogue between companies and stakeholders, to prevent improper use, increase knowledge and lifelong training and build a good relationship with the region in question and end consumers.

2. Gist of the Commission referral

2.1 The European Commission, on the initiative of vice-presidents Wallström and Verheugen, has asked the EESC to draw up an exploratory opinion aimed at analysing the general coherence of the regulatory framework for the machinery sector, in order to determine the scope for simplification. In addition to the relevant sectoral legislation, the analysis must take in the whole regulatory environment applying to the machinery sector.

2.2 With a view to involving the interested parties in the simplification process, specifically in identifying rules that might prove particularly problematic, the Commission has turned to the EESC, recognising that given its considerable wealth of experience and truly pluralist membership, it is the ideal body to reflect and condense the views of Europe's economic operators, workers and civil society.

2.3 Given its experience gained through numerous opinions on better regulation and simplification⁽¹⁾ and in view of Article 8 of the *Cooperation protocol between the European Commission and the EESC*, the Commission is entrusting this important task to the EESC. Should the EESC's work prove productive and beneficial, the Commission has suggested that it may repeat the request for many other areas of importance to its — and the EESC's — *Better Regulation* agenda.

2.4 The Commission has subsequently clarified its viewpoint, stating that better regulation does not necessarily mean less regulation, and that in fact we must safeguard at least current levels of protection for workers, consumers and the environment, with a view to ensuring a regulatory framework that allows for increased competitiveness.

⁽¹⁾ OJ C 24 of 31.1.2006, rapporteur: Mr Retureau; and OJ C 309 of 16.12.2006, rapporteur: Mr Cassidy.

3. General comments

3.1 The EESC would start by saying that it is extremely keen to undertake the task of reconciling the various interests involved, with a view to presenting a proposal on improving and simplifying the current regulatory and legislative environment. The best feature of the EESC is its ability to influence the decision-making process by hammering out the widest possible consensus among civil society representatives holding different viewpoints. By faithfully upholding the EU's principles and values, and by producing balanced, high-quality and innovative opinions, the EESC is an important and effective partner for the EU institutions. The Commission's request presents all members of the EESC with the stimulating challenge of making full use of this opportunity to further enhance the role of organised civil society, as recognised in the Treaties, to provide a forum for meeting and discussion.

3.2 The opportunity for the EESC to have an early input into identifying the specific areas in which the regulatory environment can be improved, breaks new ground in the cooperation between the EU institutions. All interested parties have, of course, already notified the Commission individually of their own requirements and preferences. Manufacturers, users, workers, consumers, standardisation bodies and public authorities have all indicated how they would like to see the existing rules *improved*. The consultation methods employed to date have not, however, produced an accurate picture reflecting the various interests, leaving all parties feeling at some stage that their views have not been taken on board.

3.3 The EESC can, however, present an accurate reflection of these interests, given both its diverse in-house expertise, and the networks of important contacts that its members can draw on to gain important insights. The EESC expressed some of its views on this subject in its Own-initiative opinion on Industrial Change in the Mechanical Engineering Sector ^(?).

3.4 The EESC notes that various initiatives have been launched or announced with regard to EU rules on industrial production and, specifically, the machinery sector. These initiatives give rise to a variety of complex problems. It would be useful to examine these problems taking account of the range of interests that EU legislation protects: the free movement of goods, workers' health and safety, consumer protection, environmental protection and the economic and social objectives of the Lisbon Strategy. These EU laws derive from different legislative instruments and a study of this kind has never been carried out. The EESC believes that the time really has come to address the whole issue comprehensively and systematically.

3.5 EU laws on the production and marketing of industrial materials have been drafted incrementally. This has generally ensured legislative harmonisation, which has greatly simplified the regulatory environment in which companies operate, although it must be stressed that this process has not yet been completed.

3.6 EU laws adopted since the late 1980s derive from two major bodies of rules: one on the market and the other on the workplace. The effective implementation of these rules requires the involvement of a wide range of parties: standardisation and notification bodies, designers and manufacturers, importers and distributors, assemblers and fitters, public inspection and disciplinary bodies (including customs and the judiciary), entrepreneurs, workers and workers' representatives, etc. Consumer organisations are very keen to be given a practical and effective role, their involvement to date being deemed insufficient. Cooperation between all of these parties is crucial, as is cooperation between public authorities at national and EU levels.

3.7 Applying these rules does not seem to create any major difficulties. However, despite this generally favourable assessment there are a certain number of practical problems that must not be overlooked.

4. Improved safety levels, but still some way to go

4.1 Every year across the EU there are between 6 000 and 8 000 fatal accidents at work (40 % of which involving workers under 35) and hundreds of thousands causing injuries. Some of these accidents are caused by work tools. In certain cases, inadequate personal safety equipment or training is also to blame. Approximately one quarter of EU workers claim to be required to use personal safety equipment for health and safety reasons. The main physical agents representing risk factors in the workplace are generally linked to work tools: noise, vibrations, ionising and non-ionising rays. Ergonomic factors have a crucial bearing on health and safety at work. In some cases, work tools may cause significant exposure to chemicals: the effectiveness of personal safety equipment may sometimes be crucial.

4.2 Particular consideration must be given to consumer products, the public being largely indifferent and undoubtedly unalerted to the inherent potential risks of the machinery they buy or hire. Sadly, too many accidents are occurring through improper use by consumers, and these are not included in the statistics.

^(?) OJ C 267 of 27.10.2005 (rapporteur: Mr Van Iersel).

5. Cooperation between the various parties is sometimes difficult

5.1 It should be noted that cooperation between the parties operating on the single market is faced with real difficulties including a deep-rooted reluctance to act with full transparency. This reluctance, on the part of the private sector, stems from a desire to protect against competition or possible sanctions, and on the part of the public sector results from bureaucratic inertia, sometimes quite entrenched. For example, there is a clear need to step up cooperation between manufacturers and users and to increase transparency in the way in which the key requirements of the *New Approach* directives are interpreted by the standardisation, supervisory and notification bodies and by consultants providing technical support to entrepreneurs.

5.2 This problem was a key concern for the Commission when launching its recent initiative on 14 February 2007, under the review of the *new approach*, entitled *New Internal Market package for goods*. This consists of a draft regulation *Setting out the requirements for accreditation and market surveillance relating to the marketing of products* (COM(2007) 37 final) ⁽³⁾ and a draft decision on a *Common framework for the marketing of products* (COM(2007) final) ⁽⁴⁾. One of its proposals is that *'market surveillance structures will be reinforced to catch unsafe products, remove them from the whole Community market and take action against fraudulent companies. The testing, certification and inspection bodies who are involved in product checking will be subject to more stringent controls in the form of accreditation, to ensure that there is a level playing field both for manufacturers and for the bodies themselves'*. (There are currently about 1 800 notification bodies in the EU, specifically laboratories, inspection and certification bodies. These are private entities accredited by public authorities.) It should be noted that these 'independent' bodies include some which have been directly set up by manufacturing firms' associations, and the conflict of interests here could become a real problem. In one Member State, for example, in the lifts sector alone over 80 notification bodies have been accredited.

5.2.1 Twenty-two years on from the issue of the Council resolution of 7 May 1985 incorporating the new approach principles, the Commission is proposing to modernise and strengthen market surveillance, making the CE marking increasingly trustworthy. The EESC feels that the new approach method, which was addressed by 25 directives (21 of which included specifications for granting the marking while four did not), has yielded good results and encouraged development of the internal market, although at the same time it considers that the proposed review is appropriate. Member States' powers and responsibilities must be increased, as must those of the

Commission, which will have to appoint more staff if it is to continuously monitor market surveillance, accreditation procedures for notification bodies and, in some cases, the activities of these bodies as well. In the Commission's survey, the vast majority of sectoral organisations were in favour of strengthening national and, accordingly, European authorities in this way.

5.3 The EESC welcomes this initiative, which limits the scope for discretion and inconsistent assessment that hinders the development of the internal market and leads to a competitive disadvantage for compliant operators. The distortion of competition caused by lapses in surveillance is a huge problem which serves to highlight one of the constraints on implementation of the new approach. It is also crucial to ensure the simplicity and clarity of the regulatory framework, particularly for small and medium-sized enterprises, as well as to step up cooperation between market supervisory authorities, both in the EU/EEA area and internationally. The EESC supports the creation of a 'platform for communication' between operators and Member States, which must act commensurately and consistently with the goals of the directives and Community policy, bringing about gradual convergence of market surveillance systems and models. It is crucial that customs authorities are involved in this.

5.4 At European level, greater cooperation is needed between all DGs concerned (e.g. ENTR, ENV, EMPL and SANCO), which could work together to produce 'guides' on the application of existing directives. These would not replace the standards, of course, but they could be useful and save a lot of money being spent on unnecessary consultancy fees.

5.5 As regards seasonal products such as garden machinery, accelerated procedures need to be laid down to prevent market opportunities being missed. Notwithstanding the need for rigorous implementation of all the legislation, especially safety rules, the EESC proposes that a 'mediation institute' be set up to this end which could be called on to ensure that specific, valid needs are met.

6. Administrative burdens — not always necessary

6.1 Another Commission priority is to reduce unnecessary red tape, which impacts considerably on competition. The EESC is following with interest the Commission's work in this area, which has taken the form of an action programme, presented on 24 January 2007, aimed at cutting administrative burdens on companies by a quarter by 2012.

⁽³⁾ Opinion INT/352, in preparation (rapporteur: Mr Pezzini).

⁽⁴⁾ Opinion INT/353, idem 3.

6.2 The Commission could help provide a practical solution to problems regarding the application of directives by, for example, acting as a central office for all communications that currently have to be sent to the individual Member States, involving great difficulties in ascertaining the correct address. This is the case for Directive 2000/14/EC on noise emissions, under which a declaration of conformity has to be sent to a Member State and to the Commission, and for Directive 97/68/EC on emissions from machinery engines, under which, if using the 'flexibility scheme', companies have to notify the relevant authorities of each Member State of type-approval received, reporting to them every six months.

6.3 Putting into practice the directives on the protection of workers from physical agents presents many difficulties for business. Particularly problematic are the directives on vibrations (2002/44/EC) and on the risk of exposure to non-ionising radiation (2006/25/EC), especially for SMEs. Such problems could arise in the application of the next directive on artificial optical radiation. Guidelines on their practical application are needed, if these directives are to achieve their objectives. Clearly, where it is genuinely impossible to apply them in practice, thought will have to be given, and swift action taken, regarding the amendments needed to enable companies fulfil their legal obligations.

6.4 In the field of industrial production and specifically machinery, it is important to take account of the various requirements involved when dealing with the issue of administrative burdens. Traceability of work carried out by the various parties is fundamental both to the physical safety of users and to the legal certainty of contractual relations established in the market. It is therefore necessary to present balanced solutions which retain the requirement for transparency and traceability, while not adding unnecessary administrative costs.

7. The role of standardisation

7.1 Technical standards play a key role in the functioning of EU rules and flesh out the basic safety requirements laid down in legislation. Compliance with these standards confers a presumption of conformity with the relevant directives. Certification, where necessary, by accredited notification bodies goes hand in hand with the legislative framework of rules.

7.2 Overall, European standardisation bodies have carried out very useful work on the basis of Commission mandates. Drawing up standards should require greater involvement of stakeholders, as this would facilitate subsequent comparison. The fact remains, however, that this is the work of a select few. The majority of user industries do not have the expertise or the resources to regularly monitor this work. There is even less involvement of workers and consumers. This situation makes it difficult to take account of the importance of experience gained. Certain standards do not address the full range of concerns

noted 'on the ground'. The EESC calls for greater stakeholder participation in technical committees, particularly at local level, in this sector in which few people have genuine decision-making power. It notes with concern that the growing cost of standardisation could become a constraint on competition, and even safety, where the risk is taken, for example, of using machinery improperly, for uses which conflict with standards. Some SMEs in Eastern Europe have a tendency to 'wing it' or resort to expedient devices.

7.3 The EESC welcomes the initiatives announced on 15 March 2007 under the *Action plan for European standardisation*, in which all Member States were invited to report on the state of play of the implementation at national level of the measures taken to enhance the participation of stakeholders in European/international standardisation. The Commission, for its part, is to collect the observations made and integrate them into European standardisation. The involvement of SMEs in standardisation is essential, both at EU and national levels; they must make an effective and practical contribution to future standardisation processes.

7.4 In certain cases it can be more difficult for entrepreneurs to comply with all health and safety legislation requirements. Risk assessment, where machinery is used, requires complementarity between the manufacturer and the user company. Problems can arise if standards do not provide for sufficient information to be supplied on any residual risk that the company must take into consideration. If companies are not properly informed of the residual risk attached to a machine that they purchase, they will have difficulty in complying with the risk assessment obligations stipulated in Framework Directive 89/391/EEC and in its 19 daughter directives on the active and passive protection of workers.

7.5 Dissemination of these standards can be problematic for small and medium-sized enterprises given the high cost of acquiring them; while standardisation leads to certification procedures, the administrative costs incurred are generally much higher than those resulting directly from legislation.

7.6 The risk analysis provided by CEN specialists is extremely important for entrepreneurs, who must combine it with a specific analysis of the actual working environment in which the machinery will be used. The cost of these harmonised standards is high, particularly for SMEs. The EESC calls for consideration to be given to the proposal that *harmonised* standards, deriving from the CEN's Commission mandate, be made available for free or for a token fee, to allow them to fulfil their legal obligations. Free dissemination on the Internet, moreover, has already been successfully implemented by the telecommunications sector, where some ETSI (European Telecommunications Standard Institute) standards are placed directly on the Web.

8. Promote regulatory stability

8.1 The EESC points out that it is not always necessary to modify directives that have been and continue to be successful. Undoubtedly, while the work and conclusions leading to the comprehensive overhaul of Directive 98/37/EC — known as the *Machinery Directive* — were particularly complex, an optimum balance was ultimately struck between the various stakeholders. In certain other cases, it would perhaps be better to avoid excessive 'enhancement', such as when amending the Low Voltage Directive (73/23/EC) or, as pointed out by the machinery manufacturers' association in its letter of 5 November 2004, in the case of the inappropriate Commission proposal to merge Directive 87/404/EC and the Pressure Equipment Directive (97/23).

8.2 It has become apparent that the market needs a clear, stable regulatory framework to take the anxiety out of investment planning and enable it to adhere to clear rules which are not changed too often. On the other hand, there is a very real danger that 'simplification' could result in greater administrative costs and higher costs for conformity assessment procedures as they become more complex.

8.3 Moreover, as regards the possibility of using Article 95 of the Treaty, while the EESC understands manufacturers' needs, it stresses that the reference legal framework underlying the adoption of directives must be in line with the fundamental principles of the Treaties, particularly in terms of the legal basis for the different standards. Clearly, focus on the objective and the content of the instrument should be the real reference criteria for implementation of the various standards. The European Court of Justice has also issued a number of judgments in this connection, some recently, excluding in any case the possibility of a mixed legal basis where references are contradictory or so layered as to limit Parliament's rights. In the case of product design, where another objective is the focus, the desire of businesses to take as a basis Article 95(3) of the Treaty, which, as is well-known, limits Member States' power and strengthens Community rules, as provided for in Article 137 or Article 175 for example, cannot always be fulfilled⁽⁵⁾. Businesses point to the added costs (which are borne by the end user) that making the necessary modifications to machinery design and production entails, in response to requests from individual Member States. Complementary legislative models should be devised which do not overlap but limit to the minimum Member States' ability to adopt separate, different measures, which must be in line with the principles of common sense and proportionality.

8.4 The recent REACH directive is a milestone in consumer and worker protection. The EESC has endorsed the technical solutions adopted and the prospect of flexibility associated with simplification; however, it points out with some concern that small and medium-sized businesses could find themselves in

some difficulties, especially if import checks are not as rigorous as this fundamental directive requires. The EESC urges the Commission to monitor carefully Member States' market surveillance procedures, as in this particular sector they have not always managed to perform their role effectively in the past, partly because the designated surveillance bodies have been seriously under-resourced. In this connection, depending on the degree of dominance of certain areas of production within the Member States, tasks could be divided between surveillance authorities, by product area for instance (valves and fittings, lifting and handling equipment, pumps and compressors, machinery for the manufacturing industries, etc.).

8.5 Despite the key contribution made by the mechanical engineering industry to the European economy as a whole, Member States seem to invest very little in the institutional activities for which they are responsible. The Commission could request information on this and compare it with the practical results obtained. Often, it is left to individual ability/commitment to determine the quality and number of checks, but much depends on the available resources.

9. Remove technical barriers to full development of the single market

9.1 Within national legislation, a range of technical barriers remain, creating significant problems for companies. One sector affected, for example, is non-road mobile machinery needing to be transported on public roads. As different rules, with varying levels of stringency, apply across the Member States, firms need to be equipped with several different types. There is some confusion as regards terminology as well, for example in the use of the terms 'undertakings' and 'firms'. The inspection requirements in some Member States entail additional costs, which are often duplicated for each country that provides for inspection by a specific body in the development, testing, or transport phases. In particular where safety measures are concerned, the EESC calls for harmonisation of legislation to be carried out quickly. As regards tractors, for example, over and above existing provisions on rear-view mirrors and speed limits, technical specifications must be laid down for front and rear lights and, most importantly, braking distance. There are currently tractors on European roads which were made as long as forty years ago. Gradual replacement of the fleet would ensure much more effective active and passive safety levels.

9.2 To regulate the use of machinery on public roads, the EESC recommends the following:

⁽⁵⁾ Judgement of the Court in Case C-94/03: Commission of the European Communities v Council of the European Union — Choice of legal basis.

— adopting a proposal to harmonise existing national legislation on the use of machinery on public roads;

- using the *New Approach* methodology;
- providing for benchmark standards that confer a presumption of conformity with requirements;
- including appropriate provisions for conformity assessment, bringing in a more rigorous conformity assessment for certain systems (steering, brakes, etc.).

10. Future legislation: involvement and impact assessment

10.1 The EESC calls for closer cooperation in future between regulators and stakeholders on future regulation policies, by means of effective dialogue, and without overly relying on econsultation, given the need for interaction between the parties. In the EESC's view, in some specific areas, frequent, ongoing consultation would prevent problems, thus ensuring better quality legislation and more effective standards.

10.2 The EESC believes it is crucial to develop, for the various options, an impact assessment methodology common to all EU institutions — Parliament, Council and Commission — as well as a suitable quality control system.

10.3 The Commission should always consider whether its intended objectives actually necessitate a regulatory framework or whether, in fact, self-regulation or co-regulation would be sufficient. The EESC believes that among the various options, the aim must be to choose the one which can meet the same objectives at a lower cost and with a lower administrative burden, and which can ensure maximum transparency and stakeholder participation.

10.4 Sectoral social dialogue has a key role to play. The common interest could be served in practice by specific initiatives to develop training, particularly in the area of safety in the workplace, including lifelong training, which builds not only skills but also awareness of the various managerial and organisational issues related to better and safer use of machinery. Corporate social responsibility, implemented through an extended dialogue which includes civil society and local authority representatives, could help to develop a safe, productive corporate culture, especially in small and medium-sized businesses, where risk management is clearly more difficult.

10.5 The EESC believes that it would be useful to carry out a review allowing all interested parties to assess the merits and limitations of the regulatory framework. Such an assessment would allow us to proceed in a unified manner and ensure that the various initiatives under way do not produce incomplete solutions or conflicting results. The Commission's decision to discuss the new Machinery Directive with stakeholders is a step in the right direction. More initiatives of this kind are needed. In particular, the EESC highlights the links between the various initiatives, such as those under the action programme on reducing unnecessary red tape and the *New Approach* (on 14 February 2007, the Commission adopted its proposals for a Council and European Parliament regulation and decision on a review framework for the *New Approach*, on the basis of a public consultation on the future of the internal market). The EESC is convinced that a joined-up approach to these initiatives and proper coordination thereof are likely to tangibly improve the current body of legislation and its uniform application across the 27 Member States.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament and Council — A Competitive Automotive Regulatory Framework for the 21st Century — Commission’s position on the CARS 21 High Level Group Final Report — A contribution to the EU’s Growth and Jobs Strategy’

COM(2007) 22 final

(2008/C 10/04)

On 7 February 2007, 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 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 18 July 2007. The rapporteur was Mr Davoust.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 144 votes with 2 abstentions.

1. Overview and main recommendations

1.1 The Committee is pleased that, ‘in the spirit of better regulation’, the European Commission is aiming ‘to promote coherent interaction between different policy areas, provide predictability and seek the protection of public interest (e.g. environment and safety) while attempting to reduce the regulatory burden on industry’. The Committee welcomes the commitment to a holistic approach and the willingness to take on board the various different dimensions of industry development and competitiveness and the different stakeholders involved.

1.2 On a more general level, the overall CARS 21 initiative reflects a desire for coordination among public policymakers — not only between themselves but also with the various industry stakeholders. In the Committee’s view, this deserves the fullest support. The Commission communication, which outlines the regulatory work already in place and sets out action to be taken in the future, illustrates the importance of such an approach, while also highlighting the difficulties involved.

1.3 The main benefit of this approach is that it makes the broad direction of European car policy clear for all stakeholders. The predictability of EU policies is improved in each of the key areas, while the regulatory burden on industry is also reduced.

1.4 One direct benefit of the approach is the reduction in the regulatory burden made possible by the replacement of 38 EU directives by UNECE regulations. Similarly, from the progress made in the fields of the environment and road safety, it is clear that an integrated approach is practicable and boosts the legitimacy of the regulatory framework in the eyes of all the stakeholders involved, while at the same time making it more predictable for industry. Such an approach thus generates a consensus that can be drawn on by all concerned as a basis for further action.

1.5 However, there are also difficulties inherent in pursuing such an approach. These fall into three categories:

- i) the quest for consensus tends to delay decision-making on the various issues involved;
- ii) the content of the analysis and of the recommendations is very much contingent on which stakeholders are consulted in the process;
- iii) an integrated approach may result in an analysis of the issues that muddies the responsibilities involved.

1.6 The list of 39 measures or commitments set out in the Commission communication is very long and, considered separately, each one does seem warranted. Bringing all 39 points together, however, will probably be more problematic, raising unresolved issues of consistency and timetabling. For instance, although an integrated approach is adopted to tackle environmental and safety issues, the two questions are not, in themselves, addressed in an integrated way. Such an integrated strategy would doubtless have been possible if, as was done in the High Level Group report, questions had been asked about the pricing of products that meet all the proposed requirements, but that would, in turn, also have highlighted the need for choices to be made. Similarly, the High Level Group was keen to back up its conclusions with a roadmap for all public policymakers. This document embodied the integrated approach that the Commission hoped CARS 21 would foster. The Committee laments the fact that the Commission communication did not propose a roadmap of this kind, even in a modified form.

1.7 Broadly speaking, the High Level Group based much of its analysis on the views of car manufacturers. As a result, most of the issues raised relate to products and technologies. The Committee notes that the same exercise would have produced a different outcome had it been more sensitive to the interests of car users. It is important therefore to ensure that provision is made for a future revision of the list of stakeholders to reflect ongoing assessments and reassessments of the issues involved.

1.8 One risk of an integrated or holistic approach is that each of the stakeholders may well argue that it is up to the other stakeholders to change. In the field of road safety or environmental performance, for instance, industry players may take the view that their efforts — particularly on the technology front — are being thwarted by the actions of infrastructure managers or consumers.

1.9 In the light of all these factors, it is clear that the Commission communication is not the last word on car-related public policy and the choices that have to be made. The Committee therefore backs the strategy of keeping the public debate on car policy alive and open not only to all the social partners but also, more broadly, to the other stakeholders involved, and of providing information on the choices that have to be made at various times. Such a strategy is preferable to drawing up a definitive list of all potential ways forward, leaving it to the experts and industry to decide at their own discretion which path to follow.

1.10 In a concluding point, the Commission communication states: '(There) exists a unique opportunity to develop a distinct policy-making culture with regard to industrial policy. The Commission believes that principles such as the quality of legislation, simplification, impact assessments, stakeholder consultations, lead times and choice of instruments should be at the heart of developing legislative proposals'.

The Committee welcomes this approach and hopes that this opinion will help the Commission to put it fully into practice.

The Committee therefore recommends:

- that industry players be given the time to fully develop the technologies needed to meet more stringent requirements without products becoming significantly more expensive as a result, and thus ultimately slowing down the renewal of the car fleet;
- that environmental issues should not be restricted to the question of CO₂ and that interest should not focus exclusively on technological remedies but should encompass a more holistic approach, taking due account of the actual role of cars and road transport in European societies;
- that the restructuring forum, the review scheduled for 2009 and the impact assessments on which that review is to be based should reflect the integrated approach fostered under CARS 21, and that steps should be taken to boost credibility both upstream (in the choice of stakeholders) and downstream (in incorporating the recommendations put forward by the working groups);
- that the European Economic and Social Committee be involved more directly and at an earlier stage, in line with its remit — reflected in its set-up and membership — to involve the various components of European society in Commission policies in precisely this way.

2. The Commission proposal

2.1 *The Commission approach: CARS 21, an original and model initiative*

2.1.1 In line with its policy to improve the quality of lawmaking and to face the challenges of increasing global competition, in 2004 the Commission asked the CARS 21 High Level Group — comprising all the main stakeholders (Member States, industry, NGOs and members of the European Parliament) and also the three key commissioners involved in this area (enterprise and industry, environment, and transport) — to advise on future policy.

2.1.2 More specifically, the High Level Group set up at that time was given the following remit: to make recommendations for a short, medium and the long term public policy and regulatory framework for the European automotive industry that enhances global competitiveness and employment while sustaining further progress in the safety and environmental performance of vehicles at a price affordable to the consumer.

2.1.3 In this way, the Commission wanted to showpiece the car sector as an example of its more modern approach to industrial policy by explicitly incorporating its activities in this field into the ambit of the Lisbon agenda. In a bid to ensure that production sectors develop in a way that is at once sustainable, economically viable, socially responsible and environmentally sound, the Commission wants any action it takes to be preceded by a wide-ranging consultation process among the stakeholders involved so as to take stock of the current state of play and the future outlook and to carve out a broad consensus as to what action should be taken. In this particular case, the stakeholders represented in the High Level Group included car makers, oil producers, suppliers, car distributors, car repair businesses, car users, national public authorities and the three main Commission directorates-general involved (environment, transport and energy, and enterprise and industry). DG Enterprise and Industry was responsible for coordinating the work, which continued throughout 2005. A public hearing was held in April 2005. The report was adopted by the working group in December 2005. Its findings were then submitted for broad public consultation in 2006. The Commission communication is based both on the CARS 21 report and the 34 submissions received in 2006.

2.1.4 The CARS 21 report represents a very laudable move on the part of the Commission to avoid excessive numbers of uncoordinated and sometimes therefore inconsistent regulatory initiatives.

2.1.5 To do that, as the report repeatedly states, the working group calls for what it terms a 'holistic' approach, i.e. an approach that looks at the interactions between the various elements involved. The High Level Group members thus want to see more readily understandable and predictable rules and to avoid situations in which the various Commission DGs take action where the impact is unclear and where no checks have been made on consistency.

2.1.6 In its final report, the working group lists 18 recommendations grouped into seven chapters: better regulation; environment; road safety; trade; research and development; taxation and fiscal incentives; and intellectual property. It also concluded by proposing a *roadmap* for those responsible for public policies and regulatory measures that will impact the automotive industry over the next ten years. Fully in line with the objectives laid down by the Commission, the roadmap was designed to give European car policy the coherence and predictability that private investors need to ensure the sector's competitiveness. The roadmap was supposed to provide that predictability by setting out the regulatory path to be followed over the next few years.

2.1.7 This communication is the Commission's response to the report presented by the CARS 21 group. It includes the Commission's assessment of the recommendations and the reactions to the CARS 21 report expressed during the 2006 consultation exercise. It sets out the direction in which the Commission intends to steer future automotive policy. The main lines of action are as follows:

- **Reduction of administrative burdens:** The Commission will propose replacing 38 Community directives with corresponding global UNECE ⁽¹⁾ regulations, for instance on tyres, safety glass, fog lamps and seatbelts. By doing so, industry can rely on one single text valid throughout the world. In addition, self-testing and virtual testing will be introduced for 25 EU directives and UNECE regulations to reduce compliance costs and make administrative procedures less costly and time-consuming.
- **Reduction of CO₂ emissions:** The Commission strategy is based on an integrated approach, involving not only engine technology, but also technological improvements (e.g. setting minimum efficiency requirements for air-conditioning systems, setting maximum tyre rolling resistance limits and the use of gear shift indicators) and increased use of bio-fuels. The strategy also focuses on additional efforts by Member States in areas such as traffic management, improvement of driver behaviour, infrastructure and further CO₂ emission reduction.
- **Road safety:** The Commission believes an effective road safety strategy should be based on a combination of improvements in vehicle technology, road infrastructure, driver behaviour and enforcement. A total of 11 future actions are proposed, including for example the mandatory inclusion of Electronic Stability Control and seat belt reminders and obligatory use of daytime running lights for new vehicles.
- **Trade:** The communication proposes assessing the potential of using bilateral trade agreements (particularly in the Asian

region) to improve market access, and reinforces the need to enforce intellectual property rights globally.

- **Research and development:** Clean renewable fuels and vehicles and intelligent vehicles and roads have been identified as core research priorities. With approximately EUR 20 billion (about 5 % of the industry's turnover) invested into research and product development, the automotive industry is the largest R&D investor in Europe in absolute terms.

3. The Committee's comments

Before coming back to the method and to the merits and limits of this new approach to the question of automotive policy and sectoral policies in general, this opinion would refer to the five key areas and the proposals which the Commission has set out for each.

3.1 *Internal market, regulatory simplification and internationalisation*

3.1.1 The EESC supports the proposal that the framework directive for the approval of motor vehicles be extended to all categories of vehicles. It stresses, in particular, the importance of this directive for the marking of spare parts.

3.1.2 The EESC supports the plan to simplify and internationalise the regulatory environment, but also wishes to avoid harmonisation becoming an absolute priority that would take precedence over all other considerations.

3.1.3 Therefore, whilst agreeing with the Commission that in principle it is worth giving preference to multilateral commitments, it also fully supports the Commission when it states that it is 'conscious of the need to maintain the possibility for the EU to legislate independently from the UN/ECE system where this is required to meet EU objectives in terms of health, environment or other policy objectives'. Given that such provisions are potentially crucial in relation to international trade and access to markets, it is indeed vital that this proviso be maintained, so as to ensure that European industry has the means to respond to any laws or regulations introduced in other regions of the globe that might be an obstacle to its competitiveness.

3.2 *Environmentally sustainable road transport*

3.2.1 The EESC welcomes the quality of the measures already introduced and envisaged for making road transport environmentally sustainable. Following the commitments entered into by the Commission, which stresses its intention to carefully analyse the impacts of future regulatory activity on employment and safety, the EESC alerts the Commission to the need to give industry time to develop the requisite technologies to meet

⁽¹⁾ United Nations Economic Commission for Europe.

stricter requirements, without producing steep rises in product prices or, ultimately, a slowdown in the renewal of fleets. This issue, whose importance was emphasised in the CARS 21 report, appears to be relatively neglected in the Commission communication.

3.2.2 Similarly, the EESC notes with interest that the Commission intends to pay more attention in future to real-life emissions (point 8), but regrets that the Commission does not consider the implications of this with respect to the inspecting, maintenance and reparability of vehicles.

3.2.3 The EESC stresses that the integrated approach upheld by the Commission essentially translates into a focus on pollutant emissions and particularly CO₂ emissions from new vehicles sold in Europe in the coming years. In effect, the Commission focuses solely on the technological solutions (biofuels, hydrogen, Intelligent Vehicles and Intelligent Transport Systems) or economic responses (possible inclusion of the road transport sector in the EU Emission Trading Scheme) it intends to promote. The Committee regrets that the Commission does not give sufficient attention to exploring the potential of a holistic approach more attentive to the place of the automobile and road transport in European societies.

3.2.4 In this respect, the Committee emphasises that the CARS 21 report explicitly expressed concern over the speed of fleet renewal, which it considered to be a key factor. It also stressed the importance of traffic congestion. The Committee wishes these avenues for promoting more environmentally friendly automobiles, and other issues, such as the promotion of new forms of access to automobiles, to be given the same consideration, in future, as the technical solutions.

3.2.5 The Committee would stress the need to encourage the supply of — and demand for — cleaner vehicles. The Commission should thus strive to develop tax incentives for certain cars and fuels that are coordinated, technically neutral and, as far as possible, harmonised; this could be done for instance on the basis of CO₂ emissions, which would help to reduce the CO₂ emitted by vehicles by directly influencing consumers and demand.

3.3 Increasing safety on European roads

3.3.1 The Committee supports the comprehensive approach to road safety issues upheld by the Commission, which is based on 'the interaction between improvements in vehicle technology, road infrastructure, driver behaviour and enforcement'.

3.3.2 The same issues that arose in relation to the environment also apply here. Thus, a key phrase in the CARS 21 report — 'at a price affordable to the consumer' — made the point that

trade-offs sometimes have to be made to the detriment of the environmental or safety aspects of vehicle performance. This phrase has not been taken up in the communication.

3.3.3 Accordingly, in the Commission communication, the list of proposals in the area of road safety is as follows ⁽²⁾:

- make the inclusion of Isofix child restraint systems obligatory for all new M1 vehicles;
- make the use of daytime running lights obligatory (a public consultation was launched on this subject on 1 August 2006);
- make the inclusion of the Electronic Stability Control mandatory starting with heavy-duty vehicles and followed by passenger cars and light-duty vehicles as soon as a test method has been developed;
- make seat-belt reminders mandatory for all new vehicles;
- amend phase II requirements of the Pedestrian Protection Directive in order to improve the provisions of Directive 2003/102/EC ⁽³⁾.

3.3.4 With a view to ensuring that increases in the cost of new vehicles as a result of these proposals remain at reasonable levels, the EESC advocates a clearer focus on vehicle prices and their impact on the speed of fleet renewal and — therefore — on road safety. The EESC draws attention to the fact that the delay in the second phase of the proposed Pedestrian Protection Directive means a shortening of the necessary phasing-in period for the manufacturers and complicates the planning of the measures to be taken. The timetable for implementing the directive and the precise specifications for manufacturers should also be clarified without delay. The Committee urges the Commission to consider that road safety also means that vehicles in circulation must be maintained by users, even when they are old. The Committee advocates that the planned measures be classified in accordance with the cost/benefit ratio of each, when their cost to the user is weighed against the impact they may have on the number of accidents and the likelihood of death or injury to road users. To the same end, the EESC urges the Commission to look beyond the technologies that have already been introduced and to integrate, more explicitly, all the means of influencing the behaviour of road users (including education, prevention and road signs). In this regard, the EESC would stress the need to be particularly attentive in future to the impact on the issues involved here of demographic developments and of the growing numbers of old or very old drivers among car and road users.

⁽²⁾ COM(2007) 22 final, page 13.

⁽³⁾ Directive 2003/102/CE of the European Parliament and of the Council of 17 November 2003 relating to the protection of pedestrians and other vulnerable road users before and in the event of a collision with a motor vehicle and amending Council Directive 70/156/CEE (OJ L 321 of 6.12.2003, p. 15); EESC Opinion: OJ C 234 of 30.9.2003, p. 10.

3.3.5 To the same end and in accordance with the position upheld in the CARS 21 report, the EESC emphasises the importance of the tax incentives aimed at boosting demand for safer cars. Steps should be taken to encourage the supply of — and demand for — safer vehicles.

3.4 Trade and overseas markets

The EESC backs the Commission's approach to international trade issues and particularly the attention it devotes to bilateral international agreements, non-tariff barriers to trade and the question of intellectual property rights, particularly in Asia. In the choice of countries for concluding free trade agreements, more attention should be paid to economic criteria such as the size of the potential market and the prospects it offers and reciprocity in the removal of trade barriers. Beyond the upstream questions, the EESC draws the Commission's attention to the need to give more explicit consideration to the spare parts market, both in order to harmonise the way it is dealt with in the various European countries and to devise a strategy towards China, India and Russia.

3.5 Research and development

The EESC lends its full backing to the Commission's support for R&D and its conviction that the three pillars of sustainable development will only hold together if private and public sector research efforts are maintained and stepped up. Nevertheless, echoing the concerns set out in point 3.4, the EESC draws attention to the need to involve the whole of the automotive sector, including post-production chain operations, in these efforts. Such questions as the cost of technological progress, the reparability of the products that benefit from this progress, and the training needed to adapt repairs and infrastructures accordingly must be raised very early on and the Commission must be proactive in ensuring that this is the case. The Commission should focus an appropriate part of the Seventh Framework Programme on other activities as part of an integrated approach to road safety issues including infrastructure (e.g. electronic communication systems).

3.6 Taxation and fiscal incentives

The EESC supports the Commission which '*urges the Parliament and Council to adopt the proposed directive⁽⁴⁾ as soon as possible*'. Once the Parliament has adopted this proposal for a directive, which encourages fiscal harmonisation, the Council will have to be convinced that it is a good idea to bring about convergence of the provisions that are currently creating distortions between the vehicle and automobile services markets within the EU.

⁽⁴⁾ Proposal for a Council Directive on passenger car related taxes (COM(2005) 261 final); EESC opinion: OJ C 195 of 18.8.2006, p. 80.

3.7 Spare parts market

The EESC, whilst regretting that these issues were not given more attention in the Commission's analysis, supports its defence of Regulation (EC) No 1400/2002⁽⁵⁾ and its intention to ensure that it is applied in a homogenous way throughout the EU. The EESC welcomes the fact that the Commission intends to support provisions that will make technical information freely accessible. In this regard the EESC stresses the importance of playing close attention to the implementation of the provisions required by the adoption of the OASIS format.

3.8 The CARS 21 method and its application by the Commission

3.8.1 The EESC welcomes the fact that the European Commission henceforth intends to **improve the regulatory framework** and '*aims to promote coherent interaction between different policy areas, provide predictability and seek the protection of public interest (e.g. environment and safety) while attempting to reduce the regulatory burden on industry*'. It welcomes the commitment to develop a comprehensive approach and to integrate the various dimensions of the automotive industry's development, its competitiveness and the various stakeholders.

3.8.2 In connection with the social and industrial aspects as addressed in the first pages of the report, the EESC feels, like the Commission, that the two need to be linked, in that employment is directly connected with the competitiveness of the European automotive industry as a whole and of the various locations. From this perspective, the EESC largely agrees with the analysis of the situation of Europe's automotive industry.

3.8.3 It is pleased that the Commission considers that, 'it appears probable that vehicle assembly for the European market will largely be conducted in Europe' whilst also agreeing with the Commission that this is not necessarily synonymous with job stability.

3.8.4 The EESC urges the Commission to organise the dialogue between the social partners so that the patterns of job relocation within and beyond the European Union, as described in the CARS 21 report, can be anticipated and managed. Similarly, the EESC would ask the Commission to consider the impact of developments in this sector on second-level subcontractors and those further down the line, who are being placed in a particularly precarious position by current trends.

3.8.5 To the same end, the EESC gives its full backing to the support measures envisaged in the communication as well as to the idea of organising a restructuring forum on the automotive industry in order to 'address challenges and better anticipate and adapt to change'. The EESC urges the Commission to seize this opportunity to ensure that the automotive sector as a whole,

⁽⁵⁾ Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (Official Journal L 203 of 1.8.2002, p. 30).

and particularly the actors involved in post-production, are taken into account in this work and included in the support measures. Such initiatives accord with the approach of holding joint discussions and strategy appraisals within the sector, which are needed by the various players involved. The EESC emphasises that it has a key role to play in this work and these discussions, in particular in ensuring that all the social partners, and the stakeholders more generally, are more clearly represented.

3.8.6 For example, SMEs or very small enterprises often have greater and less fulfilled needs for training and these actors within the automotive industry should also be able to benefit from the Structural Funds and other restructuring support instruments.

3.8.7 The Commission ends its communication by saying that:

*'there exists a unique opportunity to develop a **distinct policy-making culture with regard to industrial policy**. The Commission believes that principles such as the quality of legislation, simplification, impact assessments, stakeholder consultations, lead times and choice of instruments should be at the heart of developing legislative proposals'.*

3.8.8 The EESC agrees with this approach and hopes that this opinion will help the Commission to implement it fully. Accordingly, it draws the Commission's attention to the occasionally incomplete analysis set forth in the communication.

Brussels, 26 September 2007.

More specifically, even if they were not forgotten, the analyses in the CARS 21 report and the conclusions that the Commission drew from them appear to be characterised by an under-representation of consumers and post-production chain players in the debate. As a result, it would seem to the EESC that the automobile sector in general and the environmental and safety aspects in particular, are not dealt with in a sufficiently holistic way. The approach is biased towards production and technology and pays insufficient attention to existing car fleets and vehicle use.

3.8.9 Consequently, the EESC considers that the evaluation to be conducted in 2009 must take account of this opinion and integrate more effectively than heretofore the views of the post-production players and users. To do so, 'stakeholder consultations' must remain open and must be better organised, so as to ensure that the automobile sector under consideration comprises not just car manufactures and that the 'impact analyses' can be revamped. The quality of impact assessments needs to be improved. They need to be comprehensive, based on verified information, objective and neutral. It is not appropriate for the Commission department which has drawn up a political opinion on an issue to draw up the corresponding impact assessment as well. The EESC welcomes the proposal to set up an Impact Assessment Board and calls on the Commission to convene those stakeholders all too readily forgotten by the private-sector 'architects' of the automotive system that is to be regulated.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council relating to the roll-over protection structures of wheeled agricultural or forestry tractors (codified version)'

COM(2007) 310 *final* — 2007/0107 (COD)

(2008/C 10/05)

On 2 July 2007 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.

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 438th plenary session of 26 and 27 September 2007 (meeting of 26 September) by 172 votes, with 4 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the coupling device and the reverse of wheeled agricultural or forestry tractors (codified version)'

COM(2007) 319 *final* — 2007/0117 (COD)

(2008/C 10/06)

On 2 July 2007 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.

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 438th plenary session of 26 and 27 September 2007 (meeting of 26 September), by 163 votes to one with five abstentions, to issue an opinion endorsing the proposed text.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on statutory plates and inscriptions for motor vehicles and their trailers, and their location and method of attachment'

COM(2007) 344 final — 2007/0119 (COD)

(2008/C 10/07)

On 13 July 2007 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.

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 438th plenary session of 26 and 27 September 2007 (meeting of 26 September), with 165 votes in favour and 8 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Communication from the Commission — Action Plan for Energy Efficiency: Realising the Potential'

COM(2006) 545 final

(2008/C 10/08)

On 19 October 2006 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 5 September 2007. The rapporteur was Mr Iozia.

At its 438th plenary session, held on 26-27 September 2007 (meeting of 27 September), the European Economic and Social Committee adopted the following opinion by 145 votes to one with three abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee welcomes and supports the measures proposed by the Commission. Energy efficiency is the primary, most important area for action if the goals set out in the Energy Policy for Europe (EPE) are to be achieved, reducing greenhouse gas emissions, which will also combat global warming, reducing dependence on countries outside the EU and safeguarding the competitiveness of the European system, while maintaining affordable energy supply.

1.2 In the light, *inter alia*, of the recent IPCC (Intergovernmental Panel on Climate Change) report, the EESC considers this target to be realistic, although it does feel that all possible endeavours should be made to reduce energy consumption and

make technically achievable savings of more than 20 %. The target must go hand in hand with national action plans, reflecting the different basic financial and technological conditions, so as to ensure fair distribution of targets between Member States commensurate with each Member State's potential. Intermediate goals will need to be set, to be achieved by 2012 and 2016 for instance, so that measures can be stepped up if progress proves too slow.

1.3 The EESC suggests to the Commission that a specific debate be opened on lifestyles and 'quality of life'. The EESC asks the Commission whether it believes that it really will be possible to preserve the same lifestyle for future generations,

with both consumption and emissions increasing. Assuming that this is not possible, the challenge can only be met with resolute, bold, timely action. The problem is also taking on board the need to stave off the rebound effect whereby energy savings, which bring about an immediate increase in the public's purchasing power, are used to finance further consumption.

1.4 The EESC suggests that a further priority action should be added, to introduce district heating and cooling networks, which would avoid 33 % of primary energy being lost in the transformation stage.

1.5 The EESC recommends that priority initiatives be undertaken, such as the creation and development of new types of jobs related to the energy efficiency sector, dissemination of new, integrated energy services, harnessing of R&D, development of solid urban-waste recycling and disposal, which have many possible applications, and promotion of CSR initiatives. It is of primary importance that incentives be provided for energetics to be studied in higher and further education.

1.6 More Commission staff will be required to implement the 75 measures laid down in the Action Plan, monitoring and assessing the effectiveness of the raft of instruments proposed. They will have to monitor the development of these activities. The EESC recommends that a thorough analysis of needs be carried out and that sufficient human and financial resources be assigned.

1.7 The EESC believes that the EU's ability to present a united front on energy efficiency in international relations needs to be strengthened. To this end, it recommends that the Commission assess whether the Treaties need to be amended to allow stronger joint external representation, while still leaving Member States free to decide on the energy mix best suited to their requirements.

1.8 As regards tax policies supporting investment to achieve the objectives of the Action Plan, the EESC recommends that these policies take into account the most vulnerable social groups, the unemployed, pensioners and workers. Any 'energy taxes' or tax incentives must protect these groups.

1.9 The EESC condemns the failure to coordinate transport and energy policies adequately; together with environment and industrial policies, these address technical and industrial needs and concerns which are of necessity complementary. It is justifiably concerned that, thanks to this lack of coordination, the Commission document will be not nearly as effective as it could have been.

1.10 Residential buildings are the main priority area. The potential for savings is very high provided that a number of key points are clearly addressed, such as the need for a sharp cut in tax burdens arising from measures to improve energy efficiency, removal of red tape (licences, permits), and public funding for skills development and better training for operators. Residential buildings awarded an energy-savings certificate should benefit from tax relief or, where the owner has no taxable income, an energy bonus to be used for electricity supply. Preferential charges should be provided when annual consumption is below a certain level. The construction industry and all who work in it need training on what can be done to achieve much higher energy efficiency levels in building and new incentives to deliver these.

1.11 The EESC believes that financing of the necessary investments should be split between the public and private sectors. In the light of the success of a number of schemes already in place in some Member States, special funds could be introduced more widely, using a small part of the profits made by the businesses operating in the sector, whilst avoiding this leading to price increases for end consumers or a fall in the huge investment necessary in the area of production.

1.12 The EESC feels that it is essential to involve civil society and employers', trade-union and environmental organisations in this major challenge. Only if there is a change in collective behaviour at grass-roots level, with a widespread increase in knowledge and awareness, will it be possible to achieve perceptible results, given that the end users are actually the primary consumers of energy. Energy use in residential buildings, private transport and work activities depends directly on individuals. Education in 'responsible energy use' is essential, from kindergarten onwards. The whole of society must commit to this endeavour, which is and must become a universal symbol of new civilisation. Every European must feel that they are doing their bit in this savings race, so that future generations, too, can enjoy natural heritage which is now under severe threat from pollution and related climate change.

1.13 The EESC stresses the successes achieved by the household appliances industry with labelling. Savings of up to 70 % in respect of fridges and 60 % in respect of washing machines show how effective this method is. The EESC calls for the practice of eco-design to be extended to the public buildings, residential housing and public and private transport sectors too, i.e. those sectors with very high energy use (over 70 % of total energy use).

1.14 Losses in the generation, transmission and distribution phases warrant great attention. Over a third of energy — 480 Mtoe — is lost. With high-voltage continuous-current transmission, losses are reduced from over 10 % to 3 % of power every 1 000 km. Moreover, continuous-current transmission also has advantages in terms of people's exposure to electric and magnetic fields and eliminates the ELF electromagnetic wave emissions associated with alternating-current transmission.

1.15 Given the excellent results being achieved in the area of solar thermal power, the EESC asks the Commission and the Council to encourage and support the dissemination of this technology.

1.16 The EESC endorses the Commission's goal of increasing development of CHP plant, although it feels that the adoption of standard regulations for measuring the efficiency of these plant needs to be speeded up. The EESC believes it would be useful to invest in programmes disseminating trigeneration, which could be fuelled by biomass. Microgeneration units (Directive 2004/8/EC — units with an installed capacity below 50 kW) should be encouraged: they should be included in programmes providing incentives for saving energy and reducing impact on the environment, and integrated more easily into national grids as part of distributed generation development. However, support should be provided for businesses to cover the additional costs of changing current transmission grids entailed by the system.

1.17 The gas and electricity markets have not been fully liberalised. Businesses which manage technical monopolies must be separated legally from those operating in a system of free competition.

1.18 The EESC feels that the introduction of electronic meters could be beneficial, providing a system of remote energy distribution management and optimising management of grid load. These meters are recognised as suitable instruments which comply with the energy efficiency requirements laid down by European directives.

1.19 The transport sector has striven hard to reduce energy use and pollutant emissions. However, the constant rise in CO₂ emissions from wider use of private transport in particular, but also from all other forms of transport, calls for a further effort (CO₂ emissions from road transport rose by 26 % between 1990 and 2004). The Commission is carefully studying the impact assessment as regards adopting legislation on procedures for achieving the 120 g CO₂ target. The EESC recommends that all measures necessary to achieve the target be adopted, while

ensuring, in particular, however, that they are sensible and feasible in both technical and production terms.

1.20 The EESC points out that large-scale substitution of fossil fuels for biofuels would entail the risk of placing fuel production in competition with food production as regards allocation of fertile land for different uses. The price of food could then rise to meet the price of energy production, in turn aligned with the price of fossil fuels, effectively placing motorists from the north in competition (!) with the starving poor in the south.

1.21 The EESC fully supports the incentives and financing and tax strategies proposed by the Commission, in particular involving the EIB and the EBRD. It also supports moves to raise the European banking sector's awareness of the need to provide financial support for the implementation of national energy plans. The EESC calls for a dedicated conference to be held on financing energy efficiency, to raise awareness among stakeholders and encourage the European banking sector to participate in a major project to modernise the European economy.

1.22 The EESC supports the creation of the 'Covenant of Mayors' but feels that the goal of bringing together Europe's 20 most important cities is not ambitious enough. The target should be much higher and local expertise more effectively harnessed. One excellent way of connecting local administrators who are responsible for urban transport policy with those responsible for neighbourhood activities which have a direct impact on the public, would be to set up a portal or other means of communication for the exchange of expertise between the EU's towns and cities, where over 80 % of the EU's population live.

1.23 The EESC regrets that the Action Plan overlooks the major role that the social partners and social dialogue have to play at all levels in assessing, promoting and developing energy-savings policies. The EESC calls on the Commission to take steps to encourage the incorporation of environmental sustainability issues into the various levels of existing social dialogue structures, particularly in sectoral dialogue and in European Works Councils. Trade union organisations have a key role to play in improving knowledge and awareness at both European and national levels, helping to disseminate best practices.

1.24 It is important that the issue of energy savings goes hand in hand with good corporate social responsibility practices, particularly in multinationals; more intensive social dialogue is needed to address all energy efficiency-related issues.

(!) L. Brown, www.earthpolicy.org and 2005 FAO Report.

1.25 The international dimension of the issue of increasing energy intensity is firmly stressed by the Commission. The EESC endorses the partnership proposals and the drawing-up of an International Framework Agreement. As regards the planned international conference on energy efficiency, the EESC warns against underestimating the need to involve countries from the ACP, Euromed and ENP programmes. International cooperation is essential if we are to successfully achieve sustainable development, and greater diplomatic endeavours must be made to achieve a new, post-Kyoto, international protocol by 2009 with the conference which is to open this year in Bali.

2. The Commission Communication

2.1 The Commission issued the Communication entitled Action Plan for Energy Efficiency: Realising the Potential on instructions from the Spring 2006 European Council, which endorsed the recommendations made in the Green Paper on A European Strategy for Sustainable, Competitive and Secure Energy.

2.2 The aim of the proposals summarised in the Communication is to achieve energy savings of over 20 % by 2020 in respect of expected use, assuming a given GDP growth rate and with no further interventions. If implemented, the plan would bring energy savings of up to 390 Mtoe per year and CO₂ emissions would be reduced by 780 Mt per year. The proposed measures should ensure a drop in total use of 1 % per year, assuming a GDP growth rate of 2,3 %, which, on the other hand, if there are no new interventions, would entail an increase in use of 0,5 % per year. The investment expenditure should be offset by the annual fuel savings of approximately EUR 100 billion.

2.3 The debate triggered by the Green Paper on Energy Efficiency or Doing More with Less led to proposals for a complex, coherent raft of 75 measures spanning all areas of energy-saving potential. The sectors for priority action are the building sector and the transport sector, which consumes the bulk of oil products, although just as much attention should be given to the savings which can be made in energy production, transmission and transformation and in industry.

2.4 The Commission's plan lays down immediate-term actions and other, longer-term actions to be taken over a span of six years. A further action plan will be necessary to achieve the goal of savings of 20 % by 2020.

2.5 Looking at savings potential, beneficial savings are possible in end-use sectors, including 25 % in the manufacturing

industry, where peripheral equipment such as motors, fans and lighting offer the greatest savings potential; 26 % for transport, reinforcing co-modality and a shift to other modes of transport identified in the White Paper on Transport; and 27 % in the residential sector, thanks to wall and roof insulation, improved lighting and more efficient household appliances; while for commercial buildings an overall improvement in energy management systems could bring savings of up to 30 %.

2.6 Improvements in energy intensity of 1,8 % or 470 Mtoe per year are expected due to structural changes, the effects of previous policies and the introduction of new technologies. This means that the overall reduction in energy intensity, including the 20 % expected from the new measures proposed (1,5 %, i.e. 390 Mtoe, per year for the period 2005-2020) should be 3,3 % per year. Offset against an estimated GDP growth rate of 2,3 % per year, the total energy savings would therefore be 1 % per year.

2.7 The Action Plan will provide benefits in terms of environmental protection, reduced imports of fossil fuel meaning less dependence on third countries, and a more profitable, competitive EU industry thanks, not least, to technological innovation boosted by the processes set in motion, with positive employment effects.

2.8 The plan is structured around 10 urgent, priority actions, and the Commission calls upon Member States, local and regional authorities and all stakeholders to implement further measures to achieve an even better result. Both sectoral and horizontal measures are laid down.

2.9 Measures focus on the need to set dynamic energy performance requirements; to improve the efficiency of new and existing generating capacity and reduce transmission and distribution losses in the energy transformation sector; and to adopt a holistic approach for the transport sector.

2.10 The Strategic Energy Technology Plan, due to be adopted in 2007, will spur further efficiency gains.

2.11 Price signals warrant a great deal of attention, as they help to increase awareness. Moreover, it is essential for proper financing tools to be put in place at all levels, together with tax and other incentive policies for producers and consumers.

2.12 Energy efficiency issues need to be addressed at global level and so international agreements and partnerships are essential.

2.13 Rigorous implementation of existing directives and regulations such as the recent Directive on Energy End-Use Efficiency and Energy Services, the Labelling Directive and its eight implementing Directives, the Energy Performance of Buildings Directive, the Eco-Design Directive and the Energy Star Regulation will help to achieve the expected goals.

2.14 *The priority actions*

2.14.1 **Appliance and equipment labelling and minimum energy performance standards.** Updating of Framework Directive 92/75/EC to include new, dynamic standards for appliances. Special attention will be devoted to standby loss. Fourteen priority product groups will be targeted initially. The aim is to ensure that by 2010 the majority of products which consume a significant part of total energy consumption are covered by the minimum standards laid down by the Eco-Design Directive or performance rating/labelling.

2.14.2 **Building performance requirements and very low energy buildings ('passive houses').** Extending the scope of the Energy Performance of Buildings Directive (currently applicable to areas over 1000 m²) and proposal in 2009 of a new directive laying down EU minimum performance requirements for new and renovated buildings (kWh/m²). Targeted strategies will be developed with the building sector for very low energy buildings.

2.14.3 **Making power generation and distribution more efficient.** The energy transformation sector uses around one-third of all primary energy, with transformation efficiency of about 40 %. New generation capacity should make it possible to achieve 60 %. Losses in the transmission and distribution of electricity — often as high as 10 % — can also be substantially reduced. Minimum performance requirements will be set for new electricity, heating and cooling capacity lower than 20 MW. The implementation of the Directive on the Promotion of Cogeneration (CHP) (2004/8/EC) is expected to bring further progress. Lastly, minimum performance requirements and regulations for district heating will be introduced.

2.14.4 **Achieving fuel efficiency of cars.** To reduce CO₂ emissions, in 2007 the Commission will, if necessary, propose legislation to ensure that the 120 g CO₂/km target is achieved by 2012. The option of using tax instruments in connection with CO₂ emissions is being evaluated. The tyre sector can also make a contribution to energy efficiency (of up to 5 %) with rolling resistance standards and correct tyre pressure. The Commission is going to issue a Green Paper on urban transport to encourage the use of public transport, and introduce other, tougher measures to address the matter, particularly in congested areas.

2.14.5 **Facilitating appropriate financing of energy efficiency investments for small and medium enterprises and**

Energy Service Companies. The Commission will call on the banking sector to offer finance packages aimed at energy savings. Community financing such as Green Investment Funds and the Competitiveness and Innovation Framework Programme will have to support SMEs in particular.

2.14.6 **Spurring energy efficiency in the new Member States.** The Commission will call for more cohesion policy funds to be deployed to implement major energy efficiency projects.

2.14.7 **A coherent use of taxation.** The forthcoming Green Paper on indirect taxation and related review of the Energy Tax Directive will provide for the integration of energy efficiency considerations and environmental aspects. The benefits of using tax credits as incentives for both enterprises and consumers of appliances and equipment will be assessed.

2.14.8 **Raising energy efficiency awareness.** The development of skills, training and information for energy managers in industry and utilities will be fostered. Schools will be provided with teaching materials.

2.14.9 **Energy efficiency in built-up areas.** A 'Covenant of Mayors' will be created by the Commission in 2007, bringing together the mayors of 20 of Europe's largest and most pioneering cities to exchange best practices.

2.14.10 **Foster energy efficiency worldwide.** The aim is to conclude a framework agreement with key trading partner countries and international organisations, on improving energy efficiency in end-use sectors and in energy transformation.

Conclusions

The Commission concludes its Communication by announcing that a mid-term review will take place in 2009 and calling for strong support from the Council, the European Parliament and national, regional and local policy-makers.

3. General comments

3.1 The Commission's Action Plan takes a comprehensive approach to the framework of initiatives necessary to achieve the ambitious target, set in the proposal, of achieving energy savings of 20 % and thus reducing CO₂ emissions by 780 Mt per year by 2020. In the light, *inter alia*, of the recent IPCC (Intergovernmental Panel on Climate Change) report, the EESC considers this target to be realistic, although it does feel that all possible endeavours should be made to reduce energy consumption and make technically achievable savings of more than 20 %.

The target must go hand in hand with national action plans, which, together, should make it possible to achieve the desired result, reflecting the different basic financial and technological conditions so as to ensure a fair distribution of targets between Member States commensurate with their potential.

3.2 Intermediate goals will need to be set, to be achieved by 2012 and 2016, so that measures can be stepped up if progress proves too slow. The 2009 review seems too soon to be able to make a considered judgment. The EESC also recommends that a long-term target option (2040/2050) be provided to ensure ongoing pursuit of energy-saving goals. Within a few years investments in fossil fuel-based energy production, amounting to billions of euro, will be obsolete. This capacity needs to be replaced as quickly and efficiently as possible. It will be a historic challenge, going against the current trends of 120-storey glass skyscrapers lit up day and night and the use of land for transport infrastructure. The authorities must take on board without delay the huge-scale problem of how to replace energy sources.

3.3 The Commission's plan should both reduce energy consumption and preserve the same quality of life. On the basis of this objective, it is planned to reduce energy intensity by 3,3 % by 2020, i.e., taking into account constant GDP growth of 2,3 %, achieving a real reduction in energy use of 1 % per year, which is equivalent to a total drop in use of 14 % between 2005 and 2020. The EESC suggests to the Commission that a specific debate be opened on lifestyles and 'quality of life'. There are expectations of improved quality of life, which many gauge by the number of household appliances, mobile phones or cars per person, while others measure it in terms of CO₂ emissions, particulate matter and fine dust, traffic jams and travel time and the quality of public services. Clearly, purely as regards energy efficiency and savings, a very modest change, in the most environmentally-friendly sense of the term 'lifestyles', will speed up achievement of the goals. The EESC asks the Commission whether it believes that it really will be possible to preserve the same lifestyle for future generations, with both consumption and emissions increasing. The problem is taking on board the need to stop the rebound effect resulting in energy savings being used to finance further consumption. Reorganisation of the economic system therefore needs to be planned in good time, encouraging the creation of appropriate infrastructure and proposing to new generations an appropriate set of principles such as ⁽²⁾:

- reducing use of resources and energy;
- preventing air, water and soil pollution;
- reducing waste at source;
- minimising risk for people and the environment.

⁽²⁾ Factor Four: Doubling Wealth, Halving Resource Use. Ernst. U von Weizsäcker, A.Lovins et al.

3.3.1 Responsibility for energy efficiency needs to be disseminated at all levels, and regional and local action plans set up alongside national plans. Regional authorities must be involved in this major challenge. The scale and importance of the Action Plan are indeed a real challenge. Some aspects of the lifestyle associated with progress in the twentieth century will have to be discarded, and the very concept of good taste will have to include an ethical element of acceptability with regard to energy efficiency, as is already the case for rare animal skins and ivory products; thus, a skyscraper with glass sides or an SUV will have to be seen as unacceptable. This far-reaching change in the prevalent value system calls for cooperation from the private sector too, which should anticipate the necessary shift to promoting energy efficiency so as to have the edge on international markets, using these new principles in advertising as well rather than sending out conflicting messages that extol weight and unnecessary power as status symbols, as happens all too often.

3.4 The Action Plan identifies ten priority actions, in four priority areas: energy conversion, transmission and distribution; buildings for residential, commercial and professional use; transport; and industrial and agricultural uses. These areas account for over 90 % of energy use. Other measures will be taken in the field of international agreements, to form partnerships on drawing up standards; and in the field of information, training and communication, regarding the need to develop synergies and ownership among all stakeholders to the greatest possible degree.

3.5 The EESC suggests that a further priority action should be added, to introduce measures to reduce fossil fuels for heating and cooling, and notes that the proposal does not analyse the possibility of introducing district heating and cooling networks, which would avoid 33 % of primary energy being lost in the transformation stage. This potential could be as much as doubled if associated with the use of renewable energies or waste disposal, leading to savings of up to 50,7 Mtoe per year. The EESC suggests that, alongside the priority actions, new, tangible priority initiatives should be undertaken, facilitating creation and development of new types of jobs related to the energy efficiency sector, dissemination of new, integrated energy services, promotion of new, energy-saving products which cause less pollution, fostering of R&D at both national and European levels, with a substantial increase in the budgets allocated, and harnessing of all technological resources already available. Further areas for action could be development of solid urban-waste recycling and disposal, which have many possible applications, and promotion of CSR initiatives and voluntary agreements in businesses, actively involving workers and using EMAS procedures.

3.6 The Commission proposal announces many legislative measures, such as new directives and regulations, and the revision of existing instruments, to make standards more stringent (announcement of 7 February 2007 on the CO₂ emissions ceiling in the automotive industry). The EESC notes the Commission's proposals and the decisions of the Spring Council last March, but points out that, following the waves of enlargement in May 2004 and January 2007, a huge number of used vehicles have been brought into the countries concerned. The influx is ongoing and has even intensified. The EESC feels that it will be many years before full turnover of the vehicle fleet is achieved in these Member States, and that it is inconceivable that this should be brought about by a binding standard relating to the existing fleet.

3.7 The document does not consider the need to strengthen Community responsibilities and powers in order to ensure that the targets are achieved and to present a unified front to international partners. The EESC endorses the provisions of the European Council's document and the adoption of the EPE (Energy Policy for Europe), which sees energy policy as one of the priorities for the EU's future and strengthens EU foreign policy and cooperation. The legal constraints of the Treaties in force, which reserve decision-making on energy policy for Member States, are to some extent offset by genuine strengthening powers of representation in respect of third countries, although Article 174(4) provides for shared competence and a specific role in cooperation with international organisations. Clearly, the better the coordination of policies, the greater the EU's negotiating capacity. The EESC calls for the European Parliament, the Council and the Commission to consider, where necessary, the possibility of amending the Treaties to give the Community more powers in respect of external partners, providing unified representation.

3.8 The Energy End-Use Efficiency and Energy Services Directive (2006/32/EC) mentions a strategy based on wider application of white certificates, and national action plans which will have to be evaluated by the Commission. The Action Plan itself will involve a considerable increase in workload for the Commission, in terms of both legislative and regulatory initiatives and monitoring. The EESC believes that the experience has been encouraging thus far, although there have been a number of hitches in getting the white certificates market off the ground, due, *inter alia*, to disparities between Member States' regulations. For activities related to the achievement of the directive's goals and, more generally, to enable the Commission to work on the issue effectively, more Commission staff need to be assigned to these tasks. The Commission estimates a need for 20 staff. The EESC recommends making a thorough estimate of the resources needed and hopes that they will be provided.

3.9 The implementation of the proposed measures will bring savings leading to a drop in VAT revenue which could affect the

Community budget, partly offset by the rise in new activities related to energy efficiency policy. The EESC calls on the Commission to analyse this scenario as it is not taken into account in the Impact Assessment Report. The EESC believes that the EU's current resources are wholly insufficient to cover all the Community programmes, which are constantly subject to cuts in funding for extremely beneficial projects, including those aimed at saving energy. If an 'energy tax' is introduced, it must be part of a taxation policy which takes into account vulnerable social groups and has no negative impact on current levels of social security and public services.

3.10 The Action Plan is affected by difficulties in achieving the goals set in the White Paper on transport. In its Mid-term review, the Commission notes that the obstacles and resistance encountered thus far have hampered the reinforcement of rail and sea transport, which would bring considerable energy savings. This reinforcement must be treated as an absolute priority, considering the time needed both to build infrastructure and to change people's habits. There needs to be more focus on improving transport for workers, who are currently heavily penalised by a policy geared more to the need for immediate financial gain than to meeting public transport needs, e.g. prioritising investment in high-speed links. Facilitating people's journeys to work will not only reduce energy use but considerably improve their quality of life as well. The public investment necessary to reinforce public transport systems inevitably came up, *inter alia*, against a difficult five-year economic crisis which affected the public finances of many Member States. The failure to put in place essential infrastructure, the cut in Community funding for strategic plans such as TEN corridors (down from EUR 20 billion to EUR 7,5 billion), and the strategies of the substantial European automotive industry, helped to render the plan obsolete. The EESC is about to adopt a major opinion on transport in urban areas, which highlights a steady decline in the use of public transport networks and suggests solutions to reduce the number of private vehicles on the road⁽³⁾. The EESC condemns the failure to coordinate transport and energy policies adequately; together with environment and industrial policies, these address technical and industrial needs and concerns which are of necessity complementary. It is justifiably concerned that, thanks to this lack of coordination, the Commission document will be not nearly as effective as it could have been

3.11 These problems affect the Commission's legislative activity, communications and recommendations. The same difficulties are encountered in Brussels as at national level, and the situation is exacerbated by the fact that national policies should be coordinated at EU level (rather than the other way round).

⁽³⁾ TEN/276 — Transport in urban and metropolitan areas; rapporteur: Mr Ribbe.

3.12 A European energy policy must be sustainable by all social groups, so that all are treated equally as regards access to the services provided by energy suppliers, when purchasing more efficient household appliances and when renting flats. It should have a positive impact on employment, and this is certainly possible in the immediate term in the housing sector. For all types of measures designed to increase energy efficiency, concessions should aim to highlight the benefits for the user, so that the time necessary to offset costs is reasonably short and easy to calculate.

3.13 Funding must not come solely from public finances: a fund could be created using a small proportion of the huge profits reaped by the energy and electricity sectors, as, moreover, has already been piloted in a number of Member States. However, this must not lead to higher charges for end users and less strategic investment from businesses. The huge investments that will be needed in the production industry to cope with growing demand and increasingly heavy costs will, of course, have to be taken into account, while for other fossil resources prices are linked to oil price trends but research costs are much lower, as they are for the distribution industries. Therefore, contributions to the fund should take account of the significant differences in research costs that have to be borne. Differentiation between Member States could be provided for according to the different legislation in force in terms of requirements for energy industries to invest in research on energy efficiency and price control. This solution could enable small property-owners without financial resources to increase the energy efficiency of their homes, setting in motion a virtuous circle which would create jobs.

3.14 Any tax relief, to be used with extreme caution, should be implemented with due regard for the lowest income-groups, who, as they do not pay tax, would be excluded from measures intended to facilitate an energy efficiency policy. Efficiency bonuses could be provided for those who are not subject to direct taxation because their incomes are too low.

3.15 The EESC feels that it is essential for awareness-raising campaigns to be developed at European, national, local and regional level, with one theme agreed on at a time (e.g. during one month in Europe there could be focus on light bulbs, another month on public transport development, another month on environmentally-friendly, efficient heating/cooling etc.). Campaigns could be launched to disseminate ideas and suggestions, constantly making more of the public aware of this vital need. Only by mass awareness-raising will it be possible to achieve tangible results. The democratic debate, involvement of all the representatives of the various stakeholders and the role of governments will be essential for effective management of the actions planned. Member States with more technical consultants in the area of energy efficiency should oversee training for consultants in the other EU Member States, to ensure uniform dissemination of the knowledge necessary for the success of the Action Plan. In the Member States, the study of energetics in higher and further education should be encouraged, promoting

interregional cooperation. The Commission could play an effective coordination role.

3.16 Great care must be taken to strike the essential balance between the need to provide for all possible improvements and the economic and production systems' ability to deal with very sudden change. There is a real danger that if energy-intensive industries are faced with costs that are too high, they will relocate to areas with fewer 'constraints'. The pace of change must be strictly linked to potential to adapt and absorb the costs. Measures should be developed to enable long-term contracts to be signed guaranteeing long-term, stable energy prices in exchange for commitments to invest in innovation, technology or infrastructure in the fields of production, transport and distribution. The investments should be assessed from the point of view of energy efficiency. The use of voluntary agreements should be seen as positive, but requires a genuine, rapid monitoring capacity on the part of regional bodies and the intention to replace them with binding undertakings if they prove ineffective.

3.17 The measures identified must always take into account the state of the market, which is becoming increasingly globalised. The potential increase in energy prices could cause huge problems for high energy-use sectors such as the aluminium or cement industries. The Lisbon goals must always be borne in mind and the competitiveness of the European system consistently guaranteed; it must be able to rely on energy prices which are in line with the global economic system. Moreover, Europe must not tolerate the constant threats of relocation which some sectors and businesses continue to issue. Businesses which relocate purely to increase their share of profits should be penalised as, in addition to the — sometimes extreme — social problems which they inevitably cause, which also impact on the community, they distort competition in the internal market by placing goods on the market which have been produced in other, more tolerant countries which do not impose the same constraints.

4. Specific comments

4.1 The EESC will not discuss each individual action proposed (about 75), for obvious reasons, but it feels it should comment on the most important measures and proposals in the document and the Annexes. A hearing has been held at the EESC and further, useful recommendations made by the participants, which have enhanced the EESC's knowledge of the matter and contributed substantially to its work.

4.2 **Firstly**, the measures adopted thus far on dynamic energy performance requirements for energy-using products, buildings and energy services have yielded successful results. Producers and consumers have shown great interest in expanding supply of and demand for new, increasingly efficient products and have proved very willing to do so. The immediate confirmation of the achievable savings and increasingly widespread education and awareness-raising on environmental issues

suggest that these policies are practicable in the immediate term and can achieve the hoped-for results. Eco-design has been well received by the public, which is paying increasing attention to the features of the products on offer. The tendency which some producers are already showing to emphasise energy efficiency and give consumers detailed instructions on energy-efficient use of their products must be fostered. The US model also deserves attention, as it has allocated specific incentives for businesses which use eco-design with very encouraging results. The EESC believes that supporting the network of businesses by awarding tax credits to businesses which develop and produce products which are very energy-efficient will have successful results, provided that this system goes hand in hand with effective, substantive market and product surveillance similar to that carried out in the machinery sector. This surveillance activity must be seen as a guarantee that the investments of manufacturers that act ethically will not come to nothing and it must be commended to the regional authorities responsible for its implementation.

4.2.1 Labelling is a good practice, which should be encouraged and adopted for as many products as possible and extended to the automotive and construction sectors without delay. The EESC supports the proposal and urges the Commission to make the 14 products mentioned subject to minimum energy performance standards, paying particular attention to the specific market segments, to avoid a new regulatory system distorting competition. Other end-use products which should be made subject to minimum standards must also be identified. The priority given to reducing energy-use in 'stand-by' and 'sleep' modes is endorsed by the EESC, which sees this action as very important as it could help to reduce consumption in these modes up to 70 % by phasing out appliances in use. The EESC feels that the Energy Star agreement should make registration mandatory in the EU (as it is in the US) for open tenders for the purchase of office equipment and 'expects the Commission itself to set an example' ⁽⁴⁾. An agreement of this kind should also be negotiated with other major producers from East Asia, which now account for a considerable chunk of the electronic appliances market.

4.2.2 In the field of household appliances, because of the lack of rapid procedures for verifying the accuracy of labels and punishing abuse, there is a danger that well-intentioned enterprises which invest in energy efficiency will be penalised and non-compliant products will be allowed to enter the market. The replacement of older household appliances (an estimated 200 million appliances over 10 years old are in use in Europe) should be encouraged, bringing greater savings; non-energy efficient, obsolete appliances must be prevented from entering the second-hand market in developing countries as well. It should

also be ensured that initiatives funding the purchase of household appliances be reserved for energy-efficient products.

4.2.2.1 It should be stressed in this connection that, while refusing to comply with the voluntary self-regulation code, the electrical appliances industry is declaring the need for binding measures to regulate the market. The lack of penalties for unscrupulous producers and importers who classify products as class A which do not comply with the energy savings measures laid down has, in practice, facilitated circulation on the market of 'bogus' low-consumption appliances. The shortcomings condemned by European businesses, which are calling for 'rules', are still, however, cause for thought regarding the effectiveness of voluntary agreements.

4.2.3 Considerable savings are achievable in the building sector, and even today alternative materials, construction methods and forms of heating are available, such as condensing boilers which achieve fuel savings of between 6 % and 11 % by reusing the latent heat which would normally be dispersed. Energy use on air conditioning could be reduced by fitting sun-blocks on the outside of buildings, as interior sun-blocks provide a shield against light but preserve much of the heat energy. Passive houses, for instance, are houses which use no more than 15 kWh/m² per year (winter-summer) for basic consumption: cooling, heating. The total consumption (sufficiency) and the basic consumption limit should also be indicated, calculated as a whole (lighting, appliances — efficiency + sufficiency), including drying washing (drying one kg of washing can use three to four times the energy needed for one wash). Given that energy consumption could successfully be reduced from an average of 180 kWh/m² per year to around 15 kWh/m² per year, savings of up to 90 % could be made (22 houses, passive house village Wiesbaden 1997, average consumption 13,4 kWh/m² per year; 32 passive houses, Kronsberg 1998, average consumption 14,9 kWh/m² per year). Launch of a European market in this kind of product must be encouraged, to make these technologies widely available at affordable prices.

4.2.4 The EESC points out the need for public investment in energy efficiency in social and public buildings, together with the use of renewable sources, in particular in the new Member States where there is potential for substantial results to be achieved in energy saving. In addition to programmes to harmonise legislation and develop training for specialists, the EESC calls for part of the Structural Funds to be earmarked for this purpose. European financial institutions should also be urged to encourage investment in modernising energy efficiency in buildings.

⁽⁴⁾ Opinion on Energy-efficiency labelling for office equipment; rapporteur: Mr Voles.

4.2.4.1 Proper passive houses have to have certain construction characteristics (optimum insulation in walls and floors, pre-ventilation ducts for incoming fresh air underneath the house), which make it difficult and costly to fully adapt existing buildings to this standard. This means that it might be best to focus efforts on ensuring that as many new buildings as possible, especially public buildings — for which binding rules should be phased in — meet the passive house standard. In addition to this, it is extremely important that the energy-efficient solutions of passive houses are adopted to a considerable extent when repair or maintenance work is carried out on private buildings, which could also be supported by revolving funds with very low interest rates. It must be remembered that the majority of buildings that will be in use in 2020 are already in place now. As regards rental property, the issue must be addressed of how to make large-scale investment in energy savings in residential buildings financially viable for owners, given that it is the tenants who usually derive the direct benefits.

4.2.4.2 In the Impact Assessment Report SEC(2006) 1175, the Commission expects that savings of 140 Mtoe could be made by amending the Energy Performance of Buildings Directive (2002/91/EC), lowering the current threshold from 1 000 m² for minimum requirements (strengthening them for public buildings) and by applying the white certificates scheme more widely. The EESC is concerned that this target may be too ambitious for the short term ⁽⁵⁾. The EESC believes that Member States should adopt uniform instruments to measure the impact of the regulations (e.g. quality of heat insulation) and that it should be mandatory for them to adopt proper monitoring measures. (See the discrepancies between, for example, France, where there is little monitoring, and Flanders, where monitoring is very stringent.) The Council and Parliament should assess whether there are legal bases for authorising the Commission to issue a regulation on the subject instead of the new directive, simply repealing Directive 2002/91 after 2009.

4.2.4.3 A recently-published thesis ⁽⁶⁾ points out that:

1. When upgrading the energy efficiency of existing buildings — whether for residential, commercial or educational purposes — it is not always possible to reach the target of low energy-use buildings and passive houses.
2. To undertake this kind of operation an investment is needed which could weigh heavily on an individual: the idea of even the most potentially remunerative investment is likely to be discarded when the financial means are not available.

⁽⁵⁾ Article 15(2) of the Directive in question provides for a standstill period of three years before it has to be fully applied, in cases where the Member State can prove that there is a lack of qualified and accredited experts. This gives Member States the option not only of postponing the introduction of white certificates, but also of deferring checks on boilers and air conditioning plant. It is thus unlikely that the Council will be willing to reopen the matter before 2009 (and the Commission itself confirms this); before the measures which are expected to bring the hoped-for results can become effective, more years will have to pass for a new directive to be adopted on the matter.

⁽⁶⁾ 'Comparison between assessment models for estimating the energy and macroeconomic impact of the Passivhaus standard, Giulio Scapin — Padua University — [2005-06]', 30.05.2007, Tesi on line.it.

3. To achieve the levels of energy use of passive houses through better insulation, specific technical skills are needed which are certainly not unobtainable. These principles should be applied not only at the design stage but also, most importantly, in the operating stage.

4. The applications for which energy is used meet users' primary needs, and they are clearly not flexible: even sharp variations in energy prices do not lead to equally sharp behaviour changes in the short term. Limiting energy use or looking for alternative energy sources are ex-post reactions as people adjust to a new, long-term balance, but such steps only bring a slight improvement in the elasticity of the energy demand curve.'

4.2.4.4 The picture that emerges from this analysis is that substantially (at least over 16 cm) thick insulation will always bring a return on investment made to achieve the passive house target, especially *vis-à-vis* conventional buildings. From an operational point of view, insulation of the whole of the building envelope is more important than other measures, while an aggregate analysis of measures allows the Net Present Value (NPV) of the investment to be optimised.

4.2.5 As regards white certificates, the — albeit limited — positive experience of countries which have introduced them has been tempered by delays in industrial innovation in some EU countries. Indeed, an effective white certificates scheme requires realistic targets in terms of technical and economic potential, a wide range of options for achieving targets (sectors, projects, actors, costs), guaranteed proper market functioning (structure of demand and supply, surrounding conditions), clear, transparent, non-discriminatory rules with a streamlining effect (market access conditions, market rules) and appropriate penalties. Are these prerequisites in place in the potential European white certificates market? The necessary caution should therefore be exercised in any potential dissemination of this practice.

4.3 Losses in the transformation phase are equivalent to total basic energy consumption in residential buildings and industry, 33 %, i.e. over 580 Mtoe. The EESC believes that this should clearly be a key area of action. Losses during long-distance transmission are a major factor. An area which certainly warrants development is modern high-voltage, continuous-current transmission lines, where only 3 % of power can be lost per every 1 000 kilometres of grid. As well as bringing considerable savings, this technology eliminates the electromagnetic

effects of alternating-current transmission such as ELF electromagnetic wave emissions associated with alternating-current transmission. Current technology already makes this kind of transmission economically viable over long distances (it has been in use for decades in Sweden and the United States and is being developed throughout the world), while for short distances the cost of low-voltage alternating-current conversion systems for local use, which is still high, must be taken into account. Specific research projects should encourage endeavours to reduce these costs ⁽⁷⁾.

4.3.1 Another area for action is support for solar thermal power technology, which could be introduced in partnership with the Euromed countries, whose large areas of desert are constantly exposed to the sun's rays. A recent report commissioned by the Minister for the Environment of the Federal Republic of Germany stresses the key role of this technology developed by Italian Nobel Prizewinner, Rubbia, which is now being piloted in Granada. Enel, in cooperation with Enea, has recently launched a project which introduces, for the first time anywhere in the world, integration of a combined gas cycle and a solar thermal power plant. Using innovative, unique technology developed by Enea, *Archimede* (Archimedes) produces a constant flow of solar electricity. However, the project also boasts other elements which are not used anywhere else in the world, harnessing five new patents, such as molten liquids — liquids which when heated give off the heat from which energy is produced. Those used hitherto could be heated to up to 300 degrees. Those used by the *Archimede* project can be heated to up to 550 degrees, the same temperature as vapour fossil fuel, allowing integration with conventional power stations and therefore helping to secure the stability of the energy system.

4.3.2 The EESC recommends that the European institutions make substantial endeavours in these areas, adopting specific measures to support development of thermal solar power.

4.3.3 Cogeneration of heat and electricity, whether using residual heat from electricity production for heating or using residual heat (e.g. in furnaces) to produce electricity, could yield a huge increase in fuel efficiency, from around 35 % to 70 %. The additional costs for grid managers arising from distributed generation and active distribution should be borne in mind, and the necessary investments encouraged, reflecting the different basic conditions in the different Member States as well. The

⁽⁷⁾ It should also be borne in mind that many of the transformers in use contain what is considered to be one of the most harmful substances for man: PCB (polychlorinated biphenyl), and replacement and decontamination campaigns are under way. (It has been calculated that, in Italy alone, about 200 000 out of 600 000 transformers use or have been contaminated by PCB because of its excellent heat insulation qualities, as at the time of their large-scale use its extremely harmful chemical and physical properties in the event of fire were not known.) They should therefore be replaced.

EESC supports the Commission's desire to develop high-efficiency CHP plant, even though introduction of a regulatory framework for calculation methods has been postponed until 2010 and Guarantees of Origin are issued whose compliance with the minimum requirements is not always verifiable. The EESC wonders whether it might be possible to reduce the time-frames for harmonising calculation methods, to allow an internal market in CHP plant to develop: the differing legislation in different countries is currently blocking this. Each Member State has the right to choose its own calculation methods to assess the energy efficiency of plant and bring them into line with the Community system, which should tally with the provisions of the directive. However, in practice this does not happen and the results for plant vary greatly when subjected to the calculation methods of different Member States. Harmonisation is an effective tool for combating fraud as well. The EU's efforts must be stepped up, given that the results of the first check-up on 21 February are not in line with strategic objectives, as can be seen from the assessment reports submitted by Member States on progress made in developing CHP with a view to increasing the proportion of electricity produced in this way.

4.3.4 The EESC calls on the Commission and the Council to give more support to trigeneration programmes, which use residual heat for cooling as well. The COPs (coefficients of performance), i.e. the *ratio* between output cooling energy and input heat energy, for these plants are particularly noteworthy. Compared with a COP of 2,0 for conventional units, these plant achieve a COP of 0,7-1,3 depending on the heat used ⁽⁸⁾. Waste wood regenerators are already on the market: they can use fruit (stones, peel) and agricultural (olive residues, sweetcorn cobs) processing products, sawmill and other wood-processing waste, dead branches, bark, coffee husks, palm waste, industrial waste and discarded packaging. 100 kg of this waste produces 70 kW of continuous electrical power (80 peak) and 130 kW of heat and cooling. A tonne of waste wood costing EUR 70 replaces 160 litres of diesel costing EUR 175.

4.3.5 The Committee advocates undertaking a campaign and other measures to limit the use of product packaging, which should be recyclable. The energy consumed in the production and subsequent disposal of packaging is excessive, given that the bulk of such packaging is non-biodegradable and a serious cause of pollution.

⁽⁸⁾ From Wikipedia: A specific area of cogeneration is **trigeneration**, which, in addition to producing electricity, uses the waste heat energy from transformation to produce cooling energy, or chilled water for air conditioning or industrial processes, as well. Heat energy is transformed into cooling energy by means of an absorption refrigeration cycle, which works by changing the state of the coolant and using an absorbent.

4.4 Functioning of the market

4.4.1 At present, the energy market is not harnessing all its efficiency potential and there is a need for greater transparency on the energy efficiency of power stations and on transmission network losses. The gas and electricity markets have not been fully liberalised. In some cases, lack of transparency on price setting and on the liberalisation process itself is a barrier to a genuine energy efficiency policy. It would be appropriate in this connection to strengthen the concept of legal separation of businesses managing technical monopolies from those operating under a system of free competition, as provided for by the directives on the liberalisation of the electricity and gas markets respectively (Directive 2003/54/EC and Directive 2003/55/EC), together with the more stringent requirement of separation of ownership.

4.4.2 The sector's pricing policy should foster energy efficiency and savings, particularly as regards fossil fuels, and encourage renewables. Particular consideration should be given to vulnerable consumer groups, following the principle that they should be guaranteed the necessary energy supply for basic consumption, while continuing to make it financially beneficial for them to save energy: for example, 'social' rates could be ensured for the least well-off but only up to a given threshold of consumption, or such households could be granted financial support.

4.4.3 A useful scheme to stimulate energy savings is the introduction of electronic meters, which provide a system of remote energy distribution management and optimise management of grid load. According to Enel (the largest Italian electricity provider), which supplied its 30 million clients with electronic meters free of charge, systematic organisation of energy use, brought about not least by a targeted pricing policy, leads to more effective exploitation of production, particularly at off-peak times. Electronic meters help to make the end user aware of their consumption, encouraging more intelligent use of resources. They have been recognised as an energy-efficiency mechanism under the Energy Services and Security of Supply Directives.

4.4.4 The distributed generation model (i.e. where there are many different producers, some of them very small) is problematic in a number of respects in terms of procedures for operating medium- and low-voltage networks, which are designed solely for unidirectional flow. Huge investments are necessary to bring networks into line with new production methods. Of course, local production entails fewer losses during transmission but the investment necessary is very high and there is great reluctance locally to accept even small power stations.

4.5 The transport sector has striven hard to reduce energy use and pollutant emissions, but it is right to call for a further

effort, given that it is the fastest-growing sector in terms of energy use and a source of greenhouse gases: CO₂ emissions from road transport rose by 26 % between 1990 and 2004. The fact that European industry relies on third countries for transport fuel (98 % of which is fossil fuel) increases its responsibility to make a key contribution to energy efficiency and the reduction of emissions and gas and oil product imports.

4.5.1 The Commission has sent a strong signal to the market with its recent decision to draw up legislation on the 120 g CO₂ target, labelling for road tyres and specific maximum rolling resistance limits, and the changes to requirements governing fuels, petrol blends with high levels of ethanol, biofuels, low-carbon fuel and diesel with ultra-low sulphur content. Between 2011 and 2020, fuel suppliers in the EU will have to achieve a 10 % reduction in the greenhouse gas emissions their fuels produce when they are refined, transported and used. The reduction will save 500 million tonnes of carbon dioxide emissions by 2020. The reason for this decision was the fact that emissions fell from 186 g CO₂ km to 163 g CO₂ km, i.e. by only 12,4 %, between 1995 and 2004, with a sharp increase in average power, with regard to which it is more difficult to reduce harmful emissions. This incongruity suggests that it would be beneficial to increase taxes on non-energy efficient luxury vehicles, as some Member States have done. The Commission estimates that CO₂ emissions will be reduced by a further 400 million tonnes by 2020.

ACEA, the European Automobile Manufacturers' Association, has called for the start of the process to be put back from 2012 to at least 2015, and for all players to be involved, as recommended by the Cars 21 High Level Group. European manufacturers feel that, if they do not go hand in hand with long-term planning to replace models, the measures in question will entail unsustainable costs for European enterprise.

4.5.2 The EESC points out that large-scale substitution of fossil fuels for biofuels would entail the risk of placing fuel production in competition with food production as regards allocation of fertile land for different uses. The price of food could then rise to meet the price of energy production, in turn aligned with the price of fossil fuels, effectively placing motorists from the north in competition ⁽⁹⁾ with the starving poor in the south. A genuine ethical problem is raised by the use as fuel in countries in the northern hemisphere of agricultural resources which could save millions of lives in the developing south. Iowa's entire maize crop could be used for ethanol production. If we consider that a 25-gallon SUV tank holds 94,5 litres, which is equivalent to one person's food ration for a year, the issue becomes tangible and calls for some sort of response. The EESC is about to issue an opinion on this specific subject ⁽¹⁰⁾.

⁽⁹⁾ L. Brown, www.earthpolicy.org, and 2005 FAO report.

⁽¹⁰⁾ TEN 286 — Progress in the use of biofuels; rapporteur: Mr Iozia.

4.5.3 The EESC notes that the Commission is both encouraging voluntary agreements and announcing mandatory measures. The Commission itself acknowledges the key role of self-regulation in that targets can be achieved more quickly and cost-effectively than under legal requirements. Voluntary agreements can have advantages over regulation. They can be implemented quickly and cost-effectively and thus bring rapid progress. They are flexible and can be brought into line with technological options and market trends. The EESC asks the Commission to look carefully at the reasons for poor progress in containing CO₂ emissions in the European automotive industry, which is in the lead as regards research and development investment. The EESC agrees with the Commission's statement that binding standards do not always allow research potential to be fully developed and may hamper progress in the solutions to be adopted.

4.5.4 The construction industry has a crucial part to play in implementing energy efficiency both in new buildings and in adaptation of existing buildings. But in several countries the industry has been slow to adapt to improved methods and has been resistant to the imposition of higher standards. A major effort needs to be made to re-educate all concerned in the industry of the need and feasibility of higher standards, and to persuade them to be constantly in the lead in pioneering better efficiency standards instead of resisting change. Designers, managers and craftspeople of all the different trades in the construction professions need new training on what can be achieved on energy efficiency and new incentives to achieve these levels.

4.6 The EESC fully supports the incentives and financing and tax strategies proposed by the Commission, in particular involving the EIB and the EBRD. It also supports moves to raise the European banking sector's awareness of the need to provide financial support for the implementation of national energy plans. The removal of the remaining legal barriers for companies providing energy-efficiency solutions (ESCOs) is particularly important to this end.

4.6.1 The EESC calls for a dedicated conference to be held on financing energy efficiency, to raise awareness among stakeholders and encourage the European banking sector to participate in a major project to modernise the European economy. Banks could take part in a sort of millennium challenge, with awards for those which had adopted the best solutions to fund energy efficiency.

4.7 Campaigns to raise awareness among the general public are essential, in the EESC's view; they could be developed by national and local authorities, manufacturers and energy suppliers. The role of regional authorities as 'impartial' channels conveying information to the public must be stressed. Wide

publicity should be given to the successful results of energy savings initiatives. Advertising should promote energy efficiency and respect for the environment as the genuinely defining qualities of products, to encourage a more appropriate view of what constitutes status symbols, which are currently all too often explicitly associated with products which are not energy efficient when actually used. The EESC supports the creation of the 'Covenant of Mayors' but feels that the goal of bringing together Europe's 20 most important cities is too unambitious. The target should be much higher and local expertise harnessed. One excellent way of connecting local administrators, who are responsible for key policy in the field of urban transport, for example, and in all neighbourhood activities which have a direct impact on the public, would be to set up a portal for the exchange of expertise between the EU's towns and cities, where over 80 % of the EU's population live. The awarding of 'energy-efficient municipality certificates' (the first certificate was awarded to a small Italian municipality: Varese Ligure) is without a doubt a major incentive to local authorities to adopt energy-efficiency policies. The Commission could also launch a 'European energy efficiency competition' between Europe's schools, with prizes for those whose solutions most effectively combine savings with quality.

4.7.1 The EESC regrets that the Action Plan overlooks the major role that the social partners and social dialogue have to play at all important levels in assessing, promoting and developing energy-savings policies. The EESC calls on the Commission to take steps to encourage the incorporation of environmental sustainability issues into the various levels of existing social dialogue structures, particularly in sectoral dialogue and in European Works Councils. A job-related approach, improving the quality of information provided to workers and worker consultation and participation, could yield great benefits in terms of energy efficiency, considering the processes and new technologies in industry, worker mobility issues, recycling and home-working, to mention only the most important: it is therefore absolutely essential for workers' representatives to be involved in energy efficiency strategies. One potential area for the social partners to discuss is collective agreements which, on the basis of genuine partnerships, distribute to workers part of the savings made in a business. Trade union organisations have a key role to play in improving knowledge and awareness at both European and national levels, helping to disseminate best practices.

4.7.2 It is important that the issue of energy savings goes hand in hand with good corporate social responsibility practices, particularly in multinationals, where more intensive social dialogue is needed to address all energy efficiency-related matters; these will help to bring progress in defining a European strategy for moderate carbon use, taking into account all the

health hazards, such as fine particles, which are now creating an emergency situation in many European towns. The dissemination of best practices, such as not using carbon in printers, and other initiatives, helps to raise awareness and create positive attitudes towards sustainable policies.

4.8 The international dimension of the issue of increasing energy intensity is firmly stressed by the Commission. The EESC endorses the partnership proposals and the drawing-up of an International Framework Agreement. As regards the planned international conference on energy efficiency, the EESC warns against underestimating the need to involve countries from the

ACP, Euromed and ENP programmes. International cooperation is essential if we are to successfully achieve sustainable development, and greater diplomatic endeavours must be made to achieve a new, post-Kyoto international protocol by 2009 with the conference which is to open this year in Bali.

4.9 European industry, which is developing major energy saving technologies, can, through industrial cooperation, give other countries considerable assistance in improving the quality of their electricity production, energy consumption and resulting greenhouse gas emissions, thereby helping to reduce overall consumption.

Brussels, 27 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on airport charges'

COM(2006) 820 final — 2007/0013 (COD)

(2008/C 10/09)

On 1 March 2007, the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 September 2007. The rapporteur was **Mr McDonogh**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September 2007), the European Economic and Social Committee adopted the following opinion by 143 votes to 2 with 2 abstentions.

1. Recommendations

1.1 The Commission should lay down design criteria for various types of airport to ensure that they are practical, functional and can be commercially justified where costs are recovered through airport charges.

1.2 The State should pay for security at airports. This is a national security problem.

1.3 The construction and operation of regional airports should be encouraged. They play a vital role in the economy of the regions. They also relieve congestion at major airports and often lend valuable assistance to Search and Rescue operations.

1.4 Airports have to be considered as a basic public utility that do not necessarily make money and may need financial

assistance according to circumstances. Aid is quite common in public transport.

1.5 The Commission should lay down design criteria for airport processors (e.g. Check In, Passenger Search) and then consider the impact of regulation change on these key processor dynamics and the associated impact on resource levels and costs to operators to continue to achieve Service Level Agreements and in particular airline turn around time criteria.

1.6 The Commission should recognise the scale of charges required to achieve compliance at the smallest airport where the passenger volume may not support the economics of the business.

1.7 Airports are required to maintain compliance with specific regulatory requirements as a minimum. Pressures from low-cost airlines, who ask for a lower service level and for accordingly lower airport charges, can not always be accommodated given the costs associated with regulatory compliance. Therefore airports should be entitled to reflect and recover airport costs in their charging structure regardless of the level of service required by the airline.

1.8 Large state capital subventions to airports may distort competition.

1.9 Proper facilities should be provided for cargo.

1.10 Biometric security should be introduced to enable frequent travellers to be processed quickly. If necessary a charge could be made for this.

1.11 In line with current European legislation on this area, airports must ensure that available facilities and services are suited to the particular needs of disabled and infirm passengers.

2. Introduction

2.1 The main task and commercial activity of airports is to ensure the handling of aircraft, from landing to take-off, and of passengers and cargo, so as to enable air carriers to provide their air transport services. For this purpose, airports offer a number of facilities and services related to the operation of aircraft and the processing of passengers and cargo, the cost of which they generally recover through airport charges.

2.2 It is necessary to establish a common framework regulating the essential features of airport charges and the way they are set, as in the absence of such framework, basic requirements in the relationship between airport managing bodies and airport service providers (i.e. Airlines, Handling Agents and other service providers) may not be respected.

2.3 This Directive should apply to airports located in the Community territory that are above the size of one million passengers per year.

2.4 Airport charges should be non-discriminatory. This applies to services and suppliers.

2.5 An independent regulatory authority should be established in every Member State so as to ensure the impartiality of its decisions and the proper and effective application of this Directive. It is vital for airport users to obtain from the airport managing body, on a regular and transparent basis, information on how and on what basis the airport charges are calculated.

2.6 Airports should inform airport service providers about major infrastructure projects as these have significant impact on the level of airport charges.

2.7 Due to the emergence of air carriers operating air services at low costs, airports served by these carriers should be enabled to apply charges corresponding to the infrastructure and/or the level of service provided as air carriers have a legitimate interest to require services from an airport that correspond with the price/quality ratio. However, access to such reduced level of infrastructure or services should be open to all carriers that wish to avail of them on a non-discriminatory basis.

2.8 As the methods for establishing and levying the amounts due for the coverage of security costs differ across the Community, the harmonisation of the basis for charging security costs at Community airports where the costs of security are reflected in the airport charges is necessary.

2.9 Airport service providers should be entitled to a minimum level of service in return for the charges they pay. To ensure this, the service level should be the subject of agreement between the airport managing body and the association(s) representing the airport service providers at the airport, to be concluded at regular intervals.

2.10 The objectives of the action taken cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level.

2.11 Member States shall ensure that the airport managing body consults with airport service providers before plans for new infrastructure projects are finalised.

2.12 In order to ensure smooth and efficient operations at an airport, Member States shall ensure that the airport managing body and the association or associations representing airport service providers at the airport enter into negotiations with a view to concluding a service level agreement with regard to the quality of service provided at the airport terminal or terminals. Such agreement shall be concluded at least once every two years and be notified to the independent regulatory authority of each Member State.

2.13 Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim to provide tailored services or a dedicated terminal or part of a terminal. The level of airport charges may be differentiated according to the quality and scope of such services.

2.14 Member States shall nominate or establish an independent body as their national independent regulatory authority in order to ensure the correct application of the measures taken to comply with this Directive.

2.15 Member States shall guarantee the independence of the independent regulatory authority by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier.

3. General comments

3.1 It has to be welcomed that the Commission is going to lay down basic rules and criteria for the management and running of airports in the community.

3.2 It is important that there is clarity and transparency in the charges laid down by airports since in many cases these are monopolies.

3.3 The allocation of terminal aircraft stands have to be tackled on a rational and non-discriminatory basis if there is to be a level playing field for all airlines. Non usage of valuable terminal parking slots over a prolonged period should lead to forfeiture of these rights.

3.4 Continuous bad performance relating to their aircraft parking slots by airlines and regular delays, which can over time lead to serious disruption of airport traffic flow, should be tackled by fines and penalties.

3.5 Grandfather rights at main airports should be abolished and these slots should be auctioned every number of years.

3.6 All EU airports should employ where possible the same formula for charging landing fees and parking fees etc. Landing fees should always reflect the prime slots at sought after times so as to encourage more even utilisation of the airport facilities.

3.7 In order to speed up traffic and increase capacity airports should be encouraged to install the most modern navigation facilities. Runways should aim in having the capacity target of one landing or take off every 35 seconds. Improved efficiencies in this regard will reduce holding times during peak periods and therefore have a positive impact on emissions.

3.8 The national aviation regulators should be monitored and audited by the Commission to see that they are carrying out their duties in a firm and even handed manner.

3.9 Security changes and other costs reflected should be paid for by the state as is the case of other transport like rail. These should be closely monitored as the installation of sophisticated equipment can be costly for small and medium sized airports. It may not be economically justifiable.

3.10 The regulator should ensure the prices charged in airport retail outlets are not out of line with those charged in nearby cities.

3.11 It will be difficult to establish the common framework regulating the essential features of airport charges, the way they are set, and deciding on a common framework when employment, construction, and infrastructure costs differ from State to State. Planning policy and regulation also differ from State to State.

3.12 Where it is suggested the Directive should apply to local airports located in the Community territory that are above a minimum size, the term 'a minimum size' needs to be clarified.

3.13 Airports should be allowed to charge fees to make a reasonable profit in order to reinvest in infrastructure and other facilities.

3.14 If a vocal low-cost carrier does not want to pay anything to the airport, this makes it difficult to cover the cost of compliance, safety etc. at the airport!

3.15 In order to ensure smooth and efficient operations at an airport, airlines should be required to sign a service level agreement with the airport to guarantee a level of service to the airport.

3.16 The airport has a number of potential airline customers, not all of whom are low cost. The mix in some cases is critical in maintaining income streams which vary according to passenger profile. These income streams are at risk with the over dominance of a low cost carrier at the smaller airports.

3.17 Security equipment used in screening should be defined and standardised. Public will lose confidence in the security system quickly if the systems are not standardised. You can pass through the security screening in various airports while in some the alarms will be set off. A company is operating a registered traveller programme at a growing number of American airports. For an annual fee of USD 99,95, it will issue a biometric identity card to people who pass government checks, entitling the holders to use fast lanes at security checkpoints. This is an example of how improvements in technology could offer enhancements to the passenger experience and reduce queue times.

3.18 Land around and near airports because of its commercial value should be designated to prevent and discourage land speculation.

3.19 While security at airports seems to be rigid, there is still a lot of pilfering from passenger's luggage. This should be tackled as a matter of urgency.

3.20 The meaning of Tax free and Duty free in airport shops should be clearly defined and displayed prominently to make customers aware of what costs are involved.

3.21 Commission should set up a website to protect travelling public so they can clearly see what the relevant charges that apply to various airports are, like landing fees, etc which are shown on tickets, and charged to the public.

4. Airport design

4.1 Airports should be user-friendly and should be designed in consultation with the users that is the airlines and the passengers.

4.2 The Commission should lay down some criteria regarding a minimum space to be provided for baggage retrieval, security processing and passport control.

4.3 Design should ensure smooth movement of passengers in and out of the airport and that the airport is user-friendly.

4.4 It is a good idea to provide more sophisticated facilities for those airlines that wish to have them and are willing to pay for them.

4.5 Signage at airports is of paramount importance and at the many European airports signage is confusing. These, where possible, should be standardised.

4.6 Adequate seating and waiting areas should be provided for passengers. Access to terminals should be as user friendly as possible, particularly for passengers with disabilities and special needs, e.g. also passengers with small children.

4.7 Airport terminal design principals are based on design hour passengers flows and as such design hour criteria for critical passenger processes like check in and passenger screening should be researched and then published as a baseline for the industry.

4.8 Minimal operational criteria should be reinforced in accordance with the relevant design standards. Situations where requirements over and above the design standard are set by airlines on the airport as their minimum criteria should be avoided.

4.9 Airports must ensure that the facilities and services for which they are responsible either in their own right or in conjunction with air operators are suited to the particular needs of disabled and infirm passengers. Following on from comments made in an earlier opinion (TEN 215 — rights of persons with reduced mobility when travelling by air, the Committee feels that airports meet these obligations in complying with the requirements of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, particularly Article 9 and Annex 1.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the Council and the European Parliament: Sustainable power generation from fossil fuels: aiming for near-zero emissions from coal after 2020’

COM(2006) 843 final

(2008/C 10/10)

On 10 January 2007 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 proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 September 2007. The rapporteur was **Mr Zboril**.

At its 438th plenary session held on 26 and 27 September 2007 (meeting of 27 September 2007), the European Economic and Social Committee adopted the following opinion by 135 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Commission’s communication and agrees with the analysis and description presented in the Commission document. Responding effectively to the risks of global climate change while continuing to meet the high energy demands is a significant international challenge.

1.2 Emissions of CO₂ from coal fired power plants in the EU make 24 % of overall (EU) CO₂ emissions. Thus, such power plants are the most suitable sites for installation of CCS facilities. It means implementation of systems of capture and permanent storage of CO₂.

1.3 Most probably, coal would remain in the European energy mix in the decades to come. Coal’s particular attributes — its availability, affordability and role in stabilising energy markets — will ensure that it continues to be a primary source of fuel for the economic generation of electricity. The coal reserves distribution is uneven in the world and in the EU. Coal-based technology has the potential to make significant CO₂ emissions reductions⁽¹⁾. In the short to medium term, this requires market and regulatory frameworks that encourages investments in the latest technologies that will improve the efficiency of coal-fired electricity generation and thus reduce specific CO₂ emissions.

1.4 Proven cost-effective commercial means for removing and sequestering most of the CO₂ emissions from coal-based power plants do not currently exist; it is still an emerging technology. However, the prospects for developing and commercialising such near-zero emission coal technologies (ZETs) over the next two decades are promising.

1.5 The EESC confirms its opinion that the scale of the emissions limitation challenge means that all potentially viable energy sources and technologies need to be developed to their

practical and commercial potential. The transition to sustainable energy has a major role for coal, other fossil fuels, and nuclear as well as renewable technologies and energy conservation, with each contributing at a time and to an extent dictated by technical feasibility and affordability.

1.6 The EESC appreciates that in the long term, after 2020, CO₂ capture and storage would offer the potential for near-zero CO₂ emissions from coal-based power plants. There is a need for about 350 GW of new electricity generating capacity coal fired by 2020 and about 500 GW by 2030, the estimated investment costs amount EUR 600-800 billion. Delivery of this option requires coordinated research, development and demonstration (RD&D) now.

1.7 With continued efficiency enhancements in the power plant field and the development of near-zero emission technologies, coal will contribute to meeting the requirements of preventive climate protection. However the promising experiences CCS gives, it must not lead to the effect that already now energy policy strategies and targets are adopted as ‘a binding measure’ on the basis of broad presence of the CCS technologies.

1.8 Simplification of licensing procedures as well as their gradual harmonisation through cooperation between national regulatory authorities is needed in order to cut down as far as possible the long lead times for construction projects, without compromising the observation of the highest safety standards.

1.9 The EESC also draws attention to the fact that though the most important fuel for electricity generation and a vital input into steel production and other industrial processes, coal will have a major role to play in meeting future energy needs assisting in transition towards hydrogen economy. Coal liquefaction allows coal to act as a substitute for crude oil; synthetic gas can also be produced from coal.

⁽¹⁾ IPCC, 2005: IPCC Special Report on Carbon Dioxide Capture and Storage. Prepared by Working Group III of the Intergovernmental Panel on Climate Change (Metz, B., O. Davidson, H. C. de Coninck, M. Loos, and L. A. Meyer (eds.)). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 442 pp.

1.10 For extraction of indigenous lignite and hard coal, an appropriate political and economic framework remains necessary. The extraction of coal and transformation of energy can significantly contribute to local prosperity and employment. Maintaining the fossil fuel (coal based) power generation share at its current level is also extremely important in view of the social situation in the new Member States: out of 286 500 total manpower in the EU coal mining industry, the new MS coal mining industry employs 212 100 workers. Substantial improvement of very hard working conditions of miners, their skills, labour safety and working environment must be in focus of the mine operators throughout the EU coal industry.

1.11 The EESC also expresses its thought that the Commission in this document and its time setting is optimistic on the CCS time-frame and its lead-in time requirements. The Commission should now focus on measures to help 10-12 demonstration plants to be operated in 2015 and to create a framework for CCS that covers the main risks, is reliable and, at the same time, not too restrictive. Intermediate stage of higher efficiency generation is highly desirable and any excessive haste and too restrictive regulatory framework could seriously damage this globally important concept.

1.12 The EESC also calls for intensive research and development as regards the renewable and alternative energy sources that should contribute towards a safe EU energy mix. Simultaneously, the integrated EU energy market should be fully brought into life without any excessive delay.

2. Introduction

2.1 The Committee has already dealt with fossil fuels issue in several of its other opinions, the most recently in the exploratory opinion 'The energy supply of the EU: a strategy for an optimal energy mix' ⁽²⁾ which states that the EU should put serious efforts into clean coal technologies — improved power plant efficiency and commercial applications of carbon capture and storage. The use of gas has increased and still increases also driven by political choices. It is now obvious that the continuation of this trend is problematic. Gas can hardly continue to substitute coal, nor can gas substitute nuclear for reasons of emissions since it is a valuable raw material for high added industrial use, as is also oil.

2.2 The present draft Sustainable power generation from fossil fuels was published by the Commission in the context of the energy and climate package, 'An Energy Policy for Europe — the need for action', on 10 January 2007.

2.3 The other parts of the package cover firstly a proposal for climate change targets of 30 % reductions of greenhouse gases for the developed countries or in any case 20 % for EU alone. The package further deals with the internal market of gas and electricity, interconnections in the electricity and gas networks, future role of nuclear energy in proposal of the Nuclear Illustrative Programme; a roadmap to promote renewables, notably biofuels for transport, and a future European Energy Strategic Technology Plan. The European Council on 9 March 2007 supported the targets and the main policy contents of the package.

2.4 This Communication presents a global view of the actions needed for the continued contribution of fossil fuels and particularly coal to the security and diversification of energy supply for Europe and the world in a way compatible with the sustainable development strategy and climate change policy objectives. It takes account of the work done and opinions received during 2006 within the Second European Climate Change Programme (ECCPII), the High-level Group on Competitiveness, Energy and the Environment (HLG), the preparations for the 7th Framework Programme (FP7) for Research, and the Zero Emission Fossil Fuel Power Plant Technology Platform.

3. The Commission document

3.1 The Commission's document reviews the position of fossil fuels in the energy generation and states that fossil fuels represent an important element of the energy mix in the European Union as well as in many other economies. They are of particular importance for the generation of electricity: over 50 % of EU electricity currently comes from fossil fuels (mainly from coal and natural gas) in some countries their share amounts even 80 % (Poland, Greece). Coal is a key contributor to the EU's security of energy supply and it will remain so. Coal represents the fossil fuel with by far the largest and most widely distributed global reserves, estimated to last for some 130 years for lignite and 200 years for hard coal.

3.2 However, coal can continue to make its valuable contribution to the security of energy supply and the economy of both the EU and the world as a whole only with technologies allowing for drastic reduction of the carbon footprint of its combustion. If such technologies are developed on a sufficient scale, they can also provide solutions for combustion processes using other fossil fuels, including gas-fired power generation. The EU therefore needs to develop technological solutions for sustainable use of coal not only to retain coal in the European energy mix but also to ensure that global growth in coal use will be possible without irrevocable damage to the global climate.

⁽²⁾ OJ C 318, 23.12.2006, p. 185-194.

3.3 'Clean Coal' technologies have been developed and they are now widely used in the power generation sector, considerably reducing emissions of SO₂, NO_x, particulates and dust from coal-fired power plants. Clean Coal technologies have also brought about a steady increase in the energy efficiency of the conversion of coal into electricity. Such achievements are important steps for further progress towards novel technological solutions called 'Sustainable Coal' technologies incorporating the concepts of CO₂ capture and storage (CCS) in coal-based power generation.

3.4 The Commission sees a fair chance of achieving the commercial viability of Sustainable Coal technologies in the next 10 to 15 years. This will, however, require bold industrial investments in a series of demonstration plants, both within and outside the EU, and related policy initiatives for a relatively extensive period of time, starting practically now and lasting possibly until 2020 or even beyond.

3.5 To facilitate such development the Commission will substantially increase the funding for R&D in the energy area, introducing the demonstration of Sustainable Fossil Fuels technologies amongst the priorities for 2007-2013. A European Strategic Energy Technology Plan will provide a suitable instrument for the overall coordination of such R&D and demonstration efforts and for the maximisation of synergies at both EU and national level. The Commission will determine, based on successful results of the R&D projects, the most suitable way to support the design, construction and operation of up to 12 large-scale demonstration units of Sustainable Fossil Fuels technologies in commercial power generation by 2015.

3.6 The Commission will assess on the basis of recent and planned investments whether new fossil fuels power plants built and to be built in the EU use best available technologies regarding efficiency and whether, if not equipped with CCS, new coal- and gas-fired installations are prepared for later addition of CCS technologies ('capture ready'). If this turns out not to be the case, the Commission will consider proposing legally binding instruments as soon as possible, after a proper impact assessment.

3.7 In 2007, the Commission will assess the potential risks from CCS and lay down requirements for the licensing of CCS activities and for adequately managing the risks and impacts identified. Once a sound management framework is developed, it can be combined with changes to the existing environmental regulatory framework at EU level so as to remove any unwarranted barriers to CCS technologies. The Commission will also assess whether to amend existing instruments (such as the Environmental Impact Assessment Directive or the Integrated Pollution Prevention and Control Directive) or propose a free-standing regulatory framework. It will assess which aspects of the regulatory framework are preferably addressed at EU level or, alternatively, at national level.

3.8 The Commission considers that a clear and predictable long-term framework is necessary to facilitate a smooth and rapid transition to a CCS-equipped power generation from coal. This is necessary to enable power businesses to undertake the required investments and research in the secure knowledge that their competitors will be following a similar course. On the basis of the information currently available, the Commission believes that from the year 2020 all new coal-fired power plants should be built with CCS facilities. Existing plants should then progressively follow the same approach. The Commission will evaluate what is the optimal retrofitting schedule for fossil fuels power plants for the period after the commercial viability of Sustainable Coal technologies is demonstrated.

3.9 Cost estimates for CO₂ capture from power generation and subsequent storage at the current level of technology development range up to EUR 70 per tonne of CO₂, rendering the large-scale use of these technologies prohibitively costly for the time being. Available models and studies with a medium- to long-term perspective thus estimate the costs of CCS by 2020 at about EUR 20-30/t CO₂. This translates in the models to costs of coal-fired power generation with CCS by 2020 or soon afterwards at just 10 % above or even on the par with the current levels.

3.10 The potential negative environmental impacts from sustained use of fossil fuels and the deployment of CCS stem mainly from potential leakage from CO₂ storage. The leakage impacts can be both local (on local biosphere) and global (on climate). However, the International Panel on Climate Change's report on the issue concludes that, based on existing experience, the fraction of CO₂ retained in well-selected and managed storage sites is very likely to exceed 99 % over 100 years. Site selection and management are thus the key factors for minimising risk. The Commission impact assessment for enabling legal framework will identify all potential risks and will put forth appropriate safeguards.

3.11 Sustainable Fossil Fuels technologies, and particularly CCS, are expected to deliver significant positive results. They can effectively eliminate up to 90 % of the carbon emissions from fossil fuels power plants. This could translate into an overall reduction in EU-27 CO₂ emissions of 25-30 % by 2030 compared to 2000. An early involvement of third countries in the development and deployment of Sustainable Coal technologies and particularly the CCS component is essential for sustainable global economic development and for tackling climate change in a scenario with increasing global use of coal resources. The success of Sustainable Coal and particularly the commercialisation of CCS on a large scale will also offer better access to energy in the poorest parts of the world still deprived from the chance to use energy.

4. General remarks

4.1 The EESC welcomes the Commission's communication and agrees with the analysis and description presented in the Commission document. Responding effectively to the risks of global climate change while continuing to meet the high energy demands of mature economies and the rapidly increasing energy demands of developing economies, is a significant international challenge.

4.2 Emissions of CO₂ from coal fired power plants in the EU make 24 % of overall (EU) CO₂ emissions. The emissions from power generation in plants fired by fossil fuels are highly concentrated due high consumption of fuels in large combustion units and thus, such power plants are the most suitable ones for installation of CCS facilities. It means implementation of systems of capture and permanent storage of CO₂. Such systems consist of three relative independent stages:

- a. Capture and separation of CO₂ from flue gas in the place of occurrence (behind a boiler mostly)
- b. Transport of CO₂ to the locality of its permanent storage (mostly by pipelines)
- c. Final and permanent storage of CO₂ (in suitable geological formations or in seas observing the most stringent safety storage requirements).

4.3 Most probably, coal would remain in the European energy mix in the decades to come. Coal's particular attributes — its availability, affordability and role in stabilising energy markets — will ensure that it continues to be a primary source of fuel for the economic generation of electricity. The coal reserves distribution is uneven in the world and in the EU. Globally, it is encouraging that the largest coal reserves are found in the economically advanced and politically stable countries. The reserves in developed EU countries have been largely depleted by long time mining activities in the recent period of time and several EU countries opted for gradual reduction and even cease of coal mining.

4.4 One third of the EU countries only can rely on indigenous coal deposits while the remaining two thirds of countries depend on imported hard coal mostly. Mining of hard coal in EU amounted 161,6 million tonnes in 2006 while 235,3 million tonnes was imported. Consumption of lignite reached 373,8 million tonnes in the same year and it was entirely covered by indigenous resources. Therefore, viable means for substantially reducing specific CO₂ emissions from coal-fired power generation need to be developed and widely adopted.

4.5 Coal-based technology has the potential to make significant CO₂ emissions reductions⁽³⁾. In the short to medium term, this requires market and regulatory frameworks that encourage investments in the latest technologies that will improve the efficiency of coal-fired electricity generation and thus reduce specific CO₂ emissions. Collaborative action by the Commission, MS governments and industry is also required now to encourage worldwide coordinated research, development and demonstration of clean coal technologies such as carbon capture and storage, which will in the longer term deliver near-zero CO₂ emissions from the use of coal.

4.6 Proven cost-effective means for removing and sequestering most of the CO₂ emissions from coal-based power plants do not currently exist; it is still an emerging technology. However, the prospects for developing and commercialising such near-zero emission coal technologies (ZETs) over the next two decades are promising. CCS installations in power plants are assumed to reduce the power generation efficiency because in their intrinsic power consumption. The overall efficiency differs by the used technology, the preferred OXYFUEL technology needs 8 to 10 % of the generated power and the other technologies require even more power by themselves. It means that more fuel would be required per MWh of power supply in the grid and higher generating efficiency is essential. Future CCS retrofits would show even larger intrinsic consumption of power for their operation.

4.7 In the interim, improving the efficiency of existing and new coal-fired power plants is a cost-effective way to limit the growth of CO₂ emissions. The installation of best available commercial technology should be a focus of planners for the significant amount of new coal-fired capacity that must be built in the near term. Where practical, it is highly desirable that these power units are designed to enable cost-effective CCS retrofitting when that technology becomes available for commercial application.

4.8 The EESC confirms its opinion that the scale of the emissions limitation challenge means that all potentially viable energy sources and technologies need to be developed to their practical and commercial potential. The transition to sustainable energy has a major role for coal, other fossil fuels, and nuclear as well as renewable technologies and energy conservation, with each contributing at a time and to an extent dictated by technical feasibility and affordability.

4.9 However promising the reasonable expectations CCS gives, it must not lead to the effect that already now energy policy strategies and targets are adopted as 'a binding measure', as if on the basis of broad presence of the CCS technologies.

⁽³⁾ IPCC, 2005: IPCC Special Report on Carbon Dioxide Capture and Storage. Prepared by Working Group III of the Intergovernmental Panel on Climate Change (Metz, B., O. Davidson, H. C. de Coninck, M. Loos, and L. A. Meyer (eds.)). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 442 pp.

5. Specific comments

5.1 Coal plays a very important role in European electricity generation, but 70 % of coal-fired electricity is generated in plants that are over 20 years old. Slight increases in power consumption and much of the existing power plant capacity reaching the end of its technical/economic life will create the need for about 350 GW of new electricity generating capacity by 2020 and about 500 GW by 2030. Calculating costs of the coal fired power plants with CCS in the EU is based on optimistic cost structure of a new, 300 MW rated, power plant amounting EUR 500 million (about EUR 1,7 million per MW installed). Retrofitting of a modern power plant built from now on until 2020) needs EUR 0,5-0,7 million per MW installed and cost of retrofitting of existing facilities reaches even higher sum of EUR 1 million per MW installed. If, by the year of 2030, 500 GW of generating capacity would be brought about to the most advanced state of technology with CCS, the estimated investment costs amount EUR 600-800 billion.

5.2 The EESC appreciates that in the long term, after 2020, CO₂ capture and storage would offer the potential for near-zero CO₂ emissions from coal-based power plants. Delivery of this option requires coordinated research, development and demonstration (RD&D) now.

5.2.1 In the next decade, cost-effective CO₂ emissions reductions can result from increased coal combustion efficiencies achieved through the more widespread use of state-of-the-art coal-fired power plant technology.

5.2.2 These strategies are complementary based on technical solutions that need to be proven: deployment of modern, efficient coal-fired electrical generation technologies in the short to medium term can enable carbon capture for less cost in the longer term, if those power units are designed to enable cost-effective carbon capture retrofitting when such technology becomes available for commercial application.

5.2.3 The Seventh Framework Programme foresees that radically transforming the energy system into a less- or non-CO₂-emitting, reliable, competitive and sustainable energy system requires new technologies and new materials with risks that are too high and profits too uncertain for private firms to provide all the investment needed for research, development, demonstration and deployment. CCS and Clean Coal are amongst the 7FP Energy budget amounting EUR 2350 million from 2007 till 2013.

5.2.4 'Capture-ready' concept needs to be properly defined. Successful implementation demands that regulators and industry work together — commercial markets will not deliver without appropriate and stable policy frameworks.

5.2.5 The EESC sees an urgent need for power plant capacity increase and modernisation. In view of a projected increase in reliance on imported energy which rises to 69 % by 2030, a broadly diversified energy mix is indispensable for energy supply security reasons. Stabilising coal input to power generation can make a substantial contribution to securing the energy supply in the EU.

5.2.6 With continued efficiency enhancements in the power plant field and the development of near-zero emission technologies, coal will contribute to meeting the requirements of preventive climate protection. In setting rules for emissions trading in each EU Member State, the focus should be upon improving efficiency to achieve GHG reductions.

5.2.7 Simplification of licensing procedures as well as their gradual harmonisation through cooperation between national regulatory authorities is needed in order to cut down as far as possible the long lead times for construction projects, without compromising the observation of the highest safety standards.

5.3 The EESC also draws attention to the fact that though the most important fuel for electricity generation and a vital input into steel production and other industrial processes, coal will have a major role to play in meeting future energy needs assisting in transition towards hydrogen economy. Coal liquefaction allows coal to act as a substitute for crude oil; synthetic gas can also be produced from coal. Such technologies and applications would eventually play also a vital role in the sustainable energy mix. The Commission draft does not cover these important segments of coal present and future use.

5.4 The current intense discussion of the potential for coal utilisation in the next decades has led to the issues concerning coal extraction being driven to the background. However, for the extraction of indigenous lignite and hard coal, an appropriate political and economic framework remains necessary. The extraction and transformation of energy can significantly contribute to local prosperity and employment. When burning indigenous coal, the added value of extraction, transformation and distribution remains within the EU. If oil or gas are used, about 75 % of the price are needed to cover import costs.

5.5 Maintaining the fossil fuel (coal based) power generation share at its current level is also extremely important in view of social situation in the new Member States: out of 286 500 total manpower in the EU coal mining industry, the new MS coal mining industry employs 212 100 workers. Responsible care must be paid to very hard working conditions of miners throughout the EU.

5.6 Reductions of coal mining areas in the context of regional planning as well as over burdening by the environment protection regulations have in the past often resulted in unnecessary delays and additional burdens for the mines. The location of reserves and the mobility of the mining operation when extracting raw materials result in particular challenges in comparison with other industrial sectors. This special situation is to be taken into account especially when creating the legal framework on environmental issues, for instance waste legislation, soil protection legislation and water legislation.

5.7 The EESC also expresses a thought that the Commission in this document and its time setting is optimistic on the CCS time-frame and its lead-in time requirements. Although principles are known, a technology solution would require fairly

longer time and no breakthrough achievement can be expected to offset steady and intensive work on the implementation of this concept. The Commission should now focus on measures to help 10-12 demonstration plants to be operated in 2015 and to create a framework for CCS that covers the main risks, is reliable and, at the same time, not too restrictive. Intermediate stage of higher efficiency generation is highly desirable and any excessive haste and too restrictive regulatory framework could seriously damage this important concept.

5.8 The EESC also calls for intensive research and development as regards the renewable and alternative energy sources that should contribute towards a safe EU energy mix. Simultaneously, the integrated EU energy market should be fully brought into life without any excessive delay.

Brussels, 27 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council on common rules for access to the market for coach and bus services (Recast)'

COM(2007) 264 final — 2007/0097 (COD)

(2008/C 10/11)

On 16 July 2007, the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 September 2007. The rapporteur was **Mr Allen**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September 2007), the European Economic and Social Committee adopted the following opinion by 150 votes to 1 with 3 abstentions.

1. Conclusions and Recommendations

1.1 The committee welcomes the proposed new regulation. The adoption of this proposal will lead to the repeal of Regulation No 684/92 and Regulation No 12/98.

1.2 The safety of passengers must be the absolute priority, also in the case of Bus and Coach services. All other matters must be considered as of lesser importance.

1.3 The new regulation should contribute to road safety due to a stricter monitoring of international bus and coach services which operate in several Member States.

1.4 The committee commends this proposal as it comes under the 'Better Regulation' programme and is in conformity with the commitment to simplify and update the acquis.

1.5 The EESC recommends that:

1.5.1 Further clarification be given to the statement 'serious infringement or repeated minor infringements of community road transport legislation'. What constitutes a minor infringement? How many minor infringements will lead to an administrative penalty?

1.5.2 It is also necessary to make a list of what constitutes serious infringements.

1.5.3 The principle of subsidiarity must not be used as a means to discriminate against non-resident carriers and this proposal should incorporate greater safeguards in this regard.

1.5.4 It must be a priority to establish an EU wide data base so that so that licence details and related information can be verified and to facilitate the exchange of information.

1.5.5 Under Article 23(3) a special appeal system should be available to a carrier where a host Member State imposes an administrative sanction on the occasion of a cabotage transport operation. This to be without prejudice to a criminal prosecution.

2. Introduction

2.1 Directive 96/26/EC on admission to the occupation of road transport operator together with Regulations (EEC) No 684/92 and (EC) No 12/98 on access to the market for coach and bus services formed initially the major component of the internal market for international passenger transport services by road.

2.2 The directive introduced minimum quality standards which must be met in order to enter the profession, while the two regulations liberalised international occasional passenger services, established a special authorisation procedure for international regular passenger services as well as allowed cabotage services in the course of such international services.

2.3 These rules now ought to be made consistent with the new legal framework stemming from the regulation of public passenger transports by rail and road, which is on the verge to be adopted by Parliament and Council. These rules need also to be made clearer and in some cases simplified since it has appeared from experience that certain legal provisions entail unnecessary administrative burdens.

2.4 Carriers engaged in the international carriage of passengers by coach and bus must hold an International Road Passenger Transport Operators Licence issued by the competent authority of the Member State where the carrier is established, unless otherwise exempted.

2.5 Regulation No 684/92 opens the access to the market of international carriage of passengers by coach and bus while Regulation No 12/98 lays down the conditions for non-resident carriers to operate services within a Member State.

3. Summary of the Proposal

3.1 The Proposal aims at revising and consolidation Regulations No 684/92 and Regulation No 12/98 on the access to the market for coach and bus services. It clarifies the existing legal provisions and modifies them on certain aspects to strengthen overall consistency and reduce administrative burdens.

3.2 For the purposes of this Regulation, the following definitions will apply:

3.2.1 Regular services means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. This service must have an authorisation from their home Member State within which the carrier is established and the vehicle(s) are registered. Authorisations shall entitle their holder(s) to operate regular services in the territories of all Member States over which the routes of the service pass.

3.2.2 Special regular services means regular services, which provides for the carriages of specified categories of passengers to the exclusion of other passengers. These shall include

- a) the carriage of workers between home and work;
- b) carriage to and from the educational institution for school pupils and students.

No authorisation (route licence) is necessary for this service if they are covered by a contract concluded between the organiser and the carrier.

3.2.3 Occasional services means services which do not fall within the definition of regular services, including special regular services and whose main characteristic is that they carry groups of passengers constituted on the initiative of the customer or the carrier. This service does not require authorisation (route licence).

3.2.4 Own account transport operations are those carried on by an undertaking for its own employees or by a non-profit making body for the transport of its members in connection with its social activities provided that

- a) the transport activity is only an ancillary activity for the undertaking or body;
- b) the vehicles used are the property of the undertaking or body or have been the subject of a long-term leasing or contract and are driven by a member of the staff of the undertaking or body.

It is exempt from any system or authorisation but subject to a system of certificates issued by the competent authorities of the Member State in which the vehicle is registered.

3.2.5 Cabotage is the operation of National road Transport Services when being operated by a non-resident carrier on a temporary basis.

3.2.6 Cabotage transport operations shall be authorised for the following services;

- a) special regular services provided they are covered by a contract between the organiser and the carrier;

- b) occasional services;
- c) regular services, performed by a carrier not resident in the host Member State in the course of a regular international service in accordance with this regulation. Excluding Urban and surrounding areas. Cabotage transport shall not be preformed independently of such international service.

The national laws and regulations shall be applied by the Member States to non resident carriers under the same conditions as are imposed on their own nationals.

4. General Comments

4.1 Article 8 simplifies the procedure for obtaining authorisation (route licence). In relation to market access there will be only one ground for refusal, namely that the service applied for would seriously affect the viability of a comparable service operated under a public service obligation on the direct sections concerned. This is reasonable.

4.2 Transit countries where no passengers are picked up or set down will not be consulted but will be informed once the service has been authorised. This will improve the efficiency of the system.

4.3 The principle of subsidiarity applies as the proposal does not fall within the exclusive competence of the Community. However, safeguards are essential to ensure that non-resident carriers are not subject to discrimination.

4.4 Further clarification is needed as regards Article 18(2). Which deals with Transport tickets.

4.5 The operator must provide Transport Tickets either individual or collective. If, in the event of an inspection by an authorised inspecting officer, (and tickets having previously been issued by the operator) passenger(s) are not in possession of a valid ticket(s), then the operator cannot be held responsible for

this situation. Once tickets have been issued then passengers must henceforth be responsible for presenting tickets to an authorised inspecting officer.

5. Specific comments

5.1 In general terms this proposal achieves the objectives set by the Commission.

5.2 The issues surrounding infringements both serious and minor and the administrative sanctions that may apply needs further clarification. The nature and type of infringements that fall into the various categories, needs to be defined and be consistent throughout the Community.

5.3 In the case of serious infringements or repeated minor infringements the host Member State can request the member that issued the International Transport Licence to impose administrative sanctions on the Licence holder — (such as temporary or permanent withdrawal of some or all of the certified copies of the licence or temporary or permanent withdrawal of the licence). This is without prejudice to any criminal prosecution in the host Member State.

5.4 While reference is made to an appeals system where sanctions are imposed or where authorisations are refused such appeals must be seen by all parties to be fair and non-discriminatory.

5.5 An EU-wide data base must be established to facilitate the fast and efficient exchange of information between Member States as regards bus and coach operations. In addition when a vehicle is inspected by an authorised officer, it should be possible to key in the number of the International Transport Licence (Community Licence) and immediately obtain all relevant information to verify the validity of the licence.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law'

COM(2007) 51 *final* — 2007/0022 (COD)

(2008/C 10/12)

On 28 February 2007 the Council decided to consult the European Economic and Social Committee, under Article 174 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 September 2007. The rapporteur was Mr Retureau.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 149 votes to three with ten abstentions.

1. Conclusions

1.1 Once again, the Committee welcomes the fact that serious environmental offences may be subject to criminal sanctions. It restates that, in its view, the Commission should have the power to compel Member States to apply proportionate and dissuasive criminal sanctions when necessary in order to ensure the application of Community policies, especially in the field of protecting the environment against serious offences: such sanctions should be applied as part of the criminal justice system of each Member State. Lastly, the Commission should have the power to supervise the effectiveness of the criminal law applied in the field in question, and should actively exercise this power.

1.2 The proposal for a directive targets for example offences committed in the framework of criminal organisations (which it views as an aggravating circumstance). The Committee is convinced that such actions should be subject to sanctions, including an approximation of the criminal law rules in the Member States, but the Treaty and case-law are quite clear regarding the repression of acts committed in the framework of criminal organisations: approximation of the Member States' rules of criminal law can in principle only take place under the provisions on police and judicial cooperation in criminal matters as laid down in Title VI of the Treaty on European Union (TEU), and not under the EC Treaty (TEC) as proposed by the Commission.

1.3 The Committee also wonders if the stipulation that certain offences are to be punished by imprisonment does not exceed the powers under the first pillar, constituting interference in the choice of the most appropriate sanctions which should in principle remain a competence of the Member States.

1.4 It is of the view that Community competence should be restricted to defining obligations and stipulating that criminal sanctions are to apply. A framework decision based on Title VI of the Treaty on European Union would be needed in order to go further and lay down a system of penalties.

1.5 By the same token, the Committee would question if Community law can extend to imposing a maximum level of sanctions.

1.6 The Committee would like the obvious political aspects raised by the division of competences, and the role that it wishes the Parliament to play in all legislation touching upon criminal matters, to be covered by more precise Court of Justice case-law, by an interinstitutional agreement, or by a reform that could be built into the reform of the Treaties by the current IGC. It would tend to prefer this latter option, given the urgent need to adopt effective sanctions to protect the environment.

2. Introduction

2.1 In 1998, the Council of Europe opened a Convention on the Protection of the Environment through Criminal Law for signature. This was significant because it represented the first international convention to criminalise acts causing or likely to cause environment damage. However, Germany followed by France and the UK expressed its reluctance to ratify the Convention. As a result, Denmark and the Commission both presented separate initiatives aiming to protect the environment under criminal law.

2.2 The Council's framework decision, adopted by the Council at Denmark's proposal, and against the opinion and proposals of the Commission, defined a number of environmental offences, for which the Member States were asked to introduce criminal sanctions. Its provisions were based largely on those of the Council of Europe's Convention on the Protection of the Environment through Criminal Law of 4 November 1998 and which has, to date, been signed by ten Member States.

2.3 The Commission opposed the legal basis chosen on various Council bodies. It believed Article 175(1) of the EC Treaty to be the right legal basis in this regard and, on 15 March 2001, had presented a Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law based on this Article (1), although Article 174 of the EC Treaty conferred no powers on the Community in criminal matters.

(1) OJ C 180, p. 238.

2.4 On 9 April 2002, the European Parliament adopted a report on both the proposed directive and the draft framework decision. It agreed with the approach advocated by the Commission at that time (a directive and a framework decision).

2.5 The Council, however, adopted not the directive and framework decision proposed by the Commission, but an amended version of its draft framework decision, based on Article 34 of the Treaty on European Union which, in its opinion, represented an appropriate instrument to oblige the Member States to introduce criminal sanctions. It emphasised that most Member States were hostile to recognising criminal powers on the part of the Community, and were convinced that such matters came under the provisions for police and judicial cooperation in criminal matters set out in Title VI of the Treaty on European Union.

2.6 The case was brought before the Court of Justice, which issued a judgment on 13 September 2005 ⁽²⁾.

2.7 The European Parliament coincides with the Court and the Advocate General in considering that there is no general Community power to harmonise criminal law, but in certain clearly defined fields, such as the present one of environmental protection, the Community could oblige the Member States to prescribe criminal sanctions.

For its part, the Commission has interpreted the judgment very broadly, granting itself wide-ranging powers in many Community policies other than the environment.

2.8 Following the CJEC judgment annulling the framework decision, the Commission has presented a new proposal for a directive. The Court judged that, although as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence, this does not prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from 'taking measures which relate to the criminal law' of the Member States when they are necessary in order to ensure that Community legislation on environmental protection is fully effective ⁽³⁾. The Committee recalls that the Court emphasised the fact that in principle, the Community had no competence in criminal matters, which the Treaty on European Union sees as a sovereign sphere of the Member States. The wording quoted above — 'measures which relate to the criminal law' — is so vague as to be open to all kinds of interpretations, often contradictory.

2.9 This judgment underpins the Commission's presentation of an amended proposal for a directive ⁽⁴⁾, which contains both incriminations and sanctions, as it believes that the purely administrative sanctions or certain criminal sanctions applicable in some countries are too disparate or too weak to have an adequate deterrent effect, particularly where organised crime is

involved. It therefore considers that steps should be taken to ensure a minimum level of harmonisation of the criminal law applicable to serious environmental offences, whether resulting from acts with criminal intent or serious negligence.

2.10 In an earlier opinion ⁽⁵⁾, the EESC supported the Commission's initial proposal for a directive, and its proposal for a framework decision, under which the Member States were to adopt effective, proportionate and dissuasive criminal sanctions to combat offences against the environment. The action for annulment brought by the Commission and supported by the European Parliament against the Council's framework decision was also supported by the Committee, although in a preliminary procedural decision, the Court ruled out any intervention by the Committee.

2.11 The purpose is therefore to assess whether:

- the new proposals tally with the framework established by the Court,
- the proposed sanctions are commensurate with the aim of ensuring the effectiveness of environmental law and a higher level of harmonisation of national laws (obligation to introduce sufficiently dissuasive criminal sanctions in order to guarantee the effectiveness of applicable legislation).

2.12 The wide-ranging debate which has sprung up since the judgment at policy level and with regard to legal opinion on the 'constitutionality' or otherwise of extending the Community's competences to criminal matters for the implementation of Community policies, and debate on the precedence of the EC Treaty over the Treaty on European Union in such areas, will nevertheless have to be considered by the Committee ⁽⁶⁾ with regard to the numerous legislative proposals that the Commission envisages revising, as it has recently done in the field of intellectual property ⁽⁷⁾, for example.

2.13 Many Member States challenge the rather broad interpretation that the Commission would make of the judgment, with regard both to the content of the new environmental proposals and to the introduction of a minimum penal element for the effective implementation of all Community policies (and not only of a clearly cross-sectoral policy, such as the environment), although in any case nothing is explicitly laid down in the EC Treaty. According to these Member States, use of the Court's case-law must be restricted to environmental policy on account of the cross-sectoral and cross-border nature of the environment, and of the wording of the Court's judgment, and must not be taken by the Commission as a blank cheque for all Community policies.

2.14 In the particular case under examination, the Committee will limit its comments to the proposals concerning the environment, the only area explicitly covered by the Court's judgment.

⁽²⁾ Judgment of 13 September 2005, Case C-176/03.

⁽³⁾ Point 48 of the judgment.

⁽⁴⁾ Proposal for a Directive (COM(2007) 51 final of 9.2.2007.

⁽⁵⁾ Opinion on the European Economic and Social Committee on the *Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters* (COM(2003) 624 final) (OJ C 117 of 30.4.2004, p. 55, for the implementation of the Århus Convention.

⁽⁶⁾ It should be noted that the mandate for the reform of the treaties puts the revised EC Treaty and Treaty on European Union on an equal footing.

⁽⁷⁾ CESE 981/2007 (not yet published in the OJ).

2.15 In brief, the Commission has decided to propose incriminations and criminal sanctions, in the form of a minimum set of punishments, for 'environmental crime' with regard to any natural or legal person who commits, abets or instigates serious environmental offences, or who gives rise to such offences through serious negligence. Imprisonment and/or fines, together with additional sanctions (Article 5), are specified, and may be extended or supplemented by additional incriminations and sanctions under national law.

3. The Committee's comments

3.1 The Committee is disappointed that penal sanctions in the environmental sphere, the principle and level of which it supports, as it did the Commission's proposal for a directive and for a framework decision in 2005, should have been delayed for years and may still be further delayed as a result of disagreement between the institutions on the division of competences in the EC Treaty and Treaty on European Union. It hopes that a political solution will rapidly be devised by the institutions, *inter alia* for the involvement of Parliament, and that the treaties can be clarified, by means of the recently-opened IGC or, failing that, by future Court case-law.

3.2 The definition of environmental offences subject to criminal sanctions, such as 'significant deterioration', has not yet been interpreted when being incorporated into domestic law or in the criminal case-law of the various Member States.

3.3 The Committee notes that the directive targets 'serious offences' as a priority, especially those committed by criminal organisations, or committed on a large scale by legal persons, and that it sets out to bring the applicable sanctions at Community level closer into line with each other, to prevent legal loopholes being used by criminals. But questions concerning organised crime come under Title VI of the Treaty on European Union on police and judicial cooperation in criminal matters, and must therefore be governed by an appropriate legal instrument such as, for example, the framework decision.

3.4 The broad character of the incrimination has prompted one British tabloid newspaper to wonder whether simply picking wild flowers could lead to private individuals being imprisoned, if the bunch happened to contain a protected species. It should be emphasised that criminal sanctions are to apply only in 'serious' cases and must remain effective, proportionate and dissuasive. The national criminal court judge responsible for applying the sanctions must retain full discretion to gauge the seriousness of the offence and set an appropriate sentence in each individual case, in order to comply with the independence of the judiciary.

3.5 For its part, the Committee is satisfied with the fact that the proposed directive (Article 3) clearly details the unlawful acts covered, in keeping with the general principle of law '*Nulla poena sine lege*'⁽⁸⁾, a general principle that requires criminal legislation to be clear and precise, so that the individuals concerned

unambiguously aware of the rights and obligations entailed, or in other words: no sanction without specific legal basis.

3.6 It is clear that infringements of all environmental legislation, whether of national Community or international origin, are covered by the system of criminal sanctions proposed by the Commission. This particularly broad scope could create a legal problem in connection with the national foundation of general law or autonomous instruments for supervising international law. The 'serious offences' in question are those committed either within or across national borders. Nevertheless, the Committee agrees with this material and territorial scope, which arises from the very nature of environmental protection, offences against which generally affect the overall environment, regardless of borders.

3.7 Criminal and non-criminal sanctions are laid down for legal persons, but it is not clear if the applicable criminal sanctions can be imposed on natural persons, such as the managers of the companies concerned. The sanctions apply only to persons, belonging to the legal person, who are directly the authors or instigators of the actions subject to proceedings. The Committee considers that the directive should take account of managers who have simply failed to monitor the actions of, their subordinates, even if this entails only supplementary sanctions.

3.7.1 The Committee notes that Article 7 of the proposal establishes minimum amounts for maximum fines, but that the Member States may establish more severe penalties, if appropriate, at the time of transposition. This goes no further than ensuring a common minimum, but entails the risk of creating divergent national criminal approaches. The Committee prefers a more vigorous criminal harmonisation approach, in order to avoid the temptations of 'forum shopping', even if this means higher minimum amounts for maximum fines.

3.8 According to the Commission's impact assessment, however, the Member States would enjoy considerable leeway with regard to implementation. In the Committee's view, regular monitoring of national practices must take place, because discrepancies in transposition are such that the effective approximation of criminal law on the environment could be hampered. The Member States' usual margin of discretion should in general avoid the creation of areas where it is 'cheaper' to pollute. In this regard, the Committee agrees with the proposed legal basis (Article 175 of the EC Treaty).

3.9 With regard to imprisonment, the Committee notes that approximation is proposed on the basis of a three-step scale, corresponding to the conclusions of the Justice and Home Affairs Council of 25-26 April 2002. Alternative sanctions are also provided, additional to reinstating the environment, such as disqualification from engaging in an economic activity; lastly, the majority of serious environmental offences are covered by the scope of Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property.

⁽⁸⁾ Judgment of the Court of 8 February 2007, Case C-3/06 P, Groupe Danone.

3.10 Moreover, the establishment of a maximum ranging from two to five years is a rather bizarre option: it would have been better to choose a single minimum level for the maximum sentence, in the interests of greater harmonisation, given that this would not in any case jeopardise judges' room for discretion.

3.11 However, the Commission considers that setting limits to Member States' discretion with regard to transposition is contrary to the aim of the directive; there is a conflict between the Committee's preferred approach to criminal law and that of the Commission. In the light of how application actually takes place, it will probably be necessary to opt for one approach rather than another if the aims of the proposal are to be met.

3.12 The EESC is aware that at the present stage of the Community integration process, a regulation on this subject is not possible. Concern is however felt about the need for a clear distinction between administrative sanctions and crime, and to ensure that transposition does not give rise to major differences in Member State legislation — it would not be logical for certain behaviour to be punishable in one Member State and not in another.

Brussels, 26 September 2007.

3.13 The report on the implementation of the directive (Article 8) should also be addressed to the EESC.

3.14 The views of the EESC as expressed previously⁽⁹⁾ should be taken into account, especially regarding:

- *ius standi* (right to act to initiate public criminal proceedings) so that associations and NGOs can bring proceedings before the courts on the basis of the directive; the Århus Convention system could provide a model for the implementation of this right by accredited NGOs, which would be preferable to any class action system;
- a strengthening the cooperation and investigation machinery of the judicial authorities to enable them to prosecute environmental crimes, recommending the setting up of public prosecutors offices specialising in environmental matters;
- the use of European judicial networks to establish the necessary cooperation regarding cross-border crimes.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽⁹⁾ See CES 463/2001 fin of 3 August 2001 (NAT/114).

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, and repealing Regulation (EEC) No 2377/90'

COM(2007) 194 final — 2007/0064 (COD)

(2008/C 10/13)

On 22 May 2007, the Council decided to consult the European Economic and Social Committee, under Articles 37 and 152(4)(b) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 July 2007. The rapporteur was Mr Coupeau.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September 2007), the European Economic and Social Committee adopted the following opinion by 151 votes with 6 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee notes the steps taken by the European Commission.

1.2 The Committee would like any pharmacological substance intended for food-producing animals to be submitted to the European Medicines Agency (EMA) and the Maximum Residue Limits (MRLs) to be assessed by the Committee for Medicinal Products for Veterinary Use (CVMP).

1.3 Any company producing pharmacological products for animals should be authorised by the EMA and have had its MRLs assessed by the CVMP.

1.4 In order to prevent any hindrance to the movement of products within the European Community, these authorisations will be valid throughout all the EU Member States.

1.5 The procedure for placing products on the market should be simplified, whilst maintaining a high level of consumer protection.

1.6 Simplifying European documents and making them more readable would benefit all Europeans. Access to such documents would help everyone to discover and understand Europe's contribution to their daily lives.

2. Aim of the proposal

2.1 The aim is to continue to limit consumer exposure to pharmacologically active substances.

2.2 Whilst maintaining a high level of consumer protection, the proposal should also help to simplify legislation.

2.3 In order to achieve the desired aim, specific objectives should be borne in mind:

a) improve availability of veterinary medicinal products for food-producing animals in order to ensure animal health and welfare and avoid illegal use of substances;

b) simplify the existing legislation by enhancing readability of the provisions on established MRLs for the end-users;

c) provide clear references for the control of residues of pharmacologically active substances in foodstuffs to improve consumer health protection and the functioning of the Single Market;

d) clarify the Community procedures establishing Maximum Residue Limits (MRLs) by ensuring consistency with international standards.

3. Current situation

3.1 The current legal framework for MRLs has led to particular problems:

a) Availability of veterinary medicines has decreased to an extent that creates adverse effects for public and animal health and animal welfare.

b) International standards supported by the EU cannot be included in Community legislation without a new scientific assessment by the European Medicines Agency.

c) Member States' supervisory bodies have no points of reference, in particular for substances detected in foodstuffs from third countries.

d) The current legislation is difficult to understand.

4. Proposed measures

4.1 The main changes proposed are as follows:

a) make the assessment of possibilities for extrapolation a compulsory part of the overall scientific assessment and create a legal basis for the Commission to lay down the principles for applying extrapolation;

b) introduce an obligation to adapt Community legislation to include Maximum Residue Limits (MRLs) set by Codex with the support of the EU;

c) create a specific legal framework to set maximum residue limits for pharmacologically active substances not intended to be authorised as veterinary medicines in particular for control purposes and for imported foodstuffs.

4.2 The Commission has taken care to consult the parties concerned, in order to determine what changes might be needed.

5. Recommendations

5.1 The European Economic and Social Committee notes the steps taken by the European Commission.

5.2 The Committee would like any pharmacological substance intended for food-producing animals to be submitted to the European Medicines Agency (EMA) and the Maximum Residue Limits (MRLs) to be assessed by the Committee for Medicinal Products for Veterinary Use (CVMP).

5.3 Any company producing pharmacological products for animals should be authorised by the EMA and have had its MRLs assessed by the CVMP.

5.4 In order to prevent any hindrance to the movement of products within the European Community, these authorisations will be valid throughout Europe.

5.5 The procedure for placing products on the market should be simplified, whilst maintaining a high level of consumer protection.

5.6 Developments in scientific knowledge will help to determine whether products are innocuous and how long to wait between administering the medicine to an animal and slaughtering it for consumption.

5.7 Developments in scientific knowledge should enable the Council to set a maximum residue limit.

5.8 Request for procedures: the current procedure has proved its worth and managing requests for authorisation should still form part of it.

5.9 The classification of pharmacologically active substances should thus take account of the following:

a) a maximum residue limit

b) the absence of a maximum residue limit

c) a ban on administering substances.

5.10 The EMA should consult the reference laboratories, in order to determine the process for analysing residues.

5.11 The movement of foodstuffs of animal origin in the European Union must not be hindered.

5.12 Simplifying European documents and making them more readable would benefit all Europeans. Access to such documents would help everyone to discover and understand Europe's contribution to their daily lives.

5.13 Meat products from outside the Community treated with medicines not licensed in the EU should be subject to a scientific study proving that these products are innocuous, be submitted to the EMA, and then have their MRLs validated by the Committee, in order to ensure that consumers are fully protected.

5.14 The Commission should consider the issues surrounding the availability of medicinal substances for certain species, such as goats, rabbits, etc., which laboratories choose not to develop because they are not profitable.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Regulation concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy’

COM(2007) 196 final — 2007/0070 (CNS)

(2008/C 10/14)

On 1 June 2007, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 September 2007. The rapporteur was **Mr Sarró Iparraguirre**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 150 votes to 1, with 4 abstentions.

1. Conclusions and recommendations

1.1 The Committee broadly welcomes the proposal for a regulation.

1.2 The EESC harbours doubts as to whether the proposed regulation genuinely represents a ‘simplification’ of the regulation currently in force that could help to reduce the administrative burden, both for Member States and the parties concerned.

1.3 The Committee considers that the European Commission’s definition of ‘end-users’ is vague, because it could potentially apply to any individual. The EESC therefore suggests that the Commission amend this definition, making it much more precise.

1.4 The EESC considers that environmental data should be collected primarily by means of surveys-at-sea carried out by the Member States, as part of scientific fisheries programmes.

1.5 The Committee considers that the Commission should further clarify the grounds for non-compliance leading to penalties being imposed on the Member States and should amend the financial corrections.

1.6 The EESC calls on the Commission to delete the reference to the unrestricted access of economic data samplers to business premises because of the legal problems that this may entail.

1.7 The EESC believes that the Commission should expressly provide for Member State funding of observer-at-sea schemes and that self-sampling programmes, which would be carried out by crew members, are kept to the absolute minimum, because they could result in an excessively heavy workload.

1.8 With regard to assessing the impact of fishing activity on the environment, the Committee considers that the European

Commission should spell out what data it will need and who will collect it.

1.9 The EESC considers that collecting data that enables an assessment to be made of the degree of species interaction would be difficult and therefore proposes that this point be deleted.

1.10 With regard to the management and use of the primary data that is collected, the Committee wishes to emphasise the importance of everyone with access to these data under the proposed regulation treating them as confidential.

1.11 The Committee considers that it would be practically impossible to start Community and national programmes in 2008, and therefore recommends that the Commission launch them in 2009.

2. Explanatory statement

2.1 The systematic collection of reliable basic data on fisheries is a cornerstone of fish stock assessment and scientific advice, and consequently of critical importance for the implementation of the Common Fisheries Policy (CFP).

2.2 The Commission has carried out a review of the current system introduced by the framework regulation for the collection of data ⁽¹⁾ following several years of its implementation and considers that it needs to be reviewed in order to take due consideration of a fleet-based approach towards fisheries management, the need to develop an ecosystem approach, the need for improved quality, completeness and broader access to fisheries data, more efficient support for provision of scientific advice and the promotion of cooperation among Member States.

⁽¹⁾ Council Regulation (EC) No 1543/2000 of 29 June 2000 establishing a Community framework for the collection and management of the data needed to conduct the common fisheries policy (OJ L 176, 15.7.2000) and the other regulations in the field of the collection and management of data on fisheries.

2.3 It is therefore presenting the proposal ⁽²⁾ under consideration here with the aim of developing long-term, well-integrated regional sampling programmes covering biological, economic, environmental and social data that meet new demands generated by the need to move towards fisheries management and towards the ecosystem approach to fisheries management.

2.4 The proposal claims that the new data collection system will cover the entire process, from the collection of the data at sea to its use by the end-users. Furthermore, it innovatively provides for a) the collection of environmental data, with the aim of monitoring the impact of fishing activity on the marine ecosystem, b) a financial penalty for Member States that fail to comply with the rules, c) improvements in access to data and their use and d) a reduction in the administrative burden for all parties concerned (simplification).

3. General comments

3.1 With a view to improving scientific advice, the proposal establishes rules on the collection and management, in the framework of multiannual programmes, of biological, environmental, economic and social data concerning the fisheries sector and the use, in the framework of the CFP, of these data.

3.2 These basic data on fisheries should help to assess the activity of the different fishing fleets, draw up summaries using data collected under other Community provisions on the CFP, calculate the total volume of catches and discards per stock by commercial vessel segment, classify catches by geographical area and time period, estimate the abundance and distribution of fish stocks, evaluate the impact of fishing activities on the environment, assess the fisheries sector's socio-economic situation, facilitate monitoring of the prices of Community vessels' landings and of imports and evaluate the industry's economic and social situation.

3.3 Funding for these activities is provided for under Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea ⁽³⁾, on which the Committee has already delivered an opinion ⁽⁴⁾.

3.4 The proposal attaches particular importance to quality control and validation of the data collected, and considers that the Community financial contribution should be made conditional on quality control and compliance with agreed quality standards.

3.5 Other Community regulations cover the collection and management of fisheries data and include provisions on the collection and management of data relating to fishing vessels, their activities and catches, and on price monitoring, incidental

catches of cetaceans and conditions applicable to deep sea fishing, which should be taken into account in the proposed regulation if a comprehensive and coherent system of data collection is to be established.

3.6 The Committee broadly welcomes the proposal. Nevertheless, it is concerned to note the steady increase in regulation by the Community, which adds to the administrative burden. In this case, the EESC harbours doubts as to whether the proposed regulation genuinely represents a 'simplification' of the regulation currently in force that could help to reduce the administrative burden, both for Member States and the parties concerned.

3.7 The EESC is also pleased to note that the proposal places great emphasis on the environmental aspects of fishing activities and that it could provide the data needed to apply an ecosystem approach to fisheries management.

4. Specific comments

4.1 The regulation starts by defining a number of key concepts, such as the fisheries sector, recreational fisheries, marine regions, primary data, detailed data, aggregated data, fleet-based sampling, Community fishing vessels and end-users. The EESC considers that the term 'end-users' is vague, because it refers to 'natural or legal persons or organisations with an interest in the scientific analysis of data concerning the fisheries sector'. The Committee is of the view that, under this definition, anybody could be an end-user. It therefore suggests that the European Commission amend its definition, making it much clearer who the real end-users are.

4.2 With regard to data collection, the Commission will draw up a multiannual Community programme covering:

- commercial fisheries carried out by Community fishing vessels within and outside Community waters;
- recreational fisheries carried out within Community waters;
- aquaculture activities carried out within the territories of the Member States and Community waters;
- industries processing fisheries products.

4.3 Member States will draw up a national data collection programme in accordance with the Community programme, which will include the procedures and methods to be used in collecting and analysing data and in estimating their accuracy and precision. In particular, the national programmes will include:

- national sampling programmes;
- a scheme for observers-at-sea, where necessary;
- a scheme for surveys-at-sea.

⁽²⁾ COM(2007) 196 final, of 18.4.2007.

⁽³⁾ OJ L 160, of 14.6.2006.

⁽⁴⁾ NAT/280 — CESE 1490/2005 — OJ C 65, of 17.3.2006.

4.4 The Commission proposal states that Community and national programmes will be drawn up to cover a three-year period. The first programmes are due to cover the period from 2008 to 2010. The Committee considers that it would be practically impossible for the programmes to start in 2008, and therefore recommends that the Commission implement this provision as of 2009.

4.5 Member States will coordinate their national programmes with other Member States in the same marine region and make every effort to coordinate their actions with third countries having sovereignty or jurisdiction over waters in the same marine region, as occurs in the regional fisheries organisations.

4.6 The Scientific, Technical and Economic Committee for Fisheries (STECF) will evaluate the national programmes, any changes to these programmes and the scientific relevance of the data to be collected. The Commission will approve the national programmes on the basis of the evaluation by the STECF.

4.7 The Committee approves of the plan to collect and manage data under multiannual programmes. It wishes to point out to the Commission, however, that its proposal gives no indication of the impact that fisheries data collection will have on a vessel's daily work, in particular the impact of the fisheries sector's activities on the environment. The EESC therefore considers that environmental data should be collected primarily by means of surveys-at-sea carried out by the Member States as part of scientific fisheries programmes.

4.8 Innovatively, the Commission states that, unless the rules set out in the regulation are fully respected, it could sanction Member States by reducing and even suspending financial assistance for their national programmes. The Committee considers this to be a sound proposal and trusts that the Member States will comply with their obligations in order to avoid penalties. Nevertheless, it believes that the Commission should further clarify the grounds for non-compliance leading to penalties being imposed on the Member States and should amend the financial corrections.

4.9 As referred to in point 4.3, multi-annual sampling programmes will include:

- a sampling design for biological data following fleet-based sampling including, where appropriate, recreational fisheries;
- a sampling design for ecosystem data that permits the degree of species interactions and the impact of the fisheries sector on the environment to be estimated;
- a sampling design for economic and social data that permits the economic situation of the fisheries sector to be assessed.

4.10 The Committee reiterates the comments made in its opinion on Regulation (EC) No 861/2006, in which it considered that, in order to improve fisheries management, financing should also be provided, via the Member States, for expenditure incurred by the EU fishing sector in order to conduct the

required studies to assess the environmental effects of fishing activities and the socio-economic situation in the sector.

4.11 The Commission states that Member States should ensure that, in order to carry out their duties, samplers have access to:

- all landings, including as appropriate, transshipments and transfers to aquaculture;
- business premises for the collection of economic data.

4.12 The EESC wishes to draw the Commission's attention to the legal difficulties inherent in granting samplers unrestricted access to business premises in order to collect economic data. It therefore calls on the Commission to delete this point.

4.13 Lastly, fisheries data collection under the national programmes will involve a) observer-at-sea schemes where necessary for the purposes of collecting data and b) scientific surveys at sea to evaluate the abundance and distribution of stocks, independently of the data provided by commercial fisheries and to assess the impact of fishing activity on the environment.

4.14 The EESC considers both of these schemes to be necessary to complement the fisheries data collection framework, and believes that the Commission should specifically provide for the financing — via the Member States — of observer-at-sea schemes. The Committee would like to point out to the Commission that when observers-at-sea cannot board fishing vessels due to an obvious lack of space or for safety reasons, the self-sampling schemes that crew-members are supposed to carry out could result in an excessively heavy workload.

4.15 With regard to assessing the impact of fishing activity on the environment, the Committee considers that the European Commission should spell out what data it will need and who will collect it.

4.16 The regulation provides that Member States will be responsible for the safe storage in computerised databases and the confidentiality of the primary data collected; Member States will also be responsible for the quality and completeness of the primary data collected and of the detailed and aggregated data derived from the primary data.

4.17 The Committee considers it appropriate that these responsibilities should fall to the Member States, because confidentiality is of the utmost importance to fishing enterprises.

4.18 Data confidentiality is of the utmost importance, because national computer databases will contain all primary data collected under:

- Regulation (EEC) No 2847/1993 establishing a control system applicable to the common fisheries policy;
- Regulation (EC) No 779/1997 introducing arrangements for the management of fishing effort in the Baltic Sea;

- Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products;
- Regulation (EC) No 2347/2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks;
- Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries.

And under this regulation they will contain:

- data on vessels' activity based on information from satellite monitoring and other monitoring systems;
- data on the total volume of catches per stock by commercial vessel segment, including discards and, where appropriate, data regarding catches in recreational fisheries;
- biological data needed to monitor the status of exploited stocks;
- ecosystem data needed to evaluate the impact of fishing activities and aquaculture on the environment;
- data to evaluate the degree of species interactions; and
- economic and social data from the fleet sector and the processing industries.

Brussels, 26 September 2007.

4.19 With regard to the data enabling an evaluation to be made of the degree of species interactions, the Committee considers that, given their ambiguity and vagueness, an evaluation of this nature is not possible and should, therefore, be deleted.

4.20 Member States will process the primary data into data sets of detailed or aggregated data in accordance with relevant international standards and protocols agreed at region level and, by means of agreements with the Commission, will make them available to the Commission and to the appropriate scientific bodies.

4.21 Member States will transmit detailed and aggregated data in a secure electronic format.

4.22 Member States may refuse to transmit the relevant detailed and aggregated data only if there is a risk of natural persons and/or legal entities being identified or in cases where an end-user fails to comply with the requirements set out in the regulation.

4.23 With regard to the management and use of collected data, the Committee wishes to highlight the importance of the confidentiality of the primary data that are collected, in particular data on vessels' activity based on information from satellite monitoring. The Committee therefore calls on the Commission to adopt a different approach to the matter.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyreostatic action and of beta-agonists'

COM(2007) 292 final — 2007/0102 (COD)

(2008/C 10/15)

On 2 July 2007, the Council decided to consult the European Economic and Social Committee, under Article 152(4)(b) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 September 2007. The rapporteur was **Mr Jírovec**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September 2007), the Economic and Social Committee adopted the following opinion by 152 votes to 1 with 3 abstentions.

1. Conclusions

1.1 The European Economic and Social Committee takes note of the measures proposed by the European Commission.

1.2 The Committee welcomes the simplification and clarification of this legislation, which applies both to the general public and to companies providing pharmaceutical products for animals.

1.3 The proposal for a directive upholds the principle of proportionality, as it lays down only limited changes on the basis of the most recent scientific data and expert opinions.

1.4 The proposed directive also addresses the issue of third-country imports of food-producing animals.

1.5 The proposal for a directive does not contravene WTO commitments.

1.6 The future unavailability of Oestradiol 17 β and its ester-like derivatives will have a negligible impact on farming and animal welfare.

1.7 There is no need to set maximum residue limits.

1.8 The impact on small and medium-sized enterprises will also be minimal.

2. Aim of the proposal

2.1 The aim of the proposal is to amend Directive 96/22/EC of 29 April 1996, as amended by Directive 2003/74/EC. The proposed directive prohibits the placing on the market of certain substances for administering to any animals, the meat and products of which are intended for human consumption, for purposes other than those provided for in point 2 of Article 4.

List of prohibited substances:

List A:

— Thyrostatic substances

— Stilbenes, stilbene derivatives, their salts and esters

— Oestradiol 17b and its ester-like derivatives.

List B:

— Beta-agonists.

2.2 The changes proposed are the following:

a) exclude pet animals from the scope of the legislation,

b) prohibit any use of oestradiol 17 β in food-producing animals.

2.3 The Commission proposes making only very limited changes that are needed to prevent the further suffering of pet animals as a result of no appropriate treatment being available and to take account of scientific and expert advice concerning oestradiol 17 β ⁽¹⁾.

3. Background

3.1 Article 2(a) of Council Directive 96/22/EC specifically prohibits the placing on the market of substances listed in Annex II for administering to animals of 'all species'.

3.2 A price-comparison of products having a thyrostatic action reveals that using them for food-producing animals is of limited economic benefit.

3.3 Illegal use more commonly involves the illegal production or import of these substances. In the last five years, no illegal use of stilbene derivatives, their salts or esters has been detected.

3.4 The directive referred to above does not provide for marketing authorisations to be granted for products containing substances to treat hyperthyroidism in pet animals.

3.5 In 1981 (with Directive 81/602/EEC), the EU prohibited the use of substances having a hormonal action for growth promotion in farm animals, including oestradiol 17 β .

⁽¹⁾ 'Prevention and Control of Animal Diseases'
http://ec.europa.eu/food/animal/resources/publications_en.htm.

3.6 Although Directive 96/22/EC originally aimed to ban the use of oestradiol 17 β and its ester-like derivatives for all purposes, it ultimately did no more than limit the circumstances in which oestradiol 17 β may be administered for purposes other than growth promotion. This product is totally carcinogenic, as it can both cause and promote tumours.

3.7 The report presented to the Council and Parliament on 11 October 2005 concludes that because the use of alternative substances such as prostaglandins is widespread, use of oestradiol 17 β could be phased out for food-producing animals.

3.8 Pet animals affected by hyperthyroidism often suffer as a result of the ongoing unavailability of appropriate treatment.

4. Comments

4.1 The European Economic and Social Committee takes note of the measures proposed by the European Commission.

4.2 The changes proposed in relation to oestradiol 17 β are the direct result of the activities required by Article 11(a) of Directive 2003/74/EC.

4.3 The changes made are extremely limited and are needed to prevent the further suffering of pet animals as a result of no appropriate treatment being available.

4.4 This proposal is relevant to pet owners, practicing veterinarians, the veterinary pharmaceutical industry and Member State authorisation agencies.

4.5 The proposal will help to ensure a high level of protection of human health.

4.6 New authorisations must, however, consider potential misuse and products that are likely to be misused could, therefore, be rejected.

Brussels, 26 September 2007

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1924/2006 on nutrition and health claims made on foods'

COM(2007) 368 final — 2007/0128 (COD)

(2008/C 10/16)

On 26 July 2007 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.

Since the Committee unreservedly endorses the contents of the proposal and has already set out its views on the subject in its earlier opinions CESE 308/2004 and CESE 1571/2006, adopted on 26 February 2004 and 13 December 2006 (*), it decided, at its 438th plenary session of 26 and 27 September 2007, by 163 votes to 1 with 7 abstentions, to issue an opinion endorsing the proposal and to refer to the position it had taken in the above-mentioned documents.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

(*) EESC opinions on the *Proposal for a Regulation of the European Parliament and of the Council on nutrition and health claims made on foods* — COM(2003) 424 final — 2003/0165 COD (OJ C 110 of 30.4.2004) and on the *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No .../... on nutrition and health claims made on foods* — COM(2006) 607 final — 2006/0195 COD (OJ C 325 of 30.12.2006).

Opinion of the European Economic and Social Committee on 'Global trade integration and outsourcing: How to cope with the new challenges'

(2008/C 10/17)

On 16 February 2007 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on *Global trade integration and outsourcing: How to cope with the new challenges*.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 September 2007. The rapporteur was Mr Zöhrer and the co-rapporteur was Mr Lagerholm.

At its 438th plenary session held on 26 and 27 September (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 151 votes to one, with eight abstentions.

1. Summary

1.1 The changes in trade and the increasing integration of economies into the system of world trade are driven by a wide range of factors. One of the most important factors in this is the development of an international division of production that has led to an increasing number of intermediate products (goods and services) being traded at various stages of the production process. Trade in intermediate products is one of the most significant driving forces behind industrial change and represents a particular form of the international division of labour.

1.2 In this context, outsourcing is measured by the external trade flows of intermediate products, which differs from the usual definition and to some extent overlaps with what is known as offshoring. In order to make this distinction, one could therefore use the term 'offshore outsourcing'.

1.3 There are a number of reasons behind this offshore outsourcing. Lower labour costs (lower wages and/or lower social protection) are the most prominent in the debate. However, above and beyond this, prices of raw materials and proximity to emerging growth markets also play a significant role. Cost advantages arising from less strict environmental laws or tax advantages can also drive offshore outsourcing.

1.3.1 The phenomenon of offshore outsourcing is not a new development, but is synonymous with the organisation of production based on the division of labour, under which businesses specialise in what they do best and most cost-effectively. Information technology and cheap communication speed up this development and make cross-border trade possible in many new sectors — especially in the service sector.

1.3.2 A cheap and efficient transport system is a fundamental prerequisite for offshore outsourcing.

1.4 The volume of goods currently being traded across the world is fifteen times greater than in 1950 and its share of global GDP has tripled. Worldwide trade in services is now

reaching similar growth rates to that in goods, and is growing faster than GDP. Services account for just under 20 % of international trade.

1.5 Between 1992 and 2003, the share of intermediate goods in overall imports rose from 52,9 % to 54,1 % and of capital goods from 14,9 % to 16,6 %. The share of consumer goods fell slightly. Amongst intermediate products, there is a significant shift towards the parts and components category.

1.6 Trends also vary widely at regional level. While the share of intermediate products in imports has fallen in the EU-15, Japan and the USA, it has risen in China, south-east Asia and the new EU Member States (EU-10).

1.7 The rapid growth in trade in services has mainly taken place in the 'other services' category, which includes business-related services. Within that, financial, computer and information services are growing particularly strongly. The winners from service outsourcing are the USA, the EU-15 and India, the latter having done particularly well.

1.8 Overall, the EU has successfully maintained its leading position in world trade in both goods and services. The European economy is the market leader in a wide range of mid-technology industries and in capital-intensive goods. The increasing trade deficit with Asia and the EU's rather weak performance in the area of ICT give cause for concern.

1.9 Offshore outsourcing increases trade, which increases prosperity overall. However, the Committee is also aware that there are losers as well as winners in this game, and that the losers are usually easier to identify, as the impact is immediate (for example workers who lose their jobs).

1.10 Given that these developments in trade in intermediate products are on balance positive for the EU, the latter would be well advised to adopt a positive and proactive attitude towards free but fair worldwide trade and an active globalisation strategy. That said, particular care must be taken within the EU to ensure that the benefits that arise are shared out.

1.11 The EU must act in favour of fair conditions and (economically, socially and environmentally) sustainable development in world trade.

1.12 The EU should be aware of its strengths and build on them. In particular, the above-mentioned mid-technology sectors are often characterised by high levels of innovativeness. Beyond this, however, investment in equipment and ideas is needed in new areas.

1.13 In the light of the development of offshore outsourcing, more, detailed analyses are urgently needed. The Committee recommends that the Commission launch such analyses, which should include possible scenarios in the short and medium term, and that it involves the relevant stakeholders in the process. Such analyses could also form part of the sectoral analyses under the new industrial policy and serve as a basis for the discussions under sectoral social dialogue.

1.14 The answers to the challenges for Europe arising out of the integration of world trade and the increasing offshoring of European production lie mainly in the Lisbon strategy. In this context, the Committee highlights the following points as being key to an adaptable, competitive Europe within the process of globalisation:

- Completion and strengthening of the internal market
- Promotion of innovation
- Stimulation of employment.

2. Background to and justification for the opinion

2.1 The changes in the field of trade, and the increasing integration of economies into the system of global trade, are driven by a range of factors (trade liberalisation, lower transport and communications costs, rising incomes, increasing international division of labour, etc.). One of the most important factors in this is the development of an international division of production that has led to an increasing number of intermediate products (goods and services) being traded at various stages of the production process. This increase in intermediate trade, described here as outsourcing, is giving rise to the restructuring of numerous production processes at global and regional level, and is also happening in many areas of the service sector.

2.2 The industrialised countries' traditional comparative advantages in terms of their skilled workforce and their technical know-how in relation to their products and/or production processes are subject to increasing pressure from a number of directions. In this rapidly changing environment, the EU is faced with new competitors that have come into existence a wide range of sectors of the economy and in a high value-added service sector. The challenges for EU businesses are thus increasing apace.

2.3 Trade in intermediate products is one of the most significant driving forces behind industrial change and represents a particular form of the international division of labour, which is rapidly eclipsing more traditional forms of globalisation. It is patently obvious that the globalisation of markets, along with technical progress, makes it possible to fragment the production process of a particular product into a series of various upstream and downstream stages that are usually spread across several countries.

2.4 This opinion seeks, first of all, to examine the extent to which the worldwide phenomenon of outsourcing of goods and services is being driven mainly by developments in Asian countries (in particular China and India), and by the integration of the new EU Member States. At the same time, it is important to look at whether and to what extent the EU is vulnerable following the emergence of new global trading powers and the changes to comparative advantage that goes with it, in particular with regard to those markets in which the EU currently has a leading position. These are first and foremost those that are medium-tech and capital intensive in nature, such as the automobile and pharmaceutical industries and the manufacture of specialised equipment.

2.5 The phenomenon of relocations is not dealt with in this opinion, as it has already been covered in other Committee opinions.

2.6 In short, this means that we are dealing here with an interesting phenomenon in industry that will force businesses in the EU to develop the comparative advantages from which they have benefited in the past but are no longer guaranteed, not even in entirely new economic sectors such as services. By examining this development process, it would be possible to identify sectors that are currently weak or may become so in the future, and to advise industries in the EU to take the appropriate decisions.

3. Development of global trade

3.1 The following analysis is based on a study published in October 2006 by the European Commission Directorate-General for Economic and Financial Affairs as Number 259 of the Economic Papers series ⁽¹⁾.

3.1.1 This study covers the period between 1990 and 2003. This is of interest because significant changes affecting Europe took place in global trade at the beginning of the 1990s. The PR China began to play a bigger role in international trade, which led to its accession to the World Trade Organisation. The further realisation of a single market led to deeper integration within the EU. The political and economic opening of the countries of central and eastern Europe, and their integration into the EU, led to an expansion of the single market. Thus, the EU had 12 Member States at the beginning of this period, compared to 27 today.

3.1.2 At the same time, significant changes took place in India, Russia and Latin America (in particular Brazil), which have strengthened these countries' position in global trade.

⁽¹⁾ Economic Papers, Number 259: *Global trade integration and outsourcing: How well is the EU coping with the new challenges* by Karel Havik and Kierian McMorrow.

3.1.3 Since no reliable data are available for the period following the completion of this study in 2003, there is no basis on which to make statements about developments since then. However, one can assume that, where the study refers to the EU-10, similar trends can also be observed for Bulgaria and Romania. The example of the textile industry shows that the developments observed are, if anything, speeding up.

3.2 The volume of goods currently being traded across the world is fifteen times greater than in 1950 and its share of global GDP has tripled. Worldwide trade in services is now growing at rates similar to those of goods (about 6 % per year on average since 1990) and is thus rising faster than GDP. Services account for just under 20 % of international trade. Services account for just under 20 % of international trade.

3.2.1 While overall trends are broadly stable, the growth rates in the various categories of goods and services have been seen to diverge sharply.

3.2.2 As mentioned in the introduction above, the international division of labour is one of the most significant driving forces in the development of global trade. This division of labour is leading to ever-increasing volumes of intermediate trade (in goods and services). This growth in intermediate trade (e.g. in semi-finished goods, parts and components) or 'outsourcing' reflects the reorganisation of many production processes on a global or regional level — as opposed to on a national basis — and is a mirror image of the enormous growth in FDI flows (foreign direct investment) from less than 5 % of world GDP in 1980 to over 15 % by the late 1990s. However, not all foreign direct investment is related to outsourcing.

3.2.3 Globalised production systems, which, in conjunction with the emergence of powerful information and communications technologies (ICT), lead to outsourcing or, to use another term, 'vertical specialisation', are also having an impact on many areas of the service sector.

3.2.4 The internationalisation of production processes at regional and global levels is generating increased intra-industry and intra-firm trade. A country's exports from a given industry are increasingly dependent on imports of intermediate goods, which are either produced by the same industry or by a subsidiary of a multinational.

3.3 Overview of trade by stage of production

3.3.1 Using the UN's Broad Economic Categories Classification, it is possible to classify products according to their final use (e.g. whether they are intermediate, consumer or capital goods).

3.3.2 Between 1992 and 2003, the share of intermediate goods in overall imports rose from 52,9 % to 54,1 % and of

capital goods from 14,9 % to 16,6 %. The share of consumer goods fell slightly. In the area of intermediate goods, there has been a significant shift towards the parts and components category, particularly in the ICT and car industries.

3.3.3 Trends also vary widely at regional level. While the share of intermediate products in imports has fallen in the EU-15, Japan and the USA, it has risen in China, south-east Asia and the new EU Member States (EU-10).

3.4 These comments do not take account of trade and trends within the EU-15. It must be noted, however, that it is here that by far the bulk of individual EU Member States' trade is conducted between two thirds and 80 %. In this context, outsourcing is thus measured exclusively by the external trade flows of intermediate products, which differs from the usual definition and to some extent overlaps with what is known as offshoring. In order to make this distinction, one could therefore use the term 'offshore outsourcing'.

4. Reasons for increasing offshore outsourcing

4.1 There are many different reasons why a company decides to move its business operations or parts of it abroad. The lower cost of labour seems to be the most prominent at the moment. But factors like lower prices of raw materials and being near the growth market also play an important role. Factors that may militate against such a decision include low productivity, uncertain legal systems, poor infrastructure, unfavourable trade conditions (e.g. customs duties, standards) and lack of scope for monitoring and remedial action should problems arise.

4.2 Moving production facilities or indeed sourcing goods previously made by firms themselves is not a new development. Substituting foreign for domestic labour has been a common practice in all industrialised countries for many years. The phenomenon of outsourcing is effectively synonymous with the division of labour and with companies remaining competitive and cost-conscious while specialising in what they do best. What is new, however, is that information and communication technology (ICT) in recent years has made outsourcing of whole new types of services — and production of goods — possible. IT and cheap communication today facilitate companies to outsource most things that can be reproduced/conducted in digital form, such as IT-support, back office, call-centres, software programming, and some R&D functions.

4.2.1 Similarly, ICT has enabled additional outsourcing in goods manufacturing, as intermediate inputs can now be seamlessly sourced from multiple suppliers. Just-in-time production techniques rely heavily on ICT to simultaneously coordinate the production and delivery of individual parts and components from different manufacturers operating over varying distances.

4.3 What can be outsourced can normally also be offshored. Offshoring may take the form of a transfer of particular tasks within an organisation to a foreign location or to an independent supplier.

As said, this is not an entirely new phenomenon but the rapid development in ICT and the accompanying drop in the cost of communication have enabled many new inputs of particularly services to be traded across borders. Today such tasks as technical drawing in architecture, radiologist readings of X-rays, or certain legal services may be sent overseas. Hence, the development of ICT has expanded international trade by lowering transaction costs and making entirely new things tradable. This is not unlike the impact of the international container system in the 1950s, which also caused international trade to soar ^(?).

4.4 In this opinion we concentrate on offshore outsourcing. But in the general political debate this is often mixed up together with the issue of FDI. For example there are developments that are often presented as forms of outsourcing/offshoring but are in fact part of expansions of business operations abroad to cater to the local markets. In order to determine whether a particular relocation of a production facility is an example of offshoring it is necessary to determine which market is to be serviced. An expansion of business operations abroad for the sole purpose to serve foreign markets (horizontal FDI) won't necessarily have any negative effects on employment in the home country. On the contrary: it might have very positive effects both on profitability and on employment at the headquarters of the firm.

4.5 But of course, it is not only lower labour costs (low wages and/or lower social protection) and the need to get closer to markets that make companies relocate production. The drive can also be lower costs, due to i.e. less strict environmental regulations or tax-advantages. An interesting example of recent offshoring, that can illustrate this, is what has happened in the European cement industry. Because of the very sharp increase in energy prices in Europe — partly caused by the EU trading system for CO₂ emissions — and the direct limitation on CO₂ emission for the industry, some European cement producers have outsourced the production of clinker to China.

4.6 Last but not least, a cost effective and efficient transport system is a precondition for offshore outsourcing.

5. Goods outsourcing

5.1 Outsourcing, defined in the study as the contracting-out of production areas to external suppliers or to dedicated subsidi-

(?) Containerisation is an inter-modal system of transporting the general cargo or product in lots using ISO standard containers. The goods can be easily moved from one location to another in these containers which can be loaded intact onto the container ships, trucks, railroad, cars and planes. The concept of containerisation is considered as the key innovation in the field of logistics which has revolutionised freight handling in the twentieth century and dramatically reduced shipping costs.

aries established outside the EU, is a reflection of the following factors:

- World trade flows are being driven by the internationalisation of production structures and the rise in global FDI flows.
- World imports of intermediate goods (especially parts and components) and capital goods are on the increase. This is also resulting in rising levels of intra-industry and intra-firm trade.
- There is a sharp increase in complementary, two-way, trade flows between industrialised and developing/emerging countries. The share of intermediate products in imports to the EU-15, the USA and Japan is falling, while it is at the same time rising in their less advanced regional partners.
- Given the global companies involved, outsourcing of certain production phases is a particular feature of the ICT and automobile industries.

6. Services outsourcing

6.1 Global trade in services has been growing rapidly since the mid-1990s, attaining growth rates similar to those of trade in goods, and thus rising much faster than GDP. Services trade rose from 3,8 % of overall GDP in 1992 to 5,7 % in 2003.

6.2 While the transport and tourism categories have been growing in line with GDP, the big growth area here has been in the 'other services' category, which includes business-related services. Within that, financial, computer and information services are growing particularly strongly.

6.3 In net terms (exports less imports), the winners in the services outsourcing market have been the USA, the EU-15 and India; in relative terms, India has experienced the greatest gains.

7. EU strengths and weaknesses

7.1 Since 1990, the EU has, overall, successfully maintained its leading position in world trade in both goods and services. This is to some extent due to the fact that the investment-intensive phase of the global catch-up process in the early 1990s favoured those industries that manufacture capital-intensive goods — an area in which the EU holds a relatively strong position. The EU is the market leader in a variety of medium-technology and capital-intensive goods industries and is particularly strong in worldwide automobile production, in the pharmaceuticals industry, in the field of specialist equipment and in financial and business services.

7.1.1 Between 1992 and 2003, the EU's external trade surplus rose from 0,5 % to 1,5 % of GDP and makes a significant contribution to GDP growth.

7.1.2 A key EU strength is also undoubtedly its own internal market, which not only offers a stable legal framework but also a correspondingly large domestic market. As a result of enlargement, some of the outsourcing has taken place in the new Member States.

7.1.3 The study shows that, in some manufacturing fields, such as the automobile industry, offshore outsourcing tends to focus on specific regions (from the EU-15 to the new Member States; from the USA to Mexico and Brazil; from Japan to south-east Asia and China). This is largely explained by the distance-related costs involved, e.g. for transport. In the case of the new technologies and services, however, these costs play a less important role.

7.2 At the same time, however, the study also highlights a number of areas of concern: geographically, the EU's growing trade deficits with Asia in general; and, technologically, the EU's somewhat poor performance on the ICT front. One particular factor that must be borne in mind here is that some developing countries are keen to get ahead quickly in the value chain and are thus investing a great deal in R&D and training.

7.2.1 To date, Asia's success on the world market has largely been in product areas such as ICT, which, from a European perspective, have been less important than other areas such as the automobile industry, pharmaceuticals or the chemical sector. Over the last fifteen years, many Asian countries have specialised in the export of ICT products ⁽³⁾. It is to be expected that, as they develop further, these countries will also turn their attention to those industries in which the EU has so far been dominant (as the example of the textiles industry shows).

7.2.2 The EU and China enjoy strong complementarities in terms of their trade structures, with the EU specialising in medium-high technology and capital goods, and with China focusing on low-technology, labour-intensive and ICT-related product areas. This complementarity pattern translates directly into favourable terms of trade trends for the EU, with many EU Member States presently enjoying significant gains in their pricing power relative to emerging market powers such as China. These results suggest that the catching-up processes of large emerging economies such as China can be a mutually beneficial process, with strong per capita income gains for both the developed and developing world.

⁽³⁾ Cheap production sites in which expensive high-tech US or European products and know-how are often also processed have resulted in a situation in which goods such as computers or mobile telephones come onto the market at affordable prices and are thus available to a broad swathe of consumers.

7.2.3 Services outsourcing to India is (still) currently of little macroeconomic importance.

7.3 In the medium to long term the EU faces the following potential external trade problems:

7.3.1 The EU's good performance in the 1990s was largely the result of gains made in the initial, investment-intensive phase of world trade liberalisation — a scenario that will not continue indefinitely.

7.3.2 The EU is weak in a wide range of high-technology industries, most notably ICT.

7.3.3 Asia is becoming a potential trade competitor in some of the EU's core industries. China's low-cost producers are likely to dominate a range of low-technology, labour-intensive industries. The implications of this will be greater for the EU than for the USA or Japan.

8. Winners and losers of offshore outsourcing

8.1 Offshore outsourcing generates more trade, frequently in new types of inputs and in new sectors. We know from theory and empirical studies that trade generates wealth, thus the offshore outsourcing should assumingly increase world welfare. A complicating factor here is of course the fact that the cost advantages that cause the offshoring of a certain production can be an effect of less strict environmental regulations concerning environmental effects of a global nature. But if that is not the case, we can assume that offshoring increase world welfare. But we also know that trade often generates both winners and losers and the question is who will be the winners and who will be the losers in Europe of the growing offshoring.

8.1.1 Of course, the decision from a company to outsource a certain task can turn out to be a bad decision from the company's point of view. There may be many reasons to that. Customers may not like to be served by call-centres overseas, companies may not receive the intermediate goods in the required quality at the specified time, cultural misunderstandings may occur between companies and clients or across international borders, or proprietary information may be leaked to competitors.

8.1.2 But here we have to start with the assumption that the decision to offshore or offshore outsource a task by a company (or government) is implemented in a successful way. What winners and losers may then be identified?

8.2 Winners

8.2.1 European companies engaging in offshoring and offshore outsourcing.

These get access to potentially large cost savings, mostly arising from lower labour costs. In the longer term, these companies will also gain access to new pools of skilled labour, both directly through their own offshored facilities and indirectly through offshore outsourcing from local suppliers. Furthermore, for companies located in European countries with well regulated labour markets, offshore locations generally will sometimes allow a more flexible management of their workforce levels. Development of new markets may also very well start with the location of an offshore facility there. Such local production facilities can allow European companies to produce goods and services at prices that make sales in low-wage countries possible.

8.2.2 European countries that supply offshored and offshore outsourced production and services.

With the accession of the twelve new Member States in 2004 and 2007, the European Union now contains several large suppliers of offshored and offshore outsourced products and services. However, some EU-15 countries, especially Ireland, have also benefited as 'offshore production locations'. Supplying countries' benefits are straightforward: In the short term benefits are in terms of the jobs generated and the investment attracted, and those in the longer term are in terms of the technology and skill transfers to local populations that accompany offshore and offshore outsourcing decisions by companies.

8.2.3 Consumers of offshored and offshore outsourced production and services.

Ultimate consumers of offshored goods and services may benefit from lower prices of the items they consume. There has, for instance, been estimated that between 10 and 30 percent of the price decline in semiconductors and memory chips during the 1990s occurred because of the globalisation of the IT hardware industry. Consumers may also benefit from expanded business hours in many services industries — for instance the opportunity to reach a company call-centre in Bangalore after 5 pm GMT/CET. Price declines will, depending on the extent of offshoring and offshore outsourcing relative to the total, drive inflation lower and thereby lead to greater purchasing power.

8.3 Losers

8.3.1 European workers who lose their jobs because of offshoring and offshore outsourcing.

Workers who lose their jobs as a consequence of offshoring and offshore outsourcing are the obvious and immediate losers.

Those who lose their jobs are a small and concentrated group hit hard, relative to the much more numerous and diverse group of winners from offshoring and offshore outsourcing, who (with the possible exception of companies) will all benefit only relatively little individually. This asymmetry between winners and losers makes the political economy of offshoring identical to most other discussions of free trade and import competition. The European Globalisation Adjustment Fund set up by the Council at the Commission's prompting provides the EU with a way of helping this group, albeit with limited resources.

8.3.2 European companies unable to adopt 'best practices' through offshoring and offshore outsourcing.

The fundamental problems plaguing Europe today is low productivity growth. As globalisation accelerates, for more and more industries offshoring and offshore outsourcing strategies are a competitive imperative for companies and companies unable to restructure their operations with the use of offshoring and offshore outsourcing of particular intermediate inputs or tasks will be at a competitive disadvantage against both their non-EU competitors and EU competitors able to do so. That means that they risk to face slower growth and may ultimately either be driven completely from the marketplace or choose to relocate their entire production outside their countries of origin — in both cases likely with larger job losses occurring than if offshoring and offshore outsourcing had been possible at an earlier stage.

9. The need for action and recommendations

9.1 The Committee has in the past issued several opinions on the subjects of world trade and globalisation in general ⁽⁴⁾, most recently in the opinion on *The challenges and opportunities for the EU in the context of globalisation* (REX/228 — Rapporteur: Mr Malosse). In that opinion, the Committee advocates *inter alia* a common strategy to contend with globalisation, a planetary State governed by the rule of law, the balanced and responsible opening-up of trade, a faster pace of integration, and globalisation with a human face.

9.1.1 Not least because these developments in trade in intermediate products are on balance positive for the EU, the latter would be well advised to adopt a positive and proactive attitude towards free worldwide trade and an active globalisation strategy. That said, particular attention must be paid to ensuring that the benefits that arise are shared out and to the political discussion. The EU must act in favour of fair conditions and (economically, socially and environmentally) sustainable development in world trade.

⁽⁴⁾ — REX/182 — The social dimension of globalisation, March 2005
 — REX/198 — Preparation for the sixth WTO ministerial conference, October 2005
 — SOC/232 — Quality of working life, productivity and employment in the context of globalisation and demographic challenges, September 2006
 — REX/228 — Challenges and opportunities for the EU in the context of globalisation, May 2007.

9.1.2 EU trade policy must increasingly be aimed at improving social and environmental standards worldwide and at finding a political approach that combines solidarity with self-interest and benefits everyone. More progress needs to be made on dismantling non-tariff trade barriers, especially where there is discrimination against European businesses. In connection with offshore outsourcing, the Committee stresses its call for better protection of intellectual property.

9.1.3 The current debate on climate change, greenhouse gas emissions and sustainable development will increasingly lead to re-evaluation of many aspects of globalisation, including trade. Developing countries are already looking for greater assistance, or 'capacity building', in the use of cleaner technologies. Greater attention will be given to the use of cleaner, more energy-efficient use of transport, especially to transport by sea, where appropriate. Environmental considerations will carry greater weight in decisions as to the future location of manufacturing plant and subsequent distribution of goods. The Committee therefore looks to the Commission, where it is not already doing so, to undertake separate studies into the trade-related aspects of the wider climate change debate.

9.2 The EU should first of all be aware of its strengths and build on them. In particular, the above-mentioned mid-technology sectors are often characterised by high levels of innovativeness. Beyond this, however, investment (in equipment and ideas) is needed in new areas. The seventh framework programme (2007-2012) highlights some of these opportunities. This avenue should be pursued further and more intensively (°).

9.3 In the light of the rapid development of offshore outsourcing, more analyses (taking into account sectoral and regional differences) are urgently needed, especially since the study mentioned in this opinion paints only a very broad picture and does not take account of the latest developments.

9.3.1 The most recent EU enlargements have created new opportunities for outsourcing towards the new Member States and this requires very careful analysis, since both the winners and the losers are within the Community. If we consider that offshore outsourcing towards the new and future Member States is to make a positive contribution to the cohesion strategy, it is logical to examine the future direction of the relevant EU financial instruments.

9.3.2 No detailed studies are available on the further impact of outsourcing on employment and skills.

9.3.3 The Committee recommends that the Commission launch such analyses, which should include possible scenarios in the short and medium term, and that it also involve the relevant stakeholders in the process. Surveys of decision-makers in businesses sometimes paint a different picture than that given by trade statistics.

9.3.4 Such analyses could also form part of the sectoral analyses under the new industrial policy. They could also serve as a basis for the discussions under sectoral social dialogue, thus

providing the latter with an additional means of dealing with and anticipating change. (On this subject, see various CCMI/EESC opinions.)

9.4 The answers to the challenges for Europe arising out of the integration of world trade and the increasing offshoring of European production lie mainly in the Lisbon strategy. In this context, the CCMI highlights the following points as being key to an adaptable, competitive Europe within the process of globalisation:

- Completion and strengthening of the internal market
- Promotion of innovation
- Stimulation of employment.

9.4.1 The further development and expansion of the single market with the aim of optimising the free movement of goods, services, people and capital will make a significant contribution to enhancing competition and will thus boost business, innovation and growth.

9.4.2 The internal market can fully become a reality only when the legislation has been fully and properly transposed and has come into force. The Commission and the Council must ensure that Member States do not delay this process.

9.4.3 Developing technology and attracting innovation to the Union are critical to ensure that Europe can compete in the global marketplace. Doing so will have the impact of increasing the number of high skilled jobs in the EU and thus make the EU a more attractive location to undertake business and investment.

9.4.4 To help promote innovation the patent process has to be cost-effective and simple. At present a patent that would offer EU-wide protection for inventions is substantially more expensive and complicated than the US patent. A cost-effective Community Patent must come in operation.

9.4.5 A concerted effort must be made to hit the 3 % target of GDP set down by Lisbon to be earmarked for national research and development spending within the shortest possible timeframe. As the key figures on science, technology and innovation released by the Commission on 11 June 2007 show, in 85 % of cases, delays in achieving that target are the result of poor investments from the business sector. At the same time, however, a high degree of R&D can be achieved if major private-sector commitment is accompanied by high levels of public investment. Within the EU, the public sector (that is to say, the Member States) must therefore continue to invest in R&D so that private-sector R&D activities continue to develop. Moreover, governments should introduce an innovative funding policy to promote R&D investments.

9.4.6 Investment in information and communications technology would promote efficiency in government and speed connections between consumers and markets within Europe. The development of a comprehensive network of broadband internet connections must be a priority.

(°) On this point, see the EESC opinion INT/269 — 7th R&D framework programme, December 2005.

9.5 Employment policy is particularly important in this process. This is a matter of, firstly, finding new employment opportunities for those who lose their jobs as a result of offshore outsourcing, and secondly, maintaining standards for workers' skills and adaptability. Workers who lose their jobs as a result of relocation increasingly find it particularly difficult to find a new job. Just a few years ago, it was generally possible to find a new job within three to four months. This process can now drag on for several years, as more and more labour-intensive production is relocated and no adequate alternative is on offer. Flexible, well-trained and motivated workers are the key to Europe's economic competitiveness.

9.5.1 In this context too, therefore, the Committee highlights the conclusions of the Wim Kok report ⁽⁶⁾ in relation to

- Increasing the adaptability of workers and businesses, thus increasing their chances of anticipating change
- Bringing more people on to the labour market
- Increased and more effective investment in human capital.

9.5.2 In a world of rapid change, technologies arrive and quickly become out of date. European governments must ensure that their citizens are able to adapt to this new environment, to ensure opportunity for all. There is an urgent need for modern social and labour market policies geared towards promoting

opportunity and employability, through the provision of skills and steps to promote workers' adaptability and capacity for retraining and their geographical mobility. Central to this ambitious challenge is the need for national education and skills policies, designed and implemented by Member States, and built on the foundation of investment in education and lifelong learning to equip people to adapt to change and to new areas of comparative advantage. As was emphasised in the Lisbon agenda, this should include 'new basic skills, such as IT skills, foreign languages, technological culture, entrepreneurship and social skills'.

9.6 Alongside workers' skills, it is very important that offshore outsourcing does not lead to an additional loss of know-how. An environment must be maintained that makes Europe an attractive location for research and development. For this to happen, the role of universities (in particular technical subjects and the natural sciences) needs to be rethought, along with their European networking and their cooperation with industry.

9.7 Europe's competitiveness will first and foremost be based on a knowledge-based, innovative economy and a solidarity-based social model ensuring strong cohesion. Europe cannot win a competition with low social or environmental standards.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽⁶⁾ Report of the Employment Taskforce headed by Wim Kok, November 2003.

The taskforce started its work in April 2003 and reported to the Commission on 26 November 2003. The Commission and the Council integrated the findings of the report into their Joint Employment Report for the 2004 Spring Council, which confirmed the need for decisive action by Member States along the lines suggested by the taskforce.

Opinion of the European Economic and Social Committee on 'Patients' rights'

(2008/C 10/18)

On 14 July 2005 the European Economic and Social Committee, acting in accordance with Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *Patients' rights*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 July 2007. The rapporteur was Mr Bouis.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 108 votes to none, with two abstentions.

1. Justification and recommendation

1.1 For many years now, European countries and the European Community have addressed the question of the rights of health service users, establishing charters or a comprehensive body of legislation enabling the affirmation of such rights⁽¹⁾. These obviously depend on the quality of the health system and the way healthcare is organised. However, respect for such rights is also dependent on the behaviour and cooperation of health professionals and patients themselves; thus this might be expected to be an area where there is potential for rapid improvement.

1.1.1 In 2002, the Active Citizenship Network proposed a European Charter of Patients' Rights. These rights, which are based on the EU Charter of Fundamental Rights (Article 35), are important in European citizens' dealings with health systems in their respective countries. Despite this, a study carried out by citizens' organisations in 14 EU countries shows that the level of protection of these rights varies greatly from country to country. This calls into question the European Commission's commitment to guarantee all European citizens effective access to health services on the basis of the solidarity principle.

1.1.2 We are witnessing today an evolution in public policy where, increasingly, the tendency is to advocate citizens' involvement, with the development of participatory methods in various European countries: consensus conferences in Denmark; the setting-up of citizens' juries in several European States; general assemblies, etc. The Council of Europe and the European Parliament are promoting such participatory initiatives.

1.1.3 In the light of the European Charter of Fundamental Rights, the communication from the Commission *Consultation regarding Community action on health services*, the *Statement of common values and principles in EU health systems* adopted by the Health Council on 1 June 2006, the case law of the European Court of Justice in the field of patient mobility, the European Parliament report on patient mobility and healthcare developments in the European Union and the European Parliament resolution of 15 March 2007, the EESC calls on the European

Commission to take initiatives enabling the implementation of health policy which respects patients' rights. This requires:

- the gathering and analysis of comparative data on the regulatory and ethical obligations in force in each EU country,
- the devising, in the most appropriate form, of a Community course of action applicable to issues in this field,
- the planned evaluation of the application of the texts promulgated and policies decided,
- the dissemination of the results of this work to the relevant national authorities and representatives of the various socio-professional and user groups concerned,
- the establishment of a European Patients' Rights Day.

1.1.4 The European Economic and Social Committee is therefore addressing the issue of patients' rights in order to draw the attention of the European institutions to the need to respect these rights, particularly in the light of EU citizens' right of free movement between the 27 Member States and their equal opportunities to enjoy high-quality service in their country of origin or host country, and above all to encourage their practical application in all of the Member States. In addition, the reaffirmation of these rights implies the need for changes in relations between all health professionals and health care structures and patients on a day-to-day basis.

1.1.5 In addressing these issues there is often a need for ethical reflection where the responses are based on the political and social system of the country concerned. However, in spite of disparities in the way health systems are organised and the diversity of the debate, developments in health-related issues reveal a similar pattern in all European countries and a general and inescapable trend towards the assertion of the rights of people seeking care.

1.2 The tendency with regard to health needs and people's expectations, and beyond the health sector in the political domain, is to seek to give the individual an increasing say in health-related matters.

⁽¹⁾ Charter of Fundamental Rights of the EU, texts adopted by the Council of Europe, French Law No 2002-303 of 4 March 2002.

1.3 Advances in medical science and the introduction of social protection systems have led to a general epidemiological transition, which is reflected in fewer short-term care cases and, above all, in the rising incidence of chronic illnesses, a phenomenon accentuated by an ageing population. The provision of care for the chronically sick implies long-term care, as a result of which sick people accumulate knowledge through their experience of accessing the health care system and their experience of their illness.

1.4 The arrival of new information technologies, and in particular the development of the Internet, has reinforced this increase in patients' knowledge and improved their capacity to exchange views and to question professionals. In some cases, people sometimes have a thorough knowledge of their illness which must be taken into account. It is worth being taken into consideration by healthcare professionals.

1.5 Generally, patients' expectations vis-à-vis professionals are not limited solely to technical aspects of care but are also concerned with relational and human aspects.

1.6 Finally, living with a long-term illness or disability creates new needs and expectations on the part of the persons concerned. The challenge for treatment has changed: it is no longer a matter of seeking a cure at all cost, but more one of learning to 'live with' an illness in an ongoing effort to combat pain.

Such considerations induce people to play an increasingly active role with regard to the treatment they receive, with new needs and expectations.

1.7 People's evolving needs and expectations regarding their treatment are part of a more profound change in society which aims to promote a model based on respect for individual autonomy and the assertion of individual rights.

1.8 All of these factors lead to the conclusion that the paternalistic model of interaction between doctor and patient has run its course and consequently that there is a need to rethink the place of the patient in his interaction with the system, implying the recognition and introduction of new rights and obligations.

1.9 This opinion is focused on the rights of patients, i.e. people using healthcare systems, be they healthy or sick as defined by the World Health Organisation.

2. Background

2.1 Developments in medicine and in people's health needs and expectations give reason to consider a person in the context of his life, which implies not only taking an interest in the individual himself but also in his family, even his friends and the people he works with. *Living with an illness or disability* implies taking into account quality-of-life aspects, requiring the involvement of a range of professionals in addition to medical staff.

2.2 While the doctor retains a dominant role in the care of persons, the notion of a bond between the doctor and the

patient must be built into the functioning of the system, i.e. as an integral part of the entire body of healthcare, medical and welfare professionals.

2.2.1 The patient places his trust in the hands of health professionals and hence the doctor and nursing staff must keep a close watch on the patient, enabling them to adapt their views, treatment and assessment accordingly. This interactive process comprises listening, verbal exchanges and care provision. It enables a solid relationship to be built, which is essential for fighting the illness.

2.2.2 Thus, from the outset the medical response to these problems must be to design a real social procedure and, beyond the necessary and rigorous performance of technical acts, to meet people's demands for comprehensive care adapted to the needs of the individual.

2.2.2.1 Medical and welfare staff must act as an adviser to their patient, without, however, relinquishing their responsibility. Their task is therefore to provide care, information and support to the patient. They devise a therapeutic strategy based on hypotheses suggested by the patient's symptoms and the relationship with the patient. Thus the patient has a legitimate right to request health professionals for a personalised assessment of his condition, which must make it possible to propose a treatment that is the most suitable in technical and psychological terms.

2.2.3 Finding the best treatment and the outcome of the fight against the illness depend to a large extent on the links forged between the patient and the health professionals treating him. The outcome is as important for the healthcare staff as it is for the patient. This implies the need for mediation arrangements, so as to take account of social constraints (working life, financial factors, recognition of rights, etc.) and the challenges of emotional and family life. Family members and patient associations have a crucial role to play in this context.

2.3 Thus one can consider the advantages to be gained by a meeting between a patient organisation and an organisation of health professionals.

2.3.1 Some deplore the loss of trust that comes with the end of the doctor-patient bond as understood in its traditional sense. However, this development is to be seen more as a transition from a relationship based on blind trust to trust built up in a process of interaction and exchange between a person, his family and friends and health practitioners.

3. Inalienable rights

3.1 The affirmation of patients' rights is a human right and its objective is to promote their eventual autonomy. These rights are therefore often interconnected. The European Charter of Patients' Rights, drawn up in 2002 by the Active Citizenship Network, proclaims 14 rights, which the EESC welcomes and acknowledges. The EESC considers that three rights are linked horizontally or are preconditions for other rights.

3.2 *Right to information*

3.2.1 The information in question primarily concerns the patient undergoing treatment. It must provide details of the person's illness, how it may evolve over time, the courses of treatment possible, including the associated benefits and risks, the health establishments or professionals providing this treatment, and the effects of the illness and the treatment on the person's day-to-day life. The provision of such information is particularly important in the case of chronic illness, dependence, disability or long-term treatment leading to changes in the daily lives of the person and his family and friends.

3.2.1.1 Prevention is a key factor in improving the health state of the population. Information/awareness-raising campaigns should therefore be developed alongside the setting-up of structures with the capacity to provide appropriate examinations and care structures.

3.2.2 Information is not an end in itself but a means of allowing a person to make free and informed choices. For that reason, the ways in which information is provided are as important as the information itself. They are a part of a process which makes use of different information sources, including the Internet and telephone helpline services operated by associations, and where the patient can interact with a wide range of professionals, each of whom has his own role to play. The oral transmission of information is crucial. At regular intervals, the doctor must find out whether the patient understands the facts relating to his case and ascertain his level of satisfaction.

3.2.3 In addition, and irrespective of the person concerned, the patient's circle of family and friends must also be taken into account in the information process, all the more so if the patient is a child or a dependent elderly person. Obviously, the level of information provided will depend on the patient's state of health and capacity to decide for himself.

3.2.3.1 Every patient must be provided with information in his own language and his particular incapacities must be taken into account.

3.2.4 Only informed consent and informed acceptance of the risks involved can be valid. Information is the outcome of the doctor-patient bond where only the best interests and well-being of the patient are taken into consideration.

3.2.5 This access to personalised information is a vital step towards reducing inequalities related to health disorders, illness and care provision and improving access to the health system for all citizens.

It is desirable that the information on a person's state of health, the diagnostic and therapeutic steps taken and the ensuing results be recorded in a 'medical file'. The possibility of the patient to access this file directly or through a doctor of his choice, according to his wishes, is also part of patient information and autonomy. In any moves to secure further information

and transparency, an appropriate legal framework should, however, ensure that when the data is being recorded, it is not used for any purpose for which it is not intended. Efforts should be made to make sure that extreme vigilance is exercised as regards the use of such data, especially where it is electronically stored and sometimes also when it is transmitted across borders.

3.2.6 It is essential to develop information about the system so as to make it clearer and more transparent. Patients faced with a proliferation of players may feel they have greater autonomy as individuals or, on the other hand, they may become totally dependent on their doctor, depending on the level of their knowledge and understanding of the system. There is then a danger here that this could give rise to misplaced claims on the part of users.

3.3 *Right to free and informed consent*

3.3.1 The right of patients to participate in decisions affecting them must be affirmed. This does not mean the transfer of responsibility from doctor to patient but rather the prospect of them interacting in a therapeutic alliance, each maintaining his own position, with his own rights and area of responsibility.

3.3.1.1 The patient's consent does not apply automatically to all medical acts, now or in the future. Consent is not given once and for all, but rather it has to be renewed before each important medical or surgical act.

The consent of a patient who has been informed in this way must be explicit, that is expressed objectively. After having been given the requisite information, the patient may either accept or reject the course of action which has been proposed to him.

As regards organ donations when the donor is alive, increased vigilance must be shown over information about the risks.

3.3.1.2 Where a new treatment is being tried out, the principles are the same as those implied when seeking the patient's consent to medical care. The patient's freedom must be respected and these principles are geared to the same end: shared responsibility and trust.

3.3.1.3 As regards clinical trials, including those involving persons who are not sick, a particular pedagogical approach is required. This approach, which must comply with well-established criteria, can only be contemplated if there is a stated desire to cooperate and it is accompanied by evidence of absolute consent.

3.3.1.4 In an emergency, some exceptions to this rule must be considered; the consent of the patient must be presumed and confirmed when he has regained his power of judgement.

3.3.1.5 The patient must have the possibility of choosing a person to represent him if he is subsequently unable to make his preferences known.

3.3.1.6 The consent of a child or a sick minor must be obtained for minor medical treatment once he has gained a certain degree of personal independence and is able to make a proper judgement. Involving children in health education from the earliest possible age helps to de-dramatise certain situations and improve cooperation with young patients.

3.4 Right to dignity

3.4.1 Under this heading must be included the right to privacy, the right to pain relief, the right to die in dignity, protection of the integrity of the human body, respect for private life and the principle of non-discrimination.

3.4.1.1 Everyone has the right to confidentiality of information about his health, the diagnosis made and treatment provided, as well as to respect for privacy during examinations, consultations and medical or surgical treatment. This fundamental right requires that the patient be treated with due respect and that he not be subjected to contemptuous remarks and attitudes on the part of healthcare workers.

3.4.1.2 People are weakened by sickness, disability and dependence. The more they feel belittled, the less they feel able to demand that they be accorded the minimum of respect. It is therefore up to professionals to be more attentive to the need to show respect to people who are particularly vulnerable because of their sickness or disability.

3.4.1.3 Recognition of the importance of time devoted to consultation, listening to people, explaining the diagnosis and treatment, both in hospital and elsewhere, is one facet of respect for people. This investment in time helps to strengthen the therapeutic alliance and save time elsewhere. Healthcare provision is about devoting time to people.

3.4.1.4 This applies especially to people who already suffer from lack of social recognition: elderly people in a precarious social position, people suffering from a physical, psychological or mental handicap, etc.

3.4.1.5 In terminal cases or where the patient is undergoing particularly difficult treatment, staff need to be even more vigilant. Respect for a person and his right to die in a dignified manner is achieved by providing universal access to palliative care designed to reduce pain and maintain a certain quality of life by guaranteeing the right of a patient to have his choices respected until the end of his life. Among other things, this means putting in place a procedure such as the designation of a proxy to ensure that the patient's wishes are made known.

3.4.1.6 Pain management through the provision of effective means and access to specialised facilities: information and training for healthcare professionals and information for patients and their family and friends need to be developed as this is about respecting the right of everyone to receive care to relieve pain.

3.4.1.7 The requirement to treat a person with respect does not cease to apply after death. This implies ensuring that, whenever a hospitalised patient dies, his family and friends and the healthcare professionals who tended him at the end of his life receive appropriate psychological support and that the wishes and beliefs of the deceased are strictly respected.

3.5 Some other individual rights need to be enforced as part of a public health initiative; this requires that the system, as currently organised, comes up with an appropriate response.

3.5.1 *Right to access to care for all*: i.e. not just access to rights and social protection but to the full range of healthcare services and professionals without discrimination on the grounds of a person's social or economic position. This is not part of a move to open up the health sector but rather of a proactive public health policy, on the understanding that the practical implementation of this right differs greatly across countries, depending on the responsibilities that are taken on and the forms of funding existing in each country.

3.5.2 *Right to high-quality care*: every person, taking into account the state of his health, has the right to receive the most appropriate treatment and access to the best therapies and medicines offering the best cost-effectiveness ratio (promotion of generic drugs). The right to high-quality care also implies the right to screening and therapeutic education, which calls for investment in resources and funding, and adequate availability of properly trained professionals.

3.5.3 *Right to prevention and safety of care*: citizens want the health system to be built around and for people. They want to know more about the therapeutic strategies proposed to them, take part in personal and collective prevention efforts, and ensure that social choices, behaviour and consumption do not harm health.

4. Recommendations for implementing patients' rights

4.1 The affirmation and application of these rights is a source of concern for many professionals, patients, health policy-makers and user associations. There is an urgent need to move away from confrontation between the rights of some parties and the obligations of others. Respect for patients' rights also means a new distribution and balance for the obligations and responsibilities of professionals.

4.1.1 As the medical profession is no longer alone in taking decisions involving people's futures, it can no longer be alone in assuming full responsibility for them.

4.2 In the interests of the common good, it is the collective responsibility to help professionals respond to these expectations:

- by including ethical aspects and respect for the individual and his rights in their training, so that they understand the dynamics involved and the resulting implications, and so do not see patients' rights as a further constraint,

- by establishing forums and meeting places between professionals and between professionals and users,
- by creating new ways of delivering information to the sick involving all stakeholders in the health system,
- by developing new pedagogical procedures for dealing with consent, leading to a therapeutic alliance,
- by creating and bringing into general use new organisational and pedagogical solutions designed to minimise stress suffered by children when undergoing treatment, especially when they are in hospital,
- by setting up clinical ethics committees in health establishments, thereby facilitating support for professionals and respect for the rights of the sick,
- by including protection and promotion of patients' rights in ethical codes and codes of conduct for professionals,
- by making the system easier to understand for users whilst enhancing the position and role of health professionals as a whole,
- by devising new forms of collective practice involving doctors and other health professionals:
 - group practices, medical health centres
 - links between medical, welfare and social professionals,
- by rethinking the role of patient, user, consumer, family and citizen associations:
 - including users' representatives in representative bodies
 - recognising the role of certain associations in therapeutic education, prevention, provision of information to the sick, etc.
 - building links between the structures of associations and those of professional bodies, etc.
 - equipping associations with the means to carry out their activities and put across their views (training, representation leave, etc.)
 - creating neutral and convivial spaces in hospital establishments where patients can voice their concerns and

prepare for discussions with professionals with the support of user associations

- involving associations on the same footing as professionals in the analysis of complaints and in defining ways of improving the quality of care.

5. Conclusion: towards an affirmation of collective rights

5.1 How effective individual rights turn out to be in practice will depend to a large extent on the collective responses which are made to support this initiative. That is why it is necessary to work for the adoption of health democracy, implying the collective involvement of users and their representation in different parts of the system.

5.2 Patients' rights are one expression among others of human rights, but by no means a separate category. They are the manifestation of the desire that no patient wants to be considered as a being apart and, above all, as someone on the margins of society.

5.2.1 There is a need to acknowledge that users of the healthcare system are becoming more vocal in making known their feelings about healthcare conditions on the basis of their own experiences and also because they are receiving increasingly more information.

5.3 Consequently, it is appropriate to ask about the position of the patient in the process of making decisions which concern him, in the interests of transparency of procedures and respect for individuals.

5.4 The issue at hand is not about adopting a legalistic consumerist approach but rather about recognising that the patient is sufficiently mature to take part in decisions affecting him on the basis of respect for his rights.

5.5 Giving a voice to users and their representatives is all the more necessary as health issues extend into other areas: methods of production, lifestyle, working conditions, environmental protection, etc. This implies social, economic and ethical choices which go beyond the sole responsibility of health professionals.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on 'Promoting sustainable productivity in the European workplace'

(2008/C 10/19)

On 16 February 2007 the European Economic and Social Committee, under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on *Promoting sustainable productivity in the European workplace*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 July 2007. The rapporteur was Ms Kurki.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 155 votes to none, with nine abstentions.

1. Conclusions and recommendations

1.1 Traditional economic growth drivers (labour force growth, investment in means of production, rising education levels) need to be supplemented by the creation of new elements capable of generating sustainable growth. Firstly, productivity growth must be boosted from present levels. Secondly, ways must be found to at least halt the decline in labour supply. Thirdly, the world of work needs to be made more attractive.

1.2 The Committee believes that it is the European Union's task to support all Member States and companies in their efforts to increase sustainable productivity, which is an essential component of the Lisbon Strategy. The idea that quality and social innovations implemented in the workplace have a major impact on business success must be actively promoted. The Committee proposes that this aspect be taken on board as part of the evaluation and reform of the Economic and Employment Guidelines.

1.3 The Committee would reiterate its proposal that a European index describing the quality of working life be devised. The index would be built on research-based 'good work' criteria and would be compiled and published on a regular basis. Such an index could be used to shed light on changes and improvements in the quality of European working life and the effects on productivity. At the same time it would serve as a basis for new initiatives relating to the improvement of the quality of working life.

1.4 The development of a European quality of work index requires the creation of a broad forum. The strong and wide-ranging expertise which the European Economic and Social Committee possesses with regard to the challenges of a changing workplace and responding to such challenges would serve as a good basis for such a forum. The Labour Market Observatory could also examine this issue if its work programme permits.

1.5 The EESC urges the Commission to commission further studies on the relationship between the quality of working life and productivity. A more in-depth analysis is needed of the factors which contribute to sustainable productivity. In this

work, the EU institutions and Member States could make better use of the research and analytical work carried out by the Dublin-based European Foundation for the Improvement of Living and Working Conditions and the Bilbao-based European Agency for Safety and Health at Work.

1.6 The Committee believes it would be useful to give emphasis to workplace innovation and new kinds of professional skills and management practices in EU innovation and training initiatives (e.g. the Competitiveness and Innovation Framework Programme, Structural Funds programmes, the Integrated Lifelong Learning Programme). The social partners bear a major responsibility in this regard for preparing, implementing and evaluating projects.

1.7 The Committee proposes that the Member States implement programmes promoting the quality and productivity of work as part of their employment programmes and innovation policy. Many countries have national productivity centres and work research centres which could take part in such initiatives. The social partners have a key role to play here in planning projects and in practical project implementation.

1.8 It is essential that the debate and practical initiatives on sustainable productivity be continued in Europe's various forums, in the Member States and in companies. The Committee can make an important contribution to this process by presenting the views of civil society on the subject, particularly as part of its opinions on economic, employment and innovation policy.

2. Introduction

2.1 Sustainable economic growth and a high employment rate are essential for the prosperity of Europe. The EU's goal is to ensure 'the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress and a high level of protection and improvement of the quality of the environment' ⁽¹⁾. This can be achieved by increasing productivity growth from current levels in all sectors

⁽¹⁾ EU Constitutional Treaty, Article I-3(3).

of the economy⁽²⁾. Productivity growth increases citizens' well-being when it is based on improving the quality of working life and expanding the number of jobs. Sustainable productivity growth offers a way of ensuring sound public finances and sustainable provision of social and health care services for an ageing population. At the same time new, quality jobs are created. Thus, sustainable productivity growth supports the economic, social and environmental objectives of the Lisbon Strategy.

2.2 Labour productivity has grown steadily in Europe in the post-war period. Even in the late 1960s it was growing at an average annual rate of about 5 % per hour worked. From the 1980s onwards labour productivity growth started to slow, and the annual growth rate amounted to only about 1-2 % in the early 2000s. Changes in EU Member States' productivity figures in recent years can be explained by many factors acting in different directions. Average labour productivity growth in Europe has been boosted by the accession of new Member States, where the starting level of productivity is lower than in the old Member States. Since 1995, however, the number of low-productivity jobs has increased throughout Europe. These include low-pay, low-skill jobs in the service sector and many jobs where people are employed on atypical contracts. This trend has contributed to slower productivity growth⁽³⁾.

2.3 In manufacturing productivity growth has been fastest in technology-driven industries. These industries' share in total manufacturing is small, which the Commission believes is symptomatic of potential problems. The larger their share in value added, the more they contribute to productivity and real earnings growth in an economy. These industries are invariably leaders in innovation and in the modernisation and diffusion of new technologies, also across borders⁽⁴⁾.

2.4 Weak productivity growth in the private and public service sector in recent years is clearly a serious problem. However, it should be borne in mind that it is more difficult, even impossible, to measure productivity growth in this sector using the same indicators as in manufacturing. Despite the fact that innovations of various kinds, such as the use of ICT applications, have increased in services, this has not shown up as productivity growth in productivity statistics. Typically, innovations in the service sector are introduced through acquired technology (ICT, organisational changes and human capital) rather

than through direct R&D spending by service firms themselves⁽⁵⁾. Thus making mechanical calculations in productivity comparisons can lead to wrong conclusions, unless the actual content of different sectors is taken into account. This also applies to public services, where productivity growth targets also have to take into account social and public policy objectives as well as the requirement to guarantee a climate which is conducive to innovation and productivity growth.

2.5 Improving employment and boosting productivity are not mutually exclusive. On the contrary, together they underpin the goals of the Lisbon Strategy, which are concerned with increasing the number of better-quality jobs. According to the International Labour Office (ILO), productive employment is the foundation of decent work⁽⁶⁾. Sustainable productivity growth and a rising employment rate are a sound way of reducing the share of undeclared work in the economy.

2.6 The structure of EU economies is changing and there is an increasing shift of emphasis in factor inputs away from physical capital to human capital. According to the Commission, the demand for labour in the EU has already shifted away from traditional skills to high-skilled labour. This reflects changes in the content of jobs themselves rather than changes in the sectoral allocation of employment. Between 1995 and 2000, job creation in fast-growing, knowledge-intensive sectors accounted for more than two thirds of all new high- and medium-skill jobs, and for a very large proportion of new, low-skilled jobs⁽⁷⁾. Business services, in particular, have increased their workforces and they will play a key role in the future in providing new employment and compensating for job losses and rationalisation in manufacturing industries⁽⁸⁾.

2.7 For the individual productivity growth means that jobs are more secure and that workers have better opportunities to progress in their work and achieve higher earnings. This improves workers' qualifications and enhances their employability in a changing environment.

2.8 For companies boosting their productivity is crucial, the key to their competitiveness. As world markets determine prices to a large extent and productivity cannot be increased indefinitely by traditional investment in machinery and equipment, other means must be used. For companies productivity growth means that costs rise more slowly, price competitiveness and

⁽²⁾ Productivity can be measured at different levels, e.g. whole economy (macro-level), economic sector (manufacturing, ICT), company/work organisation/work unit, employee/occupational group, individual. Aggregate productivity is that part of productivity growth that cannot be explained by an increase in the amount of 'traditional' factor inputs (labour, capital, raw materials, energy). Productivity growth comes about as the result of such things as technological development, training of workers, organisational development or improvements in management and production methods.

⁽³⁾ The Employment Committee working group report on *Enhancing higher productivity and more and better jobs, including for people at the margins of the labour market*, EMCO/18/171006/EN-final, 2006. URL: http://ec.europa.eu/employment_social/employment_strategy/pdf/emco_workgroupprod06_en.pdf.

⁽⁴⁾ Communication from the Commission to the Council and the European Parliament: Productivity — the key to competitiveness of European economies and enterprises, COM(2002) final.

⁽⁵⁾ See above.

⁽⁶⁾ ILO World Employment Report 2004-2005: URL: <http://www.ilo.org/public/english/employment/strat/wer2004.htm>.

⁽⁷⁾ Communication from the Commission to the Council and the European Parliament: Productivity — the key to competitiveness of European economies and enterprises, COM(2002) 262 final.

⁽⁸⁾ EESC opinion of 13 September 2006 on *Services and European manufacturing industries: Interactions and impacts on employment, competitiveness and productivity*, rapporteur: Mr Calleja (OJ C 318, 23.12.2006, p. 26). URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:318:0026:0037:EN:PDF>.

payroll capacity improve, jobs are more secure (and hence more desirable), work tasks and organisation change, more added value is achieved for customers with fewer resources, profitability improves, growth and survival in the market become possible, and the ground is laid for investment and the development of activities.

2.9 Economic growth in Europe has traditionally depended on growth of the labour force, the level of investment in means of production and rising education levels. Now this model no longer functions as ideally as it should. Labour supply is no longer increasing, but rather is shrinking. Companies are less willing than before to invest in physical capital. Work has changed from being labour-intensive to being capital-intensive, and human capital is becoming more and more important. There is a growing shift away from manual work requiring little education to expert (knowledge) work requiring special training. Investment in basic training alone no longer brings as large productivity gains as before.

2.10 Economic growth in some Member States has also been boosted by tax measures (e.g. cuts in business and payroll taxes) and increased private consumption (e.g. interest rate policy, taxation). However, the scope for using these growth factors is limited and they must be assessed from the viewpoint of both tax competition and maintenance of public infrastructure.

2.11 In addition to the above-mentioned growth factors, there is a need to create new growth-generating elements. Intangible success factors have entered the picture alongside tangible ones, in particular the ability of management to motivate employees and harness their skills.

2.11.1 Firstly, firms' productivity growth must be increased from present levels. This calls for policies geared to creating an environment promoting sustainable business growth and innovation and to ensuring healthy competition. This is the only way to increase the overall size of the economic cake.

2.11.2 Secondly, ways must be found to at least halt the decline in labour supply. Several Member States will lose about 15 % of their labour force over the next ten years. Employment rates must be kept high through more effective manpower policy, immigration and integration of skilled workers, measures to reconcile work and family life and gender measures, and by reforming pension systems. Helping employees to cope in the workplace and maintaining their job motivation are key ways of inducing people to postpone retirement.

2.11.3 Thirdly, the world of work needs to be made more attractive. A large number of those in employment are in the 40-54 age group, which poses a considerable economic challenge. At the same time, it is of paramount importance to prevent young people from dropping out of education and to get them to take part in working life. Quality in work and availability of skilled labour must be improved so that the benefits of new technology, innovation and research and development can be more readily exploited.

2.12 The European Council has consistently stressed the need for investment in order to improve quality in work, inter alia, with the aid of quality indicators⁽⁹⁾. During Finland's presidency of the EU a debate was launched on the significance of productivity for the Lisbon Strategy. Finland asked the European Economic and Social Committee to draw up an opinion on *Quality of working life, productivity and employment in the context of globalisation and demographic challenges*⁽¹⁰⁾. The Committee adopted its opinion in September 2006.

2.13 The German presidency has continued the debate on the quality of working life. The theme of 'good work' gives practical expression to the Lisbon Strategy goal to create more and better jobs⁽¹¹⁾. At the informal meeting of ministers for employment and social affairs ministers in Berlin in January 2007, Germany, Portugal and Slovenia jointly emphasised the importance of 'good work' in their conclusions⁽¹²⁾. In its conclusions of 8-9 March, the European Council stressed the importance of 'good work' for boosting employment in Member States and reinforcing the European social model. According to the Council, the principles underlying 'good work' are workers rights and participation, equal opportunities, safety and health protection at work and a family-friendly organisation of work⁽¹³⁾.

2.14 European-level programmes give consideration, in one way or another, to the development of working life and the possibility of workplaces to cope with challenges to change. Unfortunately, they usually offer only separate proposals, rather

⁽⁹⁾ The Lisbon European Council of 23 and 24 March 2000 set the overall goal of achieving full employment by creating not only more but also better jobs.

The Nice Council (2000) conclusions stated the need to put the emphasis on the promotion of quality in all areas of social policy.

The Stockholm Council (2001) pointed out that regaining full employment not only involved focusing on more jobs, but also on better jobs, and called for quality of work to be included as a general objective in the 2002 employment guidelines and for accurate quantitative indicators for that purpose.

The Laeken European Council (2001) noted that quality in work was a multi-dimensional concept and that the indicators recommended by the Employment Committee were based on ten areas presented in the Commission communication, and called for their incorporation from 2002 in the European Employment Strategy. See the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions *Improving quality in work: a review of recent progress*, COM(2003) 728 final.

⁽¹⁰⁾ EESC opinion of 13 September 2006 on *Quality of working life, productivity and employment in the context of globalisation and demographic challenges*, rapporteur: Ms Engelen-Kefer (OJ C 318, 23.12.2006, p. 157).

URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:318:0157:0162:EN:PDF>.

⁽¹¹⁾ Political priorities of the Federal Ministry of Labour and Social Affairs during the German EU Council Presidency in the first half of 2007.

URL: http://www.london.diplo.de/Vertretung/london/en/03/News_-and_features/EU_Presidency/Political_priorities_FULL_DownloadDatei,property=Daten.pdf.

⁽¹²⁾ Chair's conclusions drafted in cooperation with the next two presidencies, Portugal and Slovenia.

URL: http://www.eu2007.de/en/News/Press_Releases/January/0119BMAS1.html.

⁽¹³⁾ Brussels European Council 8-9 March 2007 — Presidency conclusions. Council of the European Union 7224/07.

URL: http://www.consilium.europa.eu/cms3_applications/applications/newsroom/LoadDocument.asp?directory=en/ec/&filename=93140.pdf.

than a central starting point for guiding action. Moreover, coordination between programmes is poor, so that any progress, or lack of it, in the area of sustainable productivity goes undetected.

2.15 A key question here is how companies' productivity growth can be boosted in a way which supports employees' individual and collective resources whilst at the same time helping them to maintain their working ability and stay motivated to work in the face of changing conditions.

3. Sustainable productivity growth as a factor for success

3.1 When analysing productivity and employment it is important to distinguish between the short-term and long-term impact. In the short term there may be a negative correlation between productivity growth and employment. Structural change in industry seems to increase average labour productivity growth but to lower the employment rate⁽¹⁴⁾. In these circumstances a major input is needed from labour market policy since some workers' professional skills are outdated and as a result they become unemployed. New forms of protection from redundancy and unemployment are needed so that the skills and knowledge of as many workers as possible can be harnessed in a flexible manner. In its opinion on guidelines for employment policies the EESC makes several recommendations for enhancing the effectiveness of policy measures⁽¹⁵⁾.

3.2 In the long term it is possible to raise the employment rate through labour productivity growth. In particular, the combined impact of technology and certain work quality components generate growth, which increases jobs and raises the employment rate. This does not happen automatically, however; rather it depends on the ability of industry to increase the labour intensity of growth and to boost long-term productivity growth, which is linked to both quality in work and job satisfaction⁽¹⁶⁾.

3.3 There are many ways in which companies can pursue productivity growth. Some listed companies, in particular, assess competitiveness in the short term on the basis of quarterly earnings and costs. The 'quick profits' approach is evident in the workplace in the fact that no productive investment is made and no attention is paid to staff skills or work ability. In some cases, companies do not have the financial capacity to take such

⁽¹⁴⁾ The Employment Committee working group report on *Enhancing higher productivity and more and better jobs, including for people at the margins of the labour market*, EMCO/18/171006/EN-final, 2006.

⁽¹⁵⁾ EESC opinion of 25 April 2007 on the *Proposal for a Council Decision on guidelines for the Employment Policies of the Member States*, rapporteur: Ms O'Neill (OJ C 168, 20.7.2007, p. 477).
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:168:0047:0049:EN:PDF>

⁽¹⁶⁾ See above.

action. Moreover, pay and employment conditions are frequently set in accordance with minimum requirements, with serious, long-term social consequences. This kind of approach poses a danger to Europe's global competitiveness. Europe cannot beat its competitors through a combination of low-productivity work, bad working conditions and low pay.

3.4 Traditionally, the efficiency of production capacity has been improved by modernising production conditions and developing production organisations to better match demand. Investment has been made in machinery and equipment. As result the overall level of productivity has risen. Productivity can be increased in small steps through rationalising and streamlining techniques and developing products and services through application of more intelligent production methods. This is not enough, however, if cooperation in the workplace does not function effectively, employees are not motivated to work or there are shortcomings in the working environment which impair work performance.

3.5 Maintaining economic growth requires deeper, structural reforms. Productivity can be increased quickly through a jump-like strategic change where a company completely reorganises the way it is run and in so doing shifts on to a new growth path. In that case jobs requiring old skills inevitably disappear, but at that same time new jobs are created, which are often better in terms of quality. Firms which renew themselves create new products and new value chains. Key factors in this process are speed, innovativeness, ability to change and involvement of staff in the process. The Committee and its Consultative Commission on Industrial Change (CCMI) are actively involved in analysing structural change, innovation processes and the utilisation of technology⁽¹⁷⁾. The Committee has highlighted the importance of internal functional flexibility in promoting innovation processes⁽¹⁸⁾.

3.6 It is interesting to examine productivity as an aspect of company performance. Performance can be divided into internal and external aspects. External performance measures the company's ability to perform in the surrounding environment. However, productivity is most clearly seen as an internal characteristic of a company, and even one which is associated with a particular individual, machine or production cell⁽¹⁹⁾.

⁽¹⁷⁾ EESC opinion of 25 September 2003 on *Industrial change: current situation and prospects*, rapporteur: Mr Van Iersel, co-rapporteur: Mr Varea Nieto (OJ C 10, 14.1.2004, p. 105).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:010:0105:0113:EN:PDF>

EESC opinion of 29 September 2005 on *Social dialogue and employee participation, essential for anticipating and managing industrial change*, rapporteur: Mr Zöhrer (OJ C 24, 31.1.2006, p. 90).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:024:0090:0094:EN:PDF>

EESC opinion of 14 December 2005 on the *Communication from the Commission — Restructuring and employment — Anticipating and accompanying restructuring in order to develop employment: the role of the European Union*, rapporteur: Mr Zöhrer, co-rapporteur: Mr Soury-Lavergne (OJ C 65, 17.3.2006, p. 58).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:065:0058:0062:EN:PDF>

EESC opinion of 14 September 2006 on *Sustainable development as a driving force for industrial change*, rapporteur: Mr Siecker, co-rapporteur: Mr Činčera (OJ C 318, 23.12.2006, p. 1).

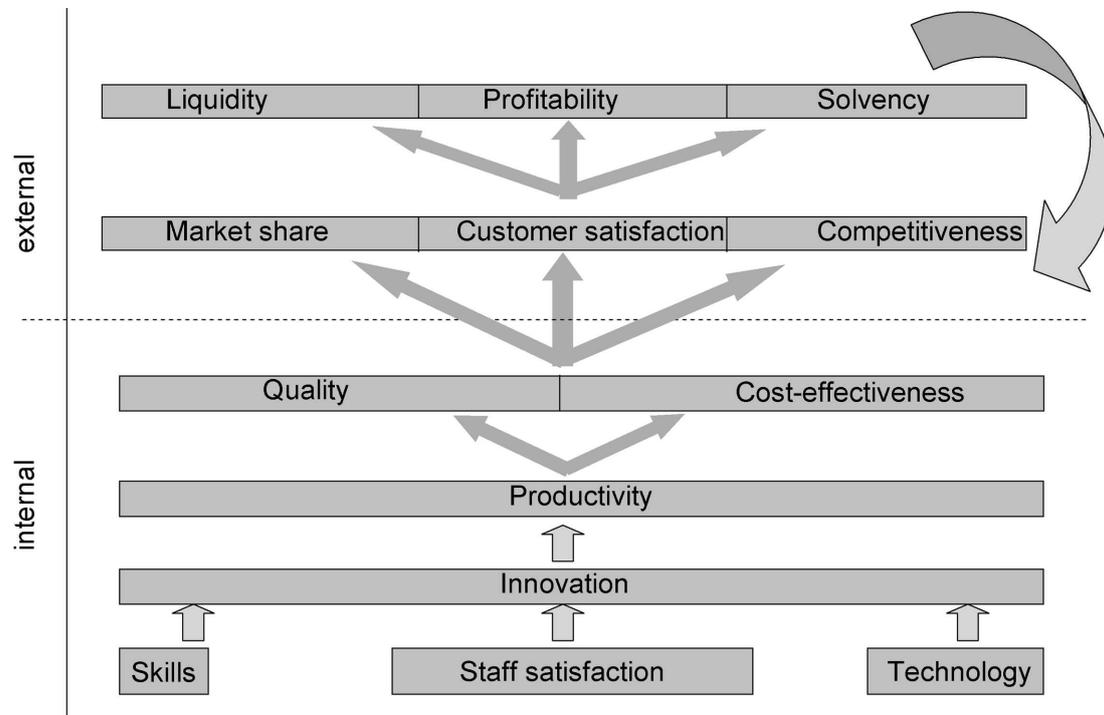
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:318:0001:0011:EN:PDF>

⁽¹⁸⁾ EESC opinion of 11 July 2007: *Flexicurity (internal flexibility dimension — collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets)*, rapporteur: Mr Janson.
http://eescopinions.eesc.europa.eu/viewdoc.aspx?doc=/esppub1/esp_public/ces/soc/soc272/en/ces999-2007_ac_en.doc

⁽¹⁹⁾ Rantanen, Hannu. *Tuottavuus suorituskyvyn analysoinnin kentässä*. Lappeenranta University of Technology, Lahti Unit 2005.

3.7 The internal aspects of company performance are innovation and productivity, the prerequisites for which are skills and know-how, staff satisfaction and a positive attitude to change, and technology. From these follow quality and cost-effectiveness. The external aspects are competitiveness, customer satisfaction and market share, from which follow liquidity, profitability and solvency (see Figure 1).

Figure 1: Aspects of company performance and how they interlink



3.8 The various aspects of performance affect each other in a spiral-like manner. For example, productivity growth leads to lower unit costs, as a result of which company competitiveness improves. This, in turn, means that the company succeeds in the market and profitability increases further. As a consequence, the company accumulates wealth, which can be spent on such things as training, means of production and management support tools, i.e. on improving the prerequisites for productivity. This can be referred to as an upward spiral in productivity. In a similar way, it is possible to describe a process leading to a downward spiral in productivity.

3.9 Thus sustainable productivity is a wider concept than simply measuring productivity or analysing labour productivity. At company level productivity is an indicator of how successfully a company can combine various production factors to improve efficiency and become competitive in the market. Sustainable productivity covers not only the physical working environment but also the psychosocial working environment, from which spring efficiency, creativity and innovativeness ⁽²⁰⁾.

3.10 The innovativeness of a company and its staff is reflected in the ability to develop and renew product or service concepts so that they create added value for customers. Innova-

tiveness is also the ability to continually improve operational, production and distribution processes together with staff and partners. Thus innovation can be a tool, a piece of equipment, a machine, a combination of these, a service model, a new way of performing an old task, or a different solution to problems. The ability to change is a key element of productivity.

3.11 On the basis of their innovative capability, organisations can be classified into different categories according to level of development. Organisations can consciously develop their innovative capability and move up from one level to another through learning. The more advanced the practices an organisation applies in its innovation activity, the better its ability to implement innovations ⁽²¹⁾.

⁽²⁰⁾ Bessant, John (2003): High-Involvement Innovation (translated into Finnish by Tuomo Alasoini). Innovative capability has eight dimensions:

- there is an understanding in the organisation of the strategic importance of innovation activity which gets people involved and is based on small steps (*understanding*)
- the organisation has procedures which enable people to participate in the organisation's innovative activity (*getting the habit*)
- the organisation's innovation activity is geared to the organisation's strategic objectives (*focusing*)
- the organisation's management provides adequate guidance and support for the organisation's innovation activity (*leading*)
- the organisation's structures, practices and processes are designed in such a way that there is the best possible mutually supporting relationship between these and innovation activity and the values which guide the latter (*aligning*)
- in problem-solving there is networking across units within the organisation and outside the organisation (*shared problem-solving*)
- the improved efficiency brought to the organisation by innovations is constantly monitored, evaluated and developed (*continuous improvement of the system*)
- the organisation is able to learn continuously and comprehensively from its experiences (*the learning organisation*).

⁽²⁰⁾ Professori Mika Hannula, Tampere University of Technology, lecture, 29 January 2004.

3.12 Increasing sustainable productivity means that companies and organisations prepare for future risks by anticipating changes and adapting quickly and flexibly to changes. In these companies everyone is committed to the ongoing development of skills and know-how, the well-being of staff is taken care of and employees take an active part in decision-making, especially decisions affecting the work they do. Workers are ready and committed to make their own input and make their skills available to further the success of the company. Management is based on mutual recognition and cooperation, not on a position of dominance *vis-à-vis* staff. Managers are able to work in partnership with customers, the business network in the company's sector and research centres.

3.13 A key question in the future as regards productivity growth and boosting productivity growth is the ability of workplaces to devise and deploy technological innovations and the business, organisational and other social innovations in working life which complement them. Productivity growth achieved in this way is sustainable. It influences economic growth via two channels: by improving the long-term productivity of workplaces/companies and by boosting labour supply, as the opportunities and desire of employees to stay longer in work increase.

4. Sustainable productivity in the workplace

4.1 A study by the European Agency for Safety and Health at Work ⁽²²⁾ takes a closer look at the link between the quality of the working environment and productivity. A key research finding is that, in today's heightened competitive conditions, a company's success can no longer be measured solely in terms of business indicators.

4.2 According to the study, customer satisfaction, optimising relations within the company, innovative capacity and flexible organisational structures are becoming increasingly important factors. The research findings show that there is a close link between good working conditions and a company's business performance. The quality of the working environment strongly influences productivity and profitability.

4.3 Productivity growth in Europe in recent years can by no means be described as clearly sustainable in qualitative terms. Companies still have too little knowledge about and too few practical arrangements for improving the quality of the working environment and identifying the positive effects this can have. According to a survey by the European Foundation for the Improvement of Living and Working Conditions, there have not been any major changes in the quality of work in one direction or the other, taken overall ⁽²³⁾. Analyses and comparisons of

conditions across the Member States show that job satisfaction is linked to job security, a positive working atmosphere, and good opportunities to learn and grow in one's job. Work in itself is changing, at a faster pace than expected, becoming more knowledge and technology based and developing a stronger customer orientation.

4.4 The survey further shows that very little progress has been made in reconciling work and family life. Flexible working-time arrangements geared to the needs of the individual have not become widespread. Although the occupational health of European workers has improved, 35 % of all workers still perceive that their health and safety are at risk because of the work they do. The intensity of work is increasing, with rising numbers working at high speed and to tight deadlines. Although the performance of work requires autonomy, levels of autonomy are not increasing. Most workers find their work interesting and feel that it offers new challenges. Access to training at work has not improved and is particularly difficult for older and less qualified workers. One of the most important changes in the workplace is the increasing use of information technology ⁽²⁴⁾.

4.5 In the future, a shortage of skilled labour could limit the scope for productivity growth. However, it is worth bearing in mind that the jobs of the future and the skills they require will be different from today. Moreover, new ways of organising work and more effective application of technology will reduce the amount of labour needed. Many companies are networking on a Europe-wide basis and the movement of workers between Member States is increasing. For this reason, the Committee has suggested that, despite the differences in their educational establishments, Member States must think of themselves as forming a European 'training area' and recognise that there is a European dimension to the development of working life ⁽²⁵⁾.

4.6 There is therefore a need to examine more closely what skills and knowledge will be required in working life in the future, both in private and public sector jobs, and also how quality of working life and productivity aspects could be incorporated into education and training. Degree and qualification structures, curricula content and teaching methods, and lifelong learning goals should be planned and implemented on this basis. It is important to guarantee the financial possibility to participate in education and training. The social partners have a crucial role to play here in discussing these issues and implementing measures. The European social partners have laid good groundwork by evaluating key features of lifelong learning and national practices ⁽²⁶⁾.

⁽²²⁾ European Agency for Safety and Health at Work: Quality of the Working Environment and Productivity — Working Paper (2004).
URL: http://osha.eu.int/publications/reports/211/quality_productivity_en.pdf.

⁽²³⁾ European Foundation for the Improvement of Living and Working Conditions: Fourth European Working Conditions Survey (2005).
URL: <http://www.eurofound.europa.eu/publications/htmlfiles/ef0698.htm>.

⁽²⁴⁾ See above.

⁽²⁵⁾ EESC opinion of 28 October 2004 on *Training and productivity*, rapporteur: Mr Koryfidis (OJ C 120, 20.5.2005, p. 64).
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:120:0064:0075:EN:PDF>.

⁽²⁶⁾ Framework of actions for the lifelong development of competencies and qualifications, Evaluation report 2006/ETUC, UNICE, CEEP.

4.7 Often the skill gaps are not in areas where skills are measurable. In addition to basic skills, key skills in the workplace of tomorrow will be e.g. interactive skills, self-management, the ability to learn and acquire new knowledge, extracting the essential from a complex flood of information, and the skills needed to work in multi-cultural workplaces and networks. In this kind of environment, young people who leave school early or with inadequate knowledge pose a special challenge.

4.8 In business management, the skill gaps are found particularly in the areas of strategic business skills and innovation management. Human resource management should be seen as a strategic aspect of management. These skills could act as a new kind of stimulus to economic growth.

5. Promoting sustainable productivity

5.1 Policy and practical measures

5.1.1 SMEs and large companies with a network of subcontractors have the capacity to harness the potential for success offered by sustainable productivity growth. Other beneficiaries are service organisations in the public and third sectors which need and want to improve their productivity in a sustainable and qualitative way and ensure that they continue to have at their disposal a high-quality, professional workforce.

5.1.2 Sustainable productivity growth can be promoted by policy measures which target the whole of society, companies and public organisations, workplaces and individuals. Because of their wide scope, social changes relating to e.g. training, industrial relations, measures to reconcile work and family life, health and safety at work, occupational health care, vocational training, professional rehabilitation, pension benefits, or retirement opportunities, are important in the long term. Legislation can be used to encourage good projects. By contrast, improvements in well-being at work at the level of the individual have a rapid impact but are insufficient by themselves and their overall impact in the workplace can be rather small.

5.1.3 Sustainable productivity growth can best be fostered by promoting company and workplace practices and procedures in such a way that they better support and enhance workers' individual resources, workplace resources and innovation skills. The social partners have a special role to play in this regard.

5.1.3.1 At European level, the social partners agreed in their new work programme for 2006-2008 to make a joint analysis of the key challenges facing Europe's labour markets (including such issues as promoting lifelong learning, competitiveness and innovation) ⁽²⁷⁾. At national level, for example, the central organisations of the Finnish social partners set up a Productivity Round Table at the beginning of 2007 with a view to

⁽²⁷⁾ Work programme of the European Social Partners 2006-2008. URL: http://www.etuc.org/IMG/pdf/Depliant_EN_HD2006-2008.pdf.

promoting productivity, quality of working life and cooperation in the field of productivity. The members of the round table are representatives of the highest executive bodies from all of the central organisations of employers and employees. In some Member States the social partners also play an active part in national enterprise development programmes. Good case studies can be found in all of the Member States ⁽²⁸⁾.

5.1.4 In some cases, legislative changes relating to environmental protection have triggered innovation needs. For example, the ban on asbestos use has prompted the need to develop replacement technologies, stricter noise regulations have spurred the development of technical equipment with low noise emissions levels, energy technology needs have led to the introduction of new equipment and building insulation needs to the development of new materials. Thus legislation has supported industry's own efforts and encouraged innovation.

5.1.5 Member States have adopted various economic instruments designed to improve the quality of working conditions or to support companies investing in innovative work organisation models. Among the instruments used are public aid and subsidies and funding (cheap bank loans). By way of example, mention may be made of Ireland's National Workplace Strategy, the New Quality of Work Initiative (INQA) launched by Germany and Finland's Workplace Development Programme, in all of which government initiative and public funding play a central role ⁽²⁹⁾. The great advantage of such programmes is that the development work takes place in workplaces. Crucial to the programmes is a strong commitment to them at the political level and motivating workers to take part in development projects.

5.2 European quality of work index

5.2.1 In order for Europe to be able to respond to the challenges of globalisation and successfully achieve the Lisbon Strategy objectives, it is important to monitor improvements in the quality of work in Member States and at European level and their links to productivity growth. Accordingly, the EESC has earlier suggested that a European index measuring quality of work is needed for this purpose. The index would be developed applying various criteria for 'good work' on the basis of relevant studies, and would be regularly collated and published ⁽³⁰⁾. Such an index could help raise the profile of changes and progress and their effects on productivity, and at the same time form the basis for new initiatives to improve the quality of working life. At present, quality of work and productivity are analysed in many different ways and different organisations are developing indicators of their own independently of each other. The new European index could incorporate elements from these indicators.

⁽²⁸⁾ For example, at the hearing held by the study group on 10 May 2007 Mr Santo Portera, finance director of the Maltese company STMicroelectronics, explained how the company had successfully responded to the challenges of globalisation by putting emphasis on high ethical standards in its activities, ensuring and improving staff skills, well-being at work and work organisation, and encouraging innovation.

⁽²⁹⁾ Ireland: www.workplacestrategy.ie, Cathal O'Reagan, at the hearing held on 10 May 2007. <http://inqa.de>, Kai Schäfer, representative of the German government and presidency, at the hearing held on 10 May 2007. http://www.mol.fi/mol/en/01_ministry/05_tykes/index.jsp.

⁽³⁰⁾ See footnote 10.

5.2.1.1 In accordance with a Council Decision, an assessment was made in 2003 of the progress made by Member States using a set of indicators built on ten dimensions of quality in work. Although some progress had been made, it emerged that there was considerable scope for improvement. In particular, the trend in productivity growth was disappointing. It was concluded that there was a need for more determined policy action, especially with respect to encouraging investment by firms in training and supporting the working ability of an ageing workforce ⁽³¹⁾.

5.2.1.2 According to the European Foundation for the Improvement of Living and Working Conditions (the Dublin Foundation), innovative firms and workplaces are characterised by freedom to learn and a sense of autonomy at work, teamwork, the possibility to rotate job tasks and multi-skilling. Thus a key factor here is enhancing employees' skills and allowing them to be actively involved in developing production processes. Besides, in spring 2007 the Foundation launched extensive new research on the links between innovation, productivity and employment which is due to last for three years. The first stage is concerned with mapping existing research on the subject in order to prepare for adding a productivity and performance dimension to the Foundation's European Company Survey in 2008. The Foundation is also actively involved in development of a new quality of work index ⁽³²⁾.

5.2.1.3 Studies by the European Agency for Safety and Health at Work on the importance of quality of work for productivity clearly show that there is a close link between the

quality of the working environment, productivity and business performance. The Agency concludes that, if risks associated with safety and health at work are not examined in detail in workplaces, or nothing is done to deal with them, it is impossible to achieve productivity targets ⁽³³⁾. This year's European awareness-raising campaign focuses on the prevention of musculoskeletal disorders (MSDs). The aim is also to identify examples of good practice for the rehabilitation of people with MSDs. Preparations are already under way for the 2008 European Week, which will focus on workplace risk assessment.

5.2.1.4 The workplace development programme launched by the Germany presidency includes a research project which aims to define more precisely what is meant by 'good work'. The programme also includes an index developed by the German Trade Union Association (DGB) for evaluating the quality of jobs. The index is based on employees' own assessments, where they rate their work according to 15 criteria. The aim is to calculate the index annually, and the first results will be available in autumn 2007 ⁽³⁴⁾.

5.2.2 The development of a European quality of work index requires the creation of a broad forum. The strong and wide-ranging expertise which the European Economic and Social Committee possesses with regard to the challenges of a changing workplace and responding to such challenges would serve as a good basis for such a forum. The Labour Market Observatory could also examine this issue if its work programme permits.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽³¹⁾ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Improving quality in work — a review of recent progress, COM(2003) 728 final.

⁽³²⁾ www.eurofound.europa.eu; Radoslaw Owczarzak, EMCC, at the hearing held on 10 May 2007.

⁽³³⁾ www.osha.europa.eu; Brenda O'Brien, at the hearing held on 10 May 2007.

⁽³⁴⁾ <http://inqa.de>; Kai Schäfer, representative of the German government and presidency, at the hearing held on 10 May 2007.

Opinion of the European Economic and Social Committee on 'Harmonised indicators in the field of disability as an instrument for monitoring European policies'

(2008/C 10/20)

The European Economic and Social Committee received a letter, dated 13 February 2007, from the future Portuguese presidency requesting its opinion on *Harmonised indicators in the field of disability as an instrument for monitoring European policies*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 July 2007. The rapporteur was Mr Joost.

At its 438th plenary session, held on 26-27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 160 votes, with no votes against and six abstentions.

1. Conclusions and recommendations

1.1 The EESC believes that the adoption of a roadmap similar to the one which was adopted in the field of gender equality, with the development of a set of indicators and quantitative targets to be achieved by Member States in a number of agreed priority areas, would be the right way to move forward and achieve progress in making equal opportunities a reality for disabled people.

1.2 The EESC urges the Commission and Member States to focus on gathering a reliable and coherent set of indicators, as well as quantitative targets in each of the statistical fields and policy objectives identified, for each Member State to achieve within a set time. The previous statistical attempts mentioned earlier in this document have not been endorsed at European level and are not a permanent indicator that could be measured on a regular basis, for example within the indicators of social inclusion. This endorsement and systematic measurement is necessary for any coherent policy.

1.3 The EESC calls on the High-Level Group on Disability to endorse a list of priorities for data collection based on a core set of indicators already existing in the ISTAT⁽¹⁾ list, which needs to be updated.

1.4 Member States should continue with their efforts to gather data on disability based on surveys, which should be released on a regular basis, for example every second year. The work on definition at international level with the Washington Group must be continued.

1.5 The EU Labour Force Survey should assess the progress achieved on a more regular basis. The Social Protection and Employment Committees could in future include a set of indicators which would be systematically researched, as opposed to independent one-off initiatives.

1.6 Therefore, the EESC urges the EC to include in Eurostat surveys a coherent disability module including the above-mentioned elements, with regular reports to allow a proper assessment of policies, as well as identification of priorities.

1.7 National disability organisations should be involved in working out priority indicators for the individual Member State concerned. Endorsement of harmonised indicators and collection of data will enable to exchange best practice solutions between Member States, as the effectiveness of the used initiatives is measurable.

2. Introduction

2.1 The European Economic and Social Committee (EESC) welcomes the Portuguese presidency's request to draw up an opinion on *Harmonised indicators in the field of disability*. The Portuguese presidency is determined to contribute to enabling the European Union to obtain reliable and comparable data in order to assess the inclusion of people with disabilities.

2.2 People with disabilities make up more than 15 % of the total population — a figure that is rising as the population ages. This means that, in the enlarged EU, more than 50 million people are disabled⁽²⁾. The SILC survey from 2005 does not take into account children with disabilities, older people, or people with disabilities living in institutions.

2.3 To make social rights, — including free movement of people — which are recognised by the Treaties and by the European Charter of Fundamental Rights, a reality for disabled people, policies and situations must be assessed and compared on a common basis in all Member States. This is the first step towards designing and implementing policies to allow people with disabilities to enjoy the same rights as non-disabled people.

⁽¹⁾ ISTAT — National Institute of Statistics — Italy, Project 'Indicators on integration of disabled people into social life', final report, June 2001, published by Eurostat.

⁽²⁾ According to the Eurostat SILC (Statistics on Income and Living Conditions) survey of 2005.

2.4 Indicators measuring the progress of Member States in the inclusion of people with disabilities in society are various: accessibility of the built environment, participation in the labour market, access to education, culture, e-accessibility, just to mention a few. Being able to assess the actions undertaken by Member States in this field and their impact is of crucial importance.

3. Lack of coherence in existing legal and political instruments

3.1 The recently adopted UN Convention on the Rights of People with Disabilities identifies many urgent needs for promoting the mainstreaming of disability issues. EU Member States should embrace these principles by ratifying the Convention without delay. In order to be in line with the objectives and principles of the UN Convention, which the EC has signed, the EU must adopt suitable policies. All countries and the EU should also be encouraged to sign the optional protocol to the UN Convention.

3.2 The European Disability Action Plan ⁽³⁾ sets itself the ambitious goals of achieving full application of the Equal Treatment in Employment and Occupation Directive (2000/78/EC), reinforcing mainstreaming of disability issues in relevant Community policies, and improving accessibility for all. In order to achieve these objectives, progress must be measured by the means of indicators which, for each political priority, assess the progress achieved in each Member State and allow the setting of measurable targets.

3.3 Directive 2000/78 EC adopted in November 2000 prohibits discrimination against disabled people in the field of employment and vocational training. The assessment of its implementation by Member States, beyond the mere issue of legal transposition, is however problematic, as no available comparable data allows the measurement of the increase in employment levels of disabled people as the law is implemented in each Member State.

3.4 The Council of Europe Action Plan on full participation of people with disabilities sets a number of concrete goals in many society and policy fields, which apply to all 46 Member States and have to be followed up. A drafting group has been set up to develop indicators to measure progress.

3.5 The Lisbon Strategy has set ambitious targets for the EU, which include raising employment levels and enhanced social cohesion. These objectives cannot be achieved without concrete measures to remove the barriers faced by disabled people in accessing employment and services to allow their full integration into society.

⁽³⁾ See: http://europa.eu.int/comm/employment_social/disability/index_en.html.

3.6 In all policy fields which impact on disabled people and can improve their inclusion into society and facilitate their access to rights, indicators are needed to measure progress, as well as to ensure a comprehensive view of results of different measures undertaken at European level. Existing laws must also be assessed in order to modify or improve them.

4. The need for a set of reliable and comparable statistics

4.1 Existing data measurement systems

4.1.1 The EESC regrets the lack of indicators in the field of disability, and more particularly the lack of existing political commitment at EU level on agreeing common indicators to support and assess policies.

4.1.2 The EESC notes that Eurostat has undertaken several interesting projects and initiatives aiming at the development of a regular data collection on aspects of disability in coordinated way across Europe: the module on health in the European Community Household Panel (ECHP) on the period 1994-1996 included a small module on disability which was published in a pocket book; in 2002, the European Labour Force Survey (LFS) included a module on the employment of disabled people in order to have a coordinated and harmonised input in the UNSD Washington Group meeting; Eurostat has launched the European Disability Measurement (EDM) project.

In 2002 the European Directors of Social Statistics agreed on a framework for regular collection of harmonised data by means of survey and/or survey modules on health, named the European Health Survey System (EHSS). Within this context the Member States have agreed — end 2006 — the final version of a European Health Interview Survey (EHIS) questionnaire; the first wave of which will be carried out in 2007-2009. The EHIS includes questions on several aspects of disability. Disability is also included as a variable in the Statistics on Income and Living Conditions (SILC) ⁽⁴⁾.

Eurostat's annual work programme 2007 includes activities in the European Statistical System (ESS) ⁽⁵⁾ on further developing Community statistics on disability and social inclusion in order to provide the relevant and comparable statistical data needed to monitor the situation of people with disabilities, in cooperation with international organisations. By mid of 2008 a new survey module on Disability and Social Integration — supported by Eurostat grant — should be ready for pilot implementation in the Member States.

In all this development work, the International Classification of Functioning, Disability and Health (ICF) — established by the World Health Organisation — is used as a basis.

⁽⁴⁾ http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1913,47567825,1913_58814988&_dad=portal&_schema=PORTAL#B.

⁽⁵⁾ For the European Statistical System, see: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1153,47169267,1153_47183518&_dad=portal&_schema=PORTAL.

4.1.3 At international level, Eurostat has engaged on the development of global measurements on disability, based on the International Classification of Functioning, Disability and Health (ICF) from the World Health Organisation, within the Washington Group on Disability Statistics ⁽⁶⁾. The Council of Europe has published methodological guidance to how to develop social indicators on social cohesion ⁽⁷⁾.

4.1.4 The proposal for a Regulation on Community statistics on public health and on health and safety at work will give a framework to activities in this field in the future. The Regulation can be utilised for gathering data on disability, changing the situation where data gathering is conducted by Member States without the relevant legal basis.

4.2 Need for further European indicators

4.2.1 Article 31 of the UN Convention states that countries have to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention. The EESC urges EU Member States to follow that principle closely.

4.2.2 The EESC welcomes the above-mentioned initiatives but regrets the lack of coherence and of agreed political indicators gathering those initiatives, in order to analyse the situation of persons with disabilities, measure the impact of policies and legislation and to evaluate their needs.

4.2.3 Indicators must be set to measure employment levels, in order to better understand what the issues to be addressed are, and to design appropriate policies. The 2006 Spring Council reiterated the need to take appropriate measures to raise employment levels of disabled people.

4.2.4 An assessment of the impact of the European Anti-Discrimination Directive, and of legislation in the different Member States, would be necessary in order to better design political and legislative action in the future.

4.2.5 Data on discrimination must be further collected in conjunction with indicators in the other fields of access to goods and services, employment, social inclusion, etc., so as to ensure a coherent view of issues affecting disabled people and how they interact.

4.2.6 Social inclusion is also a field where further assessment is needed to better understand the complex reasons that lead to the social exclusion of disabled people. Issues such as income must be measured, but also participation in social life (representation, access to associations, volunteer work, politics, etc.) and access to health care, education, culture, means of communication and social services.

4.2.7 Existing best practice solutions, such as the European parking card, should set an example for the introduction of new, similar solutions, which cannot be achieved without a set of indicators to measure social inclusion of people with disabilities, with relevant and comparable data.

4.3 Challenges in the setting of European indicators

4.3.1 The provision of data from Member States to assess the level of the inclusion of people with disabilities currently takes place without any European-level agreement on common indicators except data collection in framework of OMC ⁽⁸⁾ and ECHIM ⁽⁹⁾. It should also be further explained to the Member States why gathering data on disability matters is of great importance.

4.3.2 The SILC survey includes an estimate of the number of disabled people in the EU but excludes from this data people living in institutions, children and older people with a disability, which makes this figure less relevant.

4.3.3 Definitions of disability are different in all countries, and should be expanded to include, for example, people with mental health problems, who are often not included in national statistics. In order to secure a universally recognised basis for determining which groups of people are subsumed under the term 'persons with disabilities', any definition should draw on the second paragraph of Article 1 of the UN Convention.

4.3.4 Disabled people are a heterogeneous group, and it is difficult to establish measurement criteria. A set of indicators should therefore take into account the diversity of disabilities, as well as the policy fields that impact on the lives of disabled people, and identify barriers to full participation in society for people with disabilities.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽⁶⁾ For the Washington Group, see:
<http://www.cdc.gov/nchs/citygroup.htm>.

⁽⁷⁾ 'Concerted development of social cohesion indicators — Methodological guide', Council of Europe Publishing.

⁽⁸⁾ Open Method of Coordination.

⁽⁹⁾ European Community Health Indicators Monitoring.

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee — Towards a more effective use of tax incentives in favour of R&D'

COM(2006) 728 final

(2008/C 10/21)

On 22 November 2006 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 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 21 June 2007. The rapporteur was Mr Morgan.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 27 September), the European Economic and Social Committee adopted the following opinion by 134 votes to 2 with 5 abstentions.

1. Conclusions and recommendations

1.1 This Communication forms part of the Commission's programme in support of the Lisbon objective that the value of EU R&D expenditure should be equal to 3 % of GDP by 2010, of which 2 % should come from the private sector. The focus of this Communication is on the methods used by Member States to incentivise company R&D through the tax system. The purpose of the Communication is to clarify the legality of R&D tax incentives in the context of EU law and to give advice to Member States regarding best practice. This Communication is a welcome response to the EESC request that 'the Community should work to encourage Member States to frame their tax and liability laws so that they do more to provide incentives for industry to invest in Research and Development' ⁽¹⁾.

1.2 Some examples of best practice are described in Section 3 of the Opinion. It is, however, necessary to recognise that there are limitations to the incentives which can be provided through the tax system. The higher the rates of corporate taxation, the higher the incentive while lower rates provide less incentive. The higher the social charges, the more the incentive to give relief from them. If companies are not profitable there is less scope, since the general concept is to provide relief from taxes on profits. Finally, it goes without saying that relief must be based on actual R&D investment made and not in respect of future plans.

1.3 The recommendations for the establishment of an incentive system include the requirement that the effectiveness of each scheme should be measured. This is clearly important in the case of large profitable companies which could very well carry any tax rebates into the bottom line instead of the R&D budget. To avoid this moral hazard some countries only allow incentives on incremental R&D expenditure but this may be self defeating because an important effect of these incentives is to

retain R&D activity in the EU and prevent it going off shore. Accordingly an effective measurement system for large companies is likely to be more beneficial than restricting relief to incremental expenditure.

1.4 By far the most important impact of these programmes is the way in which they can support the development of R&D focussed SMEs during the early years of their existence. The recommendations include a powerful range of incentives which provide extra tax relief as a multiple of R&D investment, refunds in the absence of profits and relief from social charges. Given the strategic role of SMEs in the EU economy, the EESC recommends that each Member State uses an optimum mix of possible tax incentives to facilitate the survival and growth of SMEs in its economy.

1.5 In this context, the Committee is surprised that the Communication makes no reference to tax relief designed to help the formation of capital for new companies. This point is further developed in paragraphs 4.9 to 4.12. The EESC recommends that the Communication be expanded to include capital formation.

1.6 A further issue of great importance to SMEs is the treatment of patents and licences. The law is not clear and there is an element of competition between Member States in respect of the tax treatment. The EESC recommends that the Communication be extended to cover patents and licensing.

1.7 The Communication raises questions about a number of related issues on which action could be taken. The EESC recommendations are as follows:

1.7.1 Member States should improve the use of R&D tax incentives for industrial participants in transnational research projects.

⁽¹⁾ See the Opinion of the EESC on *Unlocking and strengthening Europe's potential for research, development and innovation*, OJ C 325 of 30.12.2006, p. 5, paragraph 3.5.

1.7.2 Member States should explore ways in which state imposed costs can be lowered for young R&D businesses following the example of the very successful French Young Innovative Enterprise (YIE) regime.

1.7.3 In respect of public benefit private sector research organisations, Member States should develop a common approach so that both donations and research funds can flow freely within the EU.

1.7.4 The cross border mobility of researchers should be encouraged by Member State agreements to prevent double taxation on short term assignments.

1.7.5 The Commission is encouraged to develop a common structure for the mutual recognition of R&D certificates for those countries which use them. At the same time the Commission might consider whether such certificates are needed in the single market.

1.7.6 The Committee welcomes the Commission's proposal to simplify and modernise the rules for the recovery of VAT by private entities on R&D expenditure incurred in public/private projects.

1.7.7 It is essential to the debate on tax incentives and R&D to seek an EU wide tax definition of R&D and innovation. This will be a further step towards the creation of the Single Market.

1.8 The Lisbon objective of 3 % was set by reference to the R&D investment made by competitor regions. It is a feature of the EU economy at the macro-sector level that it is not as involved in highly R&D intensive industry sectors as competitor countries such as Japan and the USA. Therefore, in addition to stimulating private sector R&D, it would make sense to increase public sector investment in universities and State funded research institutes. Environmental projects should provide an appropriate stimulus ^(?).

2. Introduction

2.1 The context of this Communication is the Lisbon strategy which calls for R&D investment in the EU to approach 3 % of GDP by 2010, of which 2 % should come from the private sector. In 2005 the Commission announced its intention to promote a more consistent and favourable tax environment for R&D, while recognising Member State competence for tax policy. (COM(2005) 488 and COM(2005) 532).

2.2 Within this Lisbon framework there have been a series of Commission initiatives aimed at increasing EU R&D spend to the target of 3 % of GDP while at the same time developing the European Research Area. There has been a drive to unlock

^(?) See also the Opinion of the EESC on *Unlocking and strengthening Europe's potential for research, development and innovation*, OJ C 325 of 30.12.2006, p. 5, paragraphs 14.2-14.4.

Europe's potential for research development and innovation culminating in the 7th Framework Programme. In its Opinions the EESC has consistently urged the Commission and the Member States to remove the barriers which hold back both the quantity and quality of R&D in Europe while at the same time taking organisational, institutional and financial initiatives to promote a sufficient critical mass of R&D activity in Europe.

2.3 The Communication provides guidance to help Member States improve their R&D tax treatment and to help develop mutually consistent solutions to common problems. Therefore it is not a EU programme targeted at specific R&D projects or objectives. It is a programme for Member States to promote R&D in the private sector and it will work to the extent that the private sector, company by company, is incentivised to undertake R&D. The Communication aims to help Member States in three ways:

- clarifying the legal conditions for Member State R&D tax incentives arising from EU law;
- highlighting general design features for R&D tax treatment and incentives based on expert analysis of good practice;
- presenting for discussion a number of possible future initiatives aimed at addressing issues of common interest in a consistent way.

2.4 The Open Method of Coordination applies to this policy domain. The decisions lie with Member States. The guidelines provided in the Communication are derived from best practice by Member States. A critique of Member State policies lies outside the scope of the Opinion. The Opinion is therefore confined to observations on the guidelines and comments on the possible future initiatives highlighted in 2.3 above.

3. Gist of the Commission's Communication

3.1 All R&D tax incentives implemented by Member States must conform to the fundamental Treaty freedoms and the principle of non discrimination. The Commission considers both implicit and explicit territorial restrictions to be incompatible with Treaty freedoms. There is ample and consistent evidence that territorial restrictions on the application of R&D incentives are unlikely to be accepted by the ECJ.

3.2 In principle, State aid rules apply regardless of the form of the aid so R&D tax incentives could constitute State aid. However, an R&D tax incentive which is not selective, i.e. one that applies irrespectively to all shapes and sizes of company in any sector would not be seen as selective and so would be treated as part of general corporate taxation.

3.3 Article 87(3)(c) of the Treaty states that the following may be considered to be compatible with the common market: 'aid to facilitate the development of certain economic activities ... where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. The Commission has adopted an RDI Framework to cover selective tax incentives which might qualify under this Article. The framework has been developed in the public interest to correct what is perceived as market failure in the R&D sphere.

3.4 In applying the framework the Commission will take into account the following framework elements:

- the R&D category, whether fundamental, industrial or experimental;
- the application of the incentive to eligible costs;
- the limitation of the aid intensity to the maximum threshold.

Furthermore the Commission will assume, on the basis of the case made by the Member State, that the incentive will address market failure by stimulating higher R&D spending by companies.

3.5 The European Council has called for the Open Method of Coordination to be used in support of research policy making and the Council subsequently invited the Committee for Scientific and Technical Research (CREST) to oversee this method of support. In this Communication the Commission has relied heavily on the report 'Evaluation and design of R&D tax incentives' produced by CREST in March 2006.

3.6 Due to varying economic and industrial structures, R&D capacity, level of R&D spending and overall tax environment, the mix of R&D and innovation policy instruments vary greatly between Member States. The majority of the existing schemes are general in nature and about half of these have an upper limit or cap. This works to the advantage of SMEs as their level of expenditure is not usually affected by the cap. About one third of tax incentives provide specific benefits for SMEs and a growing number of schemes cater specifically for young innovative SMEs.

3.7 The three basic types of tax relief are tax deferral, tax allowance and tax credit. The impact of the incentives used by each Member State is a function of the overall tax system. Depending on the purpose of the incentive, some schemes apply to total R&D expenditure, others apply only to incremental expenditure resulting from the scheme. In other cases both classes of expenditure are relieved, but at different rates. The generosity of the incentives varies considerably across Member States. As a relief of tax, it is also affected by the prevailing levels of corporation tax.

3.8 Tax deferral generally means the 100 % deduction of R&D expenditure from taxable profits. In this scheme, every Euro of R&D expense can be claimed in full against tax. Where the R&D expenses are not 100 % deductible, they can usually be capitalised and subsequently be depreciated. In particular, this will be the case for capital expenditure.

3.9 Tax allowances are used to allow more than 100 % of R&D expenditure to be relieved. Where allowances apply, the uplift is usually between 125 % and 300 %. For example, with a general corporation tax rate of 30 %, a company would be able to claim EUR 3 000 tax relief on every EUR 10 000 of R&D expenditure. With an uplift of 50 %, the company could claim EUR 4 500 relief on every EUR 10 000 of R&D spent.

3.10 When the incentive is given in the form of a tax credit, it takes the form of a tax or cash refund. The credit is usually given on the amount of tax payable, but where no tax is payable the credit may be calculated as a percentage of the R&D spend. A credit in cash payable where a company is not making profits can provide a very welcome injection of funds for early stage companies.

3.11 While most schemes, as described above, are related to corporation tax, other schemes target wage tax and social contributions, or personal income tax. These options decrease research staff costs with immediate effect, thus reducing the most important component of R&D expenses. These options will have most effect where social charges are high.

3.12 For targeting loss making firms, such as young innovative SMEs, design options range from wage tax exemption to corporation tax refund to R&D tax credits to unlimited carry forward of losses incurred for future corporation tax relief.

3.13 In 2004 France was the first EU country to introduce a tax incentive specifically to support Young Innovative Enterprises (YIE). The aim is to stimulate private sector research and create real growth by reducing the start up costs of new businesses oriented towards research and innovation. The incentives include corporation tax exemption for the first three profitable years followed by a 50 % exemption for the next two years. In addition, social security payments for highly qualified personnel are exempted for eight years. Eligibility criteria apply to the YIE scheme.

3.14 Based on the experience of the application of R&D tax incentives in fifteen Member States, the Communication concludes that Member States should:

- use general measures as far as possible because these will reach more firms, maximising the increase in R&D and minimising market distortion;

— allow full deductibility for all R&D expenses (no capitalisation or accelerated depreciation of these expenses) with adequate carry-forward and carry-back provisions for losses incurred.

3.15 As far as the design of schemes is concerned, Member States should clearly define their objectives:

- focus on the additional R&D spend to be achieved;
- focus on the behavioural change in firms;
- evaluate the wider societal effects of these changes;
- consider evaluation criteria from the design stage;
- test whether specific incentives meet their objectives.

3.16 Beyond the scope of R&D incentives for companies, the Communication also raises a number of issues affecting described as orientations for measures of common interest and mutual benefit: The EESC position on these issues is given in section 5 below.

4. Observations on the guidelines

4.1 The guidelines provide a wide range of options for the promotion of R&D via tax incentives. The EESC encourages all Member States to adapt these guidelines to their particular circumstances to create an R&D friendly regime. The Open Method of Coordination, facilitated by CREST, and driven by the Lisbon agenda should give all Member States the opportunity to apply best practice.

4.2 The impetus provided by R&D tax incentives will vary according to the size of the enterprise, whether, large, SME or start up.

4.3 In many Member States, tax incentives for R&D investments are relatively recent and the effect on large companies cannot yet be accurately tracked. It is possible that in some cases the tax savings will be reflected in the bottom line rather than the R&D department. Hence the interest in certain Member States to give greater incentives for incremental investment. At the same time Member States have an interest in retaining domestic R&D presence and straight forward incentives will encourage enterprises to keep their R&D activities where they are.

4.4 Larger firms have a greater critical mass of engineers and scientists and consequently they are well placed to send work off-shore. If, for example, Member States decide to use R&D incentives to retain software engineering jobs on shore, the

most powerful incentive could be to make the associated costs 100 % deductible as per 3.8 above.

4.5 SMEs do not have the resources of larger companies and so their finances may be under relatively greater pressure. Options adopted by some Member States to give larger allowances so SMEs and set scheme upper limits beyond the scale of SMEs will give SMEs relatively more financial flexibility for R&D investment.

4.6 It is for start ups that tax incentives have the greatest potential leverage and this is important because such companies are vital elements in the promotion of enterprise and innovation. Innovations in the service economy, as well as in science and technology very often emerge via start up companies. The R&D departments of established enterprises often seem better adapted to product replacement and product improvement rather than break through invention. New companies exploiting inventions in science and technology are vital because if they can survive the difficulties of the start up phase (unfortunately most small companies do not survive), they may either develop into wealth creating SMEs or become a valuable acquisition for a larger enterprise. The M&A budgets of many technology enterprises may be of no less importance than the R&D budgets of those same firms. Indeed, many large technology enterprises have established investment arms modelled on venture capital.

4.7 Since the acquisition of small companies by large is a feature of the enterprise economy, it makes sense that the transactions should be as tax transparent and tax neutral as possible. This means that exit taxes for founders and entrepreneurs should be minimised while distorting penalties should not be imposed on acquiring companies.

4.8 While R&D incentives may be appropriate for YIEs in the technology sector, general incentives for start up companies are equally important. This is because such incentives will encourage new business formation in all industry sectors, thus contributing to the overall growth of Member State economies.

4.9 In the context of general tax incentives to encourage new business formation, the Communication is strangely silent on capital taxes. The problem for a start up business is to secure its initial funding. So called venture capital is not eager to be involved in early stage businesses and so the seed money usually has to come from private investors, business 'angels' and the friends and family of the founder(s). The capital tax regime which applies to these investors is a vital ingredient in business formation.

4.10 The UK has a reasonably well developed system of tax incentives in this area which may serve as an example. Investment may be made directly via the Enterprise Investment Scheme (EIS) or via a Venture Capital Trust (VCT) which is a collective investment vehicle quoted on the Alternative Investment Market (AIM). Companies qualifying for either scheme have to meet relevant eligibility criteria.

4.11 In each scheme, income tax relief is available on the sum invested at 20 % (EIS) or 30 % (VCT). No capital taxes are payable on gains after a qualifying period. No income tax is payable on VCT dividends and no death duties are payable on VCT holdings in the investor's estate. While tax advantages should never be the reason for making an investment, these schemes do significantly mitigate the risks of investing in start up companies. They have succeeded in their objective of making it easier for British entrepreneurs to raise the money.

4.12 An important omission from the Communication is any guidance on the treatment of patents and licensing. There is confusion in respect of the law and evidence of competition between Member States in the tax treatment available in respect of patents. The EESC proposes that the Communication be expanded to include patents and licensing.

5. Orientations for measures of common interest and mutual benefit

5.1 The Committee supports the proposal that Member States should address the obstacles in the way of transnational research projects by, inter alia, improving the use of R&D tax incentives for industrial participants.

5.2 The Committee encourages Member States to explore ways in which state imposed costs can be lowered for young R&D businesses following the very successful French example of the YIE regime.

5.3 The Communication notes that while there are in the EU a few private sector public benefit research foundations which aim to enhance scientific knowledge by funding research, typically in universities, other regions such as the USA have very many more. Formal and informal obstacles appear to inhibit both donations by individuals and corporations (which should qualify for income and corporation tax relief) and the subsequent flow of funds to research. The Committee endorses the proposal that Member States develop a common approach so that both donations and research funds can flow freely within the EU.

5.4 The cross border mobility of researchers should be encouraged by Member State agreements to prevent double taxation on short term assignments. Member States are also encouraged to extend these arrangements to countries within the EU orbit such as the Ukraine, Israel and Turkey which are involved in a significant R&D exchange with the EU.

5.5 Some Member States allow firms to request a certificate recognising their capacity to perform R&D. In some Member States, public entities performing R&D are automatically granted such certificates. In order to facilitate mutual recognition of these certificates, the Commission will propose a possible common structure. This seems a sensible step for Member States which rely on these certificates.

5.6 The Commission has identified concerns where public and private firms interact in the R&D arena because of the problems created for the recovery of VAT on R&D expenditure by private entities. The Commission's proposal to simplify and modernise the rules and their application is very welcome.

5.7 Finally, the Communication states that in the long term it is desirable to seek EU wide tax definition of R&D and innovation and to give such expenditure favourable treatment in the common consolidated corporate tax base. This would be a further step towards the completion of the single market.

Brussels, 27 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on 'The EU Economy: 2006 Review — Strengthening the euro area: key policy priorities'

COM(2006) 714 *final* — SEC(2006) 1490

(2008/C 10/22)

On 11 January 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on *The EU Economy: 2006 Review — Strengthening the euro area: key policy priorities*.

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 4 September 2007. The rapporteur was Mr Burani and the co-rapporteur was Mr Derruine.

At its 438th plenary session, on 26 September 2007, the European Economic and Social Committee adopted the following opinion by 133 votes to two, with five abstentions.

1. Conclusions and recommendations

1.1 The Committee broadly supports the Commission document, but nevertheless wishes to add a few comments, including some already expressed before, even before the adoption of the euro. The Commission expresses various veiled criticisms of certain aspects of Member States policies. The EESC agrees with the substance of this but recalls that governments are often faced with unavoidable domestic political demands or external events (energy crises, war situations, etc.) that are beyond their control.

1.2 The long-term sustainability of budgetary policies is problematic when there is a lack of policy continuity from new governments coming to power over time. The same can be said for structural reforms, which can be influenced considerably depending on the subjective leanings of the government in office. In view of the above, the EESC agrees with the Commission on the need for structural reforms to be completed with the necessary policy continuity.

1.3 The flexibility of the markets for goods and services is one aspect of economic policy where governments have to seek the agreement of the social partners. Liberalisation, which has had varying degrees of success in the various countries and sectors, should be carried out with caution, taking into account the specific circumstances of each country and sector.

1.4 The integration of the financial markets, already achieved to a large degree for corporate services, poses more problems for the retail markets. Furthermore, most of the obstacles are of an objective nature (differences in language, the nature of services, etc.). These are problems that cannot be resolved through legislation or regulations, but rather by the market, where possible. The existing rules should be sufficient to progress with integration. At most, standards will be needed to

ensure optimum protection for consumer interests and, where necessary, market vigilance.

1.5 Wage bargaining should, as the Commission demands, take into account the implications of monetary union. The EESC hopes it will be possible to achieve convergence among economic, monetary and employment policies by means of joint Eurogroup and Employment Council meetings. Convergence, if only in principle, could contribute over time to genuine harmonisation of the various policies.

1.6 The Commission's recommendation to take greater account of the international dimension mirrors a criticism made by the EESC even before the euro was adopted. The emergence of the Asian countries should not be seen as a threat, but rather as a challenge to rise to in terms of competitiveness and innovation.

1.7 The euro area should be championed by individual governments. They should abstain from blaming the euro for national economic problems while failing to mention the benefits of having adopted the single currency. It would also be helpful if the countries that did not join the euro at the start gave clear indications of their future intentions, not only to inform the euro area public, but also to ensure that future euro policies are framed in the knowledge of which and how many economies will be included.

1.8 The EESC points out that the importance the euro has acquired as an international currency should strengthen its application for a seat on the International Monetary Fund. This would not involve taking the place of one of the current members, but rather adding a member. The objection that the IMF statutes do not permit this appears shaky and a mere pretext.

1.9 One rather controversial idea, offered with the sole aim of testing the waters for future possible consideration, is that of a European stabilisation fund, to be fed by tax surpluses in favourable periods, to finance projects of Community interest.

1.10 In general, the Committee finds the Commission report acceptable, but would point out that, like the many other documents on the euro, it fails to do justice to the importance of the political dimension of the single currency. The importance of the euro and its consequences and prospects go way beyond mere economic, financial or social implications. The true cement holding the Union together is the fact that it has chosen to pool the interests of different countries within a common currency.

2. Introduction

2.1 The Commission has published a communication on the state of the EU economy in 2006, focusing in particular on political priorities for strengthening the euro area. This document is based on another entitled 'Adjustment Dynamics in the Euro area — Experiences and Challenges' ⁽¹⁾, which as usual is valuable for providing a more in-depth analysis.

2.2 It is now customary for the EESC to comment on the Commission's annual document with an own-initiative opinion ⁽²⁾. With this opinion, the Committee intends to reaffirm views and recommendations it has already made known. These will be referred to in the present opinion when appropriate. It also wishes to contribute to the debate on the functioning of the EMU, introducing new elements, such as a joint Council of euro-area finance and employment ministers and a tentative proposal to establish a European stabilisation fund.

2.3 Meanwhile, looking back at the history of the establishment of the single currency, one cannot help noting that several measures adopted or recommended recently by the Commission can be matched to comments made by the EESC in its 1997 opinion ⁽³⁾ regarding the **rigidity of some of the founding principles** of the Stability and Growth Pact. It was pointed out then that the nature of the economic climate and national policies had not been given due consideration when setting and applying the reference parameters. The EESC's suggestions were not accepted then, but their validity has been borne out by time ⁽⁴⁾.

⁽¹⁾ Provisional document — part of the 'EU Economy Review' series, published by the DG for economic and financial affairs.

⁽²⁾ See Appendix for list of recent opinions on the broad economic policy guidelines.

⁽³⁾ Opinion on arrangements for stage three of economic and monetary union, OJ C 287 of 22.9.1997, p. 74.

⁽⁴⁾ The EESC suggested for instance that the 'convergence criteria, particularly those on government deficit and debt, should be reviewed regularly e.g. every ten years'. This suggestion was rejected, but events have shown the need to adopt a revised stability and growth pact, even earlier than the ten years proposed by the EESC.

2.4 The lack of realism early on is now reflected in the **criticisms** — justifiable but foreseeable from the outset — that are now being made of the Eurogroup countries' **economic policies**: national budgets ought to be drawn up on the basis of **common macroeconomic hypotheses**. The wishes of the presidency, expressed at the Eurogroup ministers' meeting on 6 November 2006, have not been acted upon: national budgets are still far from being based on the necessary **economic policy coordination**.

2.5 It must also be understood that it is exceedingly difficult to coordinate economic policies when countries have differing socio-economic situations and differing if not divergent political objectives. Just to have **convergent** policies would be a major improvement. Convergence depends on a multitude of factors, but mainly on **employment**, the scale and nature of which is the result of a whole web of other policies.

2.5.1 Two **integrated strategies** at least are provided by the broad economic policy guidelines and the European employment strategy guidelines. A **broad degree of convergence**, at least in an attempt to reach harmonisation over time, could be achieved by organising a joint Eurogroup and Employment and Social Affairs Council meeting involving Eurogroup ministers only. The ideas generated by such a meeting could provide valuable pointers for the annual spring Council meeting.

3. The Commission document

3.1 The communication's three admirably neat sections set out past experience, specific considerations and the Commission's recommendations. The Commission avoids repeating tacitly accepted truths and principles that over the years have become part and parcel of the economic policy guidelines.

3.2 Taking stock of the experience of the early years of the euro

3.2.1 The Commission looks back at the debates that preceded the euro's launch in 1999. The fundamental issue was 'how the participating countries would **adjust to shocks and differences in competitiveness** in a context of low labour mobility, incomplete integration of product and services markets and the retention of national budgetary autonomy'. These questions remain today, but the pessimists who predicted that national union would be short-lived have been proved wrong.

3.2.2 The **success stories**, or at least the positive proof provided by the euro, cannot be denied: **the currency is strong and stable**; it has reacted well to common external and internal shocks and has battled effectively against inflation. The Member States have enjoyed 'the most favourable financing conditions ever'. In addition, the EESC would add that a number of the euro area countries have been spared the inflation that their national currencies would certainly have suffered as a result of worsening economic and budgetary conditions. The euro, the world's second currency, has shielded Member States from the monetary and financial shocks that would otherwise have hindered growth, done away with jobs and destroyed the trust of economic operators.

3.2.3 However, the success stories are contrasted by certain perennial problems. In many cases, individual economies have had trouble adjusting to developments in their own countries, with widely differing results. These divergences have been reflected in **inflation and growth rates**. The adjustments resulting from the slow-down in the economies should have enabled faster growth trends in the medium term, following an initial loss in competitiveness. This did not happen, however, or at least only happened to a degree. 'More generally', the Commission concludes, 'the euro area has not yet been able to achieve high growth and employment over a sustained period'. The EESC will comment on this statement below.

3.2.4 The Commission also recognises that the difficulties adjusting are not only or mainly the result of delays in implementing fiscal and structural reforms: they may also be due to the regime imposed by the monetary union rules.

3.2.5 In the early years of EMU, **real effective exchange rates** showed imbalances and fluctuations. For some Member States this was compounded by a sharp fall in interest rates and 'a relaxation of credit constraints on households following an improved access to credit in the more integrated financial market', with direct effects on the consumption of durable and non-durable goods. For durable goods (real estate) in particular, certain economies experienced large-scale investment abroad, which served to increase current account deficits.

3.2.6 One general statement made by the Commission, based on the example of the Netherlands, refers to the 'hazards in designing **fiscal policies in "good times"**'. In the Netherlands, a strongly favourable economy at the beginning of the decade had pro-cyclical effects on the labour and financial markets and, ultimately, on fiscal policy. External conditions generated a sudden downturn which in turn necessitated the adoption of drastic containment countermeasures.

3.2.7 **Prices and wages** are a further factor at play here: at national level they adjusted too slowly to cyclical changes, despite a general background of wage moderation, which meanwhile contributed to declining unemployment. Poor growth in productivity put the burden of real depreciation on prices and wages but mainly on the latter. These phenomena interact at international level to generate changes in demand and also repercussions on competitiveness.

3.2.8 Lastly, there were widely differing results with **nominal and real convergence**, which could be instructive if analysed in a critical and objective way. The Commission states that the differing trends were 'partly' the reflection of different national policies. The EESC would note here that the global and European economic situation generally had similar effects on all the countries, whereas any differences recorded were largely the result of national policies. The examples of Spain, Italy, Portugal and Ireland, mentioned by the Commission, offer glaring proof that, under favourable economic conditions, the results of thrifty and spendthrift fiscal policies are totally different.

3.3 Action needed to ensure the smooth-running of the euro area

3.3.1 This chapter deserves special attention as the **five 'specific policy considerations'** that follow constitute, or rather coincide with, the **Commission's priorities for the coming years**.

3.3.2 **Consideration 1: Budgetary policies must be run even more prudently.** In essence, the measures to adopt coincide with those that were approved for the reformed stability and growth pact, and they should by now have been taken on board by governments, and not only by those in the euro area. Hence the recommendation to take the **long-term sustainability of budgetary policies** into account — something which may seem obvious, but is clearly not always observed when annual plans are drawn up.

3.3.3 **Consideration 2: Markets for goods and services must become more flexible.** The Commission speaks of '**greater downwards price flexibility**', something that is impossible to obtain when prices are rigid. In such situations there is resistance to adjusting nominal wages, as this would generate greater reductions in real wages. It is also necessary to encourage a **reallocation of resources among companies and among sectors**. All this — price flexibility and the redistribution of resources — depends on the creation of open and competitive markets. It may also be necessary to review fiscal and spending policies (or certain aspects of them), both at EU level and nationally and regionally.

3.3.4 Consideration 3: Financial market integration needs to be accelerated. Major progress has been made in this area, but according to the Commission there is still a long way to go to tap the full potential of the financial markets in the euro area. Greater integration could reduce the impact of economic shocks on incomes and on national credit markets. The Financial Services Action Plan and ongoing initiatives should deliver significant results.

3.3.5 Consideration 4: Wage setting must internalise the implications of monetary union. The social partners involved in the wage bargaining process must have access to the information they need to calculate whether wage trends are appropriate and to be able to assess the implications for adjustment processes. A wage policy that is in line with development plans should help to avoid significant 'overshooting' in intra-euro area real effective exchange rates.

3.3.6 Consideration 5: The global dimension must be taken into account. This aspect needs to be considered 'in a more systematic way'. Economic policies at euro-area and national levels have often underestimated this aspect, despite its great importance when it comes to determining economic policy. The impact of the euro, or of its exchange rates, on other players in the world economy must be carefully assessed, as trade, finance and economic policy strategies depend on it.

3.4 The way ahead to a stronger euro area

3.4.1 In this chapter, the Commission sets out the **measures that are needed to strengthen and complete monetary union**, a priority that in the current international context is becoming a matter of urgency. One sentence in particular should be highlighted: *'Recent divergences have to some degree reflected initial developments that affected member economies in the run-up to the euro area's creation in 1999'*. This holds the explanation, at least in part, for the divergences in growth and policy that have marked the last nine years.

3.4.2 The **'way ahead' set out by the Commission** is summed up here by the headings listed below. Their content is largely self-evident and there are also vast numbers of documents on the individual subjects. The way ahead will involve:

- a. accelerating structural reforms and fostering integration;
- b. further strengthening fiscal positions and improving the quality of national budgets;
- c. reinforcing coordination within and outside the euro area;

- d. promoting the enlargement of the euro area;
- e. getting closer to the citizens.

The EESC will comment on these individual points later.

4. The EESC's comments

4.1 *Consideration 1: Budgetary policies must be run even more prudently.*

4.1.1 The Committee agrees with the Commission's thinly veiled criticisms of the policies of certain Member States who sometimes seem more interested in presenting annual plans that are in line with the convergence criteria than in adopting a strategy to strengthen their fiscal positions. These criticisms should also be viewed in the light of opinions expressed by the Committee well before the single currency was adopted ⁽⁵⁾: **no government is totally at liberty to adopt its own appropriate budgetary policy, free of constraints and influences.**

4.1.2 In addition to the **constraints** imposed by the convergence rules — which are supposedly already written into an 'appropriate' budgetary policy — there are others of an **internal and external nature**. Of those of an internal nature it is sufficient to mention structural constraints and those relating to structural reforms that have yet to be implemented. The external constraints include general trends in the global economy and in particular **energy costs**; the effects of this factor differ enormously from one country to another, but it is never considered among the causes for divergent economic policies. It has to be admitted that countries that are totally or almost totally dependent on energy supplies from abroad are in a very different position from those that have a smaller deficit or, in a few cases, that are net exporters of energy.

4.1.3 The Committee also notes that in the past, structural reforms, as listed in point 4.1.6 below, have not always yielded the desired results. What is needed, therefore, is better coordination of the reforms, within each country and at Community level, as well as consistency with macroeconomic policies designed to support competitiveness and employment. This has not always been the case in the past; disappointing growth trends — found in almost all countries — highlight the way in which in some countries growth has been almost an 'independent variable' in the reforms.

⁽⁵⁾ 'Governments are not always able to conduct their economies as they would like to, and (...) forecasts — even the most authoritative — can prove to be wrong': 1997 opinion cited in Footnote 3.

4.1.4 The recommendation to take **the long-term sustainability of budgetary policies into account** (see point 3.3.2) deserves special comment. These policies are always a combination of economic/social considerations and political leanings. Looking at the history of the euro area countries over the last 10 years, it is clear that very few have witnessed 'political stability'. In all the countries, governments of differing political leanings have taken turns at the helm, as is moreover normal and desirable in a democratic system. However, this alternation makes it difficult to draw up long-term sustainability plans ⁽⁶⁾, as their reliability will depend on the stability of governments over time, as well as on various other external factors.

4.1.5 One specific aspect of the structural reforms in certain countries concerns the level of government debt, which is notably higher than the parameter set by the Maastricht criteria (60 % of GDP) and which is not showing significant improvement year-on-year. In the Committee's view, reducing this debt by using the budget surplus of a few good years or a one-shot operation is not enough. What is needed is greater efficiency in public spending or, if this proves inadequate, a radical review of its structure.

4.1.6 The Commission's 'way ahead' as mentioned in point 3.4.2a) (accelerating structural reforms) is therefore fraught with difficulties and will be highly susceptible to political trends. Structural reforms (pensions, health, public administration, liberalisation, energy) have a major social impact and the social partners play a key role, in ways that differ from country to country. No government can adopt measures, whether rational or not, that are not acceptable to the public. Recent history shows that structural reforms are often the fruit of **compromise between diverse and sometimes divergent demands**: reforms that seem 'rational' at one step removed must take account of real and unavoidable prerogatives.

4.1.7 The Committee recognises the importance of carrying through well thought-out reforms with good coordination between the Member States. However, some reforms may raise concern among households, causing them to act prudently and increase their savings levels. Although, to date, the growth in savings rates appears negligible when expressed in percentage points, this is not so when it is expressed in absolute terms. Between 2001 and 2005 savings increased by less than one percentage point, but this represents a sum of nearly EUR 50 billion subtracted from consumer spending ⁽⁷⁾. For some, this is a positive sign, as an increase in consumer spending that is lower than the increase in savings could also mean increased consumer confidence in the future of the economy. Others however draw attention to foreign investment,

lamenting the fact that it exceeds investment in Europe. These different points of view may find common ground in the fact that the increase in foreign investment in Europe is definitely one of the positive effects of globalisation.

4.2 *Consideration 2: Markets for goods and services must become more flexible.*

4.2.1 The Commission stresses that budgets must be 'more supportive of active adjustment' in the **flexibility of markets for goods and services**. Flexibility here means '**downwards price flexibility**' in contrast to the experience of the early years of the euro area. One way of achieving this would be to make prices less rigid and encourage a better allocation of resources between companies and between sectors: this would encourage a **wage policy** more in line with the need to maintain appropriate wage levels and reduce the social costs of the cyclical adjustment process.

4.2.2 The Commission's reasoning is probably correct, but the EESC wonders whether it can realistically be applied to all situations and all countries. The integration of national markets (see second part of point 3.4.2a) can be encouraged in part by a government policy of incentives, but **wage policy depends to a large degree on consultation and bargaining between the social partners**. *Price flexibility in a free market regime is not therefore always or everywhere independent of government provisions*. In practice it is subject to various parties — government, business leaders and workers — coming to an agreement. The same could possibly be said about the reallocation of resources between companies and sectors, which can certainly be encouraged by fiscal or regulatory measures, but in the end depends on market opportunities and agreements between both sides of industry.

4.2.3 Liberalisation deserves specific mention, as it can lead to a redistribution of resources between companies. Despite formal adherence to the principle, in practice liberalisation is understood and carried out in different ways and to varying degrees from country to country, depending on differing and sometimes divergent national political orientations. The impact of these measures on prices (quality is another issue) and on competition is open to debate, leading to the conclusion that they have not always or in all cases delivered the desired results. To conclude, price flexibility and wage policy trends also depend on the possibility to privatise. Meanwhile, liberalisation must be conducted when the market allows and the resulting competition must bring real consumer benefits.

⁽⁶⁾ 'Given the fluidity of the political and socio-economic scene at European and above all at world level, it might be better to talk about *programme declarations* rather than programmes; such declarations would be binding only insofar as they correspond to real economic developments': see opinion cited in Footnote 3.

⁽⁷⁾ Source: AMECO, the DG ECFIN database.

4.3 *Consideration 3: Financial market integration needs to be accelerated.*

4.3.1 The **Financial Services Action Plan** launched three years ago has yielded good results (the Commission speaks of 'important progress') in terms both of payment systems and of the financial, securities and corporate banking services markets. In these sectors, financial integration can be said to be at an advanced stage. The steps still to be taken concern supervisory measures, voting rights and company mergers: all necessary measures, but ones whose absence poses no real obstacle to the integration already in place.

4.3.2 A separate issue is the problem raised by the Commission regarding the **retail market for credit and financial services** in general. The Commission states that: 'Greater financial integration can smooth the impact of economic shocks on incomes and on national credit markets'. This statement is certainly well-founded; but whether it is really feasible remains open to discussion. For *financial products*, integration at Community level is a given: no one is against the idea of a citizen of any country being able to buy or sell securities in any other country. With regard to *financial services — credit in particular* — the situation is more complex: **integration at European level is not an easily reachable goal in the short term.**

4.3.3 Financial services along with insurance services are unusual in that they carry a *risk for the seller*: the feasibility of each transaction depends on the reliability of the client. This makes it necessary to obtain information in a country other than that of the seller and thus to draw up a contract that includes procedures to govern any possible litigation or insolvency. On the national market, none of this poses a problem, but integration at Community level with the same rules implies the use of different languages, and acceptance of the authority of the laws — and possibly the courts — of the buyer's country. These conditions generate costs, complications and obstacles that are difficult to overcome with legislative or regulatory provisions. The answer, and what is done in practice, is to open sales branches in the buyers' country or countries: in this case, it is not a matter of market integration but rather of enlarging the internal market in accordance with the principle of the freedom of establishment. The benefit is to strengthen competition on national markets and give the consumer more choice.

4.3.4 The further integration of *retail* financial markets is not therefore possible in the short term with legislative initiatives or

incentives: the efforts of the Commission and the Member States should focus on reasonable rather than impracticable objectives.

4.3.5 To conclude, the EESC agrees with the Commission's recommendations on the need to *accelerate* the integration of the financial markets as a means of better distributing financial resources, directing them to the places they are most needed. However, it would also stress that the existing rules (and the additional rules under discussion) are sufficient to secure integration on the basis of market laws. Rules are needed, if at all, to secure better and more uniform protection for consumer interests.

4.4 *Consideration 4: Wage setting must internalise the implications of monetary union.*

4.4.1 The Committee is surprised by the Commission's suggestion that the social partners do not have 'the necessary information concerning the challenges and the implications of different lines of action', and that they therefore are conducting an irrational wage policy. This view does not compute with the Commission's own position taken in a study⁽⁶⁾, where it states that 'during the period 1999-2005 nominal wage developments in the euro area have been consistent with the goal of price stability(...), thus indicating negative real unit labour cost growth of - 0,4 %. (...) Evidence shows that brightening economic conditions have not translated into accelerating wage growth so far; meaning that unit labour cost developments have remained consistent with price stability and employment-friendly growth. (...) On average, producers have been able to maintain profit margins despite strong non-labour input cost pressures and heightened international competition'.

4.4.2 The Committee gave its views on this issue in an opinion in 2003⁽⁷⁾, and they are still as valid today. It pointed out that while wages are a factor in competitiveness, they also feed demand on the internal market. The EESC stressed that medium-term growth should keep in step with increasing productivity, so as to strike a balance between sufficient growth in demand and competitive prices.

4.4.3 In this respect, the EESC recalls the conclusions of the January 2007 Employment Council and those of the February 2007 Eurogroup on the need to establish decent wage conditions and distribute the fruits of growth more effectively.

⁽⁶⁾ European Commission, 'The contribution of labour cost development to price stability and competitiveness adjustment in the euro area', Quarterly Report on the Euro Area, volume 6, No 1, 2007. (Document available in English only).

⁽⁷⁾ See EESC opinion on the *Broad economic policy guidelines 2003-2005*, OJ C 80 of 30.3.2004, p. 120.

4.4.4 The Committee would reiterate its longstanding stance on the need to bolster macro-economic dialogue so as to improve coordination and synergies between the various macro-economic policy strands (monetary, budgetary and wage-related). The lack of coordination here serves to harden the Committee's belief that a system for joint meetings between the Eurogroup and the Employment Council is becoming a necessity rather than simply useful (see point 2.5.1).

4.4.5 Whilst the Commission expresses its dissatisfaction with the trends in economic growth and employment, it strangely does not see this as a reason to rethink the direction of the macroeconomic policies and the recommended policy mix it has pursued to date. Whilst the structure of budgetary and monetary policy remains unchanged, the wage-setting policy should not be the only one being requested to be in line with the requirements of the monetary union. Such a policy would transfer to the social partners the responsibility for compensating for the mistakes in other policy areas.

4.5 Consideration 5: The global dimension must be taken into account.

4.5.1 The EESC totally agrees with the Commission's self-evident comments on the need to take the **international dimension** into account. If there is one comment to make, it is that the Commission and the Council themselves underestimated this factor when drafting the original text of the stability and growth pact, despite the EESC's recommendations, which highlighted the **risky nature of long-term plans** in the light of **unpredictable political developments** on the world stage. It goes without saying that the events of the last decade have borne this out, and the next decade looks set to be even more unpredictable. The value of taking the global dimension into account when making medium- to long-term plans is therefore somewhat theoretical.

4.5.2 As for annual plans, it is obvious that all Member States, whether euro area members or not, are affected by global trade conditions, particularly in relation to **oil** and growing **competition from the Asian powers**. Countries whose dependence on oil is relatively minor feel the price cycle less intensely. The others, however, are heavily affected by economic shocks, with a resulting impact on internal prices and competitiveness.

4.5.3 Similarly, the emergence of the Asian countries is opening **new markets for the more competitive European countries**, while damaging the position of those who have paid less attention to competitiveness and innovation. In the Committee's opinion, too much credence has been given to the theory that a lack of competitiveness is the result of **euro exchange rates** faced with Asian currencies and the dollar. The problem is largely structural and should be the subject of a radical policy rethink by governments and social partners.

5. Other ways ahead

5.1 A number of the 'ways ahead' have already been discussed in connection with the various 'considerations'. The Committee will now look at other aspects dealt with by the Commission.

5.2 The Committee takes the view that the Commission should not address EMU from a purely economic angle forgetting the political dimension. The monetary area is not an end in itself but is one element in a wider civil society project, which is about 'wanting to live together'. There is no shortage of past examples of monetary areas that were doomed to implode because the countries involved made no progress towards integration⁽¹⁰⁾. 'Euro changeover should not be tackled and projected as simply a technical currency change but as a major conversion with significant economic, monetary and social effects'⁽¹¹⁾. This is a message to remember at a time when the 27 Member States are in the process of revising the Treaty to find a way out of an institutional crisis whose many different roots include widespread economic and social unease.

5.3 One point worthy of comment is '**promoting the (...) euro area**' (see point 3.4.2.d)). The Commission lists the benefits to countries that are already part of the Eurogroup and to new members; however the latter appear to include only 'countries preparing to join the euro', clearly the countries that most recently joined the EU. No comment is made however about the **continued absence** of the countries who were already members of the EU when the euro was adopted and who used an opt-out clause: a subject ripe for review. While very much hoping that these countries will rethink their decisions, the EESC believes that a comment from the Commission would help to clarify whether **the hypothesis that the opt-out countries might join should be abandoned definitively**. Clarity on this point is one of a number of factors that could help to determine future euro-related strategies. Meanwhile, it is hard to see how the medium- to long-term plans of countries outside the Eurogroup can avoid taking into account the possibility or the desire to adopt the single currency.

5.4 The Committee wishes to send out a strong message to the EMU countries, to encourage them in their efforts to uphold the Maastricht criteria and promote policy convergence so as to arrive at real convergence. It is totally unacceptable that certain countries are clearly adopting relaxed policies without the justification of exceptional circumstances. This behaviour damages their credibility among the other Member States, and by association undermines the credibility of the EU as a whole.

⁽¹⁰⁾ The Latin Monetary Union (1861-1920) failed partly owing to the lack of fiscal discipline between its members (Italy, France, Switzerland, Belgium and Greece). The monetary union formed in 1873 linking Sweden (which at the time was in a 'Personal Union' with Norway) and Denmark failed when the political context changed. In contrast, the German customs union of the 19th century, which grew into a monetary union, was a success owing to the political unification of the country in 1871. Monetary success and political integration therefore go hand in hand, as monetary unions are founded on a high degree of economic policy coordination and therefore on a certain degree of centralisation.

⁽¹¹⁾ European Parliament resolution on the enlargement of the euro zone (2006/2103(INI)), 1 June 2006.

5.5 Lastly, the call to move '**closer to the citizens**' is one that is repeated so often that it has become a *leitmotiv*. Nevertheless, it is a crucially important issue that brings into play the direct responsibility of **individual governments**. The advantages brought by the euro are there for all to see. The fact is that at national level, price stability, easier access to credit and other benefits are often claimed by governments to be their own achievements. However, when talk is of the shortcomings (real or imagined), in particular rising prices, even in cases where the adoption of the new currency was not the cause, it is the euro that gets the blame. In politics, it is in no one's interests to give credit to others, and everyone seeks ways of blaming others for problems.

6. Further comments by the EESC

6.1 In addition to its considerations on the Commission document, the EESC wishes to submit two additional comments for further discussion.

6.2 The **dynamic of euro** exchange rates has been mentioned as a cause of imbalances in Europe's competitiveness vis-à-vis other countries, the Asian countries in particular. Inasmuch as this aspect may be one of a number of causes (and not

the main one, as stated in point 4.5.3) the Committee believes that the request for the euro area to be **allocated a seat on the International Monetary Fund** should be made again more forcefully. It was proposed in the past that a seat might be exchanged for those of the Member State participants on the IMF, but none of them seems prepared to leave in order to make room for the euro. Although the ideal solution would be **an additional seat for the euro** on the IMF, coordination between the Member State representatives might be a more realistic short-term prospect. It is hard to understand why a currency with a fundamental role in international trade should not be represented. The objection that the IMF's statutes do not allow it appears rather weak: the effort required to change a statute would appear minimal compared with the glaring anomaly of one of the world's main currencies not being able to play a part in managing world monetary policy.

6.3 The Committee is highly sceptical about the idea of a European stabilisation fund to reduce the discrepancies in the growth rate between Member States⁽¹²⁾. If there is to be a serious discussion about this idea, it certainly needs to be fleshed out further.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽¹²⁾ This fund would be financed by all Member States out of a proportion of the fiscal surplus accumulated when the economy is doing well, and would fund projects that the Council and the European Parliament have determined to be priorities and in the Community interest. The main objection to this is that it entails fiscal discipline being punished, creating a negative incentive.

Opinion of the European Economic and Social Committee on ‘The economic and social consequences of financial market trends’

(2008/C 10/23)

On 17 January 2007, the European Economic and Social Committee decided, in accordance with Rule 29(2) of its Rules of Procedure, to draw up an opinion on *The economic and social consequences of financial market trends*.

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 4 September 2007. The rapporteur was **Mr Derruine**.

At its 438th plenary session, held on 26 and 27 September (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 115 votes to 25 with 13 abstentions.

1. Recommendations

Information, transparency and protection of investors and consumers

1.1 It is important to develop statistical instruments that will give a better picture of the hedge funds and private equities industries and to develop indicators for corporate governance, all of which are subject to harmonisation, at least at European level.

1.2 In order to alleviate the increasing suspicions weighing on part of the financial industry, to limit the danger of undue risks (especially indebtedness) generating systemic shocks and to ensure respect for fair competition between the various types of investment, prudential standards should be applied to hedge funds and private equity funds (a ‘Basel III’).

1.3 ‘The EESC would urge the Commission to present, as soon as possible, its draft legislative provisions aimed at stepping up the information provided by institutional investors with regard to their policies in respect of investment and voting’⁽¹⁾.

1.4 In order to enhance protection for investors placing their money in private equity funds, the UCITS directive⁽²⁾ should be amended so that it also covers these players and obliges them to be more transparent. Although the promise of high returns may be a factor in attracting investment, the final investor may be unaware of the risks involved.

1.5 The Commission should encourage and pursue, together with the interested parties, (including banks, consumers’ associations, the public authorities and service providers) initiatives aimed at raising the awareness of consumers of financial services, who generally do not possess the requisite financial background and knowledge and are therefore unaware of the risks involved⁽³⁾.

1.6 Listed companies which have been bought out but whose turnover or number of employees exceeds a given threshold should always be required to publish a minimum amount of information when they are withdrawn from the Stock Exchange and are no longer subject to the inherent reporting requirements.

Risk management and diversification

1.7 It would be appropriate to think about the possibility of introducing an obligation to diversify the portfolio of the funds invested in, particularly in the case of save-as-you-earn schemes, using existing models as a basis (see also 1.2).

1.8 The American subprime crisis has spread to other sectors of the financial market and to the EU. In the event of a European banking crisis, it is likely that the costs incurred would be substantial because of the fragmentation of supervision, which would slow down any appropriate reaction. Under the subsidiarity principle, the major banks should be subject to supervision at European level. The Committee invites these banks, along with the Commission and the Committee of European Banking Supervisors (CEBS) to confer in order to spell out the conditions and define the criteria for identifying the banks concerned.

1.9 In the case of delegated management, which permits diversification of management risk, extending the length of management mandates would encourage a more long-term approach and limit speculation that goes beyond arbitrage, in order to limit the bias towards the short-term and the race for profits fuelled by the speculative attitudes of management service providers.

⁽¹⁾ CESE, INT/332, ‘Review of the Single Market’, 2007.

⁽²⁾ Directive 85/611/EEC/ of the Council of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) — OJ L 375 of 31.12.1985, pp. 3-18.

⁽³⁾ As it emerged from the conference ‘Increasing financial capability’ organised by the European Commission in March 2007, the Sandler report presented to the UK Chancellor of the Exchequer, Gordon Brown, contains interesting avenues for reflection.

1.10 Financial rating agencies — which are both judge and defendant here, in the sense that they help investment banks to design, value and place derivatives — should be subject to greater transparency.

Reconciling the financial strategy and the European social model

1.11 The use of tax incentives might encourage pension funds, which adopt a more long-term strategy, to integrate quality and social responsibility ⁽⁴⁾ into their financial investment policies; socially responsible investments currently represent only a limited proportion of the total ⁽⁵⁾.

1.12 The Commission and the Member States must ensure that corporate social responsibility applies to all the stakeholders, including investment funds, which have an influence on the companies which they are involved with, and sometimes manage. In this connection, the EESC raises the issue of the application of the directive on information and consultation of workers to holding companies ⁽⁶⁾ and, if they are not covered by this directive, asks that it be reviewed.

1.13 To complement this, the Directive on Safeguarding employees' rights in the event of transfers of undertakings ⁽⁷⁾ should be brought up to date to guarantee that transfers of undertakings resulting from operations to transfer these shares are also covered, thereby ensuring due respect for workers' rights to information and consultation.

1.14 Statistics on wages (and perhaps incomes) should be broken down into at least quintiles, in order to gauge the impact of wage policy on price stability more clearly.

1.15 Services of general economic interest are an essential pillar of the European social model. They are also a prime target for private equity funds, which opt for leveraged buy-outs, as SGIs generate significant cash-flow, are in a position of (near-) monopoly, have low debts and high operating costs. In order to prevent problems for consumers and citizens or any damage being caused to cohesion, [t]he EESC reiterates its call for the common basic principles to which all SGIs must adhere to be

⁽⁴⁾ See in particular the work carried out under the United Nations Environment Programme Finance Initiative (UNEPFI) including the report, 'A legal framework for the integration of environmental, social and governance issues into institutional investment' (2005).

⁽⁵⁾ See in particular the work carried out under the United Nations Environment Programme Finance Initiative (UNEPFI), including the report, 'A legal framework for the integration of environmental, social and governance issues into institutional investment' (2005).

⁽⁶⁾ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint Declaration of the European Parliament, the Council and the Commission on employee representation, OJ L 80 of 23.3.2002, pp. 29-34.

⁽⁷⁾ Directive (2001/23/EC) of the Council of 12 March 2001 relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. OJ L 82 of 22.3.2001, pp. 16-20.

defined at Community level. These should be set out in a framework directive and, if necessary, in individual sector-specific directives'. ⁽⁸⁾

Equal tax treatment

1.16 As some countries have already done or are about to do (Denmark, Germany and the United Kingdom), consideration should be given — with due respect for the principle of subsidiarity — to rules restricting the tax deductibility of interest payments on debt in the event of a company buyout.

1.17 Further to the work already undertaken by the OECD and the moves to combat unfair competition from tax havens, consideration should be given to the possibility of changing the tax rules so that the place where the manager actually operates from determines the tax base for hedge funds, given that these places are usually major cities in the OECD countries. Accordingly, the applicable tax rate should be the rate for normal income rather than the rate for capital gain.

1.18 Since a great many very short-term investment decisions are taken in offshore tax havens, the Committee urges the Council, the Commission and the ECB to think about the possibility of action based on Article 59 of the Treaty ⁽⁹⁾.

1.19 The Committee highlights the importance of coordinating fiscal policy more closely, setting minimum requirements, especially for the various forms of capital taxation. This policy can be justified on the grounds of both fairness and economic efficiency.

2. Introduction

2.1 Over the past 25 years, the global economy has undergone profound and far-reaching changes. Although we are usually content to explain this phenomenon under the label of globalisation, we are not sufficiently aware of its financial dimension or the creation of a global financial market.

2.2 Accordingly, while both the media and policy-makers continue to focus on the indicator of GDP, a new approach is needed to take proper account of the actual reality. In 2002, global GDP represented 32 thousand trillion dollars. However, although this figure may appear astronomical, it is nothing in comparison with the total sum of financial transactions outside GDP (1 123 thousand trillion dollars) which are 35 times greater in value!

⁽⁸⁾ See, among other things, The future of services of general interest, OJ C 309, 16.12.2006.

⁽⁹⁾ 'Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary'.

The global economic sphere (in trillions of US dollars, 2002)

Trading and production		Currency used for settlement	
Derivatives transactions	699	United States (dollars)	405,7
Exchange transactions	384,4 (*)	Euro system (euros)	372,9
Financial transactions	39,3	Japan (yen)	192,8
Goods and services transactions (global GDP)	32,3	Other monetary zones	183,6
Total (interbank transactions)	1 155	Total (interbank settlements)	1 155,0

(*) Including 8 for international commercial transactions.

Source: François Morin, 'Le Nouveau mur de l'argent: Essai sur la finance globalisée', 2006.

2.3 Institutional investors are spearheading financial globalisation. Their emergence has been accompanied by the spread of Anglo-Saxon *corporate governance* practices (such as protection of minority shareholders, obligations in relation to transparency, institutional activism at general meetings and changes in the relationship between shareholders, managers and workers) and the appearance of credit derivatives, new financial instruments which make it possible to disperse the risks previously seen as intrinsic to certain types of investments. These changes have either been made possible or accelerated by the new information and communication technologies.

2.4 At this stage, it should be stressed that the strategies implemented by institutional investors in the broad sense differ according to their investment horizons. Whilst some investors practise arbitrage, which tends to stabilise financial markets, others, such as pension funds, must act in response to very long-term commitments. The same name may also cover widely differing practices. For example, some private equity funds specialising in leveraged buy-outs invest in an enterprise for a period of three to five years, whilst others, operating as business angels, provide innovative SMEs with risk capital and may be committed for as many as fifteen years ⁽¹⁰⁾.

	Length of holding	
	Shares	bonds
Hedge funds	1 to 5 months	1 to 5 months
Other investment funds	9 months to 1 year	1 to 6 months
Insurance	1 and 2/3 years to 3 and 1/3 years	6 months to 2 1/2 years
Households	3 to 5 years	8 months to 4 years

Source: Natixis, 'The effect of the presence of hedge funds on the balance of financial markets', *Recherche économique*, No 2007-04.

2.4.1. Having said this, these actors may also have close links with each other. For example, 24 % of the capital raised by private equity funds in 2005 came from the pension fund sector, 18 % from commercial and investment banks, and 11 % from insurance ⁽¹¹⁾. One of the increasingly important functions of investment funds and other asset management companies is to provide management services to pension funds and insurers via management mandates.

⁽¹⁰⁾ In simple terms, here are some characteristics which can help to distinguish more clearly between hedge funds and private equities. Hedge funds work on marketable assets: i.e. shares, but also raw materials, credit derivatives and so on. They use various kinds of strategy to reach their objective, which is absolute return. When they invest in a company, they are happy with a low percentage of shares, but are proactive in influencing the choices made by the company. The aim of private equities is to extract value, mainly through company acquisitions, using debt. The company in question is then no longer listed and therefore no longer bound by disclosure requirements. After totally restructuring the company over several years, the private equity then disinvests from the enterprise.

⁽¹¹⁾ M. Aglieta 'The surge in private equity', 2007.

2.5 Institutional investors, who had already developed to a certain extent in the Anglo-Saxon countries twenty years ago, have become increasingly interested in the countries of continental Europe. Funds have also been created in the various Member States. However, at the current time, American investors still control half of all collectively managed assets.

2.6 The current estimate is that institutional investors account for 80 % of stock market transactions. Accordingly, it would seem unrealistic to take investment positions opposed to those of the major investment bodies. They are also the main players when it comes to holding cross-border shares. A Eurobarometer poll (in August 2005) revealed that only 1 % of households owned shares from a foreign company and that barely 3 % would consider buying foreign shares! Moreover, very few of them take an active part in shareholders' general assemblies whilst institutional investors have been playing an increasingly visible and active role in these for several years.

2.7 This opinion is concerned, primarily, with listed companies, since they are active on the stock markets. These tend to be very large companies. However, since they have a decisive influence on employment and the behaviour of other enterprises, the 'changes' they are subject to also affect the economy and society as a whole:

- these companies generate one in every three jobs in Europe and one in every two in the United States;
- they predominate in the extractive industries, transport and telecommunications and corporate services, in other words sectors that are key nerve centres;
- they also influence the way SMEs operate, through sub-contracting and financial involvement.

3. Convergence of corporate governance systems ⁽¹²⁾

3.1 A distinction is usually drawn between two different *corporate governance* models, with different types of institutions and practices influencing the ways companies are directed, administered or controlled, different types of relations between stakeholders and different objectives assigned to companies.

- The Anglo-Saxon model is characterised by enterprises where ownership is extremely dispersed and institutional investors very present, even if they are not directly involved in the management of the company. Although each individual investor generally holds no more than 3 % of the total shares, they exert their influence through actually selling or signalling their intent to sell their shares. This system is

⁽¹²⁾ James Shinn, 'Private profit or public purpose? Shallow convergence on the shareholder model', Princeton University, 2001. Contains studies covering 14 countries: the United States, the United Kingdom; Belgium, France, Germany, Italy, the Netherlands, Spain; China, Japan, South Korea, Malaysia, Singapore and Taiwan Roger M. Baker, 'Insiders, outsiders, and change in European corporate governance', University of Oxford, 2006.

typical of countries with a high proportion of listed companies.

- In the model characteristic of continental Europe and most other countries, including Japan, shareholders tend to hold blocks of 10 to 20 % of shares, which gives them effective control. Investors include the State, banks or other companies, and are directly involved in the management of the companies. Unlike the previous model, workers are also involved to a certain extent in the company's affairs, the most extreme example being the German 'Mitbestimmung'.

3.2 Over the past twenty years, the continental European model has converged towards the Anglo-Saxon model. The factors encouraging this process include: the Single European Act and the privatisation of State corporations, tax reforms in Germany, particularly on capital gains in the stock market, which have led banks to sell their shares in industry, the requirement for institutional investors to use their voting rights, introduced by the American Labour Department (1988 and 1994), the vitality of the US economy during the 1990s in comparison with the relative stagnation in continental Europe, the listing of major companies on several stock exchanges and the new international accounting standards.

3.3 Nevertheless, capitalism still assumes diverse national and regional forms, as a result of:

- the diversity of economic institutions at national level, in terms of law, politics, culture and resource base;
- the interdependence of capital and labour markets and between the legislation and standards regulating the ways companies operate;
- the cost of moving to another system, since changing just one of the elements mentioned above puts the coherence of the whole at risk.

4. Economic impact

4.1 The rapid rise of institutional investors has democratised access to financial markets and helped to diversify portfolio risks, by offering the expertise of a management team. By pooling household savings, more and more diverse funds are available, which reduces the risk borne by individual investors. UCITS offer access to potentially high capital yields for individual investors with modest financial means and little market expertise. For enterprises and public administrations, the concentration of capital in the hands of institutional investors reduces the costs of negotiation, by providing a single interlocutor.

4.2 Institutional investors of all kinds (including hedge funds, pension funds, banks, insurers and private equities) manage the wealth of around 300 million households, mainly in the United States, Europe and Japan ⁽¹³⁾. Their aim is to maximise the returns on their principals' savings, in line with the level of risk they are prepared to assume.

4.3 From the perspective of consumers and households, tautologically, the growing proportion of household wealth in investment fund shares implies an increase in the exposure of household wealth to market risk ⁽¹⁴⁾.

4.4 Apart from UCITS and insurers, pension funds are well known to the general public. They are presented as one of the ways of bringing down the costs of the demographic trend towards ageing of the population. They fall into two types: defined benefits schemes and defined contributions schemes. In the first instance, the risk is born by the sponsor, i.e. the employer, and in the second case, by the final saver. Although this second type of scheme is characterised by a riskier assets structure, they are becoming increasingly popular, since sponsors are seeking to minimise the risk generated by their long-term commitments and employees are increasingly drawn to saving schemes which can offer higher yields and rights that are more easily transferred from one employer to another ⁽¹⁵⁾.

4.5 Their assets are managed by the funds themselves, although management is very often delegated (either fully or partially) to mutual funds or other management companies. So, although the investment horizons are theoretically long, management performance is actually judged in the short term and on the basis of profits alone. This explains why the proportions of shares in total assets has risen sharply and has contributed to the rise in share prices.

4.6 The convergence of the two models of *corporate governance*, together with the development of ICTs, increased activism on the part of institutional investors and the latters' profit yardstick have led large enterprises to focus exclusively on maximising the returns on their shares (dividends and capital gains). Issues relating to their capacity to generate future *cash flow* or the partnership approach highlighted in the European social model have been pushed into the background.

4.7 A new type of governance has therefore emerged. Its goal is to be proactive in changing to different strategies, to ensure that value is continually created for shareholders, rather than medium or long-term improvements in competitiveness, which may thereby be compromised. Such strategies include share buy-backs, where a company buys back its own shares in order to increase the indicator of its net return on equity (ROE), mergers and acquisitions (M&A), sometimes totally unrelated to

⁽¹³⁾ J. Peyrelevade, 'Le capitalisme total', 2005, pp. 39-42.

⁽¹⁴⁾ BIPE, The proportion of households' financial wealth invested in shares, mutual funds, life insurance and pensions more than doubled in Germany, Italy and France between 1980 and 1998, reaching almost 50 % in the first two countries and 66 % in the third. In the United Kingdom, although the rise began from a higher threshold, these products have nevertheless continued to progress from 52 to 76 %.

⁽¹⁵⁾ BIPE, 'La montée en puissance des investisseurs institutionnels: implications réglementaires' (The rise of institutional investors: implications for regulations). Study carried out for the French Senate, January 2003.

the needs of industry, reduction of a company's sphere of activity and integration of its tasks into the group's activity to help diversify the investment portfolio, relocations, staff cuts and flexible work contracts to reduce fixed costs or convert them into variable costs ⁽¹⁶⁾.

4.8 Generally speaking, the requirement for a high return on equity in real terms, from 10 to 20 % depending on the sector, has destabilising macro-economic effects: such high returns imply that growth in profits is much higher than GDP. This has led, (along with other factors, such as migration, relocations, increased import penetration) to a rising proportion of wealth being held by those with capital. We are witnessing a new distribution of added value in Europe. According to data from the European Commission, the OECD and the BRI, the share of salaries in GDP (taking the average of the EU15) fell from 71,5 % in the 1980s to 66,7 % in 2004. This shift in nearly 5 GDP points has been reflected in a symmetrical rise in capital returns (profits).

4.8.1 The macroeconomic impact of such a considerable change in the distribution of wealth is deflationary; it increases global savings but, since workers' purchasing power has barely risen, their demand lacks dynamism and enterprises are not therefore encouraged to invest. On the other hand, a large proportion of their profits is redistributed to shareholders (in the form of dividends and share buybacks), which creates surplus liquidity and the phenomenon becomes self-sustaining.

4.8.2 Moreover, since the key OECD countries are competing against each other to attract direct foreign investment stimulated by surplus liquidity but held back by the slow growth of domestic markets, they have introduced tax reduction policies which could cripple public finances, unless public spending, apart from social expenditure (c.f. ageing populations), is reduced.

4.8.3 Indeed, since interest on debt is exempt from tax in many countries, leveraged buyouts are equivalent to a form of public authority subsidy for the operations of private equity funds. This places them in an advantageous position. Furthermore, apart from the question of unfair competition in relation to other economic actors which do not use this type of procedure, leveraged buyouts also have implications for public finances. A study conducted for the Danish Ministry of Taxation ⁽¹⁷⁾ predicts that, all other things being equal, in Denmark, these losses could represent 25 % of the total income from company taxation two years from now. A similar situation pertains in most other European countries and countries in the euro area, which are subject to the budget criteria of the Stability and Growth Pact.

⁽¹⁶⁾ See in particular S. M. Bilger and K. F. Hallock 'Mass layoffs and CEO turnover', 2005 et Chicago Fed Letter 'Assessing the impact of job loss on workers and firms', April 2006.

⁽¹⁷⁾ Ministry of Taxation, Denmark, 'Status på SKATs kontrolindsats vedrørende kapitalfondes overtagelse af 7 danske koncerner', March 2007.

4.8.4 With regard to the remuneration of fund managers, the 20 % carried interest they traditionally pay on returns in excess of certain thresholds is, as a rule, taxed at the lower rate, i.e. that applied to capital gains, and not at the higher rate of tax on normal income. There is no justification for this, since they themselves only contribute a marginal amount of the capital. This situation leads to a problem of unequal tax treatment between these individuals and other workers who are more heavily taxed.

4.9 It is not only companies' nature and strategies which have evolved, but also the role of the chief executive. Ten years ago, the CEO's job was all about 'stewardship' of the corporation's assets for stakeholders; today, it's all about the bottom line for investors. The rate of CEO dismissals and other forced departures on the grounds of poor shareholder returns reached its peak in 2005, when four times as many of the world's top CEOs were forced out as ten years before. More than one in seven of the world's largest companies made a change in leadership — compared with one in 11 only a decade earlier. Their tenure has also been reduced. This increasingly rapid turnover can lead to problems, since the changes that need to be made within enterprises usually take three or four years to implement.

4.9.1 As a result, since many management boards find themselves without candidates to succeed the dismissed CEO this recruitment strategy can cascade into further increases in CEO salaries — not only due to the additional compensation required to motivate a chief to change jobs, but also to the efforts of companies to retain their CEOs. Indeed, an overwhelming majority (90 %) of institutional investors are concerned about what is seen as excessively high pay for managers and the lack of any positive effect on company performance (78 %) ⁽¹⁸⁾.

4.9.2 Although companies appear to be distancing themselves from the stock options which have led to conflicts of interest and major scandals, the practice of giving 'golden parachutes' and other rewards to CEOs who have failed to improve company performance (in terms of competitiveness and jobs) is shocking in the eyes of the public.

5. Cohesion/social inequalities

5.1 On the one hand, although the high dividends paid to shareholders have been justified in the past by the risk involved in the operations in which they are investing their capital, the basis of this argument has been seriously undermined by the developments which have taken place in recent years.

5.1.1 In fact, their liability is limited to their own contributions, and the negotiability of their asset — which is linked to the growing liquidity of financial and stock markets resulting

⁽¹⁸⁾ Watson Wyatt, 'Corporate directors give executive pay model mixed reviews', June 2006.

from their globalisation and the introduction of new technologies — considerably reduces the level of risk they bear, whilst also giving them unequalled exit and diversification capacity.

5.2 Moreover, economists have observed a seasonal pattern to redundancies, which peak in January and June, in other words, the time when companies' annual budgets are determined and revised. The conclusion was that the redundancies were motivated by a desire to improve the bottom line, rather than to meet industry requirements ⁽¹⁹⁾.

5.2.1 In addition, there is a trend towards individualisation of work contracts and salaries and an explosion in the numbers of atypical contracts such as fixed-term and part-time contracts, intended to convert a proportion of the fixed costs linked with salaries into variable costs and, ultimately, to increase the profit and therefore the return on equity. In 1992, 25,4 % of employees were employed on fixed-term or part-time contracts. In 2005, the proportion had risen to 33 %. Except in 2005 itself, the growth in insecure contracts of this kind has far outpaced the growth in new jobs and, as far as fixed-term contracts are concerned, only led to a permanent contract in 33 % of cases (as against 22 % to cessation of employment and 39 % to another contract of the same type) ⁽²⁰⁾.

5.2.2 This is resulting in new risks for both workers and enterprises:

- enterprises do not invest in these mobile workers, who in their turn do not invest their energy, since they have less feeling of belonging to the enterprise and fear that they will not draw any concrete benefits from training ⁽²¹⁾ ⁽²²⁾;
- in the knowledge society, human capital is increasingly specific to particular enterprises and therefore not easily redeployed (i.e. it cannot actually be transposed from one firm to another) ⁽²³⁾;
- workers' representatives can no longer identify the interlocutors they need to approach in the context of social dialogue, since 'their company director' is actually a fluctuating and atomised group of faceless shareholders;
- workers are put in the position of competing against each other:
 - at global level, due to the high mobility of productive and financial capital and the doubling in the number of workers participating in the economy following the collapse of the Soviet bloc and the entry of other countries, notably China and India on to the international scene;

⁽¹⁹⁾ D. Plihon, 'Précarité et flexibilité du travail, avatars de la mondialisation du capital', 2006.

⁽²⁰⁾ COM(2003) 728 final 'Improving quality in work: a review of recent progress'.

⁽²¹⁾ Since human capital is increasingly singled out as a factor contributing to competitiveness in a knowledge economy, it is astonishing that it is not counted as an asset on companies' balance sheets.

⁽²²⁾ European Working Conditions Observatory, 'Fourth European Working Conditions Survey', 2007, p. 49.

⁽²³⁾ Cf. § 6.4 and following paragraphs.

- at national level, due to the unemployment rate and the proliferation of very low quality jobs, which drives up the value of good quality jobs, and to the paradox of training: on the one hand, it is now good form to highlight the need for training and the mismatch between jobs and skills, on the other, almost one in three workers feel that they are overqualified in relation to the requirements of their current jobs and the least qualified workers and interim workers are not offered sufficient training;
- the setting of worker against worker is exacerbated by the fact that worker mobility is relatively limited, because of the maintenance of transitional periods for legislation on economic migration, under which foreigners' access to the labour market is made contingent on the existence of shortages in particular

occupational categories (political restrictions) or the absence of any real progress in relation to transferability of pension rights or the overheating of the property market (socio-economic restrictions) or inadequate knowledge of languages (cultural restrictions).

5.2.3 A new balance must be found between shareholders and workers. Aside from the distortion in the division of GDP into 'capital' and 'labour' and the factors mentioned above, the imbalance is also reflected in the exponential development of financial and stock markets over the past few years, in contrast to the reverses in labour law, which no longer provides workers with sufficient protection (for example in terms of contracts or continuing training ⁽²⁴⁾). This reflects the fact that labour flexibility (and increasing insecurity) is now becoming an adjustment variable for businesses.

Development by social model

Average	Country	Market capitalisation/GDP		Worker protection	
		1990	2003	1990	2003
Anglo-saxon model	UK, USA, CAN, AUS	54	119	0,63	0,73
Scandinavian model	FIN, DK, SV	28	85	2,71	1,89
Continental	FR, DE, AT, B, NL	30	59	2,79	2,30
Mediterranean model	IT, SP, EL	16	57	3,67	2,61
Japan		98	70	2,10	1,84

N.B.: There is no data available for the new Member States.

Labour protection is measured by the 'EPL version 1' indicator calculated (for the years 1990, 1998 and 2003) by the OECD. It covers regulations on the protection of regular and temporary employment. The closer the figure is to 0, the weaker the rules on labour protection (EPL version 2 also includes information on collective redundancies but does not go back as far as 1990).

5.2.4 Although employee shareholder schemes have developed, they cannot redress the balance since, in terms of their representativeness across the workforce, they are disproportionately weighted towards the highest waged employees (generally senior management).

5.2.5 Since economic systems are shaped by a particular history (see point 3.3) it is quite understandable that the convergence of *corporate governance* models (see points 3.1 and 3.2) has not had a particularly visible impact in continental Europe in terms of the fight against unemployment, even though the European social model is based on a social market economy which is premised on a partnership approach in the widest sense, transcending the interests of shareholders alone.

5.3 It has now been several years since we entered into a phase of severe wage restraints ⁽²⁵⁾ as a result of increasing international competition and profit yardsticks. However, not all socio-occupational categories are concerned by this phenomenon.

5.3.1 Therefore, as in the United States ⁽²⁶⁾, the European Commission, Eurostat and the ECB should refine their statistics by breaking them down into (at least) quintiles ⁽²⁷⁾ so as to identify more clearly which categories of workers (very high wage earners, very low wage earners and the groups in between) are actually spurring increases in the overall wage bill and in incomes more widely, so as to get a clearer picture of the risks to price stability, in the knowledge that people in the various different categories do not have the same propensity for consumption ⁽²⁸⁾ (c.f. also 4.8.4).

⁽²⁴⁾ European Working Conditions Observatory, 'Fourth European Working Conditions Survey', 2007, p. 49.

⁽²⁵⁾ European Commission, 'The contribution of labour cost developments to price stability and competitiveness adjustment in the Euro Area' in Quarterly Report on the Euro Area, volume 6 No 1, 2007.

⁽²⁶⁾ Cf. the three yearly 'US Survey of Consumer Finances'.

⁽²⁷⁾ Distribution of wages ranked in ascending order and divided into five equal parts, containing the same number of observations.

⁽²⁸⁾ Various recent studies have pointed in this direction, notably T. Piketty, E. Saez: 'The evolution of top incomes: a historical and international perspective', American Economic Review, 2006.

6. R&D and innovation

6.1 As demonstrated by the 2000-2001 stock market crisis, in view of institutional investors' propensity for mimicry when it comes to investment decisions, there is still a possibility that this may lead to over-investment in certain sectors and, simultaneously, under-investment in others.

6.2 The example of the Scandinavian countries shows that it is possible to combine high social and technological performance with a financial system that is based on banking rather than stockmarkets.

6.3 As for *private equities*, they bring the risk-capital which small enterprises need to launch new activities (*start-up*), an area which has been in decline for several years (in 2003, it accounted for less than 10 % of their investments) ⁽²⁹⁾. On the other hand, *private equities* are increasingly focusing on buy-outs (which accounted for over 60 % of their activities in 2003) (see the chapter on 'Leverage effects and systemic risk'). Moreover, this trend is unlikely to stimulate investment, since, in view of the risks involved in this activity, the priority for *private equities* will be to reimburse and pay out to shareholders rather than to invest for the long term.

6.4 Apart from R&D, so-called 'tacit' interactions ⁽³⁰⁾ are an increasingly important factor for the competitiveness of all firms. Tacit interactions involve exchanging information, formulating opinions, coordinating and monitoring other activities and exchanges (of goods, services and information) with other workers, clients and suppliers and represent a combination of various different forms of knowledge. Employees with these kinds of skills now represent between 25 and 50 % of the total labour force.

6.4.1 If they wish to become more competitive, companies can no longer rely on standardising the work of their employees who use tacit interactions or replacing them with machines. On the contrary, they need to remove organisational barriers, create a climate of trust, not only between employees but also between employees and the firm itself, and enable them to take decisions and communicate rapidly and easily. Corporate strength therefore lies in the collective knowledge specific to each particular enterprise, which is built up over time.

6.4.2 Enterprises now have considerable room for manoeuvre when it comes to improving the productivity of workers involved in tacit interactions, more so than for other categories of employee. This is reflected in the wide disparity in performance in sectors with a high proportion of jobs of this kind. Sectoral social dialogue has a role to play here in creating opportunities for firms to share their experiences, for example in seminars and studies.

⁽²⁹⁾ Deutsche Bank Research, 'Private equity in Europe', January 2005.

⁽³⁰⁾ The McKinsey Quarterly, 'Competitive advantage from better interactions', 2006, number 2.

6.4.3 This emphasis on companies' specific areas of competence raises questions in relation to flexicurity, which envisages a generic form of training enabling individuals to find employment in another firm, possibly in a different sector from the one they are leaving.

7. Leverage effects and systemic risk

7.1 The buy-outs conducted by certain types of private equities are a speculative activity, based on indebtedness and a gamble on being able to use the profits generated by the target firm to reimburse borrowing and generate considerable gains within five years.

7.2 In the countries of continental Europe, these operations accounted for 0,6 % of GDP in 1995, and no less than 3 % in 2005. ⁽³¹⁾ (For the United Kingdom, the figures are 1 and 7 % respectively). Buy-outs now represent the key activity (70 %) for private equities, whilst the contribution of venture capital is declining (5 % in 2005).

7.2.1 In the second half of 2006, alarm signals from the central banks (ECB, Bank of England) and the rating agencies (Standard and Poor's) multiplied in response to the ebullience of this sector (USD 500 billion) which, in 2005, raised 70 billion dollars more than the previous year. They noted a systemic risk resulting from the sharp increase in firms' indebtedness together with a multiplication of junk bonds, which were reaching worrying levels.

7.2.2 This is a dilemma for the monetary authorities, since any rate increases aimed at slowing down this activity would also spell the end for firms currently surviving due to excess aggregate liquidity.

7.2.3 Buy-outs raise two other different but equally vital questions:

— When operations are conducted by creating a holding company, the directive on worker information and consultation does not apply. This results in lower worker participation for these employees, who number several hundred thousand in Europe.

— Through leveraged buy-outs (LBOs), investment funds are entitled to be represented, on behalf of the company they have acquired, on the management boards of major European groups active in crucial sectors, such as the aerospace industry. Given that some funds of US origin have particularly close links with the US government and intelligence services, the EU's technological, military and political independence is at risk, in that a seat on the management board gives access to confidential information ⁽³²⁾.

⁽³¹⁾ Adrian Blundell-Wignall, 'Private Equity Trends and Issues', OECD, 2007.

⁽³²⁾ B. Carayon, 'Patriotisme économique: de la guerre à la paix économique', 2006, p. 119.

7.3 In general, there are a number of biases that artificially boost the average return shown by private equity funds. Since they are not bound by any reporting obligations, only the highest performing private equities actually report their results, and funds which disappear due to poor results are withdrawn from the databases. A study by Citygroup shows that once these factors are taken into account, the return calculated over a ten year period is lower than for a mid-cap basket of shares. The performance reported is even lower when management costs and the costs of investing in these illiquid assets are also taken into account ⁽³³⁾.

7.4 *Hedge funds* are an industry worth over one and a half thousand trillion US dollars. These funds are not new, but their importance has grown over the past twenty years. This sector is facing pressure from investors, such as pension funds, to become more transparent. In response to this pressure, a system of credit rating and risk has been developed by various rating agencies.

7.4.1 In view of their colossal financial clout, hedge funds in their turn exert huge influence on financial, stock and money markets. This question merits in-depth examination:

- The American, UK and European regulators have recently reiterated their concern that investment banks might allow hedge funds to increase their borrowing capacity by using relatively illiquid collaterals, whose value might therefore fall rapidly in the event of a financial crisis. They are also posing questions in relation to the offshore vehicles which are speculating on the leverage effect and enabling American banks to extend credits to hedge funds beyond legal limits.
- Hedge funds are also active in the 'carry trade' sector, in other words in operations where investors borrow in low interest currencies (such as the yen or the Swiss franc) in

order to invest in currencies which pay higher interest rates (Australian dollar). Increasing numbers of banks, including the Bank for International Settlements (BIS), and economists are convinced that these transactions, which are extremely profitable for the hedge funds, are one of the factors contributing to the weakness of the yen, which in January reached its lowest level in relation to the US dollar in four years. A sudden interest in the Japanese currency (following a recovery of the Japanese rate in response to the vigour of the Japanese economy) could degenerate into a financial crisis. Barclays Capital estimates that the essentially speculative carry trade is now at its highest level since the Russian crisis of 1998.

7.5 Derivatives enable banks to lay off exposure to risk by converting it into complex financial products that are the object of transactions. In so doing, the risk is dispersed but spread across the economy, to players who may not be subject to prudential rules.

7.5.1 Although the statistical probability of a major financial crisis with systemic repercussions has diminished over time, a crisis is still probable and the damage would be all the greater than in the past, particularly in view of the closer links between institutions and markets resulting from the financial innovations which have enabled better integration of markets and merger and acquisition operations in the banking and insurance sectors ⁽³⁴⁾.

7.5.2 In view of a leverage effect which has increased over the past few years and which, by definition, does not appear on the balance sheet, it is impossible to estimate the amounts actually involved and the risk to which the economic system is exposed.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽³³⁾ House of Commons, Treasury Committee: 'Private equity: tenth report of session 2006-07'.

⁽³⁴⁾ Financial Times, 30 January 2007.

APPENDIX

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

The following amendment, which received less than a quarter of the votes cast, was rejected during the discussion (Rule 54(3) of the Rules of Procedure):

Points 5.1 and 5.1.1

Replace points 5.1 and 5.1.1 with the following point 5.1:

- ~~5.1 On the one hand, although the high dividends paid to shareholders have been justified in the past by the risk involved in the operations in which they are investing their capital, the basis of this argument has been seriously undermined by the developments which have taken place in recent years.~~
- ~~5.1.1 In fact, their liability is limited to their own contributions, and the negotiability of their asset — which is linked to the growing liquidity of financial and stock markets resulting from their globalisation and the introduction of new technologies — considerably reduces the level of risk they bear, whilst also giving them unequalled exit and diversification capacity.~~
- 5.1 Dividends paid to shareholders should be in accordance with companies' performance.'

Reason

Both points seem overly critical of the important role that shareholders play in the development of companies. Stating that 'their liability is limited to their own contributions' appears to play down the risk posed by investing in the financial and stock markets. Moreover, the recent crisis within these markets contradicts the statement that 'the introduction of new technologies considerably reduces the level of risk they bear'. Limiting dividends paid to shareholders could have a negative impact on stock market trends.

Voting:

For: 65

Against: 70

Abstentions: 13

Opinion of the European Economic and Social Committee on 'Economic policies that contribute to the European industrial strategy'

(2008/C 10/24)

On 17 January 2007 the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an opinion on *Economic policies that contribute to the European industrial strategy*.

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 4 September 2007. The rapporteur was **Ms Florio**.

At its 438th plenary session, held on 26 September, the European Economic and Social Committee adopted the following opinion by 129 votes to two, with five abstentions.

1. Conclusions and recommendations

1.1 The objectives of growth, innovation and employment, put back in the limelight by the Spring 2000 Lisbon Agenda, must go hand in hand with a reappraisal and fresh appreciation of the role of industrial policies in Europe. Whilst upholding the stability and growth pact and consolidating the single market, there is a need to find ways of coordinating action that enable European industry to play a central part in rising to the challenges posed by globalisation.

Priority sectors of Community or supranational interest must be pinpointed among the strategic objectives and bolstered using appropriate economic instruments. Responsibility for medium- and long-term industrial strategies rests mainly within the European sphere, whereas it should be up to the Member States to deal with the practicalities of implementation.

The single currency and the internal market are formidable instruments but not ends in themselves; the aims remain those set by the Treaty: economic and social progress and a high level of employment.

In the light of all the above, the EESC believes that in terms of economic policies that contribute to the European industrial strategy, the following areas should be focused on:

1.2 **The Broad Economic Policy Guidelines and the Lisbon Agenda.** The BEPG, though an economic policy guidance and coordination tool, should be tied in more closely with the Lisbon Agenda initiatives and provide for investment in innovation and new technologies in the industry sector, taking account of the economic situation of the individual Member States.

1.3 **Role and policies of the European Central Bank.** The main aim of the policy choices made by the ECB is to control inflation and to ensure price stability. The process of achieving these aims can sometimes act as a brake on investment. Whilst bearing in mind its priorities, the ECB could, wherever possible, adopt a more flexible monetary policy in order to boost investment.

1.4 **Role of the EIB.** The European Investment Bank must make a significant contribution to economic and social cohesion and bolster industrial development through incentives for research and development. The Commission should also equip itself with new macroeconomic policy tools to encourage industrial development and growth.

1.5 **The need for better fiscal policies.** In the sphere of fiscal policy, there is a need to cut red tape, particularly for SMEs. Furthermore, tax incentives should be used to encourage companies to invest in research and development.

1.6 **The risks of unregulated financialisation⁽¹⁾ of companies.** Excessive focus by companies on financial activities and the ever increasing incidence of purely speculative investment in industry is endangering the industrial fabric, often hitting production, employment and social cohesion: there is a need to adopt measures to effectively regulate the involvement of the financial world in company life.

1.7 **Relaunch of the European industrial model.** One way of combating the decline in manufacturing and company relocation would be to relaunch the European industrial model, featuring successful districts and sectors of economic activity. In any case, the industrial fabric requires both hard and soft infrastructure. It is in the interests of the EU as a whole to finance these projects.

⁽¹⁾ Financialisation: 'the increasing dominance of the finance industry in the sum total of economic activity, of financial controllers in the management of corporations, of financial assets among total assets, of marketised securities and particularly equities among financial assets, of the stock market as a market for corporate control in determining corporate strategies, and of fluctuations in the stock market as a determinant of business cycles', from Wikipedia
<http://en.wikipedia.org/wiki/Financialisation>.

Furthermore, given that services play a central role in the European economy, they must interact with the business world; they are in fact its life-blood, especially those that support production. These services to companies would soon fail if the industry sector lost its dynamism.

1.8 Research, development and intellectual property. It is clear that there is a need to improve results and investment in research and development, as they are currently far from the Lisbon Agenda targets. Once again, the EU must step up its financial commitment. Investment in research, under a new industrial strategy, should take into account the EU's new targets regarding CO₂ emissions. The protection of intellectual property rights is also important for the competitiveness and innovative capacity of European industry and should be ensured by appropriate EU instruments.

1.9 Education and industry. The importance of mutual dependence/linkages between business and education cannot be over-emphasised. Schools, universities and third-level institutions must be aware of the need to equip students with qualifications that are relevant to business. Business itself needs to communicate its requirements to these institutions. One way to improve links is to develop Business Parks on university campuses; another would be to bolster the role of European centres of excellence and, in other respects, the role of the European Technology Institute.

1.10 Social dialogue. Identifying synergies and involving all the stakeholders in achieving structural change can help make industrial change socially acceptable, if the social partners are systematically involved in anticipating and managing that change, and if the dual objective of making businesses competitive and reducing negative social impact is consistently pursued. In cross-border regions, industrial changes could be facilitated, by setting up the optional transnational framework for collective negotiation as announced in the 2005-2010 social agenda. European Works Councils can also contribute: steps must be taken to strengthen the competencies of those involved in their work, so that these councils can execute their role as a key player in the consultation and dialogue process ⁽²⁾.

2. Background

2.1 The legal basis for implementing a Community industrial policy is to be found in Article 157 of the Treaty establishing the European Community ⁽³⁾ and it is repeated in a number of

⁽²⁾ *Social dialogue and employee participation, essential for anticipating and managing industrial change* and *Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy*, OJ C 24, 31.1.2006; *Cohesion Policy in Support of Growth and Jobs: Community Strategic Guidelines, 2007-2013*, OJ C 185, 8.8.2006.

⁽³⁾ Article 157(2) in particular states that 'The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination'.

important documents. The European Commission's Communication on *Industrial Policy in an Open and Competitive Environment: Guidelines for a Community Approach* ⁽⁴⁾, published some years ago, marks a salient point in the history of European industrial policy. Other documents followed ⁽⁵⁾: the Commission Communication on *Industrial Policy in an Enlarged Europe* ⁽⁶⁾ touches on the opportunities and consequences of the planned enlargement of the European Union. Subsequent documents of note include the Commission's Communications on *Some Key Issues in Europe's Competitiveness* ⁽⁷⁾ and *Fostering structural change: an industrial policy for an enlarged Europe* ⁽⁸⁾. More recently, the Commission issued a Communication entitled: *Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy* ⁽⁹⁾, which was followed by the *Mid-term review of industrial policy* ⁽¹⁰⁾.

2.2 The introduction of the euro as the single currency led to the agreement on the stability and growth pact between participating countries, bringing a renewed need for better coordination of national economic policies, particularly budgetary policies.

The recent enlargement taking in the countries of central and Eastern Europe, on the other hand, poses a significant challenge to the future of Europe and the need to overcome the continuing disparities between the various economic, social and industrial conditions.

EU policies have achieved important objectives, particularly in consolidating the internal market and more recently with regard to the free movement of services.

The attention given to all of these priorities (meeting the Maastricht criteria, regulating the internal market, particularly diverse economic and industrial conditions) has been to the detriment of policy in support of the EU's industrial potential.

2.3 Against this backdrop, industrial policies have carried less weight within the strategy for growth and jobs. This is because the Member States have been given all but free rein in this area, with supranational agreements generating few returns and EU coordination initiatives a rarity. Despite commitments and documents over the last 25 years designed to equip the EU with an industrial policy to enable it to keep step with the world's great economic powers, there is a general feeling that national interests have prevailed. Much has been done to speed

⁽⁴⁾ COM(1990) 556 final.

⁽⁵⁾ See for instance the following two European Commission Communications in the 1990s: *An Industrial Competitiveness Policy for the European Union*, COM(1994) 319 final, and *The Competitiveness of European Enterprises in the Face of Globalisation — How it can be encouraged*, COM(1998) 718 final.

⁽⁶⁾ COM(2002) 714 final.

⁽⁷⁾ COM(2003) 704 final.

⁽⁸⁾ COM(2004) 274 final.

⁽⁹⁾ COM(2005) 474 final.

⁽¹⁰⁾ COM(2007) 374 final.

up privatisation and liberalisation, deemed the best incentives for economic growth, to the detriment of EU policy supporting the industrial and manufacturing sector.

2.4 In today's globalised world, there is a growing need to identify the European industrial strategies best placed to respond to global competition, not only from giants like the USA and Japan, but also from the emerging Asian powers such as China and India. Community instruments are therefore needed to rise effectively to the challenges posed by the rest of the world and in order to give the EU a headstart in strategic sectors.

2.5 However, the tendency in Europe over the last few years has been to renationalise industrial policy, particularly in certain strategic sectors such as energy. The risk is that the predilection for national rather than European champions, particularly in sectors requiring a broader market and greater investment, may actually go against the national interests of the Member States.

2.6 Medium- and long-term industrial strategies and their flanking economic policies are a European matter, while it should clearly be up to the Member States alone to implement those policies and scale them down into national-sized decisions.

2.7 Faced with new economic powers on the world stage that are more competitive when it comes to labour-intensive production, European industrial strategy must set its sights on quality. There is a need to foresee not only which will be the leading sectors in hi-tech, innovative, quality production, but also to pick out the economic instruments that can be made available to the industrial and manufacturing sectors representing the interests of the European Union as a whole.

3. A new start for the EU's economic policies

3.1 Since day one, the EU's internal market has been the driving force behind European integration and economic growth. The euro as a single currency has given additional impetus to the role of the single market, making exchanges faster and safer and improving competition. However, both the internal market and the euro are tools rather than objectives in themselves. The objectives are those set out in the Treaty and reaffirmed in the conclusions of the European Council of 21-22 June 2007: economic progress, social cohesion and a high level of employment.

3.2 After an encouraging performance in the second half of 2003, the European economy suffered a downturn during the second half of 2004, partly as a result of external factors such as oil prices, which were affected by the international crisis, and international trade patterns. Progress in 2005, the slight growth in 2006 and the encouraging first quarter of 2007 ⁽¹⁾, confirm that, at any rate, a stronger European economy will depend increasingly on exports and ever less on internal demand ⁽²⁾.

3.3 In the Broad Economic Policy Guidelines (BEPG) 2005-2008 ⁽³⁾, the Council mentioned the instruments, priorities and macroeconomic policies that the Member States need to adopt, as well as related reforms, necessary for a sustainable industrial strategy.

3.4 The macroeconomic policies set out by the Council in the BEPG are aimed at improving economic growth and employment, while also stressing the importance of economic policies for price stability. The measures proposed aim to:

- secure economic stability, while keeping to medium-term objectives;
- secure a manageable economy and budget, reducing public debt and bolstering pension and insurance systems;
- encourage the efficient distribution of resources, favouring spending that nurtures economic growth, and promote wage trends that contribute to economic stability;
- promote greater consistency between macroeconomic, structural and employment policies.

3.5 The macro-economic policies of the stability and growth pact should be coordinated more effectively with the Lisbon strategy objectives, in order to engender a single economic policy for the European Union and the euro area. European budget reform is needed to underpin the appropriate industrial strategy choices, redirecting resources to investment that is more conducive to growth ⁽⁴⁾.

⁽¹⁾ See Eurostat News Release 64/2007 (15 May 2007).

⁽²⁾ See Eurostat News Release 50/2007 (12 April 2007).

⁽³⁾ Council Recommendation 2005/601/EC of 12 July 2005 on the broad guidelines for the economic policies of the Member States and the Community (2005 to 2008), OJ L 205 of 6.8.2005, p. 28.

⁽⁴⁾ See Lisbon Agenda Group — Workshop on developing the Lisbon Agenda at European Level — Brussels, 17 November 2006, Synthesis Report by Maria Joao Rodrigues.

4. Investing in the Lisbon Strategy

4.1 As for reforms intended to increase growth and those most important from an industrial viewpoint, the Council referred to the following priorities:

- improving and encouraging investment in research and development, reiterating the 3 % of GDP objective set in Lisbon;
- exploiting European industry's competitive edge by shaping a modern and active industrial policy, developing new technologies, creating an attractive environment for industry, multiplying the factors for competitiveness in the face of globalisation, and nurturing centres of entrepreneurship within the EU, with a focus on quality;
- expanding and boosting the internal market and applying competition policies more effectively, partly by cutting State aid;
- promoting a business culture and nurturing SMEs;
- improving and investing in European infrastructure as a key factor for the smooth running of the European industrial machine.

4.2 The 2003 Sapir report ⁽¹⁵⁾ had already considered many of these objectives, emphasising the need to uphold the stability and growth pact. With regard to monetary policy, it argued that the only way to create the ideal climate for industrial policy was with measures that kept the cost of money under control and ensured long-term macroeconomic stability.

4.3 In its own opinion, the EESC called for the BEPG to be tied in more closely with the other Lisbon Agenda initiatives ⁽¹⁶⁾.

4.4 However, macroeconomic policy decisions remain seriously skewed. There is a marked focus on the fight against inflation and on price stability, and the European Central Bank uses interest rates too readily but with little flexibility and at times for reasons difficult to comprehend. In times of strong growth (1999-2000) the ECB practically doubled interest rates, but it was extremely slow to reduce them during the long years of poor growth. Flexible monetary policy combined with targeted fiscal policies (tight controls and public investment) could prove the winning factors in securing sustainable long-term growth in the European system.

4.5 The ECB is responsible for maintaining monetary stability and keeping inflation in check. These policies can however

⁽¹⁵⁾ An Agenda for a Growing Europe — Making the EU Economic System Deliver, André Sapir et al, July 2003.

⁽¹⁶⁾ See EESC opinion on *Broad economic policy guidelines and economic governance*, OJ C 324 of 30.12.2006, p. 49.

turn out to be obstacles to economic growth in the euro countries, and therefore also act as a brake on the other 15 'converging' countries. That is why the ECB's policies need to be coordinated more effectively with the EU's macroeconomic policies. Clearly, the ECB's decisions must give due consideration to the fact that although a strong currency has a positive effect on imports, making them cheaper, it penalises exports.

4.6 Recent months have witnessed modest but encouraging economic growth in the EU. This growth has been buoyed up by exports to other markets. This is without doubt a good thing, but it is really internal demand that needs to be sustained if growth in the internal market is to be lasting and solid. Wage policies also contribute to sustaining and building internal demand, as they give the economy a boost and improve performance, while warding off excessively low inflation or a fall in prices.

5. Better fiscal policies based on common accord

5.1 An agreed strategy that also covered fiscal policies, could help to secure support measures for industrial development and the overall strengthening of the European economy. While there is a need to cut the excessive red tape that burdens companies, SMEs in particular, there is also a need to improve legislation through simplification, ensuring both transparency and rigorous compliance. A tax system that is equitable and redistributive, in line with growth trends, and which promotes cohesion, is an important lever for growth, employment and productivity.

5.2 The phenomenon of the increasing *financialisation* ⁽¹⁷⁾ of companies can have a detrimental effect on the industrial and manufacturing sector. The impact of this situation is severe both for the distribution of income and wealth and in terms of economic development and employment.

5.3 Increased transparency and better regulation at EU level are needed, for the following main reasons: 1) hedge funds represent a high-risk instrument on the financial market; 2) individual investors are still not receiving sufficient attention and protection; 3) effective rules would protect both business and the financial market, as well as investors and savers. Transparent and efficient regulation is therefore needed at EU level to ensure investors receive appropriate and comprehensive information. The adoption of the 'Markets in Financial Instruments Directive' (MiFID), also represents a major step towards protecting investors, whether they are companies or natural persons.

⁽¹⁷⁾ See footnote 1.

5.4 The EU and Member States ought therefore to equip themselves with effective instruments to guard their economies from speculation and excessive focus on financial activities on the part of industrial and economic groups, which, rather than benefiting countries' wealth and wellbeing, present a genuine danger for social cohesion and employment.

6. Investing in key sectors

6.1 The companies to play a primary role in the future will certainly be those concerned with cutting-edge technology such as alternative energy, nano and biotechnology, aerospace and aeronautics, multi-media and telecommunications. All these sectors are capital rather than labour intensive and therefore require a highly skilled workforce.

6.2 European industry's traditionally strong sectors (vehicles, domestic appliances, etc.) need to be flanked by high-quality production. European economic policy should therefore use direct and indirect instruments to encourage major European projects in these spheres.

6.3 EIB President Philippe Maystadt, in his address to the EESC, underlined that *'the key role of the EIB is to promote economic and social cohesion, and to this end we are prioritising investment in renewable energy, energy efficiency, research and development, and the security and diversity of our energy supply'*. At the same time, initiatives such as the JASPERS programme are aimed at the preparation of projects on transport networks, the environment and health.

6.4 There are highly energy-intensive companies that are fundamental to Europe's industrial fabric. These primary European industries should be defended at Community level, by seeking to coordinate Member States' industrial policies to enable transitional and longer-term measures, if necessary of a sectoral nature. However, attention must also be given to the EU's basic targets for reducing CO₂ emissions in order to combat global warming; there is an opportunity here to reconcile the need for internal market growth with current climate change concerns. In keeping with these objectives, the EU must take a leading role in the international negotiations on Kyoto compliance and in safeguarding the recent REACH regulation.

6.5 Certain industries are already heavily affected by a worrying migration of activities. Every effort is needed to ensure

that production unit closures cause as little trauma as possible for workers and for the welfare of the regions concerned. However, the response cannot simply be one of containment. The abiding objective must be to enable companies to adapt, and to give workers ongoing training so that they can remain on the labour market by virtue of their skills.

7. Territorial policies

7.1 For balanced development throughout the Community, national and EU incentives are needed to encourage companies to make additional, not just alternative, investments, in order to extend their customer base and take full advantage of the benefits of the internal market, which now also includes the new Member States. A European industrial fabric made up of successful industrial districts and sectors of economic activity is still a very relevant model and one that can be competitive even in the face of the challenges of the future, particularly in certain specific manufacturing sectors.

7.2 The Commission itself ⁽¹⁸⁾ has stressed the trend towards de-industrialisation and relocation, phenomena that are partly linked. There is no doubt that the European economy has gone through an enormous transformation in recent decades: the manufacturing industry's share in EU output fell from 30 % in 1970 to 18 % in 2001, with a parallel explosion in the services sector which bounced up from 52 % to 71 %. Relocation affects mainly low-tech, labour intensive industries; but the real danger is that research and development activities may also be relocated beyond European borders, and this is already happening. The latest figures on industrial new orders, published by Eurostat at the end of April 2007, also give cause for concern ⁽¹⁹⁾.

7.3 Manufacturing industry has always been and will continue to be the backbone of the European economy. Many sectors are reliant on a solid industrial base, including the services sector: to abandon it would be damaging as it has enormous potential and many strong points ⁽²⁰⁾. While relocation to outside the EU has taken place within certain labour-intensive industries, it is essential that the core of industrial production, which represents the high added value of our economy, remains here in Europe.

⁽¹⁸⁾ Communication from the Commission to the Council and the European Parliament: Some Key Issues in Europe's Competitiveness — Towards an Integrated Approach, COM(2003) 704 final.

⁽¹⁹⁾ Eurostat News Release 56/2007, 24 April 2007.

⁽²⁰⁾ The fundamental importance of a strong and vigorous industrial sector in Europe is reiterated by the Commission in its Communication *Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy*, COM(2005) 474 final of 5 October 2005, and in the EESC opinion on the communication, OJ C 185 of 8.8.2006, p. 80.

7.4 A glance at the global companies with the highest turnover shows the lasting power of manufacturing in the modern economy. Furthermore, the most dynamic and innovative strand of even the tertiary sector, which is growing and is set to continue growing, is its services to industry ⁽²¹⁾.

7.5 Over the last few years, the European Commission has made a number of commitments in support of various industrial sectors; let us consider two by way of example. The automotive industry, traditionally a strong branch of European industry, accounting for 3 % of European GDP and 7 % of employment in the manufacturing sector, has recently attracted the attention of the Commission. Its CARS 21 communication ⁽²²⁾ is a bid to launch a comprehensive strategy for the European car industry, with a view to securing vehicle production in the long term, at the best prices for consumers. The document covers a number of aspects, such as cutting administrative costs, environmental sustainability, road safety, external trade and research. The Commission seems to have realised that the automobile industry and its ancillaries are central to the European economy and as such require European-level coordination instruments to guide their development.

7.6 The textiles sector is another area in which the European institutions have taken ad hoc measures. It is particularly vulnerable as it is extremely sensitive to the consequences of international competition. The Competitiveness Council on 27 November 2003 already underlined the importance of securing effective interaction between Community policies, especially through research, innovation, training measures and the protection of intellectual property rights. Early in 2004, the Commission set up a high level group (HLG) for the textiles and clothing sector, with the task of making recommendations on a series of practical initiatives at regional, national and European level ⁽²³⁾.

7.7 In November 2003, the Commission also launched the European Growth Initiative, with a view to speeding up economic recovery in the EU. It includes a 'Quick Start Programme' for public and private investment projects relating to infrastructure, networks and knowledge, with a view to encouraging the creation of public-private partnerships, in coop-

⁽²¹⁾ For the importance of services to production, and the interaction of services with the European manufacturing industries, see the EESC opinion on *Services and European manufacturing industries: Interactions and impacts on employment, competitiveness and productivity*, OJ C 318 of 23.12.2006, p. 26.

⁽²²⁾ Communication from the Commission to the European Parliament and Council: *A Competitive Automotive Regulatory Framework for the 21st Century — Commission's position on the CARS 21 High Level Group Final Report — A contribution to the EU's Growth and Jobs Strategy*, COM(2007) 22 final.

⁽²³⁾ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — *Textiles and clothing after 2005 — Recommendations of the High Level Group for textiles and clothing*, COM(2004) 668 final.

eration with the European Investment Bank. This project deserves support, particularly in light of the economic, social and environmental protection objectives set by the European Union in recent years.

7.8 The European Social Fund can be defined as one of the instruments designed to aid transition in sectors and areas hit by structural change. It is particularly geared towards active employment policies, training and access to the labour market. The European Regional Development Fund bolsters competitiveness, targeting research, innovation, education and infrastructure. Only if the socio-economic players are sufficiently involved in the programming process, under the partnership principle, will Structural Fund programmes attain their objectives.

8. Research and development

8.1 It has been demonstrated that research and development are necessary conditions for economic growth and industrial strategies. The EU institutions have made many attempts to promote, encourage and improve results and investment in innovation, always emphasising the importance of these matters.

8.2 The Lisbon Agenda set all the Member States the objective of investing 3 % of GDP in research and development. This goal still seems far off, and in recent years it has been noted that those States with a tradition of investing have continued to do so while the others have not made the expected increase ⁽²⁴⁾. Ad hoc fiscal measures can also be employed as incentives to invest in research and development.

8.3 As the Sapir report underlines, the European Union's investment in research and development is substantially different from that of the United States. The difference is not only in the resources directed towards research and development in the public and private sectors; Europe has fewer researchers, fewer scientific publications, and a lower incidence of high tech products on the international market, and it registers fewer patents and spawns fewer new successful start-ups than the USA ⁽²⁵⁾.

⁽²⁴⁾ See the work of the EESC Lisbon Group, in particular the *Resolution on the implementation of the renewed Lisbon Strategy*, of 15 February 2007, CESE 298/2007.

⁽²⁵⁾ COM(2006) 728 final.

8.4 In its Green Paper on *The European Research Area: New Perspectives* ⁽²⁶⁾ the Commission proposed a strategy to overcome the current deadlock on the Community patent, and initiatives are being prepared to support the emergence of *lead markets* in promising technology-intensive sectors.

8.5 The need for a strong coordination body within the Joint Research Programme and the Competitiveness and Innovation Framework Programme, to focus more on industrial strategies, is more evident than ever before.

8.6 Support for research is still largely a matter for national policy, but there are positive examples of European research initiatives: most economists would describe the Airbus consortium and the STMicroelectronics joint venture as successful European champions, rare examples of supranational coordination that are globally competitive in technologically complex sectors. The innovation fund could be a factor in the creation of European industrial consortia, helping increase the number of supranational success stories.

8.7 The ideal industrial fabric needs an infrastructure, and above all a European one. The aim must therefore be to upgrade and consolidate hard infrastructure, such as transport and IT networks, ports, transport corridors and carriers, and also soft

infrastructure, by focusing on training and coordination of universities and research centres, which is equally important particularly in the light of the long-term challenges.

8.8 A strong link between academia, research and the business world is essential in this regard. A strategic approach is therefore needed, which ensures that students are equipped with the necessary skills to enter the workplace. Furthermore, public and private investment will be needed to ensure the increasing development of university-linked centres of excellence that will represent a breeding ground for future entrepreneurs.

8.9 Lastly, it is worth noting that the EU's seventh research framework programme for 2007-2013 ⁽²⁷⁾ has increased the budget for small and medium-sized enterprises, allocating EUR 1,3 billion for:

- the provision of support for small groups of innovative companies in order to resolve common technology-related problems;
- a guaranteed 75 % funding for research and development in SMEs (as opposed to 50 % in the sixth framework programme);
- developing and coordinating support for SMEs at national level.

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽²⁶⁾ COM(2007) 161 final.

⁽²⁷⁾ See the EESC opinion on the *Proposal for a Decision of the European Parliament and of the Council establishing a Competitiveness and Innovation Framework Programme (2007-2013)*, OJ C 65 of 17.3.2006, p. 22.

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 — Coordinating Member States’ direct tax systems in the Internal Market’ on the
- ‘Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee — Tax Treatment of Losses in Cross-Border Situations’ and on the
- ‘Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee — Exit taxation and the need for coordination of Member States’ tax policies’

COM(2006) 823 final

COM(2006) 824 final — {SEC(2006) 1690}

COM(2006) 825 final

(2008/C 10/25)

On 19 December 2006 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposals.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 4 September 2007. The rapporteur was **Mr Nyberg**.

At its 438th plenary session, held on 26 and 27 September 2007 (meeting of 26 September), the European Economic and Social Committee adopted the following opinion by 168 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 With regard to the aims and approach of efforts in the field of taxation and the internal market, the EESC endorses the Commission’s view that tax objectives can be achieved and the tax base protected through coordination and cooperation between the Member States. It could also reduce compliance costs and remove obstacles such as discrimination and double taxation.

1.2 The Commission chooses its words carefully in these communications, with expressions such as ‘proposes to present’, or ‘proposes to examine ... in the near future ...’, etc. The EESC believes that the Commission’s proposed initiatives are a logical part of a taxation work programme. These are problem areas when cross-border activity is involved.

1.3 However, the Commission’s cautious approach puts the reader to the test. The descriptions of the various situations are very brief and the legal interpretations tentative. Consequently, any reactions to the ideas expressed in the Commission’s communications must concern themselves more with the fundamentals rather than adopting any specific position. Discussions with Commission representatives have also revealed that the communications can be seen more in terms of a report on the Commission’s wider work.

1.4 The Commission takes the view that while it is not ideal to apply domestic loss relief systems to cross-border situations, it does constitute an improvement. It is, however, extremely dubious both legally and socio-economically, as what it involves

in practice is using a foreign firm to apply the national rules of that firm’s country in another country’s territory. The different legal and economic problems involved in loss relief for firms with cross-border activity could, in the long term, be solved via a common consolidated corporate tax base (CCCTB). Given that the Commission is currently dealing with this issue in a special working group with the Member States, it should focus the group’s efforts on finding a rapid solution and use these communications more as a means of addressing the general problems.

1.5 The Commission is attempting to solve a problem without providing — at least in this communication — any assessment of its scale, or of the actual implications of introducing the right to transfer losses across borders. Moreover, the Commission’s argument does not take sufficient account of the fact that losses can be carried forward. In most cases there is not always a need to transfer losses across borders.

1.6 The treatment of transfers of corporate unrealised gains between Member States can hardly be exclusively based on a case involving transfers for private individuals. The rule that exit tax may not be levied on unrealised gains makes considerable demands in terms of information. Cooperation between the tax authorities should be sufficient to ensure that both countries get their rightful share of the tax revenue when it is eventually paid. Some transferred assets, such as intangibles, are never disposed of, or simply expire. The Commission’s description of such cases is unclear.

1.7 Generally speaking, it is important to extend cooperation and coordination on corporation tax. At the same time, the subsidiarity principle requires that the Member States' prerogative to take independent decisions based on national conditions must be respected.

2. Introduction

2.1 On 19 December 2006 the Commission presented three communications on the coordination of Member State tax policies. These include a more general communication and two communications addressing specific problems: losses in cross-border situations and exit taxation. The aim is to improve coordination between the different national tax systems rather than to propose any harmonisation.

2.2 Although the communications refer to direct taxation systems, they deal almost exclusively with company taxation. The communications have been presented in part in an attempt to find quick solutions to the problems involved when companies are active across borders, which can — in the long-term — be solved through a CCCTB; and in part to solve any problems that might remain after the consolidated tax base is introduced.

2.3 The EESC has commented positively on the introduction of a CCCTB, and stated a number of principles that should apply if one is introduced ⁽¹⁾.

2.4 The Commission states quite clearly that the discussion and proposals are not limited to merely removing discriminatory obstacles for firms and the risk of double taxation, but also aim to enable the Member States to protect their tax bases.

3. Coordinating Member States' direct tax systems in the Internal Market COM(2006) 823 final

3.1 According to the Commission, coordination of tax systems is needed to remove discrimination and double taxation, preventing non-taxation and abuse, and reducing compliance costs for businesses and persons who have to work with several tax systems. Bilateral agreements tend to be the instrument of choice where there is a mismatch between two tax systems. Court proceedings have been developed as an alternative in order to assess whether the provisions comply with Community legislation. According to the communication, tax rules that can conflict with Community legislation include rules on exit taxes, withholding tax on dividends, group loss relief, and taxation of branches.

3.2 European Court of Justice (ECJ) case law in the area is constantly evolving, but it generally concerns specific cases and can rarely be interpreted broadly. The Commission believes there is a need for guidance so that case law can be interpreted more comprehensively. With these communications the Commission is attempting to help the Member States to find coordinated solutions.

3.3 An important objective for the Commission is the removal of double taxation, which can be an obstacle to cross-border activity. In order to prevent non-taxation and abuse, the Commission proposes to examine existing rules with a working group from the Member States. Apart from the fact that the rules are essentially different, they must also be applied in 27 different administrative systems. The Commission proposes to examine how administrative cooperation between the Member States can be improved.

3.4 The Commission also announces subjects for future communications, such as measures to combat abuse, definitions of debt and equity, and to extend recourse to arbitration procedures for tax disputes between Member States.

Comments

3.5 In commenting on the three communications, the EESC would reiterate its support for efforts to secure a common consolidated corporate tax base, or CCCTB. One of the principles posited in the EESC's opinion on the subject was that the CCCTB should be mandatory if it is to be fully effective. Political reservations have been expressed about a CCCTB. The Committee takes the view, however, that efforts to secure such a tax base cannot be called into question. It is needed in the long-term if the internal market is to function properly. It would also facilitate implementation of the proposals addressed in the Commission communications. On the other hand, there can, of course, be different views as to how this tax base should be constructed, but this debate must be resumed when a concrete proposal has been presented.

3.5.1 The EESC's opinion on CCCTB pointed out that there could be a case for gradually presenting proposals that could be implemented before the main proposal is finalised. The Committee sees the communications as a step in this direction.

3.6 The wording used by the Commission in the communication is extremely cautious: 'The Commission proposes to present a number of initiatives'; 'the Commission proposes to examine this area together with Member States in a working group in the near future'; 'It is desirable to explore more generally the ways in which cross-border compliance costs can be reduced'. The Commission's cautious approach to tax issues is understandable given the prevailing negative attitude, not least on the part of finance ministers. If politicians are not prepared to work constructively on cooperation, coordination and, where appropriate, harmonisation (particularly on CCCTB), the ECJ will continue to be the institution that decides how national tax systems must work together.

3.7 The EESC believes that the Commission's proposed initiatives are a logical part of a taxation work programme. These are problem areas when cross-border activity is involved. It is important that the Commission's forthcoming proposals should be accompanied by a statement of their expected impact on the achievement of the Lisbon Agenda objectives.

⁽¹⁾ OJ C 88, 11.4.2006, p. 48: Opinion of the EESC on the Creation of a common consolidated corporate tax base in the EU.

3.8 The problems addressed in this communication and in the other two communications relate mainly to the cross-border activity of firms. Individuals are only dealt with in the communication on exit taxation. The EESC believes it is right to focus first on businesses when discussing the internal market and taxation.

3.9 When a firm is contemplating starting up in another country, it needs detailed information about that country's tax system. Greater openness is required and information needs to be more readily available. The Commission could be an important link to Member State tax offices and the information they hold. Its role as an information provider for competition policy could serve as a model here.

3.10 There is a great need for cooperation and coordination in the field of corporate taxation. Although the Commission speaks of cooperation and coordination, some of the arguments used in the communications could lead in practice to national sovereignty being waived in the field of taxation. This must be avoided in any forthcoming specific proposals.

4. Tax treatment of losses in cross-border situations COM(2006) 824 final

4.1 The treatment of tax relief on cross-border losses for firms and groups is mainly based on the ECJ decision in the *Marks and Spencer* case. In the absence of cross-border relief for losses, a firm operating in several countries will be taxed more heavily than one that operates in one country only. With CCCTB this problem could be solved for firms with operations in several countries. In the meantime, the Commission suggests various methods for providing cross-border relief for a parent company when losses are incurred by a subsidiary, and for companies with permanent establishments and branches in other countries.

4.2 It is not possible to describe the EU situation in its entirety because the rules differ between Member States.

4.3 Firms with several entities in one country can always offset losses between entities. A table in the communication shows that cross-border loss relief is generally available, but not in all Member States. The ECJ has ruled that the same conditions must apply to a firm with several activities in one country as to a firm that is active in several Member States. Consequently, the Commission believes that loss relief is pursuant to freedom of establishment.

4.4 For groups (parent company-subsiidiary), domestic loss relief is available in most Member States. Where there are subsidiaries in other countries, it is only available in exceptional cases. This was the situation in the *Marks and Spencer* case. The

ECJ decided that a loss may only be offset by the parent company once every possibility to take account of the loss in the country where the subsidiary is located has been exhausted. Loss relief may only take place vertically, to the parent company. Moreover, it can only be temporary.

4.4.1 Firms within a group are legally separate entities and are taxed individually. However, 19 Member States have domestic systems of group taxation. Most have opted for the pooling of tax results, whereas a few others only allow loss relief. Clearly, special rules are needed for cross-border loss relief, as the result must be taxed according to different systems. These rules differ across the Member States. With CCCTB, all these problems could be solved for firms with operations in several countries. What the Commission wishes to achieve are temporary common solutions for cross-border loss relief for groups.

Comments

4.5 The communication deals with loss relief but the taxation of profits is, naturally, the point of departure. The best approach would have been to formally address both profits tax and loss relief in the same document. Loss relief cannot be dealt with independently of profits tax. In focusing on the option to transfer losses, the Commission avoids the other way to make up for the deficit: intra-group contributions. If an intra-group contribution can be made before tax is paid on profits, it has the same tax effect as loss transfers.

4.6 The argument that a firm that is active in several countries must be treated in the same way as a firm that operates in several areas of the same country only addresses half the problem. The Commission wants firms with cross-border operations to be treated the same. Given that loss relief rules vary between the Member States, new discrepancies emerge between firms. If a firm comes from a country where cross-border loss relief is permitted and it can apply those rules in a country where loss relief between the parent company and the subsidiary is not permitted, then a discrepancy arises between national and foreign firms. As long as the rules differ there can be no equivalence between all three types of firm; the equivalence is merely transferred. The legal equivalence that used to exist between all firms operating in a given country thus becomes equivalence between all firms from the same country, regardless of where their operations are carried out. Put differently, the rules on transfers of losses are transferred from one country to another via a subsidiary or a branch in that country. This is unacceptable. In other words, the Commission's analysis does not include the potential impact on firms with no cross-border operations.

4.6.1 The Commission takes the view that while it is not ideal to apply domestic loss relief systems to cross-border situations, it does constitute an improvement. It is, however, extremely dubious, both from a legal and socio-economic point of view, as what it would involve in practice is using a foreign firm to apply that firm's national rules in another country's territory. The Committee believes that the most serious of the negative consequences that the Commission says result from the lack of cross-border loss relief are problems in establishment, as there are usually losses when an activity is launched. In the start-up phase, however, it is not possible to offset losses against profits in the firm's home country. This is a disincentive to establishment in other countries. Furthermore, it is SMEs that find it most difficult to bear these initial costs. Domestic firms also face these problems, so they are not just specific to establishment abroad.

4.7 Furthermore, the Commission's argument does not take sufficient account of the fact that losses can be carried forward. In most cases there is not always a need to transfer losses across borders. The difference between carry forward loss relief within a country and loss relief between countries is the time aspect. With cross-border loss relief, losses can be offset against profits immediately. The question that needs to be asked is whether the difficulties encountered in creating the special solutions needed to ensure cross-border loss relief can take place within the EU are warranted by the gains to be had from being able to apply loss relief immediately during loss-making years. A temporary intra-group contribution can be used to fund losses temporarily. The problem the Commission is attempting to solve is perhaps not as great as it might seem. The Commission's analysis should consider cross-border loss relief and loss relief over time as alternatives for firms with cross-border operations instead of focusing exclusively on just one of them.

4.8 Furthermore, there is no assessment — at least in this communication — of the scale of the problem, or of the actual implications of introducing the right to transfer losses across borders. Such an analysis is essential before any decision can be taken on whether to allow losses to be transferred across borders.

4.9 The Commission's interpretation of the legal situation, i.e. that loss relief must be allowed in order to comply with freedom of establishment when activities are performed by permanent establishments or branches in other Member States, neglects to say whether the relief is to be temporary or otherwise. It would appear that only temporary loss relief is currently available. Consequently, it should be stated clearly that this is what is being advocated.

4.10 The Commission wishes to use the restrictions imposed in the Marks and Spencer case as a guide for future measures.

The EESC also believes future proposals must be framed in a way that minimises the risk of tax avoidance in connection with loss relief.

4.11 The Commission has already submitted various proposals that allows for loss relief in years following the year in which the loss transfer was made. The loss is returned from the parent company as soon as there is a profit against which it can be offset. This would appear to be the best method here, as the tax base is only transferred temporarily between the countries concerned.

4.12 If an attempt were made to solve cross-border loss relief problems without first introducing CCCTB, then a broad-based problem — which the Commission does not seem to have addressed adequately — would remain: how are we to know the extent of the loss to be carried over from one country to another when profits and losses are based on different tax base calculations in the two countries? This means they cannot agree on the actual size of the loss. In short, it would seem that CCCTB is the only way to solve the various legal and economic problems involved in cross-border loss relief in the long-term. If this matter is resolved relatively quickly, it might be appropriate for the Commission to focus more on the other problems raised in these communications.

5. Exit taxation and the need for coordination of Member States' tax policies COM(2006) 825 final

5.1 The Commission believes that when unrealised gains are transferred between firms, the same tax deferral rules must apply whether the transfer is made within a single country or between countries. However, problems arise because the rules on taxation of unrealised gains differ. In addition, lack of information between tax authorities and the firms or individuals in question can also lead to uncollected taxes or double taxation. The Commission gives examples of how Member State rules could be coordinated better. More remains to be done if the problems are to be fully resolved.

5.2 The Commission bases its argument on a case in which a private individual ⁽²⁾ was taxed on unrealised gains when leaving the country, whereas those who stay are taxed when the gain is realised. The ECJ felt that this discrepancy was a breach of the Treaty rules on free movement. But then comes the other problem: the country where the gain was made misses out on the tax revenue. In the absence of any specific rules, when realised it accrues to the country the taxpayer has moved to. The ECJ ruled that a tax declaration could be required on leaving the country, to be used as a basis for apportioning tax revenue when the gain is realised.

⁽²⁾ Case C-9/02 Hughes de Lasteyrie du Saillant v. Ministère de l'Economie, des Finances et de l'Industrie, OJ C 94, 17.4.2004, p. 5.

5.3 Most Member States now follow the ECJ's ruling and have abolished exit tax. Uncertainty arises as to how or indeed whether tax on part of the gain is to accrue to the country from which residence is transferred. The Commission advocates a system whereby the new country of residence grants credit for that part of the gain that occurred before residence was transferred. This would require the tax authorities in the two countries concerned to coordinate their efforts. The Commission also interprets that ECJ case that applied to an individual as also applying to firms that transfer unrealised gains.

5.4 The EEA/EFTA countries constitute a special case, as they are bound by EU provisions on free movement but not on tax legislation. Here the Commission feels that, in order to ensure that revenue can accrue to the country being left, tax may be demanded on exit, unless bilateral agreements provide for other solutions.

Comments

5.5 When the Commission argues the different cases involving transfers between firms of assets comprising unrealised gains, the legal situation appears less certain than for private individuals. The Commission bases its interpretation for firms on the ECJ ruling for private individuals, but a ruling for private

individuals cannot be applied wholesale to firms. The Commission therefore needs to flesh out its analysis by addressing the specific problems that can arise for firms.

5.6 A more exhaustive text is needed to clarify what the Commission believes should apply in different situations, e.g. involving a parent company and subsidiary, or branches and permanent establishments. The Commission's communication also leaves the reader wondering whether unrealised assets should really be treated differently according to the type of relationship that exists between the firms concerned.

5.7 The rule that exit tax may not be levied on unrealised gains leads to considerable demands for information. It seems unfair to require an annual declaration that the assets have not been disposed of, when cooperation between the tax authorities should be sufficient to ensure that both countries get their rightful share of the tax revenue when it is eventually paid.

5.8 Some transferred assets, such as intangibles, are never disposed of, or simply expire. The Commission's description of such cases is not exhaustive. How is the Member State where the asset originates ever to be able to tax a previously unrealised gain if it is not allowed to do so when it is transferred?

Brussels, 26 September 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS
