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EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

442nd PLENARY SESSION HELD ON 13 AND 14 FEBRUARY 2008

Opinion of the European Economic and Social Committee on Defining the collective actions system and its role in the context of Community consumer law (Own-initiative opinion)

(2008/C 162/01)

On 16 February 2007, the European Economic and Social Committee acting under Rule 29(2) of the its Rules of Procedure, decided to draw up an own-initiative opinion on:

Defining the collective actions system and its role in the context of Community consumer law.

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 31 January 2008. The rapporteur was Mr Pegado Liz.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 14 February), the European Economic and Social Committee adopted the following opinion by 134 votes to 94 with 6 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC has decided to reopen the debate on the need for an in-depth appraisal — and the advisability of carrying out such an appraisal — of the role of and legal arrangements for a form of collective group action, harmonised at Community level, in particular in the area of consumer law and competition law, at least at an initial stage.

1.2 The EESC has always advocated the definition at Community level of a collective action designed to secure effective compensation in the event of the infringement of collective or diffuse rights. Such a measure would usefully complement the protection already afforded by both legal remedies and alternative remedies, a notable example of the former remedy being actions for injunction, as defined by Directive 98/27/EC of 19 May 1998.

1.3 The EESC has, on a number of occasions, advocated the need for the EU to take action in this field since, in its view, such action:

— may make a decisive contribution towards removing obstacles hampering the operation of the internal market which are brought about by the divergences in the various national legal systems; action by the EU would thus give consumers a renewed confidence in the benefits of the single market and also provide the requisite conditions for genuine, fair competition between enterprises (Articles 3(1) (c) and (g) of the EC Treaty);

— would make it possible to step up consumer protection, thus making it easier for consumers to more effectively invoke their rights to institute legal proceedings, whilst also ensuring that EU laws are implemented more effectively (Article 3(1)(t) of the EC Treaty);

— would comply with the basic principle of ensuring the right to an effective remedy and a fair hearing by an impartial tribunal, a right which is guaranteed under the Charter of Fundamental Rights of the European Union (Article 47).

1.4 The fact that several EU Member States have, over the last few years, adopted disparate judicial systems for representing the collective interests of consumers, whereas other Member States have yet to introduce provisions in this field, leads to inequalities as regards access to justice and has a detrimental effect on the achievement of the internal market. The EESC deplores this state of affairs, all the more since public satisfaction and confidence represent one of the widely publicised objectives of the achievement of the internal market in the twenty-first century. The EESC is all too aware of the effects that any possible steps might have on the competitiveness of European companies and the knock-on effect that disproportionate costs would eventually have on workers and consumers.

1.5 The EESC therefore intends to make its contribution to this appraisal by putting forward concrete proposals in respect of the legal arrangements for such collective actions, taking account not just of the national systems applicable in European states but also of the experience gained by other states which have developed such measures. The Committee takes particular account of the principles set out in Recommendation C(2007) 74 of the Council of Ministers of the OECD on Consumer Dispute Resolution and Redress, of 12 July 2007.

1.6 In defining the proposed parameters for an EU legislative initiative, the EESC has taken account of the common legal tradition of European judicial institutions and the common principles underlying civil procedure in the EU Member States; the EESC has therefore rejected the features of US-style 'class actions', which are incompatible with the abovementioned traditions and principles. The EESC considers particularly harmful any practice of giving a substantial share of sums won as compensation or punitive damages from cases championing consumer interests to third party investors or lawyers, mirroring American class actions.

1.7 In the light of the aims and purposes of such an instrument, the EESC has analysed the main possible options as regards: the legal arrangements to be introduced (advantages and disadvantages of an opt-in, opt-out or combined scheme); the role of the court; the question of compensation; appeals and the financing of the measures.

1.8 The legal basis for such an initiative and the legal instrument to be employed are further key issues which have also been analysed and in respect of which proposals have been put forward.

1.9 The EESC would also point out that this appraisal of the establishment of machinery for collective actions is in no way at variance with the existence and development of alternative dispute resolution (ADR) methods, indeed the opposite is the case. The EESC was one of the first bodies to express the need to set up effective instruments to enable consumers to invoke their rights — both individual and collective rights — without involving the courts. In this respect, the EESC would state the case for improved alignment of ombudsman and related systems in the various sectors of consumer society, particularly in places where cross-border trade is most developed or most likely to develop.

1.10 There is a whole range of collective remedies for consumers who have suffered loss, from individual, voluntary and consensual actions to collective and legal remedies. Each of these levels of dispute settlement must work optimally, facilitating compensation for loss suffered at the level which is the most accessible for victims.

1.11 The EESC welcomes the European Commission's declared intention to continue to study this issue. The EESC does, however, underline the need for this intention to be matched by a real political will, leading to the introduction of appropriate legislative measures.

1.12 Voicing the wishes of the representatives of organised civil society, the EESC also calls upon the European Parliament, the Council and the Member States to ensure that this appraisal is carried out taking into consideration the interests of the various parties and complying with the principles of proportionality and subsidiarity and is followed by the vital political decisions which have to be taken in order to enable an initiative along the recommended lines to be adopted as soon as possible

2. **Introduction**

2.1 The purpose of this own-initiative opinion is to promote a broad-based discussion on the role and legal arrangements for collective action ([1]) at Community level, in particular in the area of consumer law and competition law, at least at an initial stage ([2]). Its ultimate aim is to encourage civil society and the competent institutions of the European Union to study the need for and the impact of such an initiative, to think about the definition of its legal nature and the terms and conditions of its implementation, in the framework of a European legal area.

2.2 The methodology used is based on a prior analysis of needs in the single market and the conformity of the initiative with Community law. Its capacity to resolve cross-border disputes, particularly those involving the economic interests of consumers, effectively and rapidly, is then studied.

3. **The single market and the collective interests of consumers**

3.1 The development of 'mass' commercial transactions following the development of mass production from the second half of the last century brought about major changes in methods of entering into contracts and obtaining agreements for the sale and provision of services.

The advent of the information society and the opportunities thus created for distance selling and electronic commerce have brought new benefits to consumers, but they are now potentially subject to new forms of pressure and new risks when entering into contracts.

3.2 Where they have become established, public offers, standard contracts, more and more aggressive forms of advertising and marketing, unsuitable pre-contractual information, widespread unfair practices and anti-competitive practices may cause harm to key groups of consumers who are most often not identified and may be difficult to identify.

3.3 In the legal systems based on traditional procedural law, derived from Roman law, homogeneous individual interests, the collective interests of groups and the diffuse interests of the public are not always served by suitable forms of judicial action which may be described as easy, rapid, inexpensive and effective ([3]).

3.4 Almost everywhere in the world, particularly in the EU Member States, legal systems provide judicial remedies to protect collective or diffuse interests.

3.4.1 However these systems are rather disparate and give rise to clear differences in the protection of these interests. These disparities are the cause of distortions in the operation of the internal market.

([1]) In the sense of civil procedure, having the aim of defending collective or diffuse interests either for prevention (injunction) or for redress (claims for damages). Another meaning of the expression 'collective action' can be found in British and US legal literature to denote the sociological roots of associability (see *Collective action in the European Union; interests and the new politics of associability*, Justin Greenwood and Mark Aspinwall, Routledge, London, 1998), which is particularly informative about the sociological origins and social needs leading to collective actions in the strict procedural sense.

([2]) The possibility, which already exists in several national legal systems, of enlarging the scope of collective actions to include all collective or diffuse interests in areas such as the environment, the cultural heritage, spatial planning etc should not be excluded, irrespective of whether such actions are brought against private-law or public-law bodies, including administrations or public authorities.

([3]) It is rare to find such a concise form of words in the legal literature as that used by an eminent lawyer and Portuguese member of Parliament, during a parliamentary debate, to support the introduction of collective actions in Portugal. Referring to the new second and third-generation forms of law: labour law, consumer law, environmental law, spatial planning law, law for the protection of the cultural heritage, *'universal forms of law which belong to many if not all'*, Mr Almeida Santos said:
'These forms of law belong to everyone, or at least to a large number of people. Is it therefore right that the protection of these rights should be so parsimonious, with plaintiffs forced to wait for their case to come to court, a case which might be identical to that of their colleague or neighbour, sometimes winning their case only when the result no longer has any meaning, when the compensation awarded has already been eroded by inflation, or when the restoration of their honour comes too late to prevent divorce or irreparable damage to their financial standing, or when the final arrival at their destination at the end of a long procedural calvary perfectly sums up the ineffectiveness and futility of the legal process? Should we accept this Kafkaesque judicial purgatory as the status quo?' 'Suddenly we realise that exclusively individual legal protection is no longer enough; that there are 'meta-individual' rights and interests, mid-way between individual rights and collective interests; that the right of those directly or indirectly harmed to go to court is insufficient; that the individualistic concept of law and justice is approaching its end, that the dawn of a new pluralism and a new law is on the horizon' (in D.A.R. Series I, No. 46, 21/2/1990, p. 1617).

3.5 Because of a lack of harmonisation at EU level, national judicial systems have, in the recent past, developed along very different lines. These differences cannot be attributed so much to divergences in basic principles but rather to different traditions as regards procedural law. The tables appended to this document illustrate the key differences at national level ([4]).

3.6 A number of parties, in particular organisations representing consumer interests but also many legal practitioners and professors of Community law, lost no time in denouncing the disadvantages to which this situation gives rise, in terms of creating inequality amongst European citizens as regards access to law and justice ([5]).

3.7 Within the EU Institutions, it was only in 1985, however, following a seminar held in Ghent in 1982 under the auspices of the Commission, that the memorandum on *Consumer access to justice* ([6]) was published, in which the Commission for the first time looked, inter alia, at systems for the legal defence of collective interests.

3.8 However, it was only in its Supplementary Communication of 7 May 1987 that the Commission, following a Resolution of the European Parliament of 13 March 1987 ([7]), actually announced its intention of looking at the possibility of a framework directive introducing a general right for associations to defend their collective interests before the courts and calling on the Council to recognise the prominent role of consumer organisations, both as intermediaries and as direct agents in relation to consumer access to justice.

3.9 In its Resolution of 25 June 1987, exclusively devoted to consumer access to justice, the Council stressed the important role which consumer organisations were required to play, calling on the Commission to consider whether a Community-level initiative in that area might be appropriate ([8]).

3.10 Finally, in 1989, when preparing its *Future priorities for a relaunch of consumer protection policy,* the Commission expressed the view in its Three Year Programme (1990-1992) ([9]) that the arrangements for access to justice and compensation were inadequate in a large number of Member States because of their cost, complexity and the time involved, and that there were problems linked to cross-border transactions. It announced that it would be carrying out studies on measures to be adopted, with particular attention for the possibility of collective actions for compensation for losses sustained by consumers ([10]).

3.11 It was, however, only in 1993 that the Commission relaunched a public debate on this issue with the publication of the significant *Green Paper on access of consumers to justice and the settlement of consumer disputes in the single market* ([11]).

([4]) The study of the Centre for Consumer Law of the Catholic University of Leuven prepared for the Commission (DG Sanco) is an excellent summary which illustrates the consequences of the different national approaches to the settlement of cross-border disputes, particularly where consumers from several Member States are affected by the same unfair cross-border commercial practices, by defects in the same products or by contracts negotiated at a distance including the same unfair general contractual clauses.

([5]) When examining the literature on this subject, mention must be made of the pioneering work by Jacques van Compernolle entitled *Le droit d'action en justice des groupments*, Larcier, Brussels 1972 and the collaborative work entitled *L'aide juridique au consommateur* by T. Bourgoignie, Guy Delvax, Françoise Domont-Naert and C. Panier, CDC Bruylant, Brussels, 1981.

([6]) Sent to the Council on 4 January 1985 and supplemented on 7 May 1987 by a *Supplementary Communication on consumer access to justice*. Moreover, in the Commission Communication of 4 June 1985 entitled *A new impetus for consumer protection policy* (COM(85) 314 final), the outlines of which were approved by the Council on 23 June 1986 (OJ C 167, 5.6.1986), it was stressed that traditional legal procedures were slow and often expensive compared with the amounts at stake in consumer cases and that appropriate means of consultation and redress were needed to ensure that consumer rights were duly protected.

([7]) The rapporteur was the Dutch MEP Ms Boot. One of the aspects of the text which should be stressed, following the amendments tabled by MEPs Squarcialupi and Pegado Liz, was the appeal to the Commission to propose a directive harmonising the laws of the Member States so as to safeguard the defence of the collective interests of consumers, by giving consumer associations the opportunity to bring legal action in the interests of the category they represented and of individual consumers (A2-152/86 of 21 November 1986 (EP 104.304).

([8]) Resolution 87/C, OJ C 176, 4.7.1987.

([9]) Approved by the Council on 9 March 1989 (OJ C 99, 13.4.1989).

([10]) COM(90) 98 final of 3 May 1990. This was the first reference to collective actions in an official Commission document.

([11]) COM(93) 576 final of 16 November 1993. In order to understand this document, it is important to recall that, between 1991 and 1992, there were a number of initiatives in the debate on questions connected with access to law and justice, including the Conference on consumer compensation mechanisms held by the *Office of Fair Trading* in London in January 1991, the third Conference on consumer access to justice held in Lisbon on 21-23 May 1992 under the auspices of the Commission and the *Instituto do Consumidor*, as well as the seminar on the *Protection of the cross-border Consumer* held in Luxembourg in October 1993 by the Ministry of the Economy, and that on the Family and solidarity supported by the Commission, which resulted in reports which are still of great relevance today. During the same period a number of leading academics and legal experts set down their views on the issue (see, *inter alia*, *Group Actions and Consumer Protection*, Thierry Bourgoignie (Ed.), Col. Droit et Consommation, Vol XXVIII, 1992; *Group Actions and the Defence of the Consumer Interest in the European Community*, Anne Morin, INC, France, 1990).

It was on this occasion that the question of the establishment of a uniform system for actions for injunctions was examined in detail for the first time. Many people thought at the time that this would serve as a basis for a true system of collective action in defence of consumer interests ([12]).

3.12 In its Resolution of 22 April 1994 ([13]), the European Parliament concluded that it would be appropriate to carry out a degree of harmonisation of the procedural rules of the Member States, making provision for the right, in cases involving amounts below a certain threshold, to launch Community proceedings which would permit the rapid resolution of cross-border disputes. The Parliament also indicated that it would be appropriate to harmonise, to a certain extent, the conditions applicable to bringing actions for injunctions against illegal commercial practices.

3.13 Similarly, the EESC, in an opinion adopted unanimously at the plenary session of 1 June 1994 ([14]), referred, *inter alia*, to the principle of: '*general recognition of the active legal right of consumer associations to represent collective and diffuse interests, before any judicial or out-of-court authority in any Member State, irrespective of the nationality of the interested parties and the associations themselves, or of the place where the dispute arises*'. It expressly called on the Commission to establish a uniform procedure for collective actions and joint representation, not only to put a stop to illegal practices but also for actions for damages ([15]).

([12]) It should, however, be pointed out that the Green Paper is based on several earlier decisions and documents, which underpin it and give it the necessary basis of political support. In March 1992 the Commission had entrusted to a group of independent experts, led by Peter Sutherland, the task of drawing up a report on the operation of the internal market in order to assess the impact of the implementation of the White Paper on the Internal Market.
The report, published on 26 October 1992, looked in particular at the question of access to justice. It stated that there was no certainty as to the effectiveness of the protection of consumer rights and drew attention to concerns about the ineffectiveness of the Brussels Convention of 1968 on mutual recognition of court judgments and the resulting difficulty of obtaining the enforcement in a Member State of a judgment delivered by a court in another Member State. It recommended (Recommendation No 22) that the Community look into the question as a matter of urgency. This recommendation gave rise to the Communication from the Commission to the Council and the European Parliament: *The Operation of the Community's Internal Market after 1992: Follow up to the Sutherland Report* (SEC(92) 2277 final). The *Working Document of the Commission on a Strategic Programme on the Internal Market*, submitted by the Commission in June 1993, recognised the need for a coherent operational framework for access to justice which would need to include a number of measures regarding the dissemination, transparency and application of Community law (COM(93) 256 final). Moreover, the Commission Communication to the Council of 22 December 1993 drew attention to the fact that completion of the internal market could lead to an increase in the number of cases where residents of one Member State were asking for their rights to be respected in another Member State (COM (93) 632 final).
As the Commission argued that it was not up to the Community to seek a harmonisation which would have abolished the specific characteristics of different national legal systems, the Commission expressed its intention of focusing on the provision of information and training on Community law, transparency, effectiveness and rigour in the application of that law, and on coordination and cooperation in judicial matters between Member States and the Commission, facilitated by the entry into force of the Maastricht Treaty, and in particular of its 'third pillar'. These efforts resulted in the publication of the Green Paper and in the large-scale consultation which was launched in its wake. At its meeting of 27 September 1993 (686th internal market session), the Council had already concluded that it was essential to develop the debate on access to justice, in particular on the basis of a Green Paper announced by the Commission for the end of the year which would look at the question of procedural means and, if appropriate, that of increased transparency of sanctions. It was at this time that a major study was drawn up for the Commission by E. Balate, C. Nerry, J. Bigot, R. Techel, M.A. Munge, L. Dorr and P. Pawlas, with the assistance of A.M. Pettovich, on the subject of *A right to group actions for consumer associations throughout the Community* (Contract B5-1000/91/012369), which remains a standard work in this field.

([13]) PE 207.674 of 9 March; rapporteur: Mr Medina Ortega.

([14]) CES 742/94; rapporteur: Mr Ataíde Ferreira (OJ C 295, 22.10.1994). The ESC's interest in the subject was not new. In other documents, for example two own-initiative opinions on the completion of the internal market and consumer protection drawn up by Mr Ataíde Ferreira and adopted respectively on 26 September 1992 (CES 1115/91, OJ C 339, 31.12.1991) and 24 November 1992 (CES 878/92, OJ C 19, 25.1.1993), the Commission's attention had already been drawn to the need to identify opportunities for action in relation to the regulation of cross-border disputes and to recognise the powers of representation of consumer organisations in both national and transfrontier disputes (CES 115/91, point 5.4.2; CES 878/92, point 4.12, and section 4 of the interesting study appended to it, carried out jointly by Eric Balate, Pierre Dejemeppe and Monique Goyens and published by the ESC, pp. 103 et seq.).

([15]) This subject was subsequently taken up by the EESC in several of its opinions, the most significant of which were the own-initiative opinion on the *Single market and consumer protection: opportunities and obstacles* (rapporteur: Mr Ceballo Herrero), adopted at the session of 22 November 1995, which noted that at that date there had been no follow-up to the suggestions and proposals put forward by the ESC in its previous opinion on the Green Paper (CES 1309/95); the opinion on the *Single Market in 1994 — Report from the Commission to the European Parliament and the Council* (COM(95) 238 final) (rapporteur: Mr Vever), which pointed to delays in the effective implementation of the internal market, particularly regarding consumer legislation, and in particular for cross-border relations (CES 1310/95, OJ C 39, 12.2.1996); the opinion on the *Communication from the Commission: Priorities for Consumer Policy (1996-1998)* (rapporteur: Mr Koopman), in which the Committee, while welcoming the proposal for a directive on actions for injunctions and the action plan presented by the Commission on consumer access to justice, said that it awaited with interest developments in the area, that, in that area, the single market was far from complete and that a 'conscious adherence to consumer rights' was a basic condition for gaining that confidence from the consumer (CES 889/96, OJ C 295, 7.10.1996). The same kind of concern was also expressed in the ESC's opinion on the *Communication from the Commission to the European Parliament and the Council on the impact and effectiveness of the single market* (COM(96) 520 final of 23 April 1997) (rapporteur: Mr Pasolli, CES 467/97 — OJ C 206, 7.7.1997).

3.14 For her part Commissioner Emma Bonino, from the moment she set out her priorities, focused on the establishment of a Community procedure for the rapid resolution of cross-border disputes and the harmonisation of conditions for bringing actions for injunctions against illegal commercial practices, together with the mutual recognition of the right of consumer organisations to bring legal action ([16]).

3.15 Subsequently a Proposal for a European Parliament and Council Directive on injunctions for the protection of consumers' interests was published on 25 January 1996 ([17]).

With this directive the Commission took up the recommendation of the Sutherland Report and responded to the suggestion, which enjoyed widespread support, contained in the Green Paper ([18]), ([19]).

3.16 The directive undeniably a revolutionised Community law, as for the first time the Community was legislating in a general way on a matter relating to civil procedural law ([20]).

The suggestion that the scope of application be extended to include damages was not however followed up.

3.17 In parallel, the Commission drew up an *Action plan on consumer access to justice and the settlement of consumer disputes in the internal market*, presented on 14 February 1996, in which, having defined and described the problem of consumer disputes and studied the various solutions available at national level in the Member States, it listed a number of initiatives which it planned to launch. These included studying the possibility of consumers suffering loss at the hands of the same commercial operator to instruct consumer organisations to group their complaints *ex ante* in order to pool homogeneous individual cases with a view to submitting them simultaneously to the same court ([21]).

3.18 In this context, the European Parliament, in its Resolution of 14 November 1996, expressed the view that access to justice was a fundamental human right and a precondition for guaranteeing legal certainty, either at national or Community level. It recognised the importance of out-of-court procedures for

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([16]) In her first public statement, at a European Parliament hearing on 10 January 1995, the new Commissioner for consumer affairs recognised that consumer policy was a matter of the first importance for the construction of a Citizens' Europe and made a personal commitment to follow-up the consultations already carried out in connection with the Green Paper on Access to Justice.
In reply to specific questions about the situation with regard to access to justice, the Commissioner acknowledged that consumer access to justice was far from satisfactory and that the time taken for court proceedings in certain Member States was likely to compromise seriously the effectiveness of consumer law.

([17]) COM(95) 712 final.

([18]) Taking as a basis Article 100a of the Treaty on European Union, and having regard to the principles of subsidiarity and proportionality, the Commission made provision for the harmonisation of the procedural rules of the various Member States relating to certain forms of legal redress, with the following objectives:
— the cessation or prohibition of any act infringing consumer interests protected by the various directives listed in an annex;
— measures necessary to correct the effects of the infringement, including publication of the decision; and
— the imposition of a financial penalty on the losing party to the dispute in the event of non-compliance with the decision by the deadline set.
The same proposal provided that any body representing the interests of consumers in a Member State, when the interests it represented were affected by an infringement originating in another Member State, could apply to the court or competent authority of that Member State to enforce the rights it represented.

([19]) The final text of the directive was adopted at the Consumer Council held in Luxembourg on 23 April 1998, by a qualified majority with Germany voting against, and its final version, which includes most of the suggestions and criticisms made, was published on 11 June 1998.

([20]) Directive 98/27/EC of 19 May 1998, OJ L 166, 11.6.1998. It should be remembered that the European Parliament was very critical of the scope and limitations of the proposal and made various changes to the initial text, including:
— extending the scope of a directive to cover all future directives concerning the protection of consumer interests;
— including among the recognised bodies organisations and federations representing consumers or firms acting at European and not exclusively national level.
In an opinion drawn up by Mr Ramaekers, the EESC criticised the legal basis of the proposal, considering that it should have been Article 129a rather than Article 100a of the Treaty, as well as its limited scope and the requirement for prior application to a national body in the country where the proceedings had to be brought, which would significantly and unnecessarily delay the proceedings (CES 1095/96 — OJ C 30, 30.1.1997).

([21]) COM(96) 13 final.

settling consumer disputes but drew attention to the need for the consumer, having exhausted all the out-of-court conciliation procedures, to be able to resort to ordinary court procedures in accordance with the principles of legal effectiveness and certainty. Consequently, it called on the Commission to draw up other proposals to improve the access of non-resident European citizens to national judicial procedures, and encouraged the Member States to promote the involvement of consumer associations as the authorised representatives of persons empowered to bring claims before the courts and to recognise these associations as being entitled to bring collective actions in response to certain illegal commercial practices ([22]).

3.19 Since then the question would appear to have been effectively left in abeyance by the European Commission ([23]).

At the EESC, however, the question has been taken up on several occasions, with a view to demonstrating the need for a Community-level civil procedural instrument for the legal defence of diffuse, collective or homogeneous individual interests ([24]).

3.20 Only recently the Commission reopened the question in its *Green Paper on Damages actions for breach of the EC antitrust rules* ([25]) in terms which are worth quoting:

> *'It will be very unlikely for practical reasons, if not impossible, that consumers and purchasers with small claims will bring an action for damages for breach of antitrust law. Consideration should therefore be given to ways in which these interests can be better protected by collective actions. Beyond the specific protection of consumer interests, collective actions can serve to consolidate a large number of smaller claims into one action, thereby saving time and money.'*

3.21 In its opinion of 26 October 2006, the EESC expressed its support for this Commission initiative and confirmed the need for collective actions where they '*provide a perfect example of some key objectives: i) effective compensation for damages, facilitating claims for damages by organisations on behalf of the consumers affected, thus helping to provide real access to justice; ii) the prevention and deterrence of antitrust behaviour, given the greater social impact of this type of action*' ([26]).

3.22 The Commission entrusted to the Consumer Law Studies Centre of the Catholic University of Leuven the task of drawing up a major study, recently published, on alternative dispute resolution (ADR) methods. A not inconsiderable part of the study, which runs to 400 pages, is devoted to a description of 28 national systems of collective legal means for the defence of consumer interests, those of the 25 Member States plus those of the USA, Canada and Australia ([27]).

([22]) A-0355/96 (PE 253.833).

([23]) Certain directives nonetheless contain references to collective actions as a suitable and effective way of guaranteeing compliance with their provisions. This is true, for example of Directive 97/7/EC of 20.5.1997 (distance contracts), Article 11 or Directive 2002/65/EC of 23.9.2002 (distance marketing of consumer financial services), Article 13.

([24]) Reference should be made here to the following EESC opinions:
— Own-initiative opinion CESE 141/2005 — OJ C 221, 8.9.2005 on Consumer policy post-enlargement (point 11.6).
— Opinion CESE 230/2006 — OJ C 88, 11.4.2006, on the Programme of Community action in the field of health and consumer protection 2007-2013, point 3.2.2.2.1.
— Opinion CESE 594/2006 — OJ C 185, 8.8.2006 on a Legal framework for consumer policy.

([25]) COM(2005) 672 final of 19.12.2005.

([26]) Opinion CESE 1349/2006 — OJ C 324, 30.12.2006 (rapporteur: Mr Sánchez Miguel). This subject was also tackled in the Committee's own-initiative opinion on *Regulating competition and consumer protection* (CESE 949/2006 — OJ C 309, 16.12.2006.

([27]) The study was referred to in footnote 4. Although very comprehensive, this comparative study does not cover the situation in Bulgaria or Romania, nor does it take account of the most recent development in Finland, or of the highly advanced systems in Brazil, Israel and New Zealand, or of the proposals being debated in France and Italy. For an account of the Australian system, see the collaborative work *Consumer Protection Law*, by J. Goldring, L.W. Maher, J. McKeough and G. Pearson, The Federation of Press, Sydney, 1998; on the New Zealand system, see *Consumer Law in New Zealand*, by Kate Tokeley, Butterworth, Wellington, 2000; for an account of developments in Asia, and in particular India, the Philippines, Hong Kong, Bangladesh, Thailand and Indonesia, see *Developing Consumer Law in Asia*, record of the IACL/IOCU seminar, Kuala Lumpur, Faculty of Law, University of Malaya, 1994.
It appears that the Commission has recently launched another study on Evaluating the effectiveness and efficiency of collective redress mechanisms in the EU (2007/S 55-067230, 20.3.2007).

3.23 The new European Commissioner with responsibility for consumer affairs, Meglena Kuneva, has announced in several declarations that this issue was one of the priorities of her term of office. This issue is also addressed in the recent communication on the *EU Consumer policy strategy 2007/2013* ([28]). The issue was further reaffirmed by both Commissioner Neelie Kroes and Commissioner Meglena Kuneva at a recent conference in Lisbon organised at the initiative of the Portuguese presidency of the European Council ([29]).

3.24 The Council of Ministers of the OECD has also recently adopted a Recommendation on Consumer Dispute Resolution and Redress [C(2007) 74 of 12 July 2007], which acknowledges that most existing frameworks for consumer dispute resolution and redress in the Member States were developed to address domestic cases and are not always adequate to provide remedies for consumers from another Member State.

4. **Why should collective actions be introduced at Community level?**

4.1 If the interests of consumers are to be taken into account from a legal standpoint in the EU Member States and at EU level, it is essential not only that material rights be recognised but also that appropriate procedures are available for upholding these rights.

It should also be pointed out that the increase in the volume of cross-border trade has brought about an expansion of consumer litigation at EU level.

In many cases, it is recognised that the settlement of litigation on an individual basis is an inadequate measure. The cost and the slowness of such settlements are major contributory factors in rendering consumer rights ineffective, particularly in cases where a multitude of consumers (i.e. several thousand or even several million) suffer injury as a result of one and the same practice and in cases where the amounts represented by the individual damages are relatively small. The gradual development of the 'European company' also gives rise to problems when it comes to determining which law is applicable; EU citizens should be able to invoke their rights in a uniform way. As things stand at present, improper practices which occur under identical circumstances and cause identical damage in several Member States may give rise to compensation only in those few Member States which have introduced a system of collective actions.

4.2 Furthermore, the constitutions of all the EU Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms affirm the right to a fair trial. This right includes, inter alia, the right to have meaningful and effective access to the courts.

4.3 Under the existing legal systems, citizens cannot always contest, in concrete, practical terms, certain practices which are injurious to them and initiate court proceedings.

Over a period of several decades, a number of Member States have introduced two types of response to address this problem.

Initially, they recognised the right to protect the collective interests of consumers by bringing actions before administrative bodies or before courts and tribunals. A further appropriate response has also taken the form of recognition of a procedure under which individual actions are lumped together. These actions mainly seek to bring about procedural savings by lumping together all of the actions and synthesising them into a single procedure.

([28]) COM(2007) 99 final of 13.3.2007, point 5.3; the EESC has just published an opinion on this document — Rapporteur: Ms Darmanin.

([29]) 'Conference on Collective Redress: Towards European Collective Redress for Consumers?' (9/10 November 2007) during which Commissioner Kroes made the following observation: *'Consumers not only have rights, but should also be able to effectively enforce them, if necessary through court action. And when court action can only be taken by each consumer individually, no consumer will ever make it to the court room:* ***collective redress mechanisms are therefore an absolute must!*** *It is only then that (consumers) will be able to fully benefit from the Single Market.'* Commissioner Kuneva, for her part, rightly stressed that: *'Consumers will not be able to enjoy the full benefits of the Single Market unless effective systems are in place to address their complaints and to give them the means for adequate redress. Collective redress could be an effective means to strengthen the redress framework that we have already set up for European consumers, through the encouragement of ADR mechanisms and the establishment of a cross-border small claims procedure'*.

4.4 The creation of a European collective action would make it possible to provide access to justice to all consumers, irrespective of their nationality and financial situation and the amount of individual damage which they have suffered. It would also be beneficial to commercial operators in view of the procedural savings which could be achieved. The costs of such an action would be lower than the costs liable to be incurred as a result of a multitude of individual actions. This procedure would also have the advantage of providing legal certainty by virtue of the fact that an extremely large number of similar complaints would be resolved under a single ruling ([30]). Finally, such a measure would avoid contradictions in jurisprudence between courts in the different EU Member States called upon to settle similar cases.

The introduction of a common system for all European countries would therefore make it possible to provide consumers with improved protection, whilst enhancing the confidence of the business world and, as a result, boosting trade within the EU.

4.5 The introduction of a European collective action, as defined above, would have a beneficial effect in respect of private international law in view of the difficulties in interpreting and applying the standards for resolving contractual and extra-contractual disputes (Rome I and Rome II). Such an action would also make it possible to set out precise definitions of the rules governing jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (Regulation 44/2001) ([31]).

4.6 Consumer law would therefore be strengthened by increased initiation of legal proceedings which make it possible to provide consumers with fair compensation and to give effective protection to the 'weak party', which is a fundamental principle of EU law. This would apply, in particular, to the recent Unfair Commercial Practices Directive. Such practices are often used simultaneously in several Member States, causing harm to many consumers but giving them no opportunity to seek collective redress. Group action is a complementary procedure vital to the effective implementation of this directive.

All of the currently known directives in the field of consumer protection, as transposed into national law by the Member States, would therefore be made more effective by the recognition of collective actions in the fields covered by these directives.

It would be desirable for small and medium-sized enterprises (SMEs) also to benefit from the application of the provisions in question as they, too, find themselves in a similar situation.

4.7 It goes without saying that the bringing of collective actions at EU level, as a final means of seeking to resolve disputes, in no way precludes recourse to systems of out-of-court settlement of consumer disputes. The latter measures have received the unqualified support of the EESC and their potential should be further explored in detail and further developed.

5. **Terminology**

5.1 In order to be able to properly identify the subject of the proposal, agreement must be reached on the type of legal action in question.

As the survey of the different systems adopted in the various Member States demonstrates, the designation and contents of the various types of action vary considerably. Distinctions must therefore be drawn between 'representative actions', 'public interest actions' and 'collective actions'.

([30]) Patrick von Braunmuhl rightly pointed out at the 'Leuven Brainstorming Event on Collective Redress', organised by the Commission on 29 June 2007, that '*collective actions could reduce the number of individual cases resulting from a specific incident. Especially in an opt out system a company can settle a large number of consumers claims in one proceeding. It can negotiate with a group representative of all consumers concerned and it can concentrate its resources on one court case rather than on several different cases. Even if a voluntary settlement is not possible and the court has to decide there is more legal certainty if the decision covers all cases related to the same incident or breach of law*'.

([31]) This point was explained in detail at the seminar on Rome I and Rome II, held in Lisbon on 12 and 13 November 2007 and organised by the Portuguese presidency, in conjunction with the German and Slovenian presidencies, and the Academy of European Law (Europäische Rechtsakademie — ERA).

5.2 Representative actions can be brought only by consumer associations or administrative bodies (the Ombudsman and similar bodies), with a view to securing the cessation of acts which infringe the rights of the consumer and even, in the case of some countries, securing the abolition of unfair or unlawful terms in consumer contracts.

5.3 'Public interest actions' provide consumer associations with the opportunity to decide whether or not to bring an action before a court in cases where the public, general interest of consumers is damaged by the infringement of either a specific provision of substantive law or a general standard of behaviour. 'Public interest' does not represent the sum of the individual interests of consumers but is similar to 'general interests'.

5.4 'Collective actions' are legal actions which enable a large number of persons to have their rights recognised and to obtain compensation. From a technical standpoint, 'collective actions' therefore represent a collective procedural application of individual rights.

5.5 Recourse to collective actions is not necessarily limited to just the fields of consumer protection and competition.

However, in the case of this opinion, the use of the term 'collective action' is confined to the material field, as recognised under Community law.

5.6 It is therefore proposed that the term 'collective action' be used in this opinion ([32]).

6. **Legal basis**

6.1 The legal basis for the policy of defending the interests of consumers is to be found in Title XIV of the EC Treaty, which is entitled 'Consumer protection'.

Article 153 clearly provides important points for consideration.

6.2 As things stand at present, even though consumer law has mainly come into being on the basis of the benchmark Article 95 of the EC Treaty, consumer protection policy, as envisaged here, clearly represents a measure designed to promote the economic interests of consumers.

6.3 There is no doubt that collective actions will provide a high level of protection and will enable consumer organisations to organise themselves with a view to protecting the interests of consumers, i.e. to provide them with fair compensation in the event of the infringement of rights accorded to them under all Community law, including competition law.

6.4 The introduction of collective actions at EU level will also help to improve the operation of the internal market for the benefit of consumers, which is one of the goals of the 'internal market review'. This will, in turn, give consumers greater confidence in respect of the expansion of cross-border trade ([33]).

([32]) A comparative analysis of the different terms used in several EU Member States and what they mean in the respective languages is set out in an article entitled *Class System* by Louis Degos and Geoffrey V. Morson, published in the Los Angeles Lawyer Magazine, edition of November 2006, pages 32 et seq. The terms used in certain countries are as follows: Ireland — *multi-party litigation* (MPL); the UK — *group litigation order* (GLO) or simply *group action*; in Germany — *Gruppenklage*; in Sweden — *grupptalan* or *collective lawsuit*; in Portugal — *popular lawsuit*; and in Hungary- *combined lawsuit*.

([33]) Cf. Communication from the Commission on a Single market for 21st century Europe (COM(2007) 724 final of 20 November 2007.

6.5 It could also be argued that, as we are dealing here with a purely legal instrument, Articles 65 and 67 could possibly be selected as an appropriate legal basis. It was on the basis of these articles that, from 1996 onwards, the Commission proposed and the European Parliament adopted a whole series of legal instruments in the field of civil procedural law at EU level ([34]).

This solution could be considered since collective actions could be used in the case of both cross-border disputes and national litigation and in fields other than that of consumer law.

6.6 The collective action should, at all events, respect the principles of subsidiarity and proportionality; it should never go beyond the bounds of what is required to meet the objectives set out in the Treaty, insofar as such objectives cannot be adequately achieved by the Member States and are thus better realised by taking action at Community level.

6.7 The collective action should also follow the principles and mechanisms highlighted in the Recommendation of the Council of Ministers of the OECD (Rec. C(2007) 74 of 12 July 2007), which are presented as common principles despite the diversity of legal cultures that exist in the Member States.

([34]) These legal instruments include the following:
- — Green Paper on access of consumers to justice and the settlement of consumer disputes in the Single Market (COM(93) 576 final);
- — Recommendation of the Commission of 12 May 1995 on payment periods in commercial transactions and the associated Commission Communication — OJ L 127, 10.6.1995 and OJ C 144, 10.6.1995 respectively;
- — Communication from the Commission on the Action Plan on Consumer Access to Justice and the Settlement of Consumer Disputes in the Internal Market — COM(96) 13 final, 14 February 1996;
- — Communication from the Commission to the Council and the European Parliament entitled: 'Towards greater efficiency in obtaining and enforcing judgments in the European Union' — COM(97) 609 final — OJ C 33, 31.1.1998;
- — Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests — OJ L 166,11.6.1998;
- — Council Regulation (EC) 1346/2000 on insolvency proceedings — OJ L 160, 30.6.2000. The rapporteur of the EESC opinion on this subject was Mr G. Ravoet (CESE 79/2001 of 26 January 2000 — OJ C 75, 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 children of both spouses — idem. The rapporteur for the EESC opinion on the matter was Mr Braghin (CES 940/1999 of 20 October 1999 - OJ C 368, 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 the matter was Mr Hernandez Bataller (CES 947/1999 of 21 October 1999 — OJ C 368, 20.12.1999);
- — Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions — OJ L 200, 8.8.2000;
- — Programme of measures to implement the principle of mutual recognition of decisions in civil and commercial matters — OJ C 12, 15.5.2001;
- — Council Decision of 28 May 2001 establishing a European Judicial Network in Civil and Commercial Matters — OJ L 174, 27.6.2001. The rapporteur for the EESC opinion on the subject was Mr Retureau (CESE 227/2001 of 28 February 2001 — OJ C 139, 11.5.2001;
- — Council Regulation (EC) 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 — OJ L 174, 27.6.2001. The rapporteur for the EESC opinion on this subject was Mr Hernandez Bataller (CESE 228/2001 of 28 February 2001) — OJ C 139, 11.5.2001;
- — 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). OJ L 12, 16.1.2001. The rapporteur for the EESC's opinion on this subject was Mr Malosse (CESE 233/2000 of 1 March 2000 — OJ C 117, 26.4.2000);
- — Green Paper on Alternative Dispute Resolution in civil and commercial Law — COM(2002) 196 final, 19 April 2002;
- — Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims — OJ L 143 of 30 April 2004. The rapporteur for the EESC's opinion on this subject was Mr G. Ravoet (CESE 1348/2002 of 11 December 2002 — OJ C 85, 8.4.2003);
- — 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);
- — Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts, COM(2006) 618 final. The rapporteur for the EESC opinion on the subject was Mr Pegado Liz (CESE 1237/2007 of 26 September 2007);
- — Regulation 1896/2006/EC of 12 December 2006 (OJ L 399, 30.12.2006) creating a European order for payment procedure (COM(2004) 173 final of 19 March 2004). The rapporteur for the EESC opinion on the matter was Mr Pegado Liz (CESE 133/2005 of 22 February 2005).

7. **The parameters of collective actions at Community level**

7.1 *Collective actions must not take the following forms:*

7.1.1 Collective actions must not take the form of representative actions:

7.1.1.1 Representative actions are open only to a number of specially authorised bodies (consumer associations and the Ombudsman). Under this procedure consumers are generally not able to obtain redress for damage suffered by individuals.

7.1.1.2 The main aim of these procedures is to secure the cessation of acts which infringe consumer rights and even, in some countries, to secure the abolition of unfair or unlawful terms in consumer contracts in respect of which the courts are unable to make provision for any compensation.

7.1.1.3 Certain countries have made adjustments to these mechanisms in order to make it possible to compensate consumers. Such compensation is not, however, paid to individual consumers but retained by the representative bodies or paid to the State to be used for social purposes.

7.1.1.4 Representative actions are thus, in practice, not to be equated with real collective actions, in which all consumers are compensated in a single legal proceeding.

7.1.2 Collective actions must not take the form of the 'class actions' employed in the USA:

7.1.2.1 The introduction of a European collective action must not result in the establishment in Europe of US style class actions. The US judicial system is very different from the judicial systems of the EU Member States. The weaknesses of 'class actions', which are accused of giving rise to excessive settlements, are peculiar to this judicial system and could not occur in Europe.

7.1.2.2 In the USA, court decisions are delivered by people's juries and elected judges. The special make-up of the US system, which differs from that of the majority of the EU Member States (which have professional judges), very frequently leads to certain State courts authorising fanciful actions and handing down decisions which are excessively favourable to the plaintiff; this, in turn, results in consumers submitting their claims to particular courts, rather than other courts which have the reputation of adopting a less favourable approach ('forum shopping').

7.1.2.3 European 'collective actions', on the other hand, would serve as a bastion which would halt forum shopping in its tracks since a single type of legal procedure would be created and set up in each EU Member State, as a result of which, irrespective of the court or the State selected by the claimants, the legal action would proceed in the same way and the court rulings would be of a similar nature.

7.1.2.4 In the USA, the compensatory damages awarded may be accompanied by punitive damages. These damages, which are set by the juries and elected judges, frequently attain astronomical proportions. Punitive damages are not applied in most EU Member States.

7.1.2.5 Lawyers in the USA are remunerated by means of a generally applicable system of *contingency fees*. This system constitutes a sort of 'champerty', under which lawyers, who may themselves be the claimants, have an interest in the outcome of the claim. This system is prohibited — either by law or under lawyers' codes of professional conduct — in the majority of EU Member States.

7.2 *The basic choice: 'opt-in' or 'opt-out'*

In the light of an examination of the collective action procedures adopted in the Member States, these procedures may be classified into two categories, depending on the main mechanism which underpins the initiation of the action and the intervention of the consumer in the procedure. If the consumer has to make deliberate representations in order to be a party to the procedure, an 'opt-in' system is adopted. If, on the other hand, the initiation of the action automatically involves the participation of the consumer in the procedure, without it being necessary for him or her to make themselves known, an 'opt-out' system is adopted. In the latter case, the consumer always retains the right to choose not to be covered by the procedure. The drawing-up of a European collective action thus inevitably involves selecting the mechanism which is to underpin such an action.

7.2.1 'Opt-in' and test cases

7.2.1.1 Under the *opt-in* system the persons concerned have to make known their desire to be party to the procedure. The persons concerned must therefore make themselves known and expressly ask to be part of the action before the decision is delivered.

Alongside the *opt-in* system, the mechanism known as 'test cases' or which is based on an initial declaratory ruling has also come into being. These procedures are similar to collective actions based on the *opt-in* principle since, in the case of test cases too, the persons concerned must make themselves known in order to be able to be party to the procedure and to lodge individual claims. The distinctive feature of the test case mechanism does, however, lie in the fact that the judge selects one of the individual claims and gives a ruling on that claim alone. The ruling given under the test case procedure will then be applicable to all the other individual claims lodged with the court.

7.2.1.2 Advantages of these mechanisms

7.2.1.2.1 Each member of the group in question has to make himself or herself known in order to be party to the procedure; the way in which this is done is generally by signing a register. It is therefore a question of making known an express desire to participate; this enables the procedure to be in line with the principle of freedom to take legal proceedings. The plaintiff only takes action on behalf of the persons concerned once they have given their formal agreement.

7.2.1.2.2 Under the opt-in method, the foreseeable extent of the damages at stake may be determined ex ante. This is important for the defendants who are directly concerned by the claim for compensation, generally, and it enables them to take out insurance policies to cover part of the potential damages. Sufficient funds will therefore be held in reserve to meet legitimate compensation claims.

7.2.1.2.3 With regard to the *test case* procedure, a single individual case is submitted to the judge in order to enable him/her to make an assessment of the problem; this represents a saving of time and a more effective approach for the judge since he/she will be able to take a decision on the liability of the commercial operator concerned on the basis of one case only.

7.2.1.3 Drawbacks of these mechanisms

7.2.1.3.1 These mechanisms are difficult to administer and are expensive: the persons concerned have to make themselves known in order to be party to the procedure and to draw up an individual file. The management of the individual files becomes a complex matter once a large number of persons in involved.

7.2.1.3.2 This leads to very long procedural delays since the court has to organise and deal with each of the individual dossiers. In the case of mass litigation, from which most collective actions derive, the damages suffered by individuals are relatively homogenous and frequently do not need to be examined on an individual basis.

7.2.1.3.3 Turning to the *test case* procedure, the judge does not always lay down the amount of compensation due and sometimes transfers cases to individual procedures. This gives rise to administrative problems and extends the time limits of the procedure.

7.2.1.3.4 Furthermore, an analysis of collective actions under the *opt-in* procedure and the *test cases* instigated in those states which provide for such a mechanism shows that a large proportion of consumers do not lodge a claim before the courts because they do not have proper information on the existence of the procedures in question. A large proportion of the persons concerned also refuse to initiate legal proceedings because of the material, financial and psychological obstacles thrown up by legal proceedings (demands as regards time and money and the fact that the whole matter is extremely complex).

7.2.1.3.5 There is therefore a sizeable drop-out rate between the number of persons who really do take action and the potential number of persons concerned. The compensation for damages awarded to consumers is therefore incomplete and any profit unlawfully acquired by commercial operators as a result of the practice in question may, in large, part be retained by them. The deterrent goal of the procedure is not achieved.

7.2.1.3.6 These procedures also give rise to a problem with regard to the relative effect of the judgement delivered. The decision delivered in connection with a collective action will be applicable only to those persons who were party to the action. Consumers who had not made themselves known will therefore be fully at liberty to initiate individual actions which could give rise to decisions which are in contradiction with those secured in the case of the collective action.

7.2.2 Opt-out

7.2.2.1 Traditional collective actions are based on a system known as '*opt-out*', under which all the persons who are the victims of a particular conduct are included in the action by default; the only persons excluded are those who have expressly made known their desire to be excluded.

A number of European States have drawn up a *sui generis* procedure in respect of collective actions based on the abovementioned system.

7.2.2.2 Advantages of this mechanism

7.2.2.2.1 An analysis of national systems based on the *opt-out* principle shows that this procedure is simpler to administer and more effective than the other procedures adopted by some Member States.

7.2.2.2.2 The system in question ensures that the persons concerned have real access to justice and, consequently, goes so far as to provide fair and effective compensation to all consumers who are the victims of particular practices.

7.2.2.2.3 This procedure also avoids administrative difficulties for both the plaintiff and the courts (the members of the group covered by the collective action make themselves known only at the end of the procedure and not in advance of the procedure).

7.2.2.2.4 The procedure also has a real deterrent effect on the liable party, since the latter is obliged to compensate all the persons who have been victims of a given practice and may have to refund the unlawful profit derived from the practice in question.

7.2.2.2.5 Account should also be taken of the advantages which this type of procedure offers to the commercial operator against whom the case is brought. Having recourse to collective actions makes it possible to achieve savings in human resources and financial savings with regard to the defence of the commercial operator involved and to organise the defence in a much more effective way. Rather than having to manage, simultaneously a vast number of similar cases being tried by a whole range of different courts, the party in question prepares his or her defence before a single court.

7.2.2.3 Drawbacks of this mechanism

7.2.2.3.1 This mechanism could be regarded as being at variance with the constitutional principles of a number of states and with the European Convention on Human Rights and, in particular, with the principle of the freedom to take legal proceedings, insofar as persons are deemed to be automatically part of the group covered by a collective action without having given their express agreement to be so included. If the persons concerned do not ask to be excluded, they could be bound by the decision that is delivered.

It is, however, perfectly possible to preserve this individual freedom. This could be achieved in one of two ways: either by forwarding to the persons concerned information addressed to them by name, which would make it possible to regard those persons who subsequently do not ask to be excluded as having given their tacit authorisation for the action. The other way in which this goal could be achieved is by giving members of the group concerned the right to ask to be excluded from the procedure at any time, even after the decision has been delivered and, if the decision taken is not favourable to them, to enable them to initiate individual actions.

7.2.2.3.2 The rights of the defence, such as the principle of an adversarial process and the principle of equality of arms would also be safeguarded: the commercial operator involved must be able to invoke individual means of defence against one of the victims who is a member of the group covered by the collective action. This principle is linked to that of having a 'fair trial' (Article 6 of the European Convention of Human Rights). Under the *opt-out* system it is indeed the case that all the persons concerned would perhaps not be designated by name and would not be known to the commercial operator against whom the action has been brought. The latter party could therefore find it impossible to invoke individual means of defence.

However, in the context of a collective action, the individual situations are inevitably homogeneous and the judge is the guarantor that this shall be the case. Litigation linked to consumer rights and competition mainly derives from contracts and the situation of the interested parties is therefore virtually identical. The legal issue (*causa petendi*) is one and the same. It is therefore difficult to see how the commercial operator could invoke a specific means of defence in respect of a single consumer.

Throughout the procedure the judge may have the possibility of throwing out an action in cases where he establishes that the situations of the claimants are characterised by considerable differences of law and fact.

Finally, when it comes to setting compensation, the judge has the possibility of establishing sub-groups in order to adjust, for example, the amount of compensation in the light of individual situations and therefore also in the light of possible reductions in liability.

7.2.3 *Opt-out* and *opt-in* according to the type of litigation

7.2.3.1 The system recently selected by both Denmark and Norway makes provision for both *opt-in* and *opt-out* procedures. The judge may decide to have recourse to an *opt-out* system if the litigation in question involves small amounts, if the claims are similar and if it would be difficult to pursue an *opt-in* procedure. There are many cases of consumer litigation in which consumers are unable to obtain an effective individual remedy because of the large number of individuals concerned and the small financial sums involved. Use of the *opt-out* procedure makes it possible to take account of all the persons concerned and to secure a penalty which is on a par with the level of unlawful profit which may have been made. In the case of litigation involving high levels of individual damage, the *opt-in* system is selected, making it necessary for each consumer to make themselves known in order to be party to the procedure.

7.2.3.2 Advantages of this procedure

The administration of the procedure is rendered easier in the case of mass litigation. The goal of providing redress is achieved if effective publicity is provided. The goal of serving as a deterrent is likewise achieved.

Any possible infringements of constitutional principles or the European Human Rights Convention are offset by the effectiveness of the process in respect of providing redress and serving as a deterrent.

7.2.3.3 Drawbacks of the mechanism

Attention should be drawn first of all to the difficulty in defining the boundary between the two procedures of *opt-in* and *opt-out*. The two states which have adopted these procedures have done so only recently and no concrete cases are yet available. The relevant laws refer only to: '*mass litigation in respect of small sums in the case of which the use of individual procedures should not be expected*'.

This problem of the lack of a clearly-defined boundary could give rise to very long debates during the procedure and to appeals which would extend the length of the procedure.

7.3 The role of the judge

7.3.1 In this particular type of procedure, which pits a large number of claimants against each other, the powers that are vested in the judge are of crucial importance.

7.3.2 In the majority of the procedures involving the *opt-out* principle, an initial phase of the procedure involves an examination carried out by the judge to determine whether the action is admissible. This same aim is served by the examination of the individual file in respect of *test cases*.

7.3.2.1 The importance of the stage involving verification of whether or not a case is admissible lies in the fact that this stage makes it possible to halt, at the beginning of the procedure, any claims which are manifestly unjustified or of a fanciful nature and which could unlawfully damage the image of the opposing party; this objective is achieved by preventing abusive or inappropriate procedures from being taken further.

7.3.2.2 It is the judge who guarantees that this stage of verifying whether a procedure is admissible is properly carried out. In concrete terms, he has the task of verifying whether the conditions set out in law for undertaking collective actions are respected.

7.3.2.3 In particular, the judge has to check whether:

— there are indeed grounds for a legal dispute (the proceedings initiated by the claimant must not be barred);

— the composition of the group makes it impracticable to engage in a joint procedure or a procedure involving a mandate;

— there are matters of law or of fact which are common to the members of the group (the same *causa petendi*);

— the claim against the commercial operator is consistent from the point of view of the alleged facts (the criterion of the probability of the alleged claim — '*fumus boni iuris*');

— the plaintiff is able to adequately represent and protect the interests of the members of the group.

7.3.3 At a later stage, it is also important that the judge is able to validate any proposed transaction or reject it if, in his estimation, it is not in the interests of the members of the group. To be in a position to do this, he must have greater powers than simply those of approving transactions, which are the powers usually vested in judges by law under the majority of judicial systems which apply in the EU Member States.

7.3.4 Given the particular nature of this procedure, there is also a need to make provision for appropriate procedures for the production of evidence. The judge must be able to use powers of injunction with regard to the opposing party or third party in order to secure the production of documents or he must be able to order measures of inquiry with a view to establishing new evidence. The legislation establishing collective actions must expressly stipulate that the judge may not refuse to take the abovementioned action once it has been requested by the claimants.

7.3.5 In order to enable judges to take on these powers in the most effective way possible, it would appear to be necessary to stipulate that only particular courts, designated by name, will have jurisdiction for collective actions. The judicial structures of the Member States should therefore be adapted accordingly and provision also needs to be made for judges sitting in the courts in question to receive special training.

7.4 *Effective compensation for damage*

7.4.1 Collective actions must enable claims to be made for compensation for material damage (financial damage), physical damage and compensation for pain and suffering and other forms of non-pecuniary loss. Since the aim of the action is both to compensate consumers and to provide a deterrent, it seems necessary to make provision for compensation of all forms of damage if this goal is to be achieved. It should also be possible to provide courts with simple, inexpensive and transparent evaluation methods, without abandoning the principle of compensation for damages.

7.4.2 Claimants involved in collective actions must also be able to secure several forms of damage from the court. In addition to stipulating the cessation of particular behaviour or the invalidity of an act which can still be carried out, compensation of damages must be able to take a direct or indirect form. Provision must also be made for compensation to be backed up by other forms of remedy, such as advertising the publication of the court's findings, public notices etc.

7.4.3 Direct, individual compensation must not be the only form of compensation envisaged, as under certain hypotheses, it would be difficult — if not impossible — to bring about, either because the members of the group concerned cannot be identified under the *opt-out* mechanism or because there are too many such persons, or yet again, because the amount represented by their individual damages is too low. The key requirements are that the persons involved should always be compensated — even indirectly — and that the deterrent effect should be achieved.

7.4.3.1 Appropriate machinery should be devised to address the following cases: the judge is able to calculate the amount of compensation to be paid to identified or identifiable members of the group (under the *opt-in* scheme, test cases or even under *opt-out* arrangements, in cases where the commercial operator has provided a list of the customers concerned, for example). Appropriate machinery should likewise be devised to address cases where distribution of payments to individuals proves to be too expensive in view of the small amounts of individual damages involved.

7.4.3.2 In the same way, if the sums are not all distributed, priority should be given to a measure of indirect compensation in respect of the residue of the compensation. In his decision the judge should set out in detail the action to be funded by the residue and he should adopt the procedures for monitoring this operation; responsibility for implementing these procedures may be delegated to a third party.

7.4.3.3 Should even this measure of indirect compensation prove to be impossible, the total amount of the residue determined by the judge shall be paid into a fund for supporting collective action in order to enable it to finance new actions.

7.4.3.4 If the judge is unable to calculate the amount to be paid to each individual by way of compensation in cases in which it is not possible to identify all the members of the group (this applies solely in the case of the *opt-out* mechanism), he must be able to establish an assessment grid for the different categories of damages. Responsibility for distributing the compensation sums may be delegated to the court registry, the lawyer representing the group or a third party (insurance agent, account, etc.); such arrangements have the advantage of relieving the court of responsibility for this long and complex stage of analysing individual claims.

7.4.3.5 In the case of the second hypothesis, the judge must be able to make provision for individual compensation for members of the group who have made themselves known following the publication of information on the judgement; the residue of the compensation is to be allocated to actions providing indirect compensation for the damage suffered by the group.

7.4.3.6 If no indirect measure is possible, the residue must be paid to the support fund.

7.5 *Appeals*

7.5.1 Collective actions must recognise the rights of either party to lodge an appeal.

7.5.2 Bearing in mind the importance of (a) the need to ensure that victims are compensated without delay and (b) making certain that the rights of each of the parties have been properly appreciated, there is a need to reconcile each party's right to lodge an appeal against the decision with the abovementioned overriding needs.

7.5.3 The recognition of this right of appeal should therefore oblige the Member States to establish a rapid appeal procedure in order to avoid the application of a purely stalling mechanism.

7.5.4 Furthermore, having the certainty that proper provision has been made in the accounts of the liable party for the compensation which it has been ordered to pay also provides a guarantee for the victims in the event of an appeal.

7.6 *Financing the system*

7.6.1 The collective action system must ultimately be self financing.

7.6.2 Given that it is not desirable, or even possible, to introduce a blanket system of US-style *contingency fees,* since such a system runs counter to the European legal system, it is essential to make provision for a form of financing which would enable claimants who do not have the requisite funds to instigate a collective action to obtain an advance in respect of their legal costs (lawyer's fees, cost of expert opinion in connection with the inquiry measures undertaken by the judge, etc.).

7.6.3 One of the ways of funding this system would be by establishing a 'support fund for collective action', provisioned by the sum of the 'unlawful profits' made by enterprises which have been convicted; these profits, as defined by the judge in the course of the procedure, could be so used insofar as they are not claimed by identified persons who have suffered direct injury ([35]).

7.6.4 The support fund may also (a) have the role of centralising all the information relating to ongoing collective actions and (b) be instructed to pass on information relating to the steps to be taken by the persons concerned with a view to making themselves known, excluding themselves from a collective action or securing compensation.

7.7 *Additional procedural rules*

From a detailed point of view, there will be a vast range of procedural rules which will have to be laid down but they will be listed only as a 'token entry'.

Such procedural rules will have to be drawn up in the case of:

— the arrangements in respect of notifying interested parties;

— legal expenses and legal aid;

— cooperation between judicial and administrative authorities in the Member States;

— deadlines in respect of the instigation of legal proceedings and prescribed periods;

— the use of the internet (eJustice).

8. **Legal instrument to be employed: a regulation or a directive?**

8.1 Provision could be made for the introduction of collective actions at EU level by having recourse to either a directive or a regulation; it is considered that a mere recommendation would, by definition, fall short of what is required for creating the conditions for effective, uniform action which are necessary to enable such a measure to be adopted in a harmonised way in 27 Member States.

([35]) A good example in this context is the 'support fund for collective action' set up in Quebec; this fund is regarded as playing a vital role in the development of collective actions. It is provisioned by the reimbursement of sums advanced to claimants who win their collective actions and from the residue of compensation payments not claimed by members of groups involved in collective actions. Claimants who instigate collective actions are able to secure from the judge the reimbursement of expenditure incurred in instigating the action only on condition that they provide supporting documents.

8.2 Provided that the content envisaged is extended to cover other matters and not only consumers' rights, and provided that Articles 65 and 67 of the EC Treaty are selected as the legal basis, the adoption of a regulation could be considered, on a par with, for example, the regulations on: insolvency procedures; the European enforcement order; the European order for payment procedure; the European small claims procedure; and the attachment of bank accounts.

8.3 If, however, it is decided to restrict — at least for an initial period — the field of application of this initiative to that of consumer rights, the most appropriate way of making provision for collective actions at EU level would appear to be by means of a directive; such a directive would follow up the directive on actions for injunction.

8.4 Considerable differences as regards procedural rules continue to exist between the Member States. The basic principles underlying collective actions should therefore be set out in general terms since the Member States would apply the directive having due regard to their usual procedural principles.

It is indeed not certain that, for example, harmonisation will be possible since the courts given jurisdiction to hear these actions would themselves depend on the rules applicable in each Member State as regards the administration of justice.

The methods of referral must be in line with the specific provisions of the Member States. The use of a regulation would therefore not be appropriate.

8.5 It would also appear to be self-evident that, in this case, the proposed directive must provide for full harmonisation in order to prevent Member States from making the system more binding to the detriment of enterprises which have their head office in the said Member States.

Brussels, 14 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which were supported by at least a quarter of the votes cast, were rejected in the debate:

1. **Point 7.2.2.2.4**

'The procedure also has a real deterrent effect on the liable party, since the latter is obliged to compensate all the persons who have been victims of a given practice ~~and may have to refund the unlawful profit derived from the practice in question~~.'

Reason

See point 7.6.3.

Result of the vote

Votes in favour: 104 Votes against: 114 Abstentions: 13

2. **Point 7.6.1.**

Delete:

'~~The collective action system must ultimately be self financing.~~'

Reason

Access to justice is the responsibility of the public authorities and must not depend on the success of previous actions which are unconnected with subsequent cases (see also reason for amendment to point 7.6.3).

Result of the vote

Votes in favour: 107 Votes against: 116 Abstentions: 10

3. **Point 7.6.3**

Replace:

'~~One of the ways of funding this system would be by establishing a 'support fund for collective action', provisioned by the sum of the "unlawful profits" made by enterprises which have been convicted; these profits, as defined by the judge in the course of the procedure, could be so used insofar as they are not claimed by identified persons who have suffered direct injury~~. It is up to the public authorities to guarantee access to justice, for example by assigning revenue from fines for contraventions of consumer law to financing collective actions.'

Reason

The form of recourse envisaged aims to provide compensation for damage suffered by consumers, but excluding 'punitive damages'. This concept borrowed from US practice inappropriately combines civil interests and criminal law. The mere fact of fully compensating consumers for their loss constitutes an effective deterrent for the liable party.

The question of whether a profit has been made as a result of contravention of the law or fraud is a matter for sanctions imposed by the public authorities. They may assign revenue from fines levied to facilitate access to collective actions. Responsibility for ensuring access to justice lies with government, which is subject to democratic scrutiny, rather than with private law individuals and organisations.

As the damages due will have been paid to the consumers who suffered the loss, it would be inappropriate to create an artificial link between the surplus from one action and actions in subsequent cases, particularly where the objective was no longer to obtain fair reparation for the consumers who had suffered loss in the case in question.

Result of the vote

Votes in favour: 104 Votes against: 106 Abstentions: 18

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: EU Consumer Policy Strategy 2007-2013 — empowering consumers, enhancing their welfare, effectively protecting them

COM(2007) 99 final

(2008/C 162/02)

On 13 March 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

Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: EU Consumer Policy Strategy 2007-2013 — empowering consumers, enhancing their welfare, effectively protecting them

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 31 January 2008. The rapporteur was Ms Darmanin.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 148 votes with 5 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC positively receives this strategy for 2007-2013 and believes this is a promising step forward in the area of Consumer protection strategy. The EESC recognises that this is an ambitious plan, albeit at times vague, which the Commission has undertaken and augurs that the objectives shall be achieved within the time frame specified.

1.1.1 However the EESC believes that a budget amounting to an average of EUR 22.7 million per year for the Consumer Strategy Programme is unfortunately too low an amount for the implementation of the actions outlined in this strategy. There is an evident mismatch between the ambition set out in the strategy and the resources allocated to the implementation of such strategy.

1.2 The EESC notes that, whereas the Strategy is a positive and ambitious one, the undertakings so far in the areas related to consumer policy have in fact been a disappointment and consequently do not augur well for the success of this strategy. To meet the ambitions it is necessary to set up a dynamic programme for the near future.

1.3 The EESC also notes that in the area of consumer protection, legislation has a pivotal role. On the other hand, existing legislation is not flexible, and a fair market could be of great importance to consumers and suppliers. When the market does not work well, legislation is inevitable. The EESC calls upon the Commission to ensure that where legislation is necessary, it is truly being implemented and observed. And it should not harm in any way existing consumer protection in Member States. One of the tools identified in this respect is better monitoring of the market for which the EESC calls upon the Commission to ensure proper macro and micro market research be carried out. Legislation needs to be coupled with enforcement and constant evaluation. Furthermore it is essential that legislation is simple and understandable, particularly in view that most players within the internal market are SMEs.

1.3.1 It is recommendable that the Consumer Policy Programme not only ensures enforcement and evaluation of the safeguarding of consumers rights but is also conducive to facilitating cooperation and coordination between the business sectors and the consumer protection organisations in member states. Ultimately, beyond legislation,, consumer rights are best protected once these two sectors work together for a common goal.

1.4 Consumer and Retailer/Service provider education is a key component to the observation and knowledge of legislation but also crucial for responsible and sustainable consumption and production.

1.5 The EESC considers essential that the following challenges are addressed within the 2007-2013 period:

— Increased use of technology for fair promotion and responsible consumption of goods and services — eCommerce is becoming an increased tool for purchasing of goods and services however there is no form of protection for the consumer under the current legislative framework as eCommerce advancements are faster than consumer protection stances in this field

— Enforcement of legislation there where necessary — Member State legislation and enforcement of such is different between countries within the EU. It is necessary that the ones with less enforcement are brought to the level of the 'better performing' Member States

— Redress for consumers, both collective and individual — consumers should have an easy and efficient means of seeking redress both in their country and also across

borders. Furthermore collective redress ought to be harmonised across the EU so that the groups of individual consumers and also corporate consumers (particularly SMEs) may avail for such redress

— Protection of consumer rights in international markets

— Involving consumer protection in all EU policies and legislation; and

— Strong supervision of some sectors in the market where the consumer protection is absolutely necessary.

2. **Gist of the Commission's strategy**

2.1 The strategy highlights the main challenges for this upcoming period. In essence these challenges revolve round the fact that the retail and services market is evolving and growing in a manner that greater empowerment has been devolved to the consumer. However this greater empowerment may result in greater segregations between consumers with knowledge and means, and vulnerable consumer groups. However, this empowerment does not consequently mean that consumer welfare is actually maximised; it is thus essential that consumer confidence is not compromised. Another challenge relates to the ability of businesses, particularly SMEs, to adapt to the technological advancements that bring about a change in the model of selling their product/service and rely more on eCommerce and tailored services to the consumer.

2.2 The objectives set out in the strategy to be achieved by 2013 are as follows:

— Empowering the EU consumers, as this is seen to be the key element in ensuring consumer welfare whilst boosting competitiveness, based on fair and relevant information, fair contracts and redress

— Enhance the consumer's welfare in terms of price, choice, quality, affordability and safety

— Effectively protect consumers from the serious risks particularly the ones that cannot be tackled by the individual directly.

These objectives are seen as the core elements in the internal market economic growth.

2.3 These objectives shall be reached through the EU consumer policy expenditure which shall be targeted through addressing the legal framework so as to ensure consumer protection and the effective application of legislation through enforcement, cooperation, information, education and redress.

2.4 The priority areas set out therefore cover the following fields:

— Better monitoring of consumer markets and national consumer policies

— Better consumer protection regulation

— Better enforcement and redress

— Better informed and educated consumers

— Putting consumers at the heart of other EU policies and regulations.

The Strategy highlights a number of actions within each priority area a number of which have been commented upon in the Specific Comments section.

3. **General comments**

3.1 The EESC welcomes the Consumer Strategy for 2007 to 2013 and particularly supports the concept clearly spelt out in the strategy that consumer confidence and protection is a core element to a healthy and prosperous internal market. However attention should be given to successful examples within the EU related to self regulation, co-regulation and setting up Codes of Conduct.

3.1.1 However, the EESC does not confine the consumer policy to the implementation of the internal market; on the contrary, as it has been correctly stated in the 'A single market for 21st century Europe' paper from the Commission [COM (2007) 724 final], it is the internal market that should be aimed at satisfying and serving consumer interests.

3.1.2 The EESC considers that the Commission must direct its policy towards transparency of the markets and the strengthening of the internal market, a consumers policy that works in favour of the efficient markets, contributes to economic growth and to the employment and improves the welfare of the consumers.

3.2 The challenges identified by the commission in the internal market are real challenges that need to be addressed and are in fact targeted in the strategy. However, whereas these are market challenges, the EESC believes that the Commission faces two other challenges: having national policies truly harmonised; and placing consumer welfare as a core outcome of the Commission's various DGs.

3.3 The EESC considers that this new communication from the Commission on the strategy for 2007/2013 is a very important and promising step forward and much better structured than the previous common strategy for public health and consumer policy [COM(2005) 115 final] about which the Committee has also produced an opinion ([1]).

([1]) OJ C 88 on 11.4.2006. INT/271 — Rapporteur Mr. Pegado Liz.

3.4 The EESC is concerned about inconsistencies that this proposal may create with other measures already approved on a Community level. There ought to be coherence of the operational objectives and the decision of the European Parliament and the Council establishing a Community programme of action on Consumer Policy (2007-2013) ([2]).

3.5 Although overambitious and sometimes vague and not very precise, the Committee augurs that the objectives set out by the Commission are reached within the time frame specified and in the manner most consonant with the requirements of the internal market and the consumers.

3.6 Whereas the Commission has already embarked on a number of initiatives in the realisation of the objectives of the Policy, such as the Green Paper on the review of Consumer Acquis, the Committee urges the Commission to embark on the review of specific directives with diligence. The recently launched communications on the implementation of the Distance Selling Directive [COM(2006) 514 final] of 21.9.2006, the Guarantees and Direct Producers Directive [COM(2007) 210 final) and on the implementation of Directives amendments to the Timeshare Directive 2007 in fact have been a disappointment to the EESC in the way that these proposals do not really go all the way in solving the impeding issues these services in fact have. Furthermore they do not do justice to the objectives set out in the Consumer Policy Strategy.

3.6.1 The EESC looks forward for the Commission's proposal for a Directive on contractual rights of the consumers as stated in its Legislative and Work Programme for 2008 [COM (2007) 640 final], and it will be ready to give its opinion once it is adopted on the issue and, particularly, in what concerns the fulfilment of the principles stated in the process of simplification of Community Law.

3.7 Full harmonisation of consumer law is an approach the EESC is prepared to support under certain conditions and for very specific purposes, when the implementation of the internal market is the major objective. However, such an approach should not be undertaken at the cost of weakening existing rights; it should consolidate consumer rights throughout the various Member States so as to encourage further cross border purchases, resulting in a win-win situation for both the consumer and the retail/service market. The approach should not only be at a level whereby the appropriate level of protection towards the consumer is undertaken by the Member State, but also at the EU level whereby efforts are made to truly achieve market integration.

3.8 The EESC welcomes the actions outlined in the priority areas within the Consumer Strategy. The Committee in fact looks forward to the implementation of such actions. The EESC considers that the resources (both financial and human) of the DG Consumer Affairs are in fact limited. This makes the task of the DG in accomplishing its objective even more arduous. Furthermore a budget amounting to an average of EUR 22.7 million per year for the Consumer Strategy Programme is unfortunately too low an amount for the implementation of the actions.

3.8.1 Experience with the former programme showed that too many aspects of the plans could not be implemented, also as a result of a lack of staff. Furthermore, the allocated budget on an annual basis was in fact more than the budget allocated for the current period that has less ambitious targets.

4. **Specific comments**

4.1 Better monitoring of the market: The EESC recognises that better market intelligence needs to be undertaken and in fact supports the measures being proposed under this priority. However the EESC strongly urges the Commission to find innovative ways so as to truly identify the experience and perceptions of the consumer. Additionally, the Commission may possibly wish to undertake a macro approach to identifying consumer experiences in MS through an analysis of real case scenarios and their resolution thereafter. Furthermore the Committee urges that the collection of market intelligence ought not to be at the cost of having additional cumbersome tasks which the individual companies, particularly SMEs, need to carry out.

4.2 Better consumer protection regulation: Initiatives being undertaken within this priority area should thoroughly consider the effects of eCommerce and the digital world have on the rights of the consumer and consequently clearly set out obligations and rights within the digital environment. Furthermore actions ought to be identified in order not to exclude sectors of consumers from being able to avail themselves of certain services due to the digital gap, as this would only result in having yet another vulnerable segment of consumers.

4.3 Better enforcement and redress: Enforcement is definitely required so as to ensure the objectives of this policy are in fact reached; more cooperation between the MS and the Commission is a must. Actions for collective redress being proposed by the Commission are welcomed and supported by the EESC. Such form of redress ensures that consumer problems that cannot be tackled by the individual are in fact seen to.

4.4 Informed and educated customers: the EESC strongly believes that education and information are thoroughly integral to having consumer protection. The European Consumer Centres Network (ECC-Net) has been a great step forward in providing information to the consumers. However the EESC believe that the Commission ought to also find some more innovative and creative means of actually communicating with the consumers in general and with the kind of language which appeals to the public.

([2]) Decision no 1926/2006/CE of 18 December 2006 — OJ L 404 on 30.12.2006, p. 39.

4.5 Responsible and sustainable consumption: whereas we should aim in having well informed consumers it is important to stress that consumption should be made responsibly. This strategy specifies that there shall be no room for 'rogue' retailers/service providers however it should also be stated that businesses and traders expect consumers to act responsibly in their consumption patterns. Furthermore sustainability in consumption should become an important area of the internal market and both service providers/retailers and consumers should be more well versed in what sustainable consumption is really all about and adopting such practice.

4.6 Consumer protection elements must be integrated in all EU policies and regulations: the measures proposed by the Commission, such as the Consumer Liaison Officers in the DGs, are positive ones and measures which should effectively see that this priority is reached. The EESC agrees with those who think that each DG ought to report on a yearly basis how consumer policy was integrated in their specific area. The EESC thus welcomes the inclusion of the No 2 of the article 153 in the general dispositions (new article 12 of the draft reforming treaty).

4.7 Better protection of consumers in international markets: it is necessary that consumers are protected also on the international market. Such protection should not only be related to the safety of products, which is an increasingly important area for EU consumers, but also to protection against services/products sold particularly through eCommerce which result in problems to the consumer.

4.8 The strategy indicates that the Commission set as an objective to assure that the general interest services policy (SGI) goes together with the right measures for the consumers. The Committee expects that the Commission shares the point of view of the EESC which has been expressed in various opinions on SGI and universal service, in line with the new Protocol on General Interest Services of the Lisbon Treaty.

4.9 Cooperation between industry and consumer protection organisations: beyond the realm of legislation and enforcement it is the cooperation of these two sectors that shall truly bring about consumer protection. Efforts ought to be made to facilitate such cooperation; examples of best practice from Member States who adopt such approach and also have codes of conduct to follow ought to be used across the EU.

Brussels, 13 February 2008.

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: European Space Policy

COM(2007) 212 final

(2008/C 162/03)

On 26 April 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council and the European Parliament: European Space Policy

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 January 2008. The rapporteur was **Mr Van Iersel**.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February 2008), the European Economic and Social Committee adopted the following opinion by 145 votes to 1 with 4 abstentions.

1. **Conclusions and recommendations**

1.1 For strategic reasons, political and economic, the EESC is explicitly in favour of independent European access to space. It therefore endorses policies as outlined in documents of the Joint Space Council, the Commission and ESA ([1]) in April and May 2007.

1.2 A European Space policy should aim at peaceful objectives, including safeguarding collective security.

1.3 The EESC believes European space activities, be they conducted at national level, in an EU or an ESA frame, will generate visible benefits in various areas, such as scientific research, a desirable provision of infrastructure and data, and a broad range of economic applications as a result of the integration of space-based and ground-based systems.

1.4 So far the ESA concept has proved successful. Combining it with Commission activities is intended to, and will, release additional potential. This should be supplemented by processes to ensure coordination, definition of remits and calculation of cost-sharing between the Commission and the ESA.

1.5 Worldwide developments — US, Russia, Japan, China, India, which are also space-faring nations — force to even stronger action of Europe as competitor and partner in space. This requires the elaboration of concrete programmes at short notice and initiation of decision-making processes that can keep pace with decision-making by other world players.

1.6 At the same time, a faster, coordinated decision-making process would improve opportunities to define and, subsequently, realise missions in line with user needs.

1.7 GALILEO and GMES are European 'flagships'. The GALILEO programmes should be implemented without delay.

1.8 The insertion of 'space' into FP7 and Community policies must lead to an integral approach of all concerned DGs. Such broadening of the base for strategic thinking within the Commission will bring along a beneficiary effect on integral approaches at national level which are often lacking. A coordinated effort on this front is desirable.

1.9 All Member States, including the smaller ones and the new Member States, must benefit from the European space policy by creating sufficient opportunities for scientific competences as well as for highly qualified industrial capacities across Europe in both the upstream and downstream sector.

1.10 In ESA's industrial policy ([2]) of 'fair return' each country gets back its own investment via subscription and concession. As a consequence relations between governments, ESA, private companies and research institutes reflect deep-rooted patterns.

1.11 Up to now, the principle of fair return has been successful in developing European space capabilities. But the increasing maturity of the space market will require more flexibility, as fixed patterns of relationships are as a rule not conducive to industrial innovation. Due to market pull, user's needs and service developments, in particular SMEs, are expected to respond appropriately to the new requirements and options in European space policy.

1.12 On the other hand, sudden changes of fixed procedures and relationships can be counter-productive, also taking into account the large disparities between contributions to ESA.

1.13 Therefore the EESC advocates an open and transparent analysis and a dialogue on Europe's desirable performance in ten years time: which objectives and corresponding institutional tools — regarding ESA, Commission and Member States — are needed to fulfil a jointly coordinated European mission. Amongst others, the dialogue should include the way ESA is financed, the dynamic contribution of medium-sized companies, and the maintenance of the highest level of competition.

([1]) European Space Agency.

([2]) The ESA has its own industrial policy. Its form and content should not be confused with the sector-based industrial policy of the Commission.

1.14 In this respect the responsibility of the Commission for applications and the promotion of users' needs is crucial. The EESC trusts the Commission guarantees open discussions and involvement of the private sector, in particular SMEs.

1.15 The EESC agrees with the Council on the significance of space for defence and security. A push should be given to plan future systems that bring European countries together.

1.16 As the boundaries between civil and military applications are blurring, full use should be made of so-called dual-use effects.

1.17 Finally, communication is crucial. The EESC is of the opinion that the daily-life benefits of space should be better communicated.

1.18 A well targeted communication on European Space policy should foster positive incentives to youngsters regarding this sector, and should, more generally, enhance the attractiveness for young people to enter into scientific and/or technical education.

2. **A new approach towards a European Space Policy**

2.1 During the last decade the European Institutions and national task forces have increasingly dealt with the debate on new steps regarding the future of a European Space policy.

2.2 In April 2007 the Commission published in close cooperation with ESA ([3]) a Communication on space policy ([4]), an accompanying impact assessment and an extensive programme of intended actions by ESA, Commission and Member States.

2.3 On 22 May 2007 the Space Council ([5]) adopted a Resolution on the European Space Policy, based on the Communication of the Commission.

2.4 This enhanced interest, as illustrated in abovementioned documents, is stimulated by a wide variety of global developments and European strategic aims:

— the potential of the use of space-based services both for all sorts of issues and as a tool for a wide range of European policies, such as environment, security, transport, research, development aid, cohesion and education, all these in addition to research;

— the ongoing necessity for Europe to have an independent access to space as a prerequisite for a European Space Policy;

— a growing number of (emerging) world players in this field and the need for Europe to be a full player both as a partner and as a competitor;

— space as a source of innovation, industrial competitiveness and economic growth;

— reinforcement of scientific infrastructure; knowledge-based society and Lisbon objectives;

— the need to link European research to applications;

— the contribution and complementary role of space-technology to earth-based technologies and applications;

— the significance of space to European defence and security;

— the blurring boundaries between civil and military applications of space technologies;

— the awareness that single Member States are not able to meet the necessary requirements of a credible space policy; and consequently;

— the need to clearly define tasks and mandates of European Institutions and organisations as regards space.

2.5 In 2003 and 2004 the European Commission presented a Green and a White Paper on Space Policy. In both papers the outlines of a future space policy became manifest. They contained many elements — sometimes far-reaching — which are elaborated in the aforementioned Communication.

2.6 In its Resolution of 22 May the Council confirmed that the space sector 'is a strategic asset contributing to the independence, security and prosperity of Europe and its role in the world'. Intensifying European cooperation for the delivery of space-based services to the benefit of citizens is a key issue. The Council linked space policy to the Lisbon strategy and underlined its relevance to the Common Foreign and Security Policy.

2.7 The Council's Resolution stresses the goal of the build-up of the European Research Area and reaffirms the cooperation between ESA and the Commission which will foster efficiency, increased funding of European programmes, and more cohesion between technology and application. The ESA-Commission relationship will evolve through experience-based evidence. However, the question of co-financing of existing basic infrastructure (Kourou, Darmstadt) remains open.

2.8 A central issue is the cooperation and the division of labour between ESA and the Commission. ESA is leading in exploration and technology, the Commission will be responsible for applications which are related to its own policies such as transport, environment, security and relations with third countries as well as for the identification of non government users' needs for improved services.

([3]) The ESA (European Space Agency) is a completely independent organisation. It currently has 17 Member States. Not all ESA Member States are members of the EU, and not all EU Member States are members of the ESA. The ESA is jointly financed by these Member States and has a mandatory programme and optional programmes.

([4]) COM(2007) 212 final.

([5]) The Space Council is the Joint Space Council, a fusion between the Competitiveness Council and the intergovernmental Space Council for decision-making on ESA policies.

2.9 Cost-efficiency in public sector programmes will contribute to the competitiveness of private industrial and commercial companies. In particular SMEs and the supplier industry are important. At the same time the Council recognises ESA's industrial policy, in particular its 'fair return' principle, as an instrument to motivate investment and enhance European competitiveness.

2.10 Undeniably, the Resolution of last May introduces a new stage that was exuberantly welcomed by the leading actors ([6]).

3. **General remarks**

3.1 The world of space is changing fast. During the last decade the EESC has positively welcomed the Commission's Green and the White Papers on space policy ([7]). Again, the EESC strongly endorses the new steps of the Council, the Commission and ESA last May. It is symbolic that the breakthroughs regarding space policy are taking place at the beginning of the 21st century. A new era starts.

3.2 Worldwide developments in space have an increasingly strategic and technological impact.

3.2.1 Space policy is unmistakably becoming more important, if not indispensable, to contribute to earth-bound objectives, in other words, space applications are of vital importance to realise economic and societal goals for an integrating Europe.

3.2.2 In science and research progress on astronomy and planetary research is manifest. ESA benefits from existing networks. It adds with focussed programmes and peer reviews. As opposed to the scientific world the military sector is still nation-based.

3.2.3 Strategically, Europe has to safeguard its independence vis-à-vis the US and Russia, and, increasingly, China and India, and other space-faring nations, which are all at the same time competitor and partner in space. More generally, the position of Europe in the world should be the point of departure for any space policy.

3.3 The Resolution of the Space Council of 22 May 2007, and the accompanying documents such as the Commission's Communication 2007, its impact assessment, the statement by the Director-general of ESA, and the preliminary elements of a common European programme covering ESA, the Commission and the Member States are a big step forward, when one keeps in mind that:

— from the outset the rules of the Internal Market were not applied to space as a consequence of national strategic concepts, programmes, and military needs;

— there were substantial differences between national interests, financial commitments, technological objectives and industrial performances, and

— accordingly, separate national industrial patterns are often prevailing.

3.4 The Framework Agreement of 2003 ([8]) between ESA and the European Union laid the foundation of convergent planning and actions in the EU and ESA. Now, the Council formulates a global approach aiming at better coordinating and enhancing the efficiency of individual projects, be they national, intergovernmental or European.

3.5 In the view of the EESC, among important elements are the growing consensus and common vision between Member States; the confirmation of the cooperation between the Commission and ESA and a division of responsibility between these two bodies, providing the basis for increased EU funding; a better balance between R&D and applications, and, most importantly, the explicit intention to put users' needs in front; public private partnerships; and the priorities — 'flagships' — of GALILEO and GMES ([9]) within the framework of a European space policy.

3.6 It has to be noted, though, that the intended steps are part of a lengthy process that certainly is not yet in its final phase. Concrete projects and funding flows have still to be worked out.

3.7 The total budget 2005 of space activities of ESA, EUMETSAT and the Member States came to EUR 4.8 bn. (excl. the EC) ([10]). The EC will dedicate a guaranteed sum of over EUR 1.4 bn (2007-2013) to space applications and activities through its FP7 programme. Worldwide space budgets come to EUR 50 bn. The US's budget is roughly EUR 40 bn. of which more than 50 % is military. Moreover, American expenditure is driven by an all-American concept which has its effects on the cooperation between the various institutions and business ([11]). Above all, the US is a closed market which is large enough to support US space industry without having it to compete successfully on the international commercial market.

([6]) Amongst others the Press releases of the European Commission and of ESA regarding the results of the Space Council of 22 May are headings as follows: 'Space Council welcomes historic European Space Policy', and 'Europe's Space Policy becomes a reality today'.

([7]) EESC Opinion on the Communication from the Commission 'The European aerospace industry: meeting the global challenge', (Rapporteur: Mr. Sepi), OJ C 95, 30.3.1998, p. 11.
EESC Opinion on the Green Paper on European Space Policy (Rapporteur: Mr. Buffetaut), OJ C 220, 16.9.2003, p. 19.
EESC Opinion on the White Paper 'An action plan for implementing the European Space Policy' (Rapporteur: Mr. Buffetaut), OJ C 112, 30.4.2004, p. 9.

([8]) The EC-ESA Framework Agreement, October 2003, introduces a working method and a closer relationship between ESA and the Commission.

([9]) Global Monitoring for Environment and Security.

([10]) ESA EUR 2 485 mln, EUMETSAT EUR 330 mln, Member States (France, Germany, Italy, Spain) EUR 1 190 mln (civil) and EUR 790 mln (military).

([11]) On the other hand, the efficiency of a common American concept and a central organisation must not be exaggerated. The individual states and the companies, each with their own representatives on Capitol Hill and their own lobbies and networks, influence the pattern of contracts and objectives. NASA also suffers from bureaucracy and from being a monopoly.

3.8 European space activities are a mix of European (intergovernmental or communal) and national programmes. ESA is doing more than just coordinating projects and has so far proved extraordinarily successful; the ESA is an R&D Agency developing large successful infrastructures at European level. The large European operators of the ESA in space include: Arianespace, EUMETSAT, Eutelsat. Besides these programmes some Member States have their own programmes based on national political and technological traditions and objectives, and, accordingly, on national capacities, networks and applications. The European pattern consists of a complicated system of common and national programmes.

3.9 It is likely that new Member States will join ESA which would raise the number of member countries from 17 to 22 ([12]). Benefits should be drawn from existing scientific competences and from the potential reinforcement of economic clusters.

3.10 Overlap between national programmes and ESA is quite possible. Defence driven projects have so far remained largely national. This can also create inefficiencies because of the blurring of boundaries between technologies for military and civil objectives. The new global approach may help to foster convergence.

3.11 The budgets are related to infrastructure and data collection. The better the relationship with business and market forces is organised the more extensive multiplier effects through applications and services. In this respect EUMETSAT (the operator for meteorological satellites) is an illustrative example. It may provide a very useful model for other sectors.

3.12 Given budgetary constraints it is wise that Europe is focussing on priorities and is fully open to international cooperation. International cooperation has a great added value with sometimes impressive multiplier effects. However, to step in as equal partner with third countries Europe's capacities also need to meet sufficient basic requirements besides the priorities. It is desirable that such requirements are commonly agreed upon, and that, subsequently, sufficient investments are made.

3.13 In a recently published Opinion, the EESC fully endorses GALILEO, a European global navigation project ([13]). GALILEO will guarantee more accurate timing positioning and timing data worldwide for civil applications in a broad field of areas. It is comparable to the existing American GPS, but it will also add to it.

3.13.1 GALILEO will confirm the European position as an independent player in space.

3.13.2 There was no satisfactory business case for the upstream sector. The EESC welcomes the decision of the Council to fund GALILEO and the definition of the programmes. These programmes should be implemented without delay in order to create favourable conditions for the downstream sector ([14]).

3.13.3 Apart from the obstacles for a viable public private partnership which is generally a complicated affair anyway, there are a number of other open questions which are urgently to be solved in order to achieve an effective involvement of private partners.

3.14 In addition to existing services GMES will provide an increasingly indispensable coherent set of earth-observation based services. It will 'improve Europe's monitoring and assessment capacity in environment and contribute to addressing security needs' ([15]). Dynamic worldwide developments show to what extent new tools are desirable to address new challenges of environment, climate change, health, and personal and collective security.

3.14.1 These challenges concern a very broad range of areas, from natural disasters and crises to climate change impacts as gas emissions and air pollution, and to civil protection and border control.

3.14.2 The relevant applications in this field are user' driven — with users coming from very varying communities representing policymakers, public services, companies and citizens — which underlines the need for increased coordination between ESA, the Commission and the Member States, and the desirability of a collection of the needs by the EC.

3.14.3 GMES services will benefit the development and implementation of various EU policies. Given the expected added value of GMES, the budget (2009) must provide operational funding for services and space applications to support EU-policies.

3.14.4 Also in the case of GMES infrastructure it is governmental responsibility to collect data in a reliable and sustainable way. Subsequently, conditions have to be created for participation of private business.

3.15 GALILEO, GMES and the other programmes all illustrate that space policy is becoming operational and supportive to ongoing technological performances and applications which will help to use new methods of analysis, anticipation and solution of societal issues.

([12]) Including the participation of two non-EU countries, Switzerland and Norway.

([13]) EESC Opinion on the Green Paper on Satellite Navigation Applications (Rapporteur: Mr Buffetaut), CESE 989/2007 (not yet published in the Official Journal). The opinion is discussing amongst others a number of aspects which according to the EESC should have been addressed by the Green Paper.

([14]) In that perspective a new development is that the European — downstream — industry is bundling its views in 'Galileo Services (GS)' and in the European Association for Remote Sensing Companies (EARSC).

([15]) Communication on European Space Policy, page. 6.

3.16 It is important that all Member States, including the smaller and the new Member States, benefit from European space policy. A commitment of all Member States is also in the common interest of the Union as such.

3.17 The new Member States will certainly profit from applications. Moreover, opportunities should be created for them to bring in their existing scientific competences and their highly qualified industrial capacities in order to strengthen their potentialities.

4. **Governance**

4.1 The Space Council met for the first time in November 2004 to discuss and to promote European convergence and Europe-based programmes. The EESC hopes and trusts that the guidance given by the Council last May creates the desirable context for a space policy which is in accordance with the European ambitions.

4.2 Better institutional provisions are always indispensable for progress. In this respect the EESC welcomes the increasing involvement of the Council and the Commission in space matters as well as the foreseen well defined cooperation and division of responsibility between ESA and the Commission.

4.3 The Space Council creates the desirable platform for discussion on intergovernmental and community-related approaches, which will have to be connected effectively.

4.4 The insertion of 'space' into Community policies and FP7 with a special chapter Space Policy must be made visible through the intended engagement of all concerned DGs. This integral engagement will broaden also the base for strategic thinking. In this regard the specific EU competence for Space in the new Treaty will certainly be helpful.

4.5 The legal order, often overlooked, requires specific attention. In a 'single-state' context like the US the existing legal order is a natural framework for concrete activities and accompanying regulation. By contrast, in the complicated European context — ESA, Commission, sovereign Member States — a well-structured legal order is lacking which is counter-productive. Taken into account the extension of space-related activities in the EU a coherent and logical legal/institutional framework will become all the more indispensable.

4.6 The Commission's responsibility for applications and the involvement of various DGs will positively influence the discussion and cooperation with the private sector. It will open new avenues for user driven projects.

4.7 A specific aspect to be mentioned is the provision in the New Treaty concerning the link between the High Representative for Foreign Affairs in the Council and the vice-Chairmanship of the Commission, which will be united in one person.

4.8 One of the main rationales for a European Space Policy is that strategic thinking by the Commission will also bring along a beneficiary effect on integral approaches at national level which is often lacking. The involvement of DGs of the Commission will also foster networks with (potential) users in the national administrations.

4.9 For the same reason the establishment of a GMES-Bureau within DG Enterprise in charge of coordination is most welcome.

4.10 The involvement of the Commission gives space policy a place amidst the other Community policies. This will help to improve the image of the benefits of 'space' to the citizens.

4.11 Hitherto the world of 'space' has been too isolated and not well communicated. Effective communication by the Commission and the Council should emphasise the implications of 'space' for society. A well targeted communication should also include positive incentives to youngsters regarding space and, more generally, incentives to enter into scientific and/or technical education.

4.12 The EESC underlines the great importance of a systematic and overall transparent evaluation and a correct implementation. The complex relationship between research centres, public authorities in the EU and the Member States, and private business, together with the complicated financial and organisational arrangements, requires monitoring. In a dynamic interaction effective monitoring will lead to transparency, and possibly to simplification and to new views and projects, as well as their financing.

5. **Fair return and private sector**

5.1 Strategic concepts and programmes in Member States, specific national relationships with private companies, intergovernmental cooperation in and beyond the EU, and technology-driven ESA as an intergovernmental Agency explain the principle 'fair return': each country gets back its own investment in ESA-activities under the form of contracts to its industry via a complicated pattern of subscription and concession. Under the actual circumstances ESA's industrial policy is successful.

5.2 Consequently, relations between governments, research institutes, ESA and private companies reflect deep-rooted patterns, also because the space sector is a circumscribed and highly specialised market.

5.3 Decisive developments are to be taken into account:

— the need for strengthening European presence in the world;

— the use of the 'universe' for civil needs and peaceful objectives, including collective security;

— the political and financial participation of the EU and the Commission in a broad range of areas;

— the increased emphasis on application and users' needs, the switch from technology push to market pull;

— the changing role of private business.

5.4 The Council advocates the continuation of the 'fair return' principle in the case of ESA. In this respect the interests of the ESA-Member States do not coincide in all dimensions. It has to be noted that the 'fair return' principle has already evolved through a more flexible approach than was usual before, and that it is gradually modernised. In the view of the EESC, this principle should, first and foremost, become sufficiently flexible to allow (still) country-based highly qualified medium-sized companies to become appropriately involved.

5.5 In case of participation of and funding by the Commission the EU-rules prevail, i.e. competition policy and the rules on Public procurement. The EESC also welcomes the fact that the Commission is developing appropriate tools and funding rules for Community measures on space, with due consideration for the specific nature of the space sector, allowing Member States to have a balanced sectoral structure for space.

5.6 An important point of attention is the role of SMEs in developing services. A distinction must be made between big, often internationally operating, companies and a large number of specialised mostly country-based medium-sized companies looking for opportunities in European space. Consortia of SMEs in space need support.

5.6.1 The role of specialised medium-sized companies is increasing anyhow ([16]). This will probably be all the more so in this sector due to the emphasis on market pull and users' needs and a dynamic involvement of smaller companies in service development. Operational planning and projects in cooperation with medium-sized companies will become more usual.

5.6.2 Up till now space policy was largely separated from other parts of the economy. The switch in emphasis, the horizontal approach, and the cooperation between ESA and the Commission will contribute to link technology, public investments and private business. The experience of EUMETSAT with its development of operational services can be of practical value for GMES.

5.6.3 As concerns satellites business planning, marketing and commercialisation may introduce beneficial practices. Networks with medium-sized companies will be intensified.

([16]) See in this respect the EESC opinion on the Value and supply chain development in a European and global context (Rapporteur: Mr van Iersel), CESE 599/2007.

5.7 Space-based and ground-based systems should be integrated as is foreseen for GMES. Intelligent sensor networks can be further developed.

5.8 Involvement of industry requires a precise definition of EU demand. The increased emphasis on services and users' needs besides research, data collection and infrastructure implies a constant fine-tuning between science and application across Europe ([17]).

5.9 However, as noted earlier, applications require underpinning technological development. Among others, the ESTP ([18]), bringing together scientific and industrial actors, is a very promising platform for the identification of the desirable technologies. It is expected to set the long-term Strategic Research Agenda. ESTP can also provide links with other industrial fields and areas.

5.10 Up to now, the principle of fair return has been successful in developing European space capabilities. But the increasing maturity of the space market will require more flexibility, as fixed patterns of relationships are as a rule not conducive to industrial innovation. Due to market pull, user's needs and service developments, in particular SMEs, are expected to respond appropriately to the new requirements and options in European space policy.

5.10.1 In this respect the large disparities between national contributions to ESA, in particular in case of the new Member States and the smaller countries, as well as non-EU countries (belonging to the ESA), have also to be taken into account.

5.11 Therefore the EESC advocates an open and transparent analysis and a dialogue on Europe's desirable performance in ten years time in order to preserve and improve its position in the world: which objectives and corresponding institutional tools — regarding ESA, Commission and Member States — are needed to fulfil a jointly coordinated European mission, including a dynamic contribution of medium-sized companies and guaranteeing the highest level of competition.

5.12 Such analysis and dialogue should also include the way ESA is financed, in particular the effect of the optional contributions, and how procedures and progress in integrating the use of space services in the EU internal market can be foreseen. In the areas where the DGs of the Commission will be involved, special funding rules and cost-sharing calculations should be drawn up.

([17]) *'… we can no longer pursue the double monologue of industry inviting institutions to define their needs and institutions inviting industry to propose services meeting their needs.'* See letter of ASD-Europspace, 20 July 2007 to Commissioner G. Verheugen and Mr J.J. Dordain, ESA.

([18]) European Space Technology Platform, a combined platform of the major stakeholders, including: the participating countries in EU, ESA, European Space Industry (over 100 companies) and Eurospace, Research Laboratories and Universities, and National Space Agencies and 21 Organisations.

5.13 Modern sector-based industrial policy as it is developed for various sectors by the Commission can also be of help, taking into account the specific characteristics of space. Among these are the need for publicly financed technologies and infrastructure, the development of prototypes, the absence of a real market in various segments, and the active government-led and –financed space related industrial policy in the US and elsewhere.

5.14 As a first step a concretisation of the policymakers' views of the industrial ambitions of Europe is urgently needed towards industry.

6. **Defence and Security**

6.1 The Council's Resolution underlines the significance of space for defence and security. A common strategy concerning European military capabilities is debated increasingly.

6.2 This debate fits in the desirable progress of a common foreign and security policy. The EESC welcomes the gradually accepted conclusion that security should no longer be a single policy, but a mix of policies of and within the European Institutions ([19]).

6.3 It has also to be kept in mind that the boundaries between civil and military applications are blurring. It is recommendable to highlight the possible reciprocal opportunities for the sets of requirements in both sectors. Military systems may profit from civil European missions due to the dual-use effect of civil and military applications.

6.4 At the moment ownership, governance and budgets in the field of security are strictly national. Synergic approaches among different countries are rare, although some actions in the sector defence are coordinated in a European framework. There are several options for the future, from a 'light' degree of European cooperation to a full-fledged common European model.

6.5 The EESC is of the opinion that for security, technological and budgetary reasons a push should be given to plan future systems that bring European countries together.

6.6 The national logic in security is deep-rooted. But starting with a common vision on the future, including also compelling global developments, concrete projects can be started and experience-based evidence may foster progress.

6.7 In order to avoid unnecessary duplications, specialisation and division of labour could be a part of this planning ([20]). Research programmes could be set up which help to develop technical capabilities.

6.8 In this respect EDA ([21]) as one of the actors can be given room to develop special competences such as defining capabilities, proposing development programmes and coordinating national Defence and Space Agencies and ESA.

6.9 The New Treaty holds also out prospects of broadening initiatives by the Commission and the Council to foster security research, although any consequent overlaps or duplication should be avoided.

6.10 Decisions of this nature require preparation and, subsequently, commitments by the Space Council and the General Council. Institutional improvements, introduced by the new Treaty, will be supportive.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([19]) *'Today, space policy for security is not a single policy, but a mix of policies pursued by the MS, the Space Council, the Commission and eventually EDA. This composite panorama requires a better coordination to rationalise the governance and avoid duplications.'* See 'The Cost of Non Europe in the field of satellite based systems' FRS-IAI Report, Fondation Pour la Recherche Stratégique, Paris and Istituto Affari Internazionali, Roma, 24 May 2007.

([20]) A precursor is the MUSIS six-nations agreement, i.e. Multinational Space-based Imaging system for Surveillance, reconnaissance and observation.

([21]) European Defence Agency.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council and the European Parliament on the implementation of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability

COM(2007) 210 final

(2008/C 162/04)

On 24 April 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council and the European Parliament on the implementation of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability

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 31 January 2008. The rapporteur was **Mr Cassidy.**

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 145 votes to three with six abstentions.

1. **Conclusions and Recommendations**

1.1 The Commission's transposition checks have shown up significant divergences between national laws transposing the Directive 1999/44/EC. Some of these may be due to regulatory gaps in the Directive, others can already be considered as incorrect transposition of the Directive. It is unclear at present to what extent those divergences affect the proper functioning of the Internal Market and consumer confidence. The EESC recommends that the Commission study the implications for both the Internal Market and consumer confidence as a matter of urgency ([1]).

1.2 As a consequence of the above, the EESC urges the Commission to take enforcement action against those Member States who have, as yet, failed to implement the Directive 1999/44/EC correctly.

1.3 The Green Paper on the *Consumer Acquis* reveals a number of cross-cutting issues. The Commission has identified during its review some problems relating to the implementation of the Consumer Sales Directive, especially in so far as the issue of Direct Producers' Liability (DPL) is concerned.

1.4 The EESC believes that the Consumer Sales Directive is also defective in dealing with the regulation of manufacturers' and retailers' guarantees, for example, the conformity requirements under Article 2 of the Directive.

1.5 There is no overwhelming evidence for amending Directive 1999/44/EC in isolation to introduce DPL. The Green Paper on the Review of the Consumer Acquis ([2]) initiated public consultation on this and other issues, which were identified by the European Commission during the review of the EU consumer protection legislation (i.e. the eight Consumer Directives ([3])). The EESC recommends therefore that the Commission considers the desirability of introduction of DPL in a possible

([1]) The University of Bielefeld (Germany) has developed a comparative analysis of the different national regulations, including possible barriers to trade or distortions of competition resulting from the eight directives listed under footnote 3 (this comparative study is available under http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/comp_analysis_en.pdf).

([2]) COM(2006) 744 final ('the Green Paper').

([3]) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ L 372, 31.12.1985, p. 31.
Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59.
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29.
Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis, OJ L 280, 29.10.1994, p. 83.
Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144, 4.6.1997, p. 19.
Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, OJ L 80, 18.3.1998, p. 27.
Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L 166, 11.6.1998, p. 51.
Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12.

legislative follow-up to the Green Paper (e.g. 'horizontal' directive) favoured by bodies such as UGAL ([4]) and BEUC. However, the EESC emphasises that the results of this initiative should not put an undue burden on the business sector as requested by Eurocommerce.

1.6 Before the Commission introduces a horizontal directive, the EESC believes that an Impact Assessment is needed.

1.6.1. This is the case of the scope of the Directive. The EESC agrees that the Directive shall apply to additional types of contracts under which goods are supplied to consumers (e.g. car rental) and to contracts under which digital content services are provided to consumers (e.g. on line music). This is also the case of the second-hand goods sold at public auctions where the consumer attends the sale in person. Other aspects such as the definition of delivery, the passing of risk, the notion and extension of time limits of conformity of goods, the coverage of recurring defects, the regime of the burden of proof and even certain remedies should be considered as part of an horizontal instrument in the framework of a mixed approach to the revision of the Consumer Acquis, and the discussion of the details on these topics should take place when a proposal on such an instrument will be disclosed for consultation and public discussion.

1.7 Stakeholders and Member States have diverging opinions as to the impacts of DPL on the level of consumer protection and the Internal Market. A majority of the Member States and a number of stakeholders consider that DPL potentially increases consumer protection. Some consider that the producer is better placed than the seller to bring goods into conformity with the contract. Others believe that DPL would not increase consumer protection but rather cause legal uncertainty and significant burdens for businesses. The EESC believes that more information is necessary on these points ([5]).

2. **Introduction**

2.1 On 24 April 2007, the European Commission adopted the Communication on the implementation of Directive 1999/44/EC (the 'Consumer Sales' Directive) on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability as provided by Article 12 of the Directive.

2.2 On 8 February 2007, the European Commission adopted its Green Paper on the Review of the Consumer Acquis. The Directive 1999/44/EC is one of the eight Consumer Directives listed in Annex 2 of the Green Paper.

2.2.1 Annex 1 of the Green Paper also poses a number of questions on specific rules applicable to Consumer Sales. This opinion is intended to give guidance to the Commission in response to its Communication COM(2007) 210 final 'on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability'. The EESC delivered its opinion on the Green Paper ([6]) at its Plenary of 11 and 12 July 2007 and decided at that time not to give any opinion on the specific matters, namely on the questions raised by the Commission about the consumer sales directive, which will be covered in the Commission proposal for a framework directive on consumer contractual rights.

2.2.2 In its Green Paper the Commission presents a number of cross-cutting issues for public consultation. These include issues relating to gaps and regulatory shortcomings the Commission has identified during the review of the consumer acquis, including those stemming from the Directive 1999/44.

2.3 All Member States have transposed the Directive ([7]). The purpose of the Communication is to examine how Member States have implemented it. The Communication forms part of the process of **reviewing the consumer acquis**, which is consistent with the better regulation objectives pursued by the Commission, the European Parliament and the EESC in terms of simplification of the regulatory environment.

2.4 The Directive aims at harmonising those parts of consumer sale contract law that concern legal guarantees (warranties), and to a lesser extent, commercial guarantees.

2.5 All Member States were required to implement the Directive into their national law by 1 January 2002 and were also allowed to adopt more stringent provisions in favour of the consumer.

2.6 The Commission draws attention to the shortcomings of some Member States in implementing the Directive.

3. **Summary of the Commission Communication**

3.1 This Communication is concerned with the implementation of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (the 'Consumer Sales' Directive) across Member States and examines the case for introducing, at Community level, direct producers' liability, as provided by Article 12 of the Directive itself.

([4]) UGAL: Union des groupements de détaillants indépendants de l'Europe.
([5]) See footnote 1.
([6]) CESE 984/2007, rapporteur Mr Adams, OJ C 256 27.10.2007.
([7]) OJ L 171 07.07.1999 p. 12.

3.2 The Commission Communication highlights difficulties experienced by some Member States in implementing the Directive. In particular problems arise from diverging definitions of *'consumer'* and *'seller'* where there are different definitions in other Community acts.

3.3 Similarly the definition of *'consumer goods'* in Article 1(2)(b) of the Directive determines its scope. Member States have transposed the definition in different ways. In some Member States the relevant laws also apply to consumer sales of real property.

3.4 Some Member States exclude *'second-hand goods sold at public auctions where the consumer has the opportunity to attend the sale in person'*. Some have made use of this option. Others have chosen to limit the sellers' liability for such goods.

3.5 All Member States have introduced national laws transposing the requirements of the Directive. Article 12 provides that the Commission submit to the European Parliament and the Council (within a specified period), a report on the application of this Directive across Member States, in particular examining, *inter alia*, the case for introducing direct producers' liability and, if appropriate, be accompanied by proposals. This Communication discharges that obligation.

3.6 Part I of this Communication reports on the implementation of the Consumer Sales Directive across Member States and Part II examines the case for introducing the direct liability of producers towards consumers in the EU legislation.

3.7 The transposition of the Directive has raised a number of problems. Some of them may be due to regulatory gaps in the Directive, but others can already be considered as incorrect transposition of the Directive. The Commission checks have shown up significant divergences between national laws as a result of the use of the minimum clause and the various regulatory options provided by the Directive. However, it is not clear at present to what extent those divergences affect the proper functioning of the Internal Market and consumer confidence.

3.7.1 The Green Paper presented for public consultation a number of cross-cutting issues relating to gaps and regulatory shortcomings the Commission has identified during its review of the consumer acquis, including those relating to the implementation of the Directive. For these reasons, the Commission has decided not to submit any proposal at this stage in respect of the Directive.

3.7.2 So far as the issue of DPL is concerned the Commission has concluded that it has insufficient evidence to determine whether the lack of EU rules has an adverse effect on consumer confidence in the internal market. The issue is being considered further in the context of the Green Paper.

3.8 In its opinion on the Green Paper on the Review of Consumer Acquis ([8]) the EESC concludes that it has doubts that the approach put forward can lead to a high and uniform level of consumer protection across the EU. Genuine democratic legitimisation of the revised consumer acquis is necessary together with a clear legal and conceptual basis. The EESC draws attention to the poorly regulated digital environment. Any proposals for harmonised rules in the field should be backed by a proper impact assessment, and pursue simplification and clarification of existing rules. Better enforcement measures and strengthening or introducing clear and simple processes for achieving redress should be emphasised as a priority. Harmonisation of consumer legislation across the EU must take, as a guiding principle, the adoption of the best and highest level of consumer protection to be found in the Member States.

4. **Transposition problems**

4.1 The Commission's transposition checks have shown up significant divergences between national laws transposing the Directive 1999/44/EC. Some of these may be due to regulatory gaps in the Directive, others can already be considered as incorrect transposition of the Directive. It is unclear at present to what extent those divergences affect the proper functioning of the Internal Market and consumer confidence. The EESC recommends that the Commission study the implications for both the Internal Market and consumer confidence as a matter of urgency and take enforcement action against those Member States who are in default ([9]).

5. **Direct Producers' Liability (DPL)**

5.1 Some Member States have introduced various forms of Direct Liability of Producers. These differ considerably as to the conditions and modalities. The Directive of 1999 requires the Commission to examine the case for introducing Direct Producers' Liability and, if appropriate, to submit a proposal. Of the 17 Member States which responded to the Commission's questionnaire, 7 have introduced some form of DPL though the conditions for making direct claims against producers vary considerably. There are also strong objections to the concept from some Member States and from some stakeholders some of whom suggest that it is too early to assess its effects on the need for an amendment to Directive 1999/44/EC in isolation ([10]).

([8]) CESE 984/2007, OJ C 256 27.10.2007.
([9]) See footnote 1.
([10]) See footnote 3.

5.2 Stakeholders and Member States have diverging opinions as to the impact of DPL on the level of consumer protection and the Internal Market. A majority of the Member States and a number of stakeholders consider that the DPL potentially increases consumer protection. However, there is disagreement between Member States about DPL some considering that the producer is better placed than the seller to bring goods into conformity with the contract. Others believe that DPL would not increase consumer protection but rather cause legal uncertainty. The EESC believes that more information is necessary on these points.

5.3 A number of stakeholders and some Member States consider that DPL would cause a significant burden for businesses since producers would need to develop systems for handling complaints and make financial provision for exposure to this liability. There is no unanimity, however, other Member States and other stakeholders disagree.

5.4 The existence of diverging regimes of DPL is a potential problem for the Internal Market. At this stage, the Commission has not been able to draw final conclusions. There is not enough evidence to determine whether the lack of EU rules on DPL has a negative effect on consumer confidence in the Internal Market.

5.5 The case for making DPL obligatory across all Member States is far from clear cut. DPL would introduce an extended chain of liability compared with a claim against the seller. It depends on the product or service concerned. Cross-border shopping for big ticket items such as cars directly involves the manufacturer. However, thanks to European Community legislation sales agents or distributors for cars have to respect the manufacturer's warranty no matter from where the vehicle is purchased. Cross-border purchases of wines and spirits which are becoming an increasingly significant part of the Single Market are difficult to enforce either against the seller or the 'manufacturer' unless the purchaser is making frequent visits to another Member State where the goods were purchased. For consumer products in general the introduction of a DPL may add to the consumer protection and the consumer's reliance on the Single Market.

5.6 The issue of DPL requires much closer study accompanied by a detailed Impact Assessment.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Report from the Commission — Report on Competition Policy 2006

COM(2007) 358 final

(2008/C 162/05)

On 25 June 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

Report from the Commission — Report on Competition Policy 2006

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 31 January 2008. The rapporteur was **Mr Chiriaco**.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February 2008), the European Economic and Social Committee adopted the following opinion by 141 votes to 3 with 5 abstentions.

1. **Introduction**

1.1 The 2006 Report on Competition Policy highlights the changes to the internal organisation and working methods of the Commission in this field and provides evidence of the way the Commission ensures consistent European economic governance in line with the objectives of the Lisbon strategy.

2. **Instruments**

2.1 **Antitrust** [1] — **Articles 81 and 82 EC** [2]

2.1.1 In the Commission's view, fines are of central importance in deterring companies from breaking competition rules.

A new threshold for **immunity and reduction of fines** was adopted for cartel cases. Under new guidelines, the amount of the fine is based on a percentage of the company's yearly sales of the relevant product (up to 30 %) multiplied by the number of years of its participation in the infringement. The fine may be increased up to 100 % for repeat offenders.

2.1.2 With a view to a more effective control system, a **Green Paper on damages actions for breach of the EU antitrust rules** as contained in Articles 81 and 82 of the EC Treaty was adopted. The Green Paper generated intense discussion across Europe, resulting in over 150 submissions from governments, competition authorities, industry, consumer organisations, lawyers and academics within the individual Member States.

In its opinion on the Green Paper [3], the EESC also welcomed the Commission initiative, following a wide-ranging discussion.

2.1.3 Regarding action taken on **cartels**, the Commission issued **seven final decisions**, fining 41 companies a total of EUR 1 846 million (as against 33 companies fined a total of EUR 683 million in 2005).

2.2 **Merger control** [4]

2.2.1 The Commission has undertaken, through public consultation, to provide **better guidance on jurisdictional questions** [5] that arise regarding merger control under the Merger Regulation [6].

A new Notice, which was expected to be adopted in 2007, will replace the existing Notices on this issue.

2.2.2 In terms of application of the rules, the **number of mergers notified** to the Commission in 2006 **reached 356**. In total the Commission adopted 352 final decisions, 207 of which were taken in accordance with the simplified procedure.

2.3 *State aid control*

2.3.1 The Commission simplified the approval of **regional aid** by adopting a **block exemption Regulation** [7]; aid for **Research, Development and Innovation** (R, D&I) [8] by adopting a new framework; **aid for investment in SMEs** [9] by improving access to finance for SMEs; and **environmental protection aid**.

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(1) The following Commission decisions are the subject of appeals before the Court of Justice of the European Communities. There have been no definitive rulings to date, except in the De Beers case, in which the Commission decision was annulled by the Court: Cases COMP/38.638 *Synthetic rubber,* Commission decision 29.11.2006; COMP/39.234 *Alloy surcharge* (re-adoption) Commission decision 20.12.2006; COMP/38.907 *Steel beams* (re-adoption) Commission decision 8.11.2006; COMP/38.121 *Fittings,* Commission decision 20.9.2006; COMP/38.456 *Bitumen Netherlands,* Commission decision 13.9.2006; COMP/38.645 *Methacrylates,* Commission decision 31.5.2006; COMP/38.620 *Hydrogen peroxide and perborate,* Commission decision 3.5.2006; COMP/38.113 *Prokent/Tomra*; COMP/38.348 *Repsol CCP,* Commission decision 12.4.2006; and COMP/38.381 *De Beers,* Commission decision 22.2.2006.

(2) OJ C 321 E, 29.12.2006.

(3) INT/306. The EESC opinion is available at: http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\int\int306\ces1349-2006_ac.doc&language=EN.

(4) Only one Commission decision was appealed before the Court of Justice of the European Communities: Case COMP/M.3796 *Onya/J. M. Huber PCC.*

(5) Available at: http://ec.europa.eu/comm/competition/mergers/legislation/jn_en.pdf.

(6) Regulation (EC) No 139/2004.

(7) Regulation (EC) No 1628/2006.

(8) OJ C 323, 30.12.2006, p. 1.

(9) OJ C 194, 18.8.2006, p. 2.

Finally, the Commission adopted a new **de minimis Regulation** ([10]) under which aid of up to EUR 200 000 ([11]) granted over three fiscal years will not be regarded as State aid.

2.3.2 In terms of implementing the rules, the Commission examined 921 State aid cases in 2006, which represents a 36 % increase on 2005. The Commission adopted 710 final decisions, in most cases — 91 % — approving the aid without a formal investigation, deeming it compatible with the rules on free competition.

2.3.3 Furthermore, while the Commission has considered that **training aid** can contribute to the European common interest, it has taken a strict stance on **rescue and restructuring** (R&R) aid to firms in difficulty, considering it legitimate only if stringent conditions were fulfilled ([12]).

3. **Sector developments**

3.1 *Energy*

3.1.1 The **Final report on the energy sector inquiry**, adopted by the Commission on 10 January 2007 ([13]), highlighted Europe's steadily rising gas and electricity wholesale prices and relatively limited customer choice due to entry barriers for energy products.

3.1.2 The Commission carried out a number of **antitrust investigations** into hoarding of network and storage capacity, long-term capacity reservations, market sharing and long-term contracts between wholesalers/retailers and downstream customers.

3.1.3 The Commission considered and issued decisions on many energy **mergers**. The most significant cases were *DONG/Elsam/Energi E2* ([14]) and *Gaz de France/Suez* ([15]).

3.1.4 **Work on State aid control** has shown that contracts between public network operators and generators in Hungary and Poland has foreclosed parts of the wholesale markets and that in Italy favourable electricity tariffs for certain companies have been distorting competition. Also important was the State aid decision in the area of renewable energy aimed at ensuring that public financing covers only exceptional cases and does not favour businesses or activities that do not meet the required standards.

3.2 *Financial services*

3.2.1 In 2005 the Commission launched an **inquiry into the retail banking sector** ([16]), focusing particularly on cross-border competition. The final report was published on 31 January 2007 and the problems identified included entry barriers, market fragmentation and the high degree of concentration among issuers and acquirers of payment cards.

3.2.2 The Commission published its interim report on its extensive **inquiry into business insurance** on 24 January 2007.

3.2.3 Furthermore, the Commission cleared a large number of **mergers** in the area of financial services, as in the case of *Talanx Aktiengesellschaft* ([17]).

3.2.4 Through its **State aid control**, the Commission has ensured a level playing field in financial services, especially for new entrants and foreign banks. It also demanded the repeal of Luxembourg's system of hidden subsidies for holdings.

3.3 *Electronic communications*

3.3.1 The vast majority of providers of electronic communication services operate within the confines of the EU regulatory framework for electronic communications networks and services. The Commission has thus recommended **18 specific product and services markets at both wholesale and retail level for ex ante regulation** by national regulators ([18]). **Broadband access markets** provide an example of the application of ex ante sector-specific regulation and ex post competition law.

3.4 *Information technology*

3.4.1 The Commission continued to ensure that competition is not distorted in the IT sector, which is currently characterised by digital convergence and the growing importance of interoperability.

([10]) Regulation (EC) No 1998/2006.

([11]) Amount doubled with regard to the previous Regulation (Cf. Regulation (EC) No 69/2001, OJ L 10, 13.1.2001, p. 30).

([12]) Cf. case of Northern Rock (IP/07/1859). The Commission concluded that the emergency liquidity assistance provided by the Bank of England on 14 September 2007, which was secured by sufficient collateral and was interest-bearing, does not constitute state aid. However the guarantee on deposits granted by the Treasury on 17 September, as well as the measures granted on 9 October, which provided further liquidity and guarantees to Northern Rock and were secured by a Treasury indemnity, do constitute state aid. These aid measures can be authorised as rescue aid in line with the Community Guidelines on state aid for rescuing and restructuring firms in difficulty. Under these rules, rescue aid must be given in the form of loans or guarantees lasting no more than six months, although there are certain exceptions to these rules in the banking sector, in order to allow for prudential requirements, which have been applied in this case. Also in line with the rules, the UK authorities have given a commitment to deliver to the Commission by 17 March 2008 a plan for Northern Rock going beyond the short term rescue. If a restructuring plan were to involve state aid, it would have to be assessed on its own merits under the rules on restructuring aid.

([13]) COM(2006) 851 final.

([14]) Case COMP/M.3868 *DONG/Elsam/Energi E2* Commission decision, 14.3.2006.

([15]) Case COMP/M.4180 *Gaz de France/Suez* Commission decision, 14.11.2006.

([16]) Commission decision, 13.6.2005 (OJ C 144, 14.6.2005, p. 13).

([17]) Case COMP/M.4055 *Talanx/Gerling* Commission decision, 5.4.2006.

([18]) *Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible for ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services*, OJ L 114, 8.5.2003, p. 45. The Commission approved a new recommendation on 17 December 2007 (OJ L 344, 28.12.2007, p. 65) which refers to only eight markets.

Of huge significance in this regard is the case of ***Microsoft***, which was fined for not providing the information requested by the Commission, within the deadline set. Microsoft's appeal against the Commission decision ([19]) was rejected by the Court of First Instance in its judgment of 17 September 2007 ([20]).

3.4.2 In the area of **merger** control the Commission cleared the mergers between *Nokia* and the network equipment business of *Siemens AG* and between *Alcatel* and *Lucent Technologies*, as it considered that the supply of optical networking equipment and broadband access solutions would not become less competitive.

3.5 *Media*

3.5.1 The objective of competition policy in the media sector is to guarantee a level playing field, whether between different commercial operators or between commercial operators and publicly-funded operators.

3.5.2 In the area of **digital broadcasting,** the Commission opened infringement proceedings against Italy to investigate whether, in the digital switchover, restrictions had been placed on broadcasters and competitive advantages granted to existing analogue operators, in clear violation of the Competition Directive.

3.5.3 With regard to **premium content**, State aid for **films and other audiovisual works** and **rights management,** the Commission has intervened repeatedly to ensure effective competition.

3.6 *Transport*

3.6.1 The main problem areas are protected national markets in the case of road transport, low levels of interoperability in rail transport, and a lack of transparent access to competitive port services.

3.6.2 In the case of road transport, the Commission has maintained its policy of approving State aid in order to favour the uptake of cleaner technology and for public service obligations.

3.6.3 Regarding **rail transport**, the Commission issued an important decision concerning State aid for rail infrastructure, which was considered to be within the remit of the public authorities and not to constitute State aid ([21]).

3.6.4 In the area of maritime transport, the Commission has undertaken to issue guidelines on the application of competition law so as to help smooth the transition to a fully competitive regime. Concerning State aid, the Commission has insisted on the dismantling of any nationality clause exempting ship-owners from payment of the social contributions of their seafarers.

3.6.5 Finally, in the area of **air transport**, the Commission adopted Regulation (EC) No 1459/2006 discontinuing, from 1 January 2007, the exemption from the prohibition under Article 81(1) EC of IATA passenger tariffs for routes within the EU as well as the exemption for slots and scheduling.

3.7 *Postal services*

3.7.1 Following significant changes in the postal market, the Commission proceeded to reduce the services for which monopoly rights are granted to Universal Service Providers, on the one hand, and preserve competition in liberalised areas, to avoid de facto re-monopolisation, on the other hand.

3.7.2 Also of importance was the Commission's decision that compensation for Services of General Economic Interest should only be considered compatible with the State aid rules in cases where the amount of the compensation did not exceed the cost of the public service obligation and provided that the other conditions were also met.

The Commission also examined whether postal operators were enjoying other advantages. In this context, it recommended that France ([22]) should end the unlimited State guarantee enjoyed by the French Post office in its capacity as a public body by the end of 2008.

4. The European Competition Network (ECN) and national courts

4.1 2006 was an important year, in which the system set up by Regulation (EC) No 1/2003 was further bedded down and cooperation strengthened both between the members of the ECN, i.e. between national competition authorities (NCAs) and the Commission, and between the national courts and the Commission.

4.2 Cooperation between the ECN members is organised around two principal obligations on the part of the NCAs, namely to inform the Commission when new cases are opened and to do so before the final decision is taken. The Commission was informed of some 150 case investigations launched by NCAs, and reviewed or advised NCAs regarding 125 of these.

4.3 Close cooperation within the ECN included a meeting between the Director-General of the Competition DG and the NCAs, where the ECN leniency model programme was endorsed. The Commission and the NCAs also met to discuss issues relating to antitrust policy, sector inquiries and particular sectors.

4.4 *Application of EU competition rules by national courts in the EU*

4.4.1 Article 15(1) of Regulation (EC) No 1/2003 allows national courts to ask the Commission for its opinion or for information in its possession. The same Article also requires the Member States to forward to the Commission a copy of any judgment issued by national courts.

([19]) The text of the decision is available at: http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37792/art24_2_decision.pdf.
([20]) Case T-201/04 (OJ C 269, 10.11.2007, p. 45).
([21]) Case N 478/2004, 7.6.2006 (OJ C 209, 31.8.2006).
([22]) Case E 15/2005, *Recommandation proposant l'adoption de mesures utiles concernant la garantie illimitée de l'Etat en faveur de La Poste* (not yet published).

4.4.2 Continuous training of national judges is of crucial importance for increasing knowledge of EU competition law. To this end, the Commission co-finances training projects each year in all Member States.

5. **International activities**

5.1 In preparation for their accession to the EU, the Commission helped promote the enforcement of the competition rules in Romania and Bulgaria, as it is now doing in Croatia and Turkey.

5.2 **Bilateral dialogue** on competition was stepped up between the Commission and numerous competition authorities, as well as contacts with the United States, Canada and Japan. The Competition DG also assisted China and Russia in the drafting of competition law.

5.3 Finally, in the framework of **multilateral cooperation**, the Competition DG is playing a leading role in the International Competition Network and participates in the work of the OECD Competition Committee.

6. **Interinstitutional cooperation**

6.1 Each year, the European Parliament issues an own-initiative report on the Commission's annual competition report. The Commissioner responsible for competition policy holds regular talks with the Council and the relevant Parliamentary Committees.

6.2 Also noteworthy is that the Commission informs the EESC and the CoR about major initiatives and participates in the debate on the adoption of the EESC's yearly opinion on the Commission's annual Report on Competition Policy.

7. **Conclusions and comments**

7.1 *Relationship between competition policy and economic growth policy*

By restoring entire economic sectors to the logic and dynamic of the market, competition policy has made a practical contribution to the creation of a cohesive single European market, with fewer rules and regulations.

7.1.1 Competition policy is playing an increasingly important role in European economic policy. Both the Commission ([23]) and the EESC ([24]) have on previous occasions pointed out the need to launch new economic policy instruments aimed at directing both competition and industrial policy towards the objectives of increased economic and social cohesion, employment protection, inter alia through control systems on State aid and forms of relocation, environmental protection and the promotion of major, weighty research and development programmes.

Competition policy is currently closely coordinated with other policies, such as the internal market and consumer policy, with a view to creating better functioning markets for the benefit of consumers and European competitiveness.

7.1.2 Based on an update for the seven largest Member States, the Commission forecast economic growth in 2007 at 2.8 % in the EU and 2.5 % in the euro area ([25]). Despite the IMF's downward revision of the growth forecast for the euro area from 2.1 % a 1.6 %, the EESC maintains that European growth should continue, supported by sound fundamentals and a favourable global environment.

7.1.3 The EESC considers it important that the EU achieves balanced economic growth and price stability, a highly competitive social market economy that promotes training and aims at full employment and social progress, and a high level of protection and improvement of the quality of the environment.

7.1.4 In a market where competition policy will continue to gain importance, economic, social and environmental indicators are key factors in measuring competitiveness, not only for end consumers but particularly for business.

7.1.5 The EESC maintains that the competitiveness of European businesses and services must be safeguarded by a clear regulatory framework based on the proper application of competition policies hand in hand with trade policies.

The EU is currently the world's most open market to foreign goods; abolishing the EU's most fundamental safeguards against dumping and subsidies would indiscriminately hit all EU manufacturers that operate in compliance with the competition and legal trade rules and EU standards and without recourse to State aid.

In this regard, the EESC calls on the Commission to, on the one hand, to be more attentive to reporting to the WTO cases of distorted international competition and, on the other, to undertake to insert a clause into bilateral trade agreements that requires its trading partners to comply with competition rules, including the effective control of State aid.

7.2 *State aid control*

7.2.1 The EESC appreciates the Commission's modernisation strategy with regard to the State aid action plan, which is based on: targeted State aid, economic analysis, effective procedures and shared responsibility between the Commission and the Member States. It also supports the stance taken by the Commission to welcome State aid for technology transfer, innovation and the multisectoral framework for major investment projects and treat such aid differently.

7.2.2 When investigating State aid cases, the Commission should accept as justified the specific tax treatment adopted by Member States for mutual societies, such as cooperatives and companies with a major social impact.

([23]) Fostering structural change: an industrial policy for an enlarged Europe, COM(2004) 274 final.

([24]) Opinion of the European Economic and Social Committee on Fostering structural change: an industrial policy for an enlarged Europe (COM (2004) 274 final), OJ C 157 of 28.6.2005.

([25]) Cf. IP/07/1295. More information is available at: http://ec.europa.eu/economy_finance/publications/european_economy/2007/interim_forecast_1107_en.pdf.

7.3 *Banks and financial markets*

7.3.1 The EESC welcomes the action taken by the Commission to control cross-ownership of shares and the management of financial products. It has happened in certain cases that credit institutions were major shareholders (shareholders' agreements) in other companies, and that therefore loans granted by banks were ultimately used to finance the purchasing of shares in those same banks.

7.4 *Energy*

7.4.1 The EESC emphasises that energy should not be viewed as merely a market but also in terms of development, employment and the environment. Currently, the EU is faced with new global competitors ([26]) and the new market structures must often take account of power politics.

7.4.2 The EESC maintains that the specific nature of the gas sector needs to be taken into account when addressing the issue of separating generation from supply (unbundling) ([27]).

7.5 *Plurality of information and competition law*

7.5.1 The EESC recommends that a distinction be drawn in the media field between rules specifically designed to defend the pluralism of information and general antitrust rules. It must also be stressed that while operational competition rules are a basic condition for ensuring pluralism, they are not enough in themselves.

7.5.2 The danger of failing to properly understand this is that the competition rules will be diminished and the principle of pluralism weakened.

7.6 *Telecommunications*

7.6.1 The EESC maintains that the functional unbundling of telecoms networks and the creation of a sectoral EU agency must be properly assessed relative to other sectors given that investment in a crucial sector for European competitiveness is key to its competitive development, particularly considering the speed of technological change.

Brussels, 13 February 2008.

7.7 *Enforcement of the competition rules and strengthening of national courts in the EU*

7.7.1 To ensure effective enforcement of the rules, there is a need for continuous training and education of national judges and all legal professionals in EU competition law.

In this regard, the EESC calls on the Commission to adopt guidelines, as soon as possible, on the application of Article 82 EC, particularly regarding exclusive practices.

7.7.2 While welcoming the co-financing of the projects set up by the Commission, the EESC maintains that above and beyond the 15 training projects launched in 2006 for the 25 Member States, more can and should be done to meet the challenges that competition policy poses and to address the problems that arise in relations between the Commission, business, associations and consumers.

7.7.3 In particular, EESC-Commission relations were recently strengthened following the signing, at the EESC plenary session of 30-31 May 2007 ([28]), of an addendum to the cooperation protocol of November 2005. The agreement places the EESC at the centre of the communication drive, thanks to the EESC's privileged position as a facilitator of dialogue with the public.

7.7.4 The EESC calls on the Commission and the Parliament to develop an interinstitutional cooperation policy aimed at making national systems compatible with EU legislation.

The EESC supports the process of adopting a new treaty (the so-called Treaty of Lisbon) to simplify the statutory framework and meet the needs of a 27-Member-State EU, allowing the EU to reach agreement on new policies and to take the necessary decisions to overcome the new challenges it faces.

7.7.5 The EESC stresses that competition policy must not be associated with separate objectives but must continue to be a fully-fledged *activity* of the European Commission ([29]).

In a bid to bring more transparency to the ongoing negotiations, the EESC held a conference at its headquarters on 27-28 September last. Entitled *IGC 2007: organised civil society has its say on the future of Europe*, the conference achieved a high level of participation.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([26]) Particularly *Gazprom* and *Sonatrach*.

([27]) Neelie Kroes, *More competitive energy markets: building on the findings of the sector inquiry to shape the right policy solution*, Brussels, 19 September 2007.

([28]) A summary of the opinions adopted at the above-mentioned plenary session is available at: http://www.eesc.europa.eu/activities/press/summaries_plenaries/2007/grf_ces83-2007_d_en.pdf.

([29]) The text of the Treaty of Lisbon, adopted in Brussels on 3 December 2007 by the Conference of the representatives of the governments of the Member States is available at: http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the component type-approval of lighting and light-signalling devices on wheeled agricultural or forestry tractors (Codified version)

COM(2007) 840 final — 2007/0284 (COD)

(2008/C 162/06)

On 25 January 2008, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the component type-approval of lighting and light-signalling devices on wheeled agricultural or forestry tractors (Codified version)

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 442nd plenary session of 13 and 14 February 2008 (meeting of 13 February), by 147 votes to one, with seven abstentions, to issue an opinion endorsing the proposed text.

Brussels, 13 February 2008.

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 textile names (Recast)

COM(2007) 870 final — 2008/0005 (COD)

(2008/C 162/07)

On 8 February2008, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on textile names (Recast)

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 442nd plenary session of 13 and 14 February 2008 (meeting of 13 February 2008), by 128 votes in favour, with 2 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 13 February 2008.

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 return of cultural objects unlawfully removed from the territory of a Member State (Codified version)

COM(2007) 873 final — 2007/0299 (COD)

(2008/C 162/08)

On 8 February 2008, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State (Codified version)

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 442nd plenary session of 13 and 14 February 2008 (meeting of 13 February 2008), by 141 votes to one and one abstention, to issue an opinion endorsing the proposed text.

Brussels, 13 February 2008.

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 colouring matters which may be added to medicinal products (Recast)

COM(2008) 1 final — 2008/0001 (COD)

(2008/C 162/09)

On 31 January 2008, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the colouring matters which may be added to medicinal products (Recast)

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 442nd plenary session of 13 and 14 February 2008 (meeting of 13 February 2008), by 122 votes to 1 and 4 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on: An independent evaluation of services of general interest

(2008/C 162/10)

On 16 February 2007, the European Economic and Social Committee, under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

An independent evaluation of services of general interest.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2008. The rapporteur was Mr Hencks.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 14 February 2008), the European Economic and Social Committee adopted the following opinion by 162 votes to 24, with 11 abstentions.

1. **Conclusions and recommendations**

1.1 The reform of the Treaties adopted by the European Council on 17 and 18 October 2007 breaks new ground on services of general interest (SGIs), with the inclusion in the provisions on the functioning of the Union of a clause of general application on services of general economic interest (SGEIs) (Article 14) which is to be applied to all European Union (EU) policies, including on the internal market and competition, and a protocol appended to the two treaties on all services of general interest, including services of non-economic general interest (SNEGIs).

1.2 SGIs, SGEIs and SNEGIs all help to ensure the wellbeing of society as a whole and the effectiveness of citizens' fundamental rights. These services, which are provided in the general interest, are a matter of political choice and accordingly fall under the remit of the legislator.

1.3 It follows that there is not only a stronger obligation for the EU and Member States to ensure that services of general economic interest operate effectively, which implies that the evaluation of the performance of such services should be an ongoing process, but also that the decision-making institutions need to agree on a clear definition of the concepts, objectives and purposes of the three categories of services. Until this is done, evaluations of their performance will not provide citizens with the legal certainty they have a right to expect from both their national and European institutions.

1.4 The purpose of evaluation will be to enhance the effectiveness and efficiency of services of general economic interest and their adaptation to the changing needs of citizens and business, while providing public authorities with what they need to make the best choices; in addition, it will have a key role to play in achieving a balanced trade-off between markets and general interests, and between economic, social and environmental objectives.

1.5 In view of the importance of SGIs in combating social exclusion and promoting justice and social protection, which are set as objectives of the EU in the Treaty, regular evaluation is imperative, not only of the services of general economic interest already covered by Community rules, but also of services of non-economic general interest (SNEGIs) at Member State level.

1.6 At national, regional and local levels in Member States, evaluation of SGIs (economic and non-economic) will have to be independent, involve multiple parties and take the differing points of view into account; based on a full range of criteria, it will have to cover the three pillars of the Lisbon strategy, and be conducted in consultation with all stakeholders.

1.7 At Community level the task will be to lay down the procedures for exchange, collation, comparison and coordination, and to stimulate the independent evaluation process, while respecting the subsidiarity principle, by defining a harmonised evaluation methodology at European level based on common indicators, through dialogue with the representatives of stakeholders.

1.8 To ensure the relevance and usefulness of this evaluation, a Steering Committee should be set up, operating in complete independence and representing multiple parties, with representatives from the European Commission, the European Parliament, the permanent representations of the Member States to the EU, the Committee of the Regions and the European Economic and Social Committee.

2. **Current situation**

2.1 The Treaties include services of general economic interest among the European Union's common values, particularly in view of their contribution to social and territorial cohesion. The amended Treaty adopted by the European Council on 17 and 18 October 2007 confirms this by providing for the European Parliament and the Council of the European Union to lay down principles and conditions, by means of regulations, enabling SGEIs to fulfil their missions, without prejudice to the competence of Member States to provide, to commission and to fund such services, while emphasising the shared responsibility of the Member States and the Community.

2.2 Thus, it is up to the Union and the Member States, each within their respective powers and within the scope of application of the amended Treaty, to ensure and verify that such services operate effectively on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions.

2.3 Thus, when the amended Treaty is applied, the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, will have to define such principles and conditions, while complying with the principles of subsidiarity and proportionality.

2.4 A protocol on SGIs appended to the amended Treaties emphasises the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users and ensuring a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

2.5 For the first time in a primary Community legislative text, this protocol takes note of non-economic services of general interest. It emphasises that the provision, the commissioning and the organisation of such services are Member State competences and that the provisions of the Treaties do not affect these competences in any way, so that non-economic services of general interest remain excluded in principle from internal market, competition and State aid rules, bearing in mind that the general principles of Community law apply to the implementation of national competences.

2.6 Regarding the distinction between economic and non-economic services, the amended Treaty does not provide any definition. This will mean continued reliance on judgements by the European Court of Justice, resulting in persistence of the current legal uncertainty. Citizens have high expectations of the European Union. It ought to improve quality of life, guarantee respect for fundamental rights and ensure that its decisions are not retrograde in their impact.

3. **The need to evaluate services of general interest**

3.1 Among other things, the obligation to ensure that services of general economic interest operate effectively set out in Article 14 of the amended Treaty implies that the evaluation of the performance of such services should be an ongoing process.

3.2 The EESC feels that for an SGEI to be considered as operating effectively, it should comply with principles such as:

— equality, universality, affordability, accessibility, reliability, continuity, quality and effectiveness, while guaranteeing users' rights and achieving economic and social viability;

— taking account of the specific needs of certain groups of users such as disabled, dependent and disadvantaged persons, etc.

3.3 Even though the amended Treaty does not mention evaluation explicitly, it does imply that there is a need for vigilance, and evaluation is a suitable means of exercising such vigilance.

3.4 Member States or the EU will need to define and adapt the tasks and objectives of services of general economic interest within their remit in a transparent and non-discriminatory manner, while complying with the proportionality principle and ensuring that services are in the interest of all users and meet with their general satisfaction.

3.5 In order to check whether tasks of general interest are correctly and effectively performed and that objectives — depending on whether the services in question are SGEIs or services of non-economic general interest, or on the actual nature of the service — are or will be met, the competent authority must put in place a system for evaluating performance, efficiency and quality which goes beyond mere opinion polls and surveys.

3.6 Evaluation is therefore the systematic analysis and monitoring of the conditions for effective implementation of the particular general interest mission in the light of its fulfilment and capacity to meet the needs of consumers, businesses, citizens and society, and of EU objectives, particularly with regard to economic, social and territorial cohesion, the social market economy, the Lisbon strategy and guaranteeing the exercise of fundamental rights.

3.7 Services of general economic interest typically have to try to achieve a series of trade-offs:

— between markets and the general interest,

— between economic, social and environmental objectives,

— between users (individual users, including disadvantaged groups, businesses, local authorities, etc.), not all of which have the same needs and interests,

— between Member State competences and Community integration.

3.8 These trade-offs can shift as a result of economic and technological change, and of changing individual and collective needs and expectations, and also reflect the need for consistency between diverse situations in each country, specific geographical circumstances and sectoral characteristics.

3.9 Performance evaluation is a separate activity to regulation, but is also an aspect of it. Regulatory activity can benefit by basing itself on and stimulating evaluation. At the same time, evaluation must provide insight into situations in which services do not function properly, and into differences in terms of quality and/or type of service between different countries, thus highlighting adaptation to changing expectations depending on users' and consumers' needs and concerns and changes in the economic, technological and social context.

4. **Which services should be evaluated**

4.1 In view of the objectives assigned to services of general interest and their importance in the implementation of various Community policies, regular evaluation is essential not only for economic services, which are covered by Community rules, but also for non-economic services. The latter are part of the effective implementation of fundamental rights, and their operation is underpinned by the solidarity principle and respect for human dignity, with due reference to the common values which are inherent in the European social model.

4.2 Given that the Protocol appended to the amended Treaties confirms that services of non-economic general interest are the exclusive responsibility of the Member States, SNEGIs will have to be evaluated at the national, regional or local levels only.

4.3 Given that services of non-economic general interest, just like SGEIs, relate to a range of EU objectives (respect for fundamental rights, promoting citizens' well-being, social justice, social cohesion, etc.) and that the European Union is partly responsible for the achievement of these objectives, it must at least ensure that Member States carry out regular evaluations of the operation of such services of non-economic general interest.

5. **The approach followed by the EU institutions**

5.1 At the Nice (2000) and Laeken (2001) European Councils, agreement was reached on the need for effective and dynamic evaluation at Community level of the competition effects and performance of services of general interest, while taking due account of national, regional and local specificities and competences.

5.2 It was also considered that this evaluation should be carried out within existing structures, in particular through horizontal and sectoral reporting and the Commission's Cardiff report on economic reform, and should cover market structure and performance, including employment aspects, an economic and social assessment of public service obligations, and citizens' and consumers' opinions on the performance of services of general interest and the impact of liberalisation on them.

5.3 Since 2001, a horizontal evaluation — confined to network industries (electricity, gas, electronic communications, postal services, air and rail transport) — has been conducted annually (except in 2003) by the European Commission, based on a method defined in a Commission communication ([1]); however, not all stakeholders are in agreement on this evaluation, which according to some is more an evaluation of Community policies on network industries than of how such industries perform.

5.4 In 2003, in connection with the Green Paper on services of general interest, the European Commission launched a public consultation to establish how the evaluation should be organised, what criteria should be used, how citizens could be encouraged to participate, and how the quality of date could be improved. The main conclusions of this consultation were the need for a multi-dimensional evaluation and a review of evaluation mechanisms; however, according to the Commission, there was a lack of consensus on who should conduct the evaluation.

5.5 The White Paper on services of general interest ([2]) emphasised the evaluation process which in the future would have to precede any adjustment to the Community legislative framework, particularly concerning the liberalisation of services.

5.6 In its White Paper the Commission recognised the particular responsibility of the Community institutions, with the help of data provided at national level, in the evaluation of services that are subject to a sector-specific regulatory framework established by the Community. It did not exclude the possibility of an evaluation at Community level also being considered in other areas if it could be established in specific cases that such an evaluation would create added value.

5.7 Finally, the Commission ordered an in-depth assessment report on evaluation methods from an external consultant, the main conclusions of which will be summarised in a new communication scheduled for 2008.

5.8 The Commission claims that this external audit will have to assess the need for a performance evaluation of SGEI provision at EU level by network industries, put forward recommendations on improving horizontal evaluations, and evaluate the significance of Commission involvement as a producer of horizontal evaluations.

5.9 In its Communication on SGIs ([3]), the Commission 'considers it important, for the quality and transparency of the decision-making process, to regularly conduct in-depth evaluation and to disclose its methodology and results, so that they are open to scrutiny'.

6. **Principles and criteria of evaluation**

6.1 In its Communication COM(2002) 331, the Commission committed itself to involving civil society in the horizontal evaluation of SGI performance, in particular by setting up '*a permanent mechanism for the monitoring of citizens' opinion and their evolution* "and ensuring that" *Stakeholders, including the social partners, will also be consulted on an ad-hoc basis for specific issues*'.

6.2 The way in which society is evolving is reflected in the growing expectations of the public — in this case, users and consumers — not only that their rights will be acknowledged but also that their specific circumstances will be taken into account. There is a close correlation between how services of general interest are carried out and the societies in which they are provided.

6.3 The variety of structures and statutes (public or private operators, public-private partnerships) used by national, regional and local public authorities to provide services of general interest mean that multi-dimensional evaluation is needed.

6.4 In addition, evaluation at Member State level has to be pluralist, with the involvement of all stakeholders: the authorities in charge of defining and implementing services of general interest, regulators, operators/providers responsible for carrying out services, representatives of consumers, trade unions and civil society, etc.

([1]) COM (2002)331 final, 18.6.2002. Communication from the Commission: A Methodological Note for the Horizontal Evaluation of Services of General Economic Interest.

([2]) COM(2004) 374 final, 12.15.2004. Commission Communication: White Paper on services of general interest.

([3]) COM (2007)725 final, 20.11.2007. Communication from the Commission accompanying the Communication on 'A single market for 21st century Europe': Services of general interest, including social services of general interest: a new European commitment.

6.5 Apart from involving multiple parties, this evaluation will have to be independent and take the differing points of view into account given that not all stakeholders have the same interests, and that in some cases they may even clash, with inconsistencies between information and appraisals provided by them.

6.6 The economic and social effectiveness of services of general interest together with their activity and performance cannot be assessed on the basis of a single criterion, in this case competition rules; a full range of criteria must be used.

6.7 As the CIRIEC and the CEEP emphasise in a report drawn up in 2000 ([4]) at the request of the European Commission, evaluation is 'only meaningful if taken in connection with the designated objectives and tasks, which in their definition derive from three sources — the consumer, the citizen, and the society — and have three components — guarantee of the exercise of people's fundamental rights, social and territorial cohesion and the definition and conduct of public policy'.

6.8 Evaluation will need to cover the three pillars of the Lisbon strategy (economic, social and environmental) and simultaneously to involve internal market, competition, consumer protection and employment policies as well as all relevant sectoral policies.

6.9 The evaluation therefore needs to refer to multiple criteria, with particular reference to:

— the definition of the conditions governing the public service obligations and the relevant authorisation to provide the service,

— the effective implementation by operator(s) of specifications or obligations linked to a universal service or the authorisation to provide the service,

— the price and quality of the service, its accessibility for people with disabilities, and user satisfaction,

— positive and negative external factors,

— the attainment of public policy objectives,

— the adaptation of provisions to reflect legal constraints.

6.10 This process will therefore involve providing information and evaluation of actual practices and the impact of actions on different types of users, enabling the structural imbalance in information which is inherent in relations between operators/providers, regulators and consumers to be overcome.

7. **Implementing evaluation**

7.1 The evaluation system will have to be based on periodic reports drawn up at national or local levels by evaluating bodies set up by the Member States in line with the above principles.

7.2 At Community level the task will be to lay down the procedures for exchange, collation, comparison and coordination. It will therefore be up to the European Union to stimulate the process of independent evaluation, while respecting the subsidiarity principle and the principles set out in the Protocol appended to the amended Treaties, by defining a harmonised evaluation methodology at European level based on common indicators and the means whereby SGIs operate, through dialogue with the representatives of stakeholders.

7.3 To ensure the relevance and usefulness of the evaluation, a Steering Committee should be set up representing the diverse interests of all stakeholders (public authorities, social partners, operators, regulators, individual and business users, trade unions); at Community level, it could comprise representatives from the European Commission, the European Parliament, the permanent representations of the Member States to the EU, the Committee of the Regions and the European Economic and Social Committee.

7.4 This Steering Committee would be responsible for:

— evaluation methods,

— defining the indicators,

— specifications for the requisite studies,

— commissioning such studies on the basis of multiple expert opinions,

— a critical review of reports,

— recommendations,

— disseminating findings.

7.5 Discussions with all stakeholders on assessment reports could take the form of an annual conference on SGEI performance on the lines of the existing conferences on network industries held over the last few years at the European Economic and Social Committee, or they could be held in conjunction with the spring social summit.

Brussels, 14 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([4]) CIRIEC/CEEP study: 'Services of General Economic Interest in Europe: Regulation-Financing-Evaluation Good Practices' http://www.ulg.ac.be/ciriec/intl_en/research/publications/index.htm.
CIRIEC: International Centre of Research and Information on the Public and Co-operative Economy.
CEEP: European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest.

Opinion of the European Economic and Social Committee on Promoting broad public access to the European digital library

(2008/C 162/11)

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

Promoting broad public access to the European digital library

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2008. The rapporteur was Ms Pichenot.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 153 votes to four, with five abstentions.

1. **Conclusions and recommendations**

1.1 As the 2008 launch of the European digital library ([1]) approaches, the Committee's opinion aims to offer broad support to this plan to make part of our cultural, scientific and technical heritage accessible on line. It therefore underpins the European institutions' work on setting up a portal for the general public, a tool for disseminating organised knowledge in the digital era.

1.2 The Committee recognises the joint efforts of the Commission and the Member States and welcomes the coordination of cultural institutions set in motion by the CENL (Conference of European National Librarians) in order to establish a foundation to group together all those institutions willing to make their digitalised collections available. It calls on civil society organisations at European, national and regional level to join this far-reaching European project so as to ensure the public is well-informed.

1.3 Civil society involvement in the development of the EDL will prove decisive for four main reasons, justifying EESC involvement:

— it will help to define relevant criteria for choosing the content to be digitalised;

— it will secure public support for the requisite funding;

— it will encourage the participation of and new ideas from all the stakeholders in the publishing chain and other cultural bodies;

— it will promote an inclusive information society.

1.4 The Committee is aware of all that has already been achieved by the Commission with stakeholder involvement in the Member States during successive presidencies. It endorses the recent European Parliament report ([2]), which summed up progress made and the next steps. The Committee has chosen to focus this opinion on the need for civil society to get involved, by encouraging its members to take part in the launch of the EDL and in future developments. The emphasis should be on user expectations and needs, so as to achieve the goal of broad public access.

1.4.1 With regard to civil society organisations, the EESC recommends:

— becoming involved in informing the European public as of 2008;

— devoting attention to the need to monitor user groups testing the common portal for relevance, user-friendliness and eAccessibility ([3]) for people with disabilities;

— organising a broad debate on content, in consultation with neighbourhood libraries;

— prompting a debate in the information society on the adjustment of the legal framework to make it compatible with the digitalisation of modern intellectual, artistic and scientific property.

1.4.2 As regards the Member States and the Commission, the EESC recommends:

— establishing a steering committee for the project, open to dialogue with civil society;

— securing financial commitments from the Member States to enable large-scale digitalisation from a wide range of backgrounds and media by 2010;

([1]) The European Digital Library (EDL) is a provisional name for the European project aimed at digitalising documents from museums, archives, audiovisual centres and libraries, etc.

([2]) Report on 'i2010: towards a European digital library' (2006/2040(INI), by Ms Marie-Hélène Descamps, MEP, July 2007).

([3]) EESC opinion on Future eAccessibility legislation (rapporteur: Mr Hernandez Bataller), OJ C 175 of 27.07.2007; EESC opinion on Equal opportunities for people with disabilities (rapporteur: Mr Joost), OJ C 93/08 of 27.4.2007.

— establishing national digitalisation plans following consultation, with reference to a common document-policy charter and with support from skills centres;

— carrying out a Community-level search for solutions to the technical problems of multilingualism and interoperability and with a view to working out common guidelines to secure eAccessibility for people with disabilities;

— surveying user expectations, needs and practices (especially for people with disabilities), and involving the EESC in that process;

— drawing conclusions from the analysis of national practice with regard to exceptions contained in Directive 2001/29/EC ([4]) and extending the search for solutions to fill legal loopholes (orphan works, out-of-print works, documents of digital origin, etc.).

1.4.3 As regards economic operators and cultural institutions, the EESC wishes to encourage them to:

— promote broad access to recent or contemporary digital content, accessible on the European digital library portal;

— draw up models for putting copyrighted work on-line at an affordable price;

— take part in the digitalisation of their collections through public-private partnerships;

— be prepared to use sponsorship to promote digitalisation;

— promote the role of public libraries in making dematerialised content available by means of local access in situ or within closed circuits (intranets).

2. **Improving public information and involving civil society in the development of the future European digital library (EDL)**

2.1 *Improving public information on the future European digital library*

2.1.1 In 2010, the on-line accessibility in Europe of cultural assets from libraries, archives and museums will give Europeans and people elsewhere in the world access to six million digital documents to use for recreational, educational, professional and research-related purposes. This quantitative goal will mark the first stage in a large-scale digitalisation process.

2.1.2 This project, provisionally termed the European Digital Library (EDL), is called a library for the sake of convenience, but even in its communication ([5]), the Commission defined a broad framework for digitalisation, calling on all institutions to take part. The project therefore encompasses cultural, scientific and technical knowledge, and concerns all sorts of written documents, books, sheet music, maps, sound recordings, audiovisual recordings, magazines, photographs, etc.

2.1.3 The Committee agrees with the Member States in their unanimous conclusions to the November 2006 Council meeting that this EDL project is a flagship project, designed to promote participation for all in the information society, and to assist the public in their understanding of the European identity.

2.1.4 The project's second goal is to make the future EDL a multilingual access point for all, not just a source of interest for scientific or artistic communities, by means of a common portal. With this in mind, the EESC invites the Commission to improve public information so as to encourage people to get involved with the start-up of the digital library, in particular by providing multilingual documentation. A communication plan should be drawn up for all the European institutions and the Member States, starting as of the launch in November 2008.

2.1.5 Mass digitalisation will be a milestone in the history of humanity. The debate ought therefore to cover the selection and organisation of content and knowledge at European level. The EESC believes that a broad debate on the conditions for mass digitalisation should cover certain financial, technical and legal aspects, necessary if there is to be progress towards a knowledge-based society open to all:

— the financial resources needed for the digitalisation of public assets, i.e. how to strike the right balance between the digitalisation of rare or fragile documents and the mass digitalisation expected by the general public;

— financial support for the publishers carrying out the digitalisation of their current collections and agreeing to make them accessible on-line;

— financing from the private sector and sponsorship for digitalisation and dissemination;

— the preservation, without differentiation, of intellectual property rights until 70 years after the death of the author;

— transparency and a collegial system for the selection for digitalisation of cultural content of all kinds (text, audiovisual material, museum pieces, archives, etc.) from the public domain;

([4]) Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society.

([5]) Communication of 30 September 2005 on i2010: Digital Libraries, COM(2005) 465 final.

— the need for a 'European document policy charter' listing the main areas of knowledge for digitalisation; this presupposes a Europe-wide inventory of the on-line accessibility of material that has already been digitalised;

— the possibility for authors of out-of-print works that have not been re-published to opt for digital publication under a simpler licence ([6]);

— the benefits of setting up an interactive file to assist in the search for the holders of copyright on orphan works ([7]);

— the processing of scientific information ([8]);

— issues associated with the accessibility of Internet portals and digitalised material for people with disabilities, particularly disabilities affecting sight.

2.2 *Involving civil society in the European cultural agenda in the era of globalisation*

2.2.1 Discussion of the project so far has been the sole preserve of specialists, reflecting the keen interest of stakeholders (cultural institutions, authors, editors, librarians, etc.) and their effective participation in the high-level group set up by the Commission. When, in 2005, the Commission launched its consultation, entitled 'i2010: Digital libraries' ([9]), only 7 % of responses came from private individuals and only 14 % from universities. There is nothing surprising about this lack of involvement on the part of the general public; particularly since the debate was launched suddenly at the end of 2004 after the announcement of a massive digitalisation project by Google, and since the questionnaire targeted the economic interest groups likely to be affected by a digitalisation project.

2.2.2 Given the commonplace nature of free access to information on the Internet, the cost of which is hidden in substantial financing from advertising, the public is likely to be confused when it comes to the services offered by digital libraries. Civil society therefore has a major responsibility, particularly towards the younger generations, to take part in an information and education campaign on the value of intellectual and artistic work and the need to ensure it is given due respect.

2.2.3 The EESC calls on the Commission and the Member States to do everything within their power to involve civil society in future developments in the digitalisation of cultural heritage. The involvement of civil society organisations is crucial for four main reasons: to define common content selection criteria, to offer financial support, to encourage all those involved and to promote an inclusive information society.

2.2.4 To do this, the EESC recommends opening a public forum in March 2008, to coincide with the launch of the prototype, to lend a voice to the associations, and educational, cultural, family-related and socio-occupational bodies representing future users. Civil society initiatives will prove useful in the various phases following the launch in November 2008 and in subsequent phases of development.

2.2.5 The debate should complement the 2007-2010 roadmap set out in the annex to the Council conclusions and extend it so as to ensure digitalisation continues and that better use is made of it. The EESC welcomes with interest the invitation to contact the Civil Society Platform for Intercultural Dialogue, which is forming a citizens' network in connection with the digital libraries.

2.2.6 After the 2008 European Year of Intercultural Dialogue, the debate may grow and lead on to a new consultation in 2009. That should enable civil society to play a part in deciding on the longer term stages, taking into account the European cultural agenda in the era of globalisation ([10]).

2.3 *Encouraging the development of the future library*

2.3.1 The EESC endorses the proposal made in the European Parliament report ([11]), calling for the establishment of an EDL steering committee made up of the cultural institutions involved in EDLnet. It will oversee the project and the coordination of national digitalisation plans. A fruitful dialogue must begin between this steering committee and organisations representing users, notably the EESC.

2.3.2 The EESC recognises the major guiding role of the CENL, leaning on international codification standards (bibliographic notes) and the head-start made in the digitalisation of written material. It would urge other national cultural institutions, at regional and national level as well as European level, to become involved in the coordination of EDLnet for archives, national museums and audiovisual centres, more specifically within the foundation set up in November 2007.

([6]) A simplified licence, such as for instance the 'Creative Commons' (www.creativecommons.org).

([7]) High Level Expert Group Report on Digital Preservation, Orphan Works and Out-of-Print Works (April 2007).

([8]) Communication of 14 February 2007 on Scientific information in the digital age: access, dissemination and preservation, COM(2007) 56 final.

([9]) Communication of 30 September 2005 on *i2010: Digital Libraries,* COM(2005) 465 final.

([10]) Communication of 10 May 2007 on A European agenda for culture in a globalising world, COM(2007) 242 final.

([11]) Report on 'i2010: towards a European digital library' (2006/2040 (INI), by Ms Marie-Hélène Descamps, MEP, July 2007).

2.3.3 On this key issue, the EESC supports the application of Directive 2001/29/EC, which protects copyright and related rights in the information society, particularly when it comes to the reproduction and distribution of works. Nevertheless, in the digital age, there are elements missing from this directive with regard to the treatment of orphan works, procedures for digital preservation, the status of 'digital born' work that originated on the web and the absence of solutions for out-of-print work that has not been republished.

2.3.4 This directive makes exceptions in particular for specific reproductions made by libraries accessible to the public or to educational establishments, museums or archives and for use for the benefit of people with disabilities. As these exceptions are optional, use of them varies from one Member State to the next.

2.3.5 Alongside this legal situation, the Committee recognises that other issues of a technological nature contribute to the complexity of the project. In this area, it welcomes the work done by the Commission over a number of years to resolve the technical aspects. It supports the initiatives taken under the seventh R&D framework programme and the 'eContentplus' programme, especially the research into interoperability and digitalisation skills centres. Interoperability and multilingualism, the mechanisms through which the content of museums, libraries and archives will be accessible on a single site, will be among the main factors in the EDL's success.

2.3.6 National- and regional-level civil society organisations and in particular national economic and social councils are called upon to support the necessary investment in digitalisation in each Member State, so as to reach a critical mass of content and guarantee diversity. The Committee recommends that the Member States draw on Structural Fund financing; Lithuania can provide a good example of this.

3. **Promoting broad access to the EDL by supplying historic and contemporary well-organised content**

3.1 *Taking into account the expectations and needs of users* ([12])

3.1.1 The EESC believes that this exceptional juncture in the digitalisation process must be used as a powerful tool to promote social and territorial cohesion ([13]). More specifically, the Committee recommends taking account of the expectations of the different generations in digital supply and means of access so as to facilitate links and the passing-on of information. It is rare for non-readers to be converted to reading past adolescence. The challenge for the information society when it comes to broad public access to the digital library is to make these non-readers and occasional readers into users.

3.1.2 The digitalisation of cultural works and particularly of scientific information ([14]) carries considerable potential for access to knowledge in the light of the concept of lifelong learning ([15]). One implication of this objective will be the need to adapt initial and ongoing teacher training ([16]) to cater for this new setting for knowledge transmission.

3.1.3 The expected knock-on effect of this mechanism demands research into users' expectations and practices. In the current phase, priority has been given to written content (manuscripts, books, reviews and reference books) for which three main uses have been identified: full text searches, on-line consultation and off-line reading (a virtual personal library). New uses should be tested, such as collaborative tools, platforms for annotation, the hypertext enrichment of content and even multimedia input (sound, video or animation). These new functions serve as useful tools, not only for the dissemination of ideas but first for the development of the thought processes behind them.

3.1.4 For other non-written documents, the Michael portal (a multilingual inventory of European cultural assets) has since 2007 been giving access to various digital collections of museums, libraries and archives previously dispersed around Europe. A number of local, regional and national cultural institutions have thus made their collection descriptions available. The project initially covered the United Kingdom, France and Italy but will eventually take in 15 other Member States, offering new cultural tourism services. This portal, known as 'Michael Culture', is part of a foundation set up in November 2007 to bring together and manage all the cultural institutions involved in the project.

3.1.5 The EESC recommends setting up a 'usage observatory' to study the full range of possibilities and practices. The attraction of the EDL will lie not just in its wealth of content, but also in the dissemination of new practices for intellectual exchange and in openness to research themes. The Committee hopes to become involved in the work of the EDLnet users' working group.

3.2 *Promoting an all-inclusive digital society, in particular by making arrangements for people with disabilities* ([17])

3.2.1 In line with the ministerial declaration made in Riga in June 2006 on new technologies in an inclusive society, care should be taken to ensure that the EDL does not increase differences between average Internet use and Internet use by older

([12]) The user is not just a passive client, but views him or herself as an active user with a role in defining the service expected and its evaluation.

([13]) EESC opinion on Future eAccessibility legislation, OJ C 175 of 27.7.2007, p. 91.

([14]) European Council Conclusions on scientific information.

([15]) EESC opinion on the Proposal for a Recommendation of the European Parliament and of the Council on key competences for lifelong learning (rapporteur: Ms Herczog), OJ C 195 of 18.8.2006.

([16]) EESC opinion on Improving the quality of teacher education (rapporteur: Mr Soares), adopted on 16 January 2008 (CESE 1526/2007 fin).

([17]) Commission awareness-raising campaign submitted to the Council on inclusiveness in the information society: *'e-Inclusion, be part of it!'*.

people, people with disabilities or vulnerable people. In recent exploratory opinions, the Committee set out some measures designed to secure e-accessibility, not least involving the European Social Fund.

3.2.2 The digitalisation and on-line availability of documents from libraries, archives and museums across Europe are unparalleled tools for the accessibility of people with disabilities. However, a complicated design, inappropriate format or inadequate protection measures could prevent that access.

3.2.3 The 2001 directive states explicitly that exceptions to the principles of copyright may be allowed for people with disabilities (e.g. the blind and partially sighted, and people with physical or mental disabilities).

3.2.4 To give access to this cultural heritage, the Internet portal of the future EDL and the associated national portals must be designed from the outset in such a way as to be accessible to disabled people by means of specific technical mechanisms.

3.2.5 Although technological protection mechanisms against pirating can often be circumvented by those in the know, they are nevertheless effective barriers to ordinary users. To this end, the EESC recommends that technological protection measures take issues of accessibility and interoperability into account from the design stage, so as to enable the reading tools used by people with disabilities, such as voice synthesisers, to be used to read digital texts.

3.3 *Broadening the supply of content already available with contemporary or recent documents*

3.3.1 In autumn 2008, a portal will appear with two million works, photographs or maps, copyright-free, accessible on line and downloadable free of charge. This will make a priceless contribution, particularly for documents that are rare, precious or out of print. However, in the long run, access cannot be limited to the supply of such historic documents with no relevance to the modern day.

3.3.2 The EDL's original brief was also to offer users contemporary or recent documents that are still in copyright, on the same portal as documents not subject to copyright.

3.3.3 A high level expert group was set up by the Commission to look into ways of providing access to recent works. This committee, made up of representatives from publishing houses, national libraries, audiovisual sector professionals and archives, sought to reduce the 'black hole of the 20th and 21st centuries' ([18]) in relation to the issue of copyrighted works. It drew up proposals in April 2007 to facilitate access to orphan works and out-of-print works and to promote digital conservation.

3.3.4 Achieving the objective of mass digitalisation accessible to the general public means inventing a new economic model, ensuring fair distribution between authors, publishers and service providers. Internet surfers have the right to expect access to a reasonably priced pay-service. The Committee would encourage economic operators in the publishing chain to actively negotiate and secure solutions ([19]). Publishers, authors and booksellers have a responsibility to make consumers an attractive offer, so as to nurture this new market and avoid the risk of pirating and counterfeit, while respecting the positions of the various players.

3.3.5 They advise that with regard to works covered by copyright, subject to agreement with copyright holders, users could be enabled to access short extracts or to flick through books virtually by means of specialist sites. Beyond that, to access the copyrighted document in its entirety, the web surfer would be directed towards private operators, including the traditional library network, where various options would be proposed at an affordable price, recognising the need to recompense copyright holders. The Committee would encourage copyright holders to sign up to these new formulae.

3.3.6 In order to encourage this pay-service at an affordable price, it is important that Member States extend reduced VAT on books and other publications to publications in an electronic format.

3.3.7 With a view to promoting more open licences and thus adding to the contemporary content available, a recent Committee opinion ([20]) recommends that proper protection should be granted at Community level for authors and artists who opt for a simpler licence. While making their work accessible free of charge, this should also give them guarantees concerning their moral rights and offer protection against abusive commercial use.

3.3.8 The Committee recommends that the Commission take the initiative and devise new licences so as to eventually decouple digital publication rights from rights collected for publication on paper.

([18]) This expression was used by Commissioner Viviane Reding when speaking to the EESC on 12 December 2007.

([19]) Study by Denis Zwirn, Numilog (April 2007) with a view to devising an economic model for the participation of publishers in the European Digital Library.

([20]) EESC opinion on the Proposal for a Directive of the European Parliament and of the Council on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version), OJ C 324 of 30.12.2006, pp. 7–8.

3.3.9 In 2007, the Commission conducted an in-depth comparative study ([21]) of national rights regarding the transposition of the directive on copyright and related rights ([22]). The Committee will be taking a close look at the conclusions reached by this report with a view to improving European harmonisation.

3.4 *Responding to the need for organised knowledge*

3.4.1 As we begin the 21st century, faced with a torrent of Internet information with no specific references and of uncertain authenticity, the European project's trump card will be to select content so as to secure objectivity and plurality, organising and classifying knowledge, and offering standard format in order to retain clarity in the profusion of information. The ability to respond with finesse, quality and relevance to users' questions and their searches will depend on the development of search engines, in conjunction with improved coordination of digital knowledge at European level.

3.4.2 For access to organised collections, the EESC would stress the potential benefit of testing the prototype launched in March 2007 as a joint endeavour between institutions in France, Hungary and Portugal. This European matrix, validated by experts, is the basis for a European digitalisation corpus, contributing to the next stage in the EDL. Furthermore, this prototype is open to all search engines and should make searches easier by using standard questionnaires to enable surfers to express and target their requests.

3.5 *Securing cultural and linguistic diversity*

3.5.1 The EESC would stress the unique role on the world stage of this multilingual library ([23]) as a fundamental tool for preserving and harnessing cultural diversity. With its exceptional cultural heritage and major output of content, Europe must play a key role in the digitalisation of knowledge at world level, in accordance with the UNESCO convention on cultural diversity. Thanks to the dissemination of European languages worldwide, accessibility will be useful to both Europeans and non-Europeans seeking access to world heritage and the sources of their own culture in Europe.

([21]) Study on the transposition and effect on the legislation of the Member States of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (ETD/2005/IM/DI/91).

([22]) The duration of copyright has been extended to 70 years following the death of the author and 50 years for related rights.

([23]) EESC opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — A New Framework Strategy for Multilingualism, OJ C 324 of 30.12.2006, p. 68.

3.5.2 The EESC recommends that in the post-2010 development phase of the EDL each Member State should donate a selection of its works of literature in other languages, so as to contribute to the promotion of a European cultural identity and respond to diversity.

4. **Promoting and modernising the role of public libraries within an on-line accessibility system**

4.1 The EESC recommends supporting the role of public libraries, as a means of securing local access in a globalised system. The circulation of cultural assets has taken on a worldwide, multimodal dimension, which works well if the public have the material means necessary to access this considerable resource. Public libraries are local cultural facilities that still offer equal access to the greatest number. Libraries must retain a role in making dematerialised content available, with a view to social inclusion.

4.2 In the chain that leads from the author to the reader via the bookseller, lending libraries and multimedia libraries have proved their worth in passing on organised knowledge and offering the public access to cultural products. These local facilities must continue to fulfil this role for dematerialised content. It is therefore appropriate to promote specific contracts or licences that encourage these establishments in their dissemination task without creating imbalances ([24]).

4.3 It is a matter of importance that the digitalisation of the public domain of national cultural institutions should take place in consultation with local libraries and archive centres. The expectations of lending library users, a non-specialist public, must be taken into account when decisions are made regarding content exempt from copyright, demonstrating respect for public diversity.

4.4 *Devising economic models for the purchase and availability to the public of digitalised contemporary works*

4.4.1 Lending libraries buy materials (books, CDs, sheet music, language learning material, etc.) and make them available to their users free of charge or for a minimal sum, for a limited time, ensuring that money does not systematically obstruct access to them. A new economic model for dematerialised content is needed to respond to the expectations of library and multimedia library users and must be tailored to their practices. In addition, lending libraries are major buyers of current content, and have a direct grip on up-to-date information and cultural and technical products. They must be involved in defining this new economic model.

([24]) See Recital 40 of the 2001 Directive on copyright in the information society.

4.4.2 The spread of dematerialised content, in particular when it is the product of digitalisation, must not be allowed to prevent lending libraries from pursuing their educational role. Economic and technical models for the circulation of digitalised content must therefore take into account the role of lending libraries and enable them to continue in that role, in the context of closed circuits (intranets) and as part of the lending service to library members.

4.5 *Ensuring service users have local access*

4.5.1 Lending libraries should be able to supply their members with local access to dematerialised content through closed circuits (intranet) in the same way as for material content; i.e. with computer work stations, printers, software, high-speed connections, assistance and coaching. The initial and on-going training given to librarians and the organisation of their work must from now on take dematerialised content into account.

4.6 *Organising events and coaching for access to digitalised and dematerialised content for the general public*

4.6.1 In the absence of training and information, the general public tend to view PCs, which are increasingly common fixtures in homes, as sources of multimedia recreation, unaware of the cultural, educational, teaching and information resources available on the Internet. In the same way that lending libraries use events to offer all ages an active interface with books and reading, they must take responsibility for coaching and events on dematerialised content.

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on an Energy mix in transport

(2008/C 162/12)

In a letter dated 19 March 2007 the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on an:

Energy mix in transport.

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 18 December 2007. The rapporteur was Mr Iozia.

At its 442nd plenary session, held on 13 — 14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 130 votes to 11 with 8 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee is pleased to respond to the request from the Commission Vice-President and Commissioner responsible for Transport, Jacques Barrot, to draw up an opinion on the energy mix in transport, being convinced of the need to build up an on-going dialogue between the Commission and the Committee, representing organised civil society.

1.2 The Committee agrees with the conclusions of the spring Council, which highlighted the following priorities:

— increasing security of supply,

— ensuring the competitiveness of European economies and the availability of affordable energy,

— promoting environmental sustainability and combating climate change.

1.3 Guideline policies for the most appropriate energy mix must, therefore, be based on these priorities, as already put into practice by the Commission in its communication on fuel targets 2001-2020.

1.4 While believing that oil will remain the main transport fuel for many years to come, and that natural gas — also a non-renewable resource — will be able to supplement and partly replace oil-based products, the EESC considers a sharp increase in funding for research into the production and use of hydrogen and second-generation agro-fuels to be vital. It therefore

welcomes the initiative on the part of the Commission, which decided on 9 October 2007 to finance a Joint Technological Initiative worth EUR 1 billion for the 2007-2013 period, and echoes the calls from businesses and research centres engaged in developing hydrogen use for the Council and Parliament to speed up the process of adopting the proposal.

1.5 Growing public concern over climate change, together with the risks associated with the rising average global temperature — which, in the absence of specific action, could increase by between 2 and 6,3 °C, points to the need for a reinforcement of all appropriate means of countering the negative effects of greenhouse gas emissions into the atmosphere. The EESC appreciates the work of the EAA and its major contribution to disseminating data and reporting on the progress of measures to combat atmospheric pollution.

1.6 The EESC agrees with the conclusions of the Environment Council of 28 June 2007 and supports the proposal for the Commission to review the 6th environmental action programme in the light of the priorities identified:

— tackling climate change,

— halting the loss of biodiversity,

— reducing the negative impact of pollution on health,

— promoting sustainable use of natural resources and sustainable waste management.

1.7 Means to achieve these aims are being studied in all transport sectors, and the main European agencies are gearing their efforts to securing practical results in a few years. The decision to apply the system of emission certificates to air transport, whose contribution to the production of greenhouse gases is increasing, will enable the development of new fuels to be stepped up. Some companies are already examining the possibility of using agro-fuels, as the results with hydrogen are still only partial and hydrogen-based alternatives remain a long-term prospect. Large naval engines are more easily converted to mixed fuels with lower carbon content, while in the rail sector a combination of electricity and developing renewable sources will certainly boost the existing outstanding environmental performances.

1.8 The best fuel is fuel that is saved. In the EESC's view, the decisive choice on the most suitable energy mix — a choice which should increasingly be elevated to the rank of a community policy — must take account of all these factors, with the health and wellbeing of European citizens, and of the planet, clearly coming first. Tax policies and incentives, recommendations and regulations must always reflect this priority, by favouring the most eco-compatible and economically sustainable option. Savings must be made for the benefit of public transport, alternative means of transport and economic and social policy choices that boost individual mobility while reducing the unnecessary movement of goods.

1.9 The EESC is convinced that the future of transport necessarily lies in the progressive decarbonisation of fuels, and should achieve zero emissions. H_2 production using renewable energy, such as biomass, photolysis, thermodynamic or photovoltaic solar energy, wind power or hydroelectric energy is the only option which amounts to more than a 'green daydream'. As an energy storage element, hydrogen allows energy supply, which is periodic by nature (night/day, yearly cycles, etc.), to be brought into line with variable, de-coupled energy demand.

1.10 The development of combustion and traction technologies has triggered the rapid spread of hybrid vehicles. The most appropriate solution for reducing emissions seems to be fully electric traction, entailing the development of electricity generation from renewable sources, or hybrid use of natural gas and hydrogen, at least for as long as significant availability exists. Another intermediate possibility might be the use of a hydrogen/methane blend, with low hydrogen content. This method represents an initial step towards the use of hydrogen in mobility.

1.11 The use of hydrogen as an energy carrier adapted to transport purposes — albeit subject to the limitations identified at present — represents a challenge for the future, and the possibility of seeing vehicles running partly or fully on hydrogen may become a fact in only a few years, provided that research continues to be supported by the national and European authorities. In this context, the results of the CUTE (Clean Urban Transport for Europe) project are encouraging.

1.12 As it has previously said in relation to energy efficiency, the EESC considers that it would be most helpful to have a web portal, where university research and national, regional and city-based experiments could be shown to a broader audience, and in particular local administrators. The EESC considers that in order to obtain an optimal energy mix, a proper mix is necessary in transport, boosting the efficiency of hydrocarbons and transport priorities. While awaiting reliable and efficient production of hydrogen, the use of electricity, generated from renewable sources, cannot be delayed. The challenge facing transport is to make increasing use of electricity, as soon and wherever possible.

1.13 The EESC would underline the importance of informing and involving civil society which, through its patterns of behaviour, is contributing to the achievement of consumption reduction objectives, and is helping to support research and innovation regarding clean, sustainable fuels. These choices should be mainstreamed into European and national policies, emphasising the added value represented by the Member States' capacity for cooperation and cohesion. This entails upholding common values and a European social model which is alert to the protection of environmental assets, the health and safety of its citizens and those living and working in the Union, and which is concerned with the living conditions of humanity in general.

2. **Introduction**

2.1 Commission Vice-President and Commissioner for Transport, Jacques Barrot, has asked the European Economic and Social Committee to draw up an opinion on an *Energy mix in transport*.

2.2 The Committee shares the Transport Commissioner's concerns regarding fuel supplies and the need to bring forward research and studies on possible solutions relating to developments in transport policy and the need to adopt measures regarding the relevant fuels.

2.3 The contextual challenges the EU faces with regard to achieving full compliance with the Kyoto protocol objectives, the urgency of climate change, reducing its energy dependence on third countries, pursuing options implemented in line with the Lisbon agenda, achieving the objectives of the Transport White Paper and developing co-modality, and energy efficiency options, make this a central issue in the EU energy strategy.

2.4 Back in 2001, the Commission pointed to the need to tackle the issue of the fuels mix, in its communication on fuel targets 2001-2020, setting out a number of objectives for non-oil fuels, and considered the following scenario to be possible and compatible:

— natural gas could increase its market share to approximately 10 % by 2020,

— hydrogen is the potential future main energy carrier. Its share of fuel consumption could reach a few percent,

— biomass-to-liquid (BTL) fuels could largely enhance the market share of agro-fuels beyond 6 % by 2010, with the maximum potential for all biomass-derived fuels being estimated at about 15 %,

— liquefied petroleum gas (LPG) is an established alternative motor vehicle fuel with scope for additional market share, possibly up by 5 % by 2020,

— in brief, alternative fuels have the potential to increase their market share in the coming decades and, in the long term, to exceed the 20 % target indicated for 2020.

2.5 The EESC welcomed this communication, and in a previous own-initiative opinion ([1]) singled out the development of natural gas ([2]), research into crop-based fuels, and improving the energy performance of fuels currently on the market as the best way to diversify supply and, at the same time, reduce greenhouse gas emissions.

([1]) OJ C 195 of 18.8.2006, p. 75-79.
([2]) The development and promotion of alternative fuels for road transport in the European Union (OJ C 195 of 18.8.2006, p. 75-79).

3. **Climate change**

3.1 A growing body of scientists now agree that the climate is directly affected by greenhouse gas emissions. During the 20th century, the average temperature has risen by approximately 1 °C. A number of scenarios based on current climatic models reflecting trends of global GHG emissions are being put forward predicting that the average global temperature could rise by 2 °C to 6,3 °C, with devastating effects on the weather, sea levels, agricultural production and other economic activities.

3.2 The Environment Council held in Luxembourg on 28 June 2007 reaffirmed the relevance of the 6th Environmental Action Programme and the Commission's proposal for a mid-term review, emphasising the four priorities it sets out: tackling climate change; halting the loss of biodiversity; reducing the adverse effect of pollution on health; and promoting the sustainable use of natural resources and managing waste sustainably.

3.3 The Environment Council endorsed the strategy for an integrated climate and energy policy and the need to open negotiations to achieve a comprehensive post-2012 agreement by 2009. In a statement to the High-level meeting held on 27 September 2007 in New York, the President of the European Council, José Sócrates said that 'The UN climate change process is the appropriate forum for negotiating future global action. In this context, the Bali Summit ([3]) at the end of this year stands as a milestone, where we expect the international community to launch an ambitious roadmap for negotiations on a global and comprehensive climate change agreement'. The presence of the United States, which only overcame its reservations about participating in mid-October, and its vote in favour of the final resolution, have significantly strengthened the decisions taken, given the economic weight of the United States and its responsibility for greenhouse gas emissions.

3.4 The Environment Council emphasised the importance of internalising environmental costs as well as energy consumption costs in order to achieve long-term sustainable policies. Equally important is the increased use of market instruments in environment policy, including taxes, levies and emission certificates, for the benefit of the environment. Eco-innovation should be rapidly integrated on a large scale into the impact assessments of all relevant EU policies as well as wider and more effective use of financial instruments, especially in connection with fuel and energy consumption.

3.5 On 29 June 2007, the Commission adopted its Green Paper on adapting to climate change. During his presentation of the Green Paper, EU Environment Commissioner Stavros Dimas set out a number of practical and immediate measures for adapting to the climate change that was already underway. Rising temperatures, flooding and torrential rain in the north, drought and heat waves in the south, endangered ecosystems, new diseases were just a few of the problems mentioned in the text.

([3]) United Nations Climate Change Conference in Bali, December 2007

3.6 'Adapt or die' — according to Dimas, this was the choice facing some of Europe's sectors. Agriculture, tourism and energy would suffer devastating consequences and we needed to act now in order to limit future economic, social and human costs.

3.7 The document puts forward a number of practical solutions: reducing water waste, building dykes and flood barriers, developing new crop protection techniques, protecting the populations most affected by climate change, adopting measures to safeguard biodiversity. Nevertheless reducing CO_2 emissions remains the key objective for EU countries.

4. **The European Council**

4.1 The Spring 2007 European Council discussed energy and the climate and proposed adopting 'an integrated climate and energy policy', identifying it as an absolute priority and stressing 'the strategic objective of limiting the global average temperature increase to not more than 2 °C above pre-industrial levels'.

4.2 The Energy Policy for Europe (EPE) clearly sets out a strategy based on three pillars:

— increasing security of supply;

— ensuring the competitiveness of European economies and the availability of affordable energy;

— promoting environmental sustainability and combating climate change.

4.3 With regard to transport policy: 'The European Council stresses the necessity of an efficient, safe and sustainable European transport policy. In this context, it is important to proceed with actions to increase the environmental performance of the European transport system. The European Council notes the European Commission's ongoing work regarding the assessment of external costs for transport and their internalisation'. The European Council of 21 and 22 June took note of the Commission's intention to come forward no later than June 2008 with a model for assessing internalisation for all modes of transport and mapping out further steps consistent with the 'Eurovignette' Directive, by extending, for instance, the field of application to urban areas, making all types of vehicles or infrastructure subject to tolls.

5. **Greenhouse gas emissions**

5.1 With regard to emissions, transport is currently responsible for 32 % of total energy consumption in Europe and 28 % of total CO_2 emissions ([4]). The sector is believed to account for 90 % of the increase in emissions between 1990 and 2010 and could be one of the main reasons why the Kyoto objectives willnot be met. Road passenger transport is set to rise by 19 %, whereas road haulage should increase by over 50 %, according to the Commission's estimates.

5.2 Another sector to have experienced exponential growth is aviation transport, which registered an 86 % increase in emissions between 1990 and 2004 and makes nowadays 2+ % of global emissions.

5.3 TERM 2006 (Transport and Environment Reporting Mechanism) ([5]) considers that the progress made by the transport sector in 2006 is still unsatisfactory. The report examines the mid-term review of the 2001 Transport White Paper, which could bring improvements or negative effects depending on how it is interpreted at national and regional level. The EEA considers that, concerning the environment, the mid-term review changes the focus from managing transport demand to addressing existing negative side effects, i.e. transport demand growth is no longer explicitly identified as one of the main environmental issues within the transport sector. Key issues such as climate change, noise and landscape fragmentation caused by excessive transport infrastructure still hinge on the need to manage transport demand. This is something which the White Paper appears to have failed in this respect.

5.4 Another significant point raised in the report is transport subsidies, which in the EU amount to around EUR 270–290 billion. Almost half this amount is spent on road transport, one of the least eco-friendly modes. 'Transport contributes to several environmental problems such as climate change, air emissions and noise and is at the same time favoured by significant subsidies. Road transport receives EUR 125 billion in annual subsidies, most of it as infrastructure subsidies, assuming that taxes on road transport are not regarded as contributions to finance infrastructure. Aviation, as the mode with the highest specific climate impact, gets significant subsidies in the form of preferential tax treatment, in particular exemptions from fuel tax and VAT, which add up to EUR 27 to 35 billion per year. Rail is subsidised with EUR 73 billion per year and benefits the most from other on-budget subsidies. For water-borne transport, EUR 14 to 30 billion in subsidies have been identified. (*Size, structure and distribution of transport subsidies in Europe EEA*)'.

5.5 According to the Annual European Community greenhouse gas inventory 1990-2005 and inventory report 2007:

— EU-15 GHG emissions decreased by 0,8 % (35,2 million tonnes CO_2 equivalents) between 2004-2005

([4]) The EEA (European Environment Agency) recently published its annual report on Transport and Environment: on the way to a new common transport policy, which assesses the performance and efficiency of the transport sector in integrating environmental policies and strategies.

([5]) The report is published on the website: Annual European Community GHG inventory 1990-2005 and inventory report 2007, European Environment Agency, Technical Report No 7/2007.

— EU-15 GHG emissions were 2,0 % lower in 2005, compared to the Kyoto Protocol base years

— EU-15 GHG emissions decreased by 1,5 % between 1990 and 2005

— EU-27 GHG emissions decreased by 0,7 % (37.9 million tonnes CO_2 equivalents) between 2004 and 2005

— EU-27 GHG emissions decreased by 7,9 %, compared to 1990.

CO_2 emissions from road transport decreased by 0,8 % (6,0 million tonnes CO_2 equivalents) between 2004 and 2005.

6. **Security of primary energy supplies**

6.1 The European Union depends on imports (91 % of which being oil) for over 50 % of its energy needs. Unless this tendency is drastically reversed, this dependence rate will have risen to 73 % by 2030. The Council, as well as the European Parliament on several occasions, and the Commission itself have dwelt on this vital issue, stressing the need to adopt policy measures aimed at achieving the highest possible level of energy self-sufficiency.

6.2 In its Resolution on the macro-economic impact of the increase in the price of energy ([6]), adopted on 15 February 2007, the EP noted that the transport sector accounted for 56 % of total oil consumption. It advocated an EU strategy to phase out fossil fuels completely, arguing that 'transport fuel supplies could be expanded by facilitating the production of unconventional oil and liquid fuels based on natural gas or coal where this is economically reasonable'. The EP also called for a framework directive for energy efficiency in transport to be adopted and the harmonisation of passenger car legislation, including an EU-wide harmonised CO_2 based vehicle taxation with labelling procedures and fiscal incentives to diversify energy sources. Finally, the EP called for the development of vehicles with low CO_2 emissions, using second generation biofuels and/or biohydrogen fuels (biomass-derived hydrogen).

6.3 The crisis with Russia, which culminated in the decision taken on 1 January 2006 to reduce energy supplies to Kiev, and endemic political instability in the Middle East, have confronted Europe with epochal challenges, i.e. successfully ensuring secure and sustainable energy supplies in anticipation of increased future pressure on the demand for fossil fuels.

6.4 At present, European production of alternative and renewable energy sources for the transport sector is almost exclusively restricted to biofuels, which currently cover only 1 % of Europe's energy needs in the transport sector. In its opinion ([7]) on the progress made in the use of biofuels, (the Committee argued that the policy thus far pursued should be reconsidered, emphasising second-generation agrifuels. At the same time, the development of second-generation conversion technologies should be promoted and supported: they can use raw material from 'fast-growth crops', based principally on herbaceous or forestry crops or agricultural by-products, thereby avoiding the use of the more valuable agrifood seeds. Bioethanol and its by-products in particular, which are currently obtained by fermenting (and subsequently distilling) cereals, sugar cane and beet, may in future be produced from a wide range of raw materials, combining waste biomass from agricultural crops, residue from the wood and paper industries, and other specific crops.

7. **Transport mix**

7.1 The energy mix in transport is to a large extent determined by the modes of transport chosen to meet various freight and passenger journey needs. It is important because different modes of transport have more or less dependence on hydrocarbons. Accordingly, any strategy for the optimum energy mix in transport must seek to reduce passenger and freight dependence on fossil fuels.

7.2 The main options for doing this are twofold. First, changes need to be made in hydrocarbon efficiency and transport priorities; these are discussed elsewhere in the Opinion. Second, priority must be given to the use of electrical power. With existing energy sources and the future potential of alternative energy sources we can be optimistic about the future for clean electricity supply. The challenge is to use more electricity in transport.

7.3 The transport mode with the greatest electric potential is rail, whether for passengers or freight and whether international, national, regional or urban. The expansion of rail transport powered by electricity can reduce short haul air traffic, long distance road freight transport and bus and car usage generally.

7.4 In its agenda, the European Rail Research Advisory Council (ERRAC) emphasises the challenges it faces in enabling rail transport to triple its freight and passenger volume by 2020. The development of energy efficiency and environmental issues are at the heart of the initiative. Research under the TEN projects is focusing on the possible applications of hydrogen fuel cells, which could be integrated in the traction vehicle electric system and which would gradually substitute the fossil fuel-driven locomotives currently in operation.

([6]) *Resolution on the macro-economic impact of the increase in the price of energy* — Rapporteur: Manuel António dos Santos (PES, PT).

([7]) Communication from the Commission to the Council and the European Parliament Biofuels Progress Report — Report on the progress made in the use of biofuels and other renewable fuels in the Member States of the European Union (COM(2006) 845 final), rapporteur: Mr Iozia.

7.5 For the foreseeable future air transport will remain dependent on hydrocarbon fuels but the introduction of high speed train (HST) services should significantly reduce the number of scheduled flights over distances of less than five hundred kilometres. Air freight is growing faster than air passenger traffic, using dedicated transport aircraft. Some of it, especially commercial mail services, could be diverted in future to the HST network. This change in the transport mix would be accelerated by an increase in HST links to airports.

7.6 The Advisory Council for Aeronautical Research in Europe (ACARE) is engaged in upholding its own Strategic Research Agenda, which examines the general issue of climate change, noise pollution and air quality. The 'Clean Skies' Joint Technology Initiative will explore the best solutions for sustainable aviation transport in terms of design, engines, and fuels. The SESAR project should make it possible to achieve vast economies by rationalising the air traffic management system (see EESC opinion).

7.7 National and international road freight traffic is a major user of hydrocarbon fuels. A 21st century high speed freight network operating between major inter-modal nodes could achieve a material reduction in road freight transport. As the HST network develops, it could be used overnight for freight traffic. Such a change in mix would be accelerated by a pricing strategy for roads, fuels and vehicle licences.

7.8 The European Road Transport Research Advisory Council (ERTRAC) has also adopted a strategic research agenda, with the environment, energy and resources as its focal points. A reduction of up to 40 % in specific CO_2 emissions (per kilometre) for passenger cars and up to 10 % for heavy duty commercial vehicles by 2020 are among the agenda's foremost objectives. There is also a specific chapter on fuels.

7.9 Water transport is generally supported by public opinion, whether it be river canal, coastal or oceanic. River, canal and coastal freight are energy efficient alternatives to road transport and should be encouraged in the transport mix.

7.10 Intercontinental maritime transport is actually a greater user of hydrocarbons than aviation and is also growing faster. It accounts for about 95 % of world trade by volume and it is relatively efficient but it is a serious source of sulphur and nitrogen oxide emissions.

7.11 With the globalisation of supply chains and the emergence of the Asian economies, intercontinental maritime transport is expected to increase 75 % by volume over the next fifteen years, with the consequent growth in emissions because this traffic is diesel powered. With the growth in emissions and the reducing supplies of hydrocarbon fuels, will we finally reach an era when long distance freight traffic between major ports on all five continents is going to be shipped in super-scale bulk carriers powered by alternative fuels rather like modern submarines, aircraft carriers and ice breakers? That would certainly change the energy mix in transport.

7.12 In the maritime sector, the 'Waterborne' technology platform is developing research in order to improve marine engine yields overall, reduce drag, and test for alternative fuels, including hydrogen.

7.13 Passenger cars are multifunctional and indispensable vehicles which most people need to carry on their daily lives. Nevertheless, within a strategy to change the transport mix, there are opportunities to replace urban and suburban bus and passenger car journeys by electric powered trains and trams.

7.14 The relative energy density of different fuels must be taken into account when selecting the most appropriate and efficient ones. Efforts should therefore focus on the use of the highest energy density fuels. The following table provides examples of a number of density values, expressed in MJ/Kg.

Fuel	Energy content (MJ/Kg)
Pumped stored water at 100m dam height	0,001
Bagasse [1]	10
Wood	15
Sugar	17
Methanol	22
Coal (anthracite, lignite)	23-29
Ethanol (bioalcohol)	30
LPG (liquefied petroleum gas)	34
Butanol	36
Biodiesel	38
Oil	42
Gasohol or E10 (90 % petrol and 10 % alcohol)	44
Petrol	45
Diesel	48
Methane (gaseous fuel, compression dependent)	55
Hydrogen (gaseous fuel, compression dependent)	120
Nuclear fission (Uranium, U 235)	85 000 000
Nuclear fusion (Hydrogen, H)	300 000 000
Binding energy of helium (He)	675 000 000
Mass-energy equivalence (Einstein's equation)	90 000 000 000

[1] From Wikipedia: biomass remaining after sugar cane stalks are crushed to extract their juice.

Source: J.L. Cordeiro based on IEA and US Department of Energy

7.15 In summary, there are clearly opportunities to change the transport mix in a way which would have a material impact on the hydrocarbon dependency of the EU transport sector. The key to this is the generation of more electricity which will allow the further development of electric powered transport as well as providing the energy source for any ultimate development of hydrogen power.

8. **A hydrogen society**

8.1 Environmental damage is caused mostly by the products of combustion of fossil fuels, but also by the technologies used to extract, transport and process them. However, the worst damage results from their final use. More specifically, in addition to carbon dioxide, combustion releases elements added at the refining stage (lead substances for example) into the atmosphere.

8.2 Global demand of 15 billion tonnes of oil equivalent is predicted in 2020, with an average rate of growth of more than 2 %. This demand will have to continue being met principally by fossil sources, currently accounting for between 85 % and 90 % of world energy supply. However, a progressive shift in focus is already under way regarding low carbon/hydrogen (C/H) ratio fuels, moving away from carbon to oil and methane, and gradually progressing towards full decarbonisation, i.e. using hydrogen as an energy carrier.

8.3 Interesting data on experiments with hydrogen fuel cell technology, as applied to public transport buses in Porto, was presented at a hearing in Portugal. The changing attitude of the general public towards hydrogen was of particular interest: the information provided has helped to substantially reduce mistrust regarding this energy carrier. It should be borne in mind that hydrogen is not a freely available primary energy vector, but must be produced by using:

— hydrocarbons such as oil or gas, resources which are still plentiful but not renewable,

— electrolysis from water, using electrical energy.

Annual world hydrogen production stands at 500 billion cubic metres, equivalent to 44 million tonnes, 90 % of which is obtained from the chemical process of reforming light hydrocarbons (mostly methanol) or cracking heavier hydrocarbons (oil), and 7 % from coal gasification. Only 3 % is produced by electrolysis

8.4 Calculations according to the lifecycle method have shown that the quantity of greenhouse gas emissions produced when using hydrogen produced by conventional means (i. e. electrolysis), in the light of the energy mix in Portugal, which already includes a significant renewable component, is 4.6 times greater than the emissions from engines using diesel or natural gas, and three times greater than those from petrol engines. This means that the prospects for widespread use of hydrogen depends on the development of renewable energies with very low greenhouse gas emissions.

8.5 The consumption curve has shown that to keep engines at peak efficiency, even when turning over, considerably greater higher amounts of hydrogen than of conventional fuels must be consumed. This clearly demands further thinking on its future use in urban transport, which entails frequent stops on account of both traffic and its inherent service patterns.

8.6 It should however be remembered that the Porto experiments were carried out in a much broader context than the CUTE (Clean Urban Transport for Europe) project. The overall results of the project differ from those discussed during the hearing, due to a number of differences concerning terrain, traffic conditions and methods of use. The project's overall results are encouraging and also shed light on problems associated with its development. The key problem, in the opinion of the Commission, is an apparent inability among high-level political leaders to grasp fully the potential and advantages presented by significant progress in the use of hydrogen for road transport.

8.7 The most appropriate solution for reducing emissions seems to be fully electric traction, entailing the development of electricity generation from renewable sources, or hybrid use of natural gas and hydrogen, at least for as long as significant availability exists. Reliable studies on this alternative have not yet been carried out, but it does appear to be the most efficient, according to some efficiency and energy potential parameters.

8.8 Another intermediate possibility might be the use of a hydrogen/methane blend, with low hydrogen content. This method represents an initial step towards the use of hydrogen in mobility. It involves few disadvantages: since the distribution and on-board storage systems are the same, it can be used by existing cars, yielding performances similar to those with methanes, but reducing emissions and increasing the speed of combustion, thereby reducing particles and the formation of nitrogen oxides.

8.9 Recent research carried out by the Denver Hithane Project, Colorado State University, and in California, with the support of the Department of Energy and the National Renewable Energy Laboratories, has demonstrated that a blend of 15 % H_2 with CH_4 cuts total hydrocarbons by 34,74 %, carbon monoxide by 55,4 %, nitrogen oxide by 92,1 % and carbon dioxide by 11,3 %, as reported by a study presented by ENEA ([8]).

8.10 H_2 production using renewable energy is the only option which amounts to more than a 'green daydream'. As an energy storage element, hydrogen allows energy supply, which is periodic by nature (night/day, yearly cycles, etc.), to be brought into line with variable, de-coupled energy demand. Hydrogen should be produced using the least energy-intensive technology,

([8]) Ecomondo — Rimini, November 2006 — Mr Giuseppe Nigliaccio ENEA.

with a full analysis of the production cycle and its match with the requested energy service. All renewable energies that can be linked to use in the form of heat, electrical energy or fuel, should be pursued without passing through the longer hydrogen cycle, and therefore put into direct use.

8.11 Another factor that should be considered is production close to consumption, cutting the transport-related costs and emissions. This theory, which is valid in general, is all the more valid if applied to energy efficiency, in view of the costs of dispersion due to transmission and distribution: in consequence, the other aspect to be considered is the territorial spread of production.

8.12 Prospects for the use of hydrogen also depend on the territorial spread of the distribution network. As with the problems encountered with CNG (compressed natural gas), whose distribution network is extremely patchy and, in some Member States, virtually absent, distribution centres for vehicles using hydrogen fuel cells are non-existent. The introduction of CNG, and further ahead of hydrogen, must be backed up by mass distribution policies.

8.13 The European Commission has earmarked EUR 470 million to set up the Fuel Cells and Hydrogen Joint Undertaking (COM(2007) 571 final), on which the EESC is currently drawing up an opinion. This should speed up the use of hydrogen — something which is clearly also of interest to the transport sector. The Community funding is matched by the same amount from private industrial sector, providing a total of some EUR 1 billion to speed up the introduction of hydrogen in Europe. The fund will finance technology initiatives for producing hydrogen fuel cells, and a programme of technological research and implementation. The research is to be carried out by public-private partnerships in industrial and academic circles, and will continue for a six-year period. The aim is clear: to put hydrogen vehicles on the market in the course of the ten years between 2010 and 2020 — in other words, starting three years from now.

8.14 Many hydrogen vehicles could be ready to enter the market today. But there is no common, standard and simplified procedure for the type-approval of hydrogen powered vehicles. At present, hydrogen vehicles are not covered by the Community type-approval system. Defining European standards would help to reduce the risk margin in research for car manufacturers, as they would be able to assess which prototypes would have real market potential.

8.15 The Zero Regio project, co-financed by the European Commission, comprises the construction and experimental use of two innovative multifuel and hydrogen supply structures, one in Mantova and the other in Frankfurt, using various technological options to produce and supply hydrogen. In Mantova, the hydrogen is produced within the service station using a 20 mc/h natural gas reformer. The technology employs a high-temperature catalyser process with a pre-blended flow of vapour and natural gas that is converted into hydrogen in a series of steps. The vehicle fleet currently comprises three hydrogen fuel cell-drive Fiat Panda cars. There are also plans to supply hydromethane. The Mantova and Frankfurt service stations are also considered to be 'Green Petrol Stations', as in order to help reduce CO_2 emissions, they are fitted with photovoltaic equipment of 8 and 20 kWp respectively, capable of generating renewable source electricity equivalent to approximately 30 000 kWh/year, representing a reduction of about 16 tonnes/year of CO_2 emissions.

8.16 Carbon dioxide capture and sequestration techniques are very costly and affect final production efficiency, raising serious issues regarding possible future risks of pollution of water tables or sudden, massive releases of carbon dioxide. The idea of producing hydrogen by using carbon is problematic ([9]).

8.17 Recent studies ([10]) have revealed a hitherto neglected problem, i.e. the potential consumption of water if the hydrogen society develops rapidly. The study is based on current levels of water consumption by electrolysis production and power plant cooling systems. The resulting data is worrying since it is estimated that 5 000 litres of water are required to produce one kilo of hydrogen for cooling alone, and at present efficiency standards, over 65 kW per kg.

8.18 The use of hydrogen as an energy carrier adapted to transport purposes — albeit subject to the limitations pointed out — represents a challenge for the future, and the possibility of seeing vehicles running partly or fully on hydrogen may become a fact in only a few years, provided that research continues to be supported by the national and European authorities.

8.19 As it has previously said in relation to energy efficiency (TEN/274), the EESC considers that it would be most helpful to have a web portal, where university research and national, regional and city-based experiments could be shown to a broader audience, and in particular local administrators. The exchange of best practices is essential for highly subsidiarity-based policies, i.e. decided at local level.

([9]) The currently established technology involves pulverised coal plants using the classic vapour cycle and processing of the products of combustion discharged during the procedure. In practice, vapour is produced at 'conventional' pressures and temperatures to drive turbines in plants which are as yet few and far between. There are currently four types of plant, in descending order in terms of technological development and environmental impact: supercritical and ultra-supercritical pulverised coal; fluid bed combustion; combined cycle gasification; and lastly combustion with oxygen. Two solutions exist today which in any case provide for geological CO_2 sequestration; these are coal combustion in boilers, in which oxygen is used to bring about a high concentration of CO_2 at discharge, thereby reducing capture and sequestration costs; and the use of integration gasification combined cycle technologies, which produce a synthetic gas which is then purified, therefore separating the high-grade, combustible part of the CO_2.

([10]) Webber, Michael E. 'The water intensity of the transitional hydrogen economy.' Environmental Research Letters, 2 (2007) 03400.

8.20 The following European average figures should be published on the web portal:

— grams of CO_2 emitted into the atmosphere in generating 1 kWh of electricity;

— quantity of CO_2 emitted in agriculture and diesel fuel manufacture for the production of one litre of diesel substitute;

— quantity of CO_2 emitted in agriculture and bio-ethanol manufacture for the production of one litre of bio-ethanol.

This is the only way of quantifying actual CO_2 emissions and savings and converting kilowatt-hours saved correctly into the equivalent weight of CO_2.

9. **General comments and recommendations of the EESC**

9.1 In response to Commissioner Barrot's request, the EESC has drawn up this opinion in order to provide the Commission and other EU institutions with civil society's views on what needs to be done to meet the challenges presented by the Kyoto Protocol.

9.1.1 The EESC considers it essential to combine discussions on the future fuel mix with a significant change in current modes of transport, giving preference to urban and extra-urban public transport, which will entail modernised vehicle fleets and better infrastructure. The quality and efficiency of rail transport will have to be improved through investment in infrastructure and rolling stock and, as a result, the electricity generation required to sustain the development of rail transport will have to rely increasingly on renewable energy and low carbon fuels.

9.2 In a previous opinion (TEN/274, rapporteur Mr Iozia), the EESC had stated clearly that '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' and that the 'fact that European industry relies on third countries for transport fuel increases its responsibility to make a key contribution to energy efficiency and the reduction of emissions and gas and oil product imports'.

9.3 The EESC shares and supports the view that efficiency, security and sustainability will therefore serve as the European institutions' baseline principles for evaluating the policies to be followed and the measures to be adopted to promote cleaner energy use, a cleaner and more balanced transport sector and greater corporate responsibility in Europe without compromising the competitiveness of European firms, as well as to create a framework that fosters research and innovation.

9.4 The future transport fuel mix will therefore have to include these characteristics: reducing greenhouse gas emissions overall; reducing as far as possible energy dependence on third countries and diversifying energy sources; keeping costs consistent with the competitiveness of the European economic system.

10. **Challenges relating to the EU transport sector's future fuel choices: investing in research**

10.1 If the absolute priority is compliance with the Kyoto objectives, the bulk of available public and private resources should be channelled into research on fuels that fully meet the indispensable requirements of economic efficiency, environmental sustainability and low emissions for managing eco-friendly transport.

10.2 Cooperation between universities, research centres, the fuel industry and manufacturing industry, and the automotive industry in particular, must be further developed. The Seventh Framework Programme (7FP) implemented by Council Decision No 971/2006/EC concerning the Specific Programme 'Cooperation', sets leadership in key scientific and technological areas as one of its objectives. These priorities include the environment and transport.

10.2.1 The need to improve the efficiency of traditional batteries is being neglected. Developing electric cars depends on reducing the weight and improving the autonomy and performance of traditional batteries. The EESC recommends that the Commission make a specific commitment in this direction.

10.3 In its opinion on the 7FP ([11]), the European Economic and Social Committee expressed its concerns regarding the scarcity of fossil fuels, steadily rising prices and the effects of climate change. It advocated allocating more funds to the energy sector in general while stressing how the challenge in dealing with the critical issues in the transport sector could secure sufficient funds, estimated at EUR 4 100 million for 2007-2013.

11. **Ensuring the competitiveness of European economies and the availability of affordable energy**

11.1 The EESC underscores the fundamental aspect of the Union's strategy, ensuring the EU's competitiveness, which is undoubtedly based on affordable and stable prices. Transport has always been the only means of transferring freight, passengers and animals to markets. It is now of vital importance to another crucial European industry, i.e. tourism. The third aspect of sustainability, price, is the most complex challenge. At present, there are no alternative fuels that can compete with oil and natural gas in terms of price. Despite increases in recent years, these products are still the most competitive.

([11]) Official Journal — 2006/C 185/02, 8/8/2006 (rapporteur: Mr Wolf, co-rapporteur: Mr Pezzini).

11.2 Nevertheless, while advocating a steady increase in the use of biofuels and other renewable energy fuels, the EESC considers it essential to step up applied research into second-generation agro-fuels, which use waste or non-food biomass, and are free of the disadvantages of the first generation, i.e. those derived mainly from cereals, beet and sugar cane, or from oilseeds for human or animal consumption ([12]). The Committee stresses that the cost assessment should not be restricted exclusively to the cost of the final product. A correct comparison of costs vis-à-vis fossil fuels must take into account the internalisation of all external costs (environmental damage, location of production sources, processing costs, water consumption and land use, etc.).

11.3 Gradual substitution, where component mixing processes are not possible, should run parallel to a gradual adaptation and/or overhaul of distribution systems that take into account the physical quality of the new products.

11.4 Although the EESC supports the positive aspects of this strategy, it is nevertheless aware that it will be expensive, especially in its initial phases, and therefore liable to reduce the European system's competitiveness. However, the EESC underlines that, in order to avoid this risk and so as not to limit the global impact, Europe must spearhead a movement that will ultimately lead other parts of the planet in the same direction.

11.5 The investment required in the field of alternative biomass-derived energy sources must be able to rely on a stable regulatory framework. This entails adapting directives on fuel to the new production methods, clear cooperation with the manufacturing industries, in order to enable innovation processes to proceed in line with the industry's true potential. Specific attention, in addition to 7FP projects, has to be focused on relevant innovation and research at both central and peripheral levels.

11.6 If the efforts and investment put into developing new efficient and sustainable fuels are not to be wasted, we need to bolster these processes with initiatives aimed at increasing the service speed of vehicles, reducing consumption, taking action, for instance, on European road junctions that create bottlenecks in national and urban traffic. The Lisbon public transport authority Carris, which supplements its traditional trams (the legendary No 28) with a fleet of eco-friendly buses, has reduced CO_2 emissions by 1,5 %, by means of measures which have boosted service speeds, such as doubling priority bus lanes.

11.7 The Coimbra transport authority, SMTUC, has for its part experimented with a blue line comprising electrically-powered buses, which operate in the city centre along reserved lanes with no specific stops — they may be boarded at any point. A blue stripe painted on the roadway indicates the route, partly for the benefit of non-residents and the many tourists who prefer this type of efficient and clean transport. Coimbra's trolley buses are also particularly appreciated: thanks to their back-up batteries, they can avoid traffic congestion by diverting from their overhead lines. This mode of transport combines very low levels of atmospheric and noise pollution with a well above average vehicle service life, absorbing the higher initial purchasing costs.

11.8 The EESC recommends appropriate tax incentives for these urban transport vehicles (reduced rates for purchasing eco-friendly vehicles or, alternatively, special funding for local authorities, lower prices for ecobuses), and publicity campaigns on the use of ecobuses, which should be carried out with coordination at European level, upgrading and expanding park-and-ride facilities — where necessary stepping up security — and maintaining low prices, and integrating them with urban transport facilities, as is already the case in many European cities.

11.8.1 The Green Paper *Towards a new culture for urban mobility* COM(2007) 551, published by the Commission on 25 September 2007, looks at these problems and proposes solutions involving support for urban public transport rehabilitation projects financed under the ERDF and the CIVITAS programme. The Commission's Green Paper sends out a powerful message promoting eco-friendly urban transport, and the EESC agrees with this approach and recommends exploring other practical initiatives on the basis of positive experiences and through strengthened cooperation with the EIB and the EBRD.

11.9 The future of urban transport, as discussed in a previous EESC opinion ([13]), clearly lies with public transport. Two research projects, already at the experimental stage, were presented during the hearings for the present opinion: an electric minicar, that can be driven without a driving licence, and a cybernautic vehicle, operated by a complex system of remote controls, that can run along predetermined routes. These vehicles could be hired for inner city travel, perhaps replacing the toll charges applicable to bulky and polluting vehicles.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([12]) See EESC opinion TEN/286 following the plenary session of 24/25 October.

([13]) OJ C 168 of 20.7.2007, p. 77-86.

Opinion of the European Economic and Social Committee on Energy efficiency of buildings — The contribution of end users (exploratory opinion)

(2008/C 162/13)

On 16 May 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on

Energy efficiency of buildings and the contribution of end users

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2008. The rapporteur was Mr Pezzini.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 14 February 2008), the European Economic and Social Committee adopted the following opinion by 195 votes in favour with 1 abstention.

1. **Conclusions**

1.1 The Committee recognises that energy efficiency is a fundamental factor when it comes to taking care of the climate and achieving the targets set by the EU in Kyoto and the new ceilings set by the European Council in March 2007 in the field of reducing emissions. It therefore recommends stepping up efforts aimed at consumers.

1.2 The Committee is convinced that there is great potential in the building sector for saving energy, particularly from heating, air conditioning, motive power and lighting as well as through insulation techniques, in building design and use.

1.3 When defining measures to increase energy efficiency, account should also be taken of the benefits of the widespread use of cost-effective technological innovations, enabling end users to take more informed decisions regarding their individual energy consumption.

1.4 The Committee believes that innovative methods must be developed so as to address the issues of information and financing for end users more directly: it is essential that owners and tenants do not see these new Community measures as a new tax levied on such a primary asset as the home.

1.5 The Committee believes that new cultural stimuli and incentives will need to be devised, both to offset the higher costs and to raise interest in:

— project research,

— revised building methods,

— the use of better materials in the building process, and

— new structural methods.

1.6 In the Committee's view, the work of the CEN (the European Committee for Standardisation) should be stepped up, in line with the Commission's brief on the matter, which provides for the definition of harmonised standards for measuring the energy consumption of existing buildings and new builds, as well as for certification and inspection procedures.

1.7 The Committee would reiterate the importance of avoiding setting unsustainable restrictions on Member States, in the face of international competition, and ensuring that owners who rent out or occupy a property are not forced to shoulder costs that they cannot afford.

1.8 The obligations and costs arising from the certification process should in the Committee's opinion be accompanied by publicity campaigns, so as to guarantee fair access to improved energy efficiency, in particular for residential buildings, built or managed in the context of social policy, and blocks of flats, particularly in the new Member States where most blocks of flats are standard-type buildings; for such buildings, standard certificates can be used.

1.9 The Committee would stress the importance of developing Community initiatives to harmonise the activities of Member States in terms of energy efficiency, so as to make real progress towards greater European coherence, while taking local conditions into account.

1.10 The Committee recommends a number of measures that could encourage end users to be more mindful of energy efficiency in general and more specifically in buildings:

— free advice on energy and public financing of feasibility studies;

— tax credits and/or subsidies for carrying out 'energy audits';

— tax relief for the consumption of fuel for heating, electricity and motive power and economic incentives and deductions/reimbursements for the purchase of energy efficient and environmentally-sound technologies or for the installation of better heat insulation in existing buildings;

— low-interest loans for the purchase of energy efficient equipment and installations (e.g. condensing boilers, individual thermostats, etc.) and for work involving ESCOs ([1]);

([1]) ESCO = Energy Service Company.

— tax relief or deductions for investments in R&D activities, or in pilot projects, with a view to promoting the dissemination of new technologies, in the field of building-sector energy efficiency, making the most of the opportunities provided by the 2007-2013 Seventh Framework Programme for Research and Technological Development (FP7), the Competitiveness and Innovation Framework Programme (CIP), the LIFE+ programme and the Structural and Cohesion Funds;

— EIB loans, above all for the sustainable renovation of large, ageing public or public service buildings and social housing;

— assistance to families on low incomes and pensioners for improving the energy efficiency of housing, and long-term, low-interest loans aimed at improving the energy efficiency of buildings;

— fixed-price standard packages for regular maintenance services for boilers and centralised air-conditioning installations, to be provided by qualified staff;

— a Community website linked to national sites, easy for end users to access;

— the preparation of European teaching materials, in all Community languages, focussed on the various professional groups concerned, regarding the issue of a European 'housing licence' ([2]);

— the incorporation of key education-related themes in relevant Community programmes — the EU's education programme; FP7-RTD; Marie Curie; EIB, Universities;

— the provision of information and training materials for schools at all levels, for professional and union associations, and for consumers and their organisations.

1.11 From the point of view of the final consumer, the Committee feels that consideration must be given to the obstacles hindering the promotion and implementation of energy efficiency in buildings in Europe: barriers of a technical, economic, financial, legal, administrative, bureaucratic, institutional, management-related and socio-behavioural nature and barriers linked to inconsistencies of approach (imbalances between heating/air-conditioning, no consideration of the local climate).

2. **Introduction**

2.1 The Presidency Conclusions of the Brussels European Council (8/9 March 2007) stress 'the need to increase energy efficiency in the EU so as to achieve the objective of saving 20 % of the EU's energy consumption compared to projections for 2020 […] "and identify" energy-efficient and energy-saving behaviour of energy consumers, energy technology and innovations and the **energy savings from buildings**' as priority areas.

2.1.1 Energy efficiency of buildings is an issue which falls within the scope of the Community initiatives on climate change (commitments under the Kyoto Protocol) and security of supply, particularly in the context of the green papers on security of energy supply and energy efficiency, on which the EESC has commented on several occasions ([3]).

2.1.2 Energy consumption in buildings-related services accounts for around 40 % ([4]) of the EU's energy consumption.

2.1.3 For heating alone, the average consumption of dwellings in many regions of Europe is 180 kWh/m^2/year. This shows that many European nations' buildings are particularly poor performers when it comes to energy efficiency.

2.1.4 Many factors contribute to this. On the one hand, few consumers are aware of the ever-increasing difficulties of obtaining energy at affordable prices; on the other, architects, building firms and the countless small entrepreneurs who work in the building sector ([5]) tend to pay little attention to energy efficiency and environmentally sound construction when building and to prioritise aesthetic aspects and follow passing fashions such as floor quality, luxury washing appliances, attractiveness the vitrification of external facades, type of material and size of window frames.

2.1.4.1 Moreover, many administrative bodies, particularly municipal engineering departments and public health offices, fail to pay enough attention to the issue when it comes to recording energy consumption of buildings as part of checks ensuring that they provide safe accommodation or are insufficiently informed.

2.1.4.2 Nevertheless, contrary to common belief, there is great scope for increasing energy efficiency, in existing as well as new buildings, particularly in multi-occupancy accommodation in cities ([6]).

2.1.5 As regards renovation of existing infrastructure, the contracts that can be concluded with Energy Service Companies (ESCOs) have an important role to play: under these contracts,

([2]) To certify awareness of the need to use resources efficiently. See similar proposal for a European computer licence.

([3]) Opinion on the Green Paper — Towards a European strategy for the security of energy supply, rapporteur Ms Sirkeinen, OJ C 221 of 7.8.2001, p.45; exploratory opinion on a strategy for an optimal energy mix, rapporteur Ms Sirkeinen, OJ C 318 of 23.12.2006, p. 185; exploratory opinion on Energy Efficiency, rapporteur Mr Buffetaut, OJ nr C 88/53 of 11.4.2006; opinion on energy end-use efficiency and energy services, rapporteur Ms Sirkeinen, OJ C 120 of 20.5.2005, p. 115; opinion on an Action Plan for Energy Efficiency, rapporteur Mr Iozia, OJ nr C 10/22 of 15.1.2008.

([4]) 32 % in transport, 28 % in industry — Source: European Commission, DG ENTR.

([5]) The building sector's GDP accounts for over 5 % of the EU's total GDP.

([6]) If the average energy consumption of buildings in European regions fell to 80KWh/m2/year, i.e. into Class D, much of the energy used in the building sector could be saved. This is clearly in line with the spirit of Directive 2002/91/EC.

the companies are entrusted with the improvements to be made to existing buildings, to make — sometimes substantial — savings on energy costs. The company is paid with the money saved from the reduced consumption ([7]).

2.1.6 Additionally, numerous measures could be taken in small-scale renovations such as external shutters on windows, the installation of smart meters, which allow consumers to monitor their consumption in real time on an ongoing basis, or gas-fired water heating plant (top boxes) that can reduce costs and harmful gas emissions by 40 %. Air ventilation micro-systems have also proved to be remarkably efficient in flats, while paying attention to the type of material used, for example, for a transparent vertical panel (windows) can reduce heat loss from a flat by at least 20 % ([8]). The use of water-saving renovation techniques also cuts down on energy consumption. In connection with the energy bills, energy suppliers shall inform the consumers clearly and free of charge about the consumption of the corresponding period of the year before, for the consumes to be able to put their present consumption into perspective.

2.1.7 The EESC firmly believes that initiatives in this sector can bring huge savings, thus helping to achieve goals related to climate change and security of energy supply. Given that there is relatively little scope for action in the short- or medium-term in the area of energy supply conditions, it is necessary to influence end users, i.e.:

— increase energy end-use efficiency;

— contain demand for energy;

— promote renewable energy production ([9]);

— provide for better energy management, on the basis of self-control.

2.1.8 There are a variety of factors which prevent saving and better use of energy resources:

— cultural considerations;

— difficulty of handling the change;

— lack of know-how;

— inadequate fiscal policy;

— not enough enterprise partnerships;

— lack of information.

([7]) There are currently three types of contract: the first-out performance contract, the shared savings contract and the guaranteed savings contract.

([8]) This is achieved by using a low-emission window made up of two glass panels with a layer of noble gas between them (krypton, xenon, argon).

([9]) The contribution of renewable sources: solar radiation intercepted by the Earth: **177 000 TW;** solar radiation at ground level: **117 000 TW;** Global primary energy consumption: **12 TW** (Source: University of Bergamo, Engineering department).

2.1.9 The potential for energy saving in the building sector is huge, especially when it comes to energy consumption for heating, motive power and lights in the use-phase of the building. This is shown by what are known as passive buildings ([10]), which harness huge saving opportunities, spurring the Community's competitiveness and innovation by keeping the focus increasingly on development and use of new, more energy efficient technologies.

2.1.10 The energy policy's strategic objectives seek to:

— reduce pollutant and climate-change emissions, with due regard for the particular characteristics of the environment and the region;

— promote competitive growth in the property sector, industry and new energy technologies;

— focus on welfare and public health protection as related to energy policy.

2.1.11 When defining measures to increase energy efficiency, account should also be taken of the benefits of widespread use of cost-effective technological innovations. End users can take more informed decisions regarding their individual energy consumption if they are given appropriate information, such as details of measures laid down to increase energy efficiency, comparisons of end users' profiles, and specific, practical techniques relating to energy-powered appliances ([11]).

2.1.12 All kinds of information on energy efficiency, especially the related costs, should be widely disseminated in the appropriate forms to interested parties. The information should also cover financial and legal aspects and should be presented in information and advertising campaigns which provide a clear picture of best practices, at all levels.

2.1.13 Measures limited solely to technical aspects are necessary, but not sufficient, to reduce energy consumption in the building sector. The complex interaction between the constantly-developing technology and its many and varied users also needs to be addressed.

2.1.14 As part of the previous Intelligent Energy — Europe Programme (2003–2006), the initiative of an EPBD Buildings Platform was developed ([12]). This provides services facilitating the implementation of Directive 2002/91/EC on the energy performance of buildings, which entered fully into force at the beginning of 2006. The directive includes the following requirements, which apply to the Member States:

— method of calculation of the integrated energy performance of buildings and related energy performance requirements;

([10]) 'Passive' buildings are buildings which consume less than 15 KWh/m^2/year.

([11]) End users should already be provided with some of this useful information under Article 3(6) of Directive 2003/54/EC.

([12]) EPBD = European Energy Performance of Buildings Directive.

— minimum joint EU requirements on the energy performance of new buildings;

— minimum requirements on the energy performance of large existing buildings that are subject to major renovation;

— energy certification of buildings, which is mandatory for new buildings, buildings subject to major renovation and all flats subject to change of occupancy ([13]);

— regular inspection of boilers and of air-conditioning systems in buildings, and assessment of heating installations in which the boilers are more than 15 years old.

2.1.15 From a technical point of view it is essential that the public and consumers realise the need for an integrated approach which takes various factors into account, including:

— the quality of heat insulation;

— the type of heating and air-conditioning installations;

— the use of renewable sources;

— the orientation of the building;

— the prevention of damp problems and the formation of mildew.

2.1.15.1 There are essentially two basic indicators:

— **the specific energy demand of the building envelope**: this estimates the performance of the envelope, which minimises heat loss in winter and limits over-heating in summer;

— **the entire specific primary energy demand:** in addition, this estimates the performance of the set of installations which convert primary energy into accommodation comfort and into various services.

2.1.16 To achieve the goal of keeping down energy consumption and pollutant and climate-change gas emissions, policies are also needed which:

1. flank heat insulation measures (passive energy-saving measures) with substantial improvements in installation technology (active energy-saving measures);

2. extend the range and scale of energy-saving measures;

3. integrate renewable sources into high-efficiency 'hybrid' systems;

4. target innovative systems: **solar cooling, micro CHP, trigeneration, heat pumps and hybrid plant** ([14]).

([13]) In the event of purchase, sale, renting out or inheritance.

([14]) **Average energy concentration**: solar panels:~ 0,2 kW/m²; wind turbine: ~ 1-2 kW/m², hydraulic engine: ~ 5 000 kW/m²; heat engine: ~ 10,000 kW/m² (Source: University of Bergamo, Engineering department).

2.1.17 Community innovation and research programmes play a decisive role in developing the energy efficiency of buildings, as regards the technological goal of developing 'zero energy' intelligent buildings, i.e. 'positive energy' buildings which produce more energy than they consume, using the most common alternative forms of energy such as solar, wind and geothermal energy.

2.1.18 At Community level, in addition to the above-mentioned Competitiveness and Innovation Framework Programme (CIP), a decisive role in supporting the development of clean energy technologies is played by the Seventh Framework Programme for RTD, which provides for a special thematic priority under the 'Cooperation' specific programme.

2.1.19 European technical standardisation has an essential role to play in the energy efficiency of buildings sector. The CEN — European Committee for Standardisation — has been instructed by the Commission to draw up the technical regulations necessary for the implementation of the above-mentioned Energy Performance of Buildings Directive ([15]), as follows:

— harmonised standards on measuring energy consumption for existing buildings;

— harmonised standards for new buildings;

— uniform standards for certification;

— joint standards for inspection procedures.

2.1.20 Almost 30 (CEN) European standards have been drawn up ([16]). The Member States have already confirmed their intention to implement them on a voluntary basis. Should it be observed that voluntary conformity with the standards is not being achieved, appropriate legislation should be introduced to make them binding.

2.1.21 In any case, it is the Commission's responsibility to provide Member States with the instruments necessary to develop an integrated, uniform methodology for calculating the energy performance of buildings. Once the Member States have established minimum energy-efficiency requirements, these must

([15]) Cf. footnote 16 for the UN-CEN/CENELEC reference standards drawn up thus far. WWW.CEN.EU/CENORM/BUSINESSDOMAINS/SECTORS/UTILITIESAND ENERGY/NEWS.ASP.

([16]) EN ISO 6946 Building components and building elements; EN 10339 Air-conditioning systems for thermal comfort in buildings; EN 10347 Building heating and cooling; EN 10348 Building heating; EN 10349 Building heating and cooling; EN 13465 Ventilation for buildings; EN 13779 Ventilation for non-residential buildings; EN 13789 Thermal performance of buildings; EN ISO 13790 Thermal performance of buildings; EN ISO 10077-1 Thermal performance of windows, doors and shutters; EN ISO 10077-2 Thermal performance of windows, doors and shutters; EN ISO 13370 Thermal performance of buildings; EN ISO 10211-1 Thermal bridges in building construction; EN ISO 10211-2 Thermal bridges in building construction; EN ISO 14683 Thermal bridges in building construction; EN ISO 13788 Hygrothermal performance of building components and building elements; EN ISO 15927-1 Hygrothermal performance of buildings; EN ISO 13786 Thermal performance of building components; EN 10351 Building materials; EN 10355 Walls and floors; EN 410 Glass in building. Determination of luminous and solar characteristics of glazing; EN 673 Glass in building. Determination of thermal transmittance (U value); EN ISO 7345. Thermal insulation – Physical quantities and definitions.

be reflected in 'energy performance certificates', which are essentially marks conferred on buildings, similar to those conferred on household appliances. However, the certificates for buildings are more elaborate and complex and are accompanied by recommendations on how to improve performance.

2.1.22 Research projects have clearly demonstrated that, along with a building's technical installations, the attention which its users give to energy saving — be they residents or users of workplaces during the daytime — is a decisive factor in energy consumption.

2.1.22.1 For instance, it is worthwhile promoting a culture of dressing more appropriately in high temperatures, e.g. not wearing jackets and ties in the summer ([17]), as well as appropriate winter attire, to enable the temperature in apartments and offices to be kept at approximately 20 or 21 °C ([18]).

2.1.23 Even the orientation of a house affects the quantity of heat needed to make it comfortable for its inhabitants. The per-capita energy consumption for heating identical terraced houses can vary by a factor of 2,5 (and by a factor of 3 for detached houses) while electricity consumption can vary by a factor of 4 or 5.

2.1.23.1 In view of the above and other considerations, the existing legislation should be fleshed out with some precepts for energy efficiency, not only for buildings but also for neighbourhoods.

2.1.24 Increasingly, even at school age ([19]), people should be made more aware of the significant amount of primary energy required by their homes for:

— providing heating in the winter;

— keeping them cool in the summer;

— heating water;

— running lifts;

— providing lighting;

— running domestic appliances;

and that with a little care and readiness much of this energy can be saved ([20]).

([17]) See decision by the Japanese prime minister.

([18]) The temperature in Brussels' Renewable Energy House does not exceed 21 °C in wintertime.

([19]) Joules, the unit for measuring energy, and watts (joules per second), the unit for measuring electrical power, should be included in school curricula alongside the notions of metres, litres and kilograms ....

([20]) The cheapest sort of energy is **the sort that has been saved!**

2.1.25 End users often have to take important decisions regarding investments, for instance when renovating houses or deciding to make significant changes to houses still being planned or built. Decisions to invest in new technologies that allow significant energy savings can have major repercussions on the energy performance of buildings. Examples include:

— materials that offer better insulation;

— frames (doors and windows) with improved transmittance ([21]);

— solar protection mechanisms, such as simple shutters for instance;

— the choice or adjustment of the heating system ([22]);

— the installation of additional systems such as photovoltaic technology, solar heating, or horizontal or vertical geothermal heating systems ([23]);

— the prevention of damp problems and the formation of mildew.

2.1.26 It is clear that to change the frame of reference generally used to date, new cultural stimuli and incentives will have to be found to compensate for the higher costs and to increase interest in:

— planning-stage research;

— revised building methods;

— the use of quality materials in the building process;

— new structural designs, to enable solar heating equipment to be fitted ([24]);

— the optimum positioning of solar panels;

— prior surveys for the use of vertical or horizontal geothermal technology.

([21]) The transmittance value is set increasingly to equal and exceed the aesthetic value of housing fixtures.

([22]) Condensing boilers have efficiency of 120 % compared to traditional boilers, which have efficiency of 80 %.

([23]) Vertical geothermal technology is based on the principle that the temperature of the ground is higher deeper down. Therefore a quantity of water sent down a pipe at a certain depth comes up at a higher temperature and requires less heat to reach the temperature necessary to heat a building. Horizontal geothermal technology exploits the constant temperature of the earth at a depth of 4 or 5 metres and therefore provides water at a higher temperature than the ambient temperature, in a coil placed at that depth. This means that the thermal delta is lower. The amount of heat needed to bring a quantity of water from 6 °C up to 30 °C is very different to that needed to bring it from 14 °C to 30 °C.

([24]) 'Solar cooling': solar energy can also be used to generate air conditioning devices, with considerable energy savings. The process is based on a heat absorbing cooling device. The use of **solar collectors** as generators of power to run cooling devices enables the panels to be used during the sunniest periods.

2.1.27 The following incentives deserve to be considered:

— an increase in the buildable area;

— a reduction in some of the taxes levied on construction and renovation projects;

— streamlined planning permission procedures;

— allowances for the greater thickness required by an opaque vertical structure (a wall), when furnished with layers of insulating material;

— the award of quality labels, on the basis of the level of saving achieved.

2.1.28 Any measures adopted with a view to securing significant energy savings should take into account the fact that the majority of Europeans live in existing buildings and that new buildings constitute only a small percentage.

2.1.29 One problem with rented accommodation is that it is generally *the owners that bear the cost* of energy efficiency-increasing measures (e.g. new door and window frames, high-efficiency boilers, clean energy generators), *whereas it is the users that benefit* from the resulting lower costs.

2.1.30 This problem could be avoided by backing the '**third-party financing**' method ([25]). This involves **encouraging** energy-saving initiatives in buildings, carried out by companies linked to lending bodies, **paying off** investments over a fixed number of years with the average savings made as a result of lower energy costs in the years following completion of the work.

2.1.31 One valid financing system used in the industrialised countries, which could be backed and extended, is demand side management (DSM). Energy producing or supplying companies invest in projects for the energy-related renovation of the buildings within their responsibility. The savings made after the work cover the expense.

2.1.32 Clearly, the system could be improved with the right legal framework, encouraging energy suppliers to invest in renovating the heating systems of buildings for which they supply energy.

2.1.33 The complex issue of saving energy in residential buildings is one facing most of the EU's new Member States. The burden of this cost and complexity must not be allowed to fall on the end users and the public. The Czech Republic, for instance, has managed to use some of the funds granted through cohesion policy for the renovation of residential buildings.

2.1.34 The main area requiring attention is the need to ensure that building renovation is carried out with concern for energy conservation. If the objectives of keeping energy consumption and pollutant gas emissions down are to be met, policies are needed to:

— flank heat insulation measures (passive energy-saving) with the necessary improvements to installation technology (active energy-saving);

— extend the range and scale of energy-saving initiatives, not least using policies that provide for financial and planning incentives;

— disseminate 'hybrid' systems, i.e. systems that combine traditional energy with alternative or clean energy inputs, so as to reduce the use of fossil fuels.

2.1.35 To be genuinely effective, a policy aimed at promoting energy savings in buildings must secure, alongside public involvement, the commitment of the various professional associations and entrepreneurs in the various sectors, namely:

— professionals;

— promoters of green and bioclimatic urban planning;

— project managers;

— energy managers;

— ESCOs;

— construction companies;

— real estate companies;

— building sector manufacturers;

— providers of service and maintenance.

3. **The current situation**

3.1 *The current situation within the EU*

3.1.1 Improving the energy efficiency of buildings has been the objective of many Community provisions, including: the 1989 Directive on construction products ([26]) and the construction-related elements of the 1993 SAVE Directive ([27]), a 1993 directive on the energy certification of buildings ([28]), the 2002 Directive on the energy efficiency of buildings (EPBD) ([29]), Directive 2005/32/EC of 2005 establishing a framework for the

([25]) This is the subject of an EU recommendation in Article 4 of Directive EEC No. 93/76 (OJ L 237/28 of 22.09.1993). In this instance it is a technical–financial device applied in the form of a contract, for the overall provision of auditing, financing, installation, operation and maintenance by an external company commonly known as an ESCO (Energy Service Company) and required to pay for the investment in new devices, by mortgaging part of the financial value of the expected energy saving for a number of years. See appendix.

([26]) Directive 89/106/EEC.
([27]) Directive 93/76/EEC.
([28]) Directive 93/76/EEC (repealed by Directive 2006/32/EC).
([29]) Directive 2002/91/EC.

setting of ecodesign requirements for energy-using products ([30]), and the 2006 Directive on energy end-use efficiency and energy services ([31]). Meanwhile there have been many other legislative measures relating to products, such as the directive on boilers ([32]), the office equipment decision ([33]), the directive on household appliances and the labelling of energy consumption ([34]), the directive on the energy efficiency of refrigerators ([35]), and the directive on ballasts for fluorescent lighting ([36]). The 2002 EPBD Directive deals specifically with improving the energy efficiency of new and existing residential and non-residential buildings.

3.1.2 The deadline for transposing this directive was 4 January 2006, but various Member States have requested and been granted an extension ([37]), while others, are subject to infringement procedures by the Commission for failed or incorrect transposition ([38]). Nevertheless, all the Member States should have established criteria for energy certification by the end of 2007.

3.2 *The current situation in relation to types of housing and climate*

3.2.1 In order to address fully the issue of end users' contribution to the energy efficiency of buildings, one has to consider the specific characteristics of the vast areas of the EU concerned, with regard in particular to:

— the various types of building stock,

— the various climate contexts.

3.2.2 **Types of building stock.** In the new Member States and the five East German Länder, the building stock has potential for considerable energy savings, compared with building stock in the other 15 Member States.

3.2.2.1 The building stock in these areas is for the most part the legacy of post-war town planning, and is based on the use of prefabricated components making up large multi-storey multi-occupancy blocks. These were built using rapid mass production and homogeneous, standard, centralised technologies. They also went without any maintenance or restructuring for long periods ([39]).

3.2.2.2 In Romania, for instance, 4 819 104 residential buildings were counted in 2002. There were 83 799 housing blocks containing 2 984 577 apartments. They account for approximately 60 % of existing flats. Furthermore, 53 % of residential buildings are over 40 years old; 37 % are over 20 years old and only 10 % are under 10 years old.

3.2.2.3 In over 95 % of the big apartment blocks, common to all the countries of the former Soviet bloc, energy for heating, ventilation and water heating is supplied by centralised systems. Studies carried out in 2005 on this type of building calculated potential energy savings of 38-40 %.

3.2.2.4 These major energy losses can be put down in part to the end users, the poor quality of materials, insufficient heat insulation, old high-consumption technologies, obsolete heating installations, high-consumption lighting, inefficient firing installations, poor quality pumps, etc. Another reason is inefficient energy management, with considerable losses ([40]) paid for in the long run by the consumer. **Energy efficiency is the most accessible, the least polluting and the cheapest** of all the available options.

3.2.3 Climate zones

3.2.3.1 In the main climate zones of northern and southern Europe, average consumption in the residential sector is equal to 4 343 kWh/year ([41]). This energy is used principally for heating, which consumes 21,3 % of demand for electricity, despite being concentrated mainly in northern and central Europe. Next in line is the share of electric energy used by fridges and freezers (14,5 %) and by lighting (10,8 %).

3.2.3.2 In southern Europe (Italy, Spain, Portugal, Slovenia, Malta, Greece, Cyprus, and the south of France), one of the main factors in increased electricity consumption is the rapid spread of low power consumption, low yield residential air conditioning units ([42]) (< 12 kW output cooling power) and their widespread use in summertime.

([30]) Directive 2005/32/EC.
([31]) Directive 2006/32/EC.
([32]) Directive 92/42/EEC.
([33]) Decision 2006/1005/EC.
([34]) Directive 92/75/EEC.
([35]) Directive 96/57/EC.
([36]) Directive 2000/55/EC.
([37]) See, Italy, among others …
([38]) See reasoned opinion sent to France and Latvia, 16.10.2007.
([39]) Overview on energy consumption and saving potentials — Carsten Petersdorff, ECOFYS GMBH, Eupenerstrasse 59, 50933 Cologne, Germany. May 2006.
([40]) When it comes to the energy content of the fuel used, the overall energy losses are equal to 35 % for the best performing systems and 77 % for those least efficient.
([41]) Total consumption of electricity divided by the number of households.
([42]) In March 2002, the European Commission adopted Directive 2002/31/EC) aimed at the introduction of more energy efficient installations; it was supposed to enter fully into force by June 2003, but the deadline was then postponed until summer 2004. It set the energy efficiency indicators for small Class A air conditioners at 3.2. However, there are already models on the market with higher energy efficiency levels, ranging from 4 to 5.5 for the better models. This means that the generalised spread of Class A is no longer an ambitious objective. It also means that the scope for savings is still wide, as there are still a large number of Class D and E models on the European market with efficiency indicators of approximately 2.5.

3.2.3.3 Residential consumption of electricity for air conditioners, to which Directive 2002/31/EC applies, has been estimated at around 7-10 TWh per year for the 25-Member State EU ([43]). It should also be noted that in Europe, new multimedia equipment, such as personal computers, printers, scanners, modems and mobile phone chargers plugged in continuously account for 20 % of household energy consumption.

3.3 *A few international comparisons*

3.3.1 Energy consumption in **Japan,** accounts for approximately 6 % of world consumption. Measures were taken some time ago to reduce this level of consumption and the resulting CO_2 emissions, particularly in the transport and construction sectors, the residential sector accounting for 15 % of overall consumption.

3.3.2 In the residential sector, primary energy savings, reduced CO_2 emissions and energy cost savings achieved by means of building energy efficiency measures have been estimated, respectively at approximately 28 %, 34 %, and 41 % ([44]). Japan's residential building energy efficiency standards ([45]) were revised in 1999 and include both yield standards and prescriptive standards, the objective being to achieve full application of these standards for more than 50 % of new buildings.

3.3.3 The Japanese method of assessing jointly buildings and the household electrical appliances used has the following features:

a) an assessment of the energy efficiency of buildings and of household electrical appliances;

b) an assessment of the energy efficiency of the entire house, using total energy consumption, specifying consumption for air conditioning, water heating, lighting and ventilation, **at the time of construction;**

c) an assessment of efficiency regarding air conditioning, water heating, lighting and ventilation appliances **during actual use;**

d) detailed measurements of efficiency when new homes are actually lived in, with a view to reaching savings targets by 2010.

([43]) See footnote 37.

([44]) Energy efficiency standard as measured by Japan's 'CASBEE' rating. Source: From Red Lights to Green Lights: Town Planning Incentives for Green Building presentation to the 'Talking and walking sustainability international conference', February 2007 Auckland. Author: Mr Matthew D. Paetz, Planning Manager, BA, BPlan (Hons), MNZPI. Co-Author: Mr Knut Pinto-Delas, Urban Designer, Masters of Urban Design (EIVP, Paris).

([45]) Japan: Law Concerning Rational Use of Energy, Law No 49 of 22 June, 1979).

3.3.4 **In the USA,** already in 1987 ([46]), in line with the chapters on residential building in the International Energy Conservation Code (IECC ([47])), minimum efficiency standards were established for 12 types of household electrical appliance. These form the basis for a number of state energy codes.

3.3.5 Building energy efficiency monitoring is the responsibility of individual states and in many cases individual counties, particularly since the adoption of the Energy Policy Act of 2005, (EPACT), which uses accelerated tax deductions to encourage the owners of commercial buildings to apply energy efficiency systems to reduce dependence on fossil fuels.

3.3.6 The Model Energy Code (MEC) ([48]), developed on the basis of the IECC in the 1980s and regularly updated including as recently as 2006, is backed up by the US Department of Energy's Building Energy Codes Program, and aims to promote ever better building energy codes and assist the federal states in adopting and applying those codes, which are reviewed regularly in order to:

— redefine climate zones,

— simplify prescriptive requirements,

— remove obsolete, superfluous or contradictory definitions.

3.3.7 In 2007, the Energy Efficient Buildings Act was introduced to Congress with a view to:

— establishing a pilot program to award grants to businesses and organisations for new construction or major renovations of energy efficient buildings that will result in innovative energy efficiency technologies;

— giving due consideration to buildings that are likely to serve low income populations;

([46]) USA: the National Energy Policy and Conservation Act (NEPCA) 1987.

([47]) USA: Residential Energy Code Compliance — IECC 2006 on the residential requirements of the 2006 International Energy Conservation Code., http://www.energycodes.gov/.

([48]) In the USA, 63 % of states have adopted the MEC for residential buildings and 84 % have adopted the ASHRAE/IES 90.1-2001 standard for commercial buildings, a technical standard developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers — ASHRAE and the Illuminating Engineering Society of North America — IES/IESNA. CFR. HTTP://WWW.ASHRAE.ORG/ E http://www.greenhouse.gov.au/buildings/publications/pubs/international_survey.pdf.

— providing a clear definition of an 'energy efficient building' as one that after construction or renovation uses heating, ventilation, and air conditioning systems that perform at no less than Energy Star standards; or if Energy Star standards are not applicable, uses Federal Energy Management Program recommended heating, ventilating, and air conditioning products.

3.3.8 According to the Federal Department of Energy, DOE, the design of new more comfortable and efficient buildings could reduce cooling and heating costs by 50 %, while measures aimed at applying the energy efficiency codes in buildings will create new job opportunities in construction, renovation and plant engineering.

4. **General comments**

4.1 The Committee has spoken out on a number of occasions on the need to make significant and sustainable energy savings by developing low-consumption techniques, products and services, and on the need to change people's behaviour so as to reduce energy consumption while nevertheless maintaining the same quality of life.

4.2 The Committee recognises that energy efficiency makes a major contribution to safeguarding the climate and to respecting the commitments made by the EU at Kyoto as regards emission reductions, and it recommends continuing and stepping up efforts made at consumer level.

4.3 The Committee would argue that to encourage energy savings in buildings there must be a detailed examination of the obstacles that have prevented full implementation of the EPBD directive, and that a transition period of approximately 10 years should be allowed before making certification for all existing buildings covered by the directive compulsory.

4.4 In its 2001 opinion on the draft EPBD directive, the Committee stressed its support for the Commission initiative and its desire to develop a common methodology for assessing and monitoring the energy performance of buildings. However, it pointed out that care should be taken to: **'avoid creating intolerable constraints for Member States in terms of international competition' and to 'avoid imposing charges on property owners — whether renting out or living in their property — that are disproportionate to their means, as this could have the effect of neutralising the objectives of the directive, and encouraging people to reject a united Europe'** ([49]).

4.5 The EESC believes any extension to the EPBD directive should include a building-system lifecycle analysis, to illustrate the impact on the carbon cycle. This would give consumers and the regulatory authorities a clearer idea of the consequences regarding the carbon emissions of the products planned for use in the building system.

4.5.1 Any extension of Community legislation in this area should in any case be subject to an appropriate impact evaluation, given its likely impact on the market and the costs falling on the final consumers, be they owners or tenants.

4.5.2 Care should also be taken to ensure that the desired measures for improving heat insulation allow for sufficient circulation of air and humidity, prevent damp and do not cause damage to the building, for instance by causing mildew to form.

4.6 As the Committee has already pointed out ([50]), 'Relevant actions to enhance energy efficiency vary widely because of different local circumstances and actions so far. The effects of these actions on the internal market seem limited. Against this background it is important, in line with the subsidiarity principle, that additional actions at EU level give genuine added value'.

4.7 The certification process should be accompanied by publicity campaigns, so as to guarantee fair access to improved energy efficiency, in particular for residential buildings that are built or managed in the context of social housing policy.

4.8 The regular maintenance, by qualified staff, of boilers, air-conditioning installations and other alternative energy installations will help to ensure they are at the right settings, in accordance with product specifications, and thus providing optimum performance.

4.9 On the basis of the positive experience of a number of Member States, and following the results in past years of the implementation of major Community policies, the Committee would recommend a number of measures that could help to promote energy efficiency in general and more specifically in buildings:

— free energy advice;

— tax credits and/or subsidies for carrying out 'energy audits';

— tax relief on the consumption of fuels for heating, electricity and motive power;

— tax relief for the purchase of energy efficient and environmentally-sound technologies;

([49]) Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings' in OJ C 36/20 of 8.2.2002.

([50]) Opinion regarding energy end-use efficiency and energy services, rapporteur: Ms Sirkeinen; O.J. nr C 120 of 20.5.2005, p. 115.

— low-interest loans for the purchase of energy efficient equipment and installations (e.g. condensing boilers, individual thermostats, etc.);

— preferential loans for ESCO initiatives;

— tax relief or deductions for investments in R&D activities, or in pilot projects, with a view to promoting the dissemination of new technologies focused on energy efficiency in buildings;

— assistance to families on low incomes and pensioners for improving the energy efficiency of housing;

— long-term, low-interest loans aimed at improving the energy efficiency of buildings.

4.10 The Committee believes that innovative methods must be developed so as to address the issues of information and financing for end users more directly: **it is essential that owners and tenants do not see these new Community measures as a new tax levied on such a primary asset as the home**.

4.11 Meeting the Kyoto Protocol objectives and saving energy must not appear to be a simple transfer of greater costs from the energy producing industries to the end users and European citizens.

4.12 In order to limit the burden on individual owners, the Committee would argue that, wherever possible, certification should be conducted for entire buildings using sample apartments to secure certification that would be valid for all the apartments in the building.

4.13 A website, promoted by the Commission and linked to national websites, might be a useful way of overcoming the legal, institutional, management-related and technical barriers that prevent user-friendly access for end users.

4.14 The Committee considers it to be important that it should set a good example on energy efficiency in the management of its own buildings. It has noted the excellent example of its near neighbour in Brussels — the 'Renewable Energy House' — which shows that significant improvements in an existing building can be achieved in a cost-efficient way. Some improvements have already been made in the Committee's buildings, and in working towards EMAS certification. The Committee is now calling for a further report from its administration to review progress so far, and identify what further improvements could be made.

Brussels, 14 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on The possible positive or negative impact of increased environmental and energy requirements (policies) on the competitiveness of EU industry

(2008/C 162/14)

On 20 September 2007, the Slovenian presidency asked the European Economic and Social Committee to draw up an exploratory opinion on

The possible positive or negative impact of increased environmental and energy requirements (policies) on the competitiveness of EU industry.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2008. The rapporteur was **Mr Wolf**.

At its 442nd plenary session, held on 13-14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 128 votes with 1 abstention.

Contents

1. Summary and conclusions

1.1 The Committee has focused this opinion on issues surrounding energy policy and climate change. It will examine the question of under what circumstances advantages or disadvantages arise for EU competitiveness if energy consumption and the emission of greenhouse gases are significantly reduced. Here it focuses mainly on the economic aspects.

1.2 Given the interdependency between competitiveness, economic performance, jobs and citizens' social prosperity, the matter under consideration is also of major importance for Europe's social future.

1.3 The Committee concludes that the challenges linked to this bring with them an opportunity to generate a wave of innovation and investment and thus to strengthen the economy and the (global) competitiveness of European industry. If this succeeds, the advantages outweigh the disadvantages, inter alia in terms of the impact on employment and strengthening the European social model.

1.4 A key prerequisite for this is that, in the areas of energy, the economy and research, the right policy measures are taken, the right principles are applied, and overregulation is avoided. Failing this, there is cause for concern that the disadvantages — excessive use of overly expensive energy, loss of economic competitiveness, relocations, putting the European social model at risk — will outweigh the advantages and allow crises to develop. Affordable energy is the life blood of modern industrial and post-industrial societies with all of their social and cultural achievements. Therefore, the cost of energy must not — beyond what is necessary to protect the climate and because of scarcity of resources — be further increased by additional state measures.

1.5 The guiding principle of energy policy targets and instruments must therefore be the greatest possible efficiency. Only then will the economic costs and the social burden on the public be kept to a minimum. The measure of this regarding climate change is the cost of avoiding the emission of a particular quantity of greenhouse gases (e.g. CO_2). Regarding energy consumption and security of supply, the best measure is energy efficiency. (In each case, it is important to define these measures meaningfully.) Therefore, European energy and climate policy instruments should focus on economic energy efficiency measures and the use of economic and sustainable energy technologies.

1.6 The guiding principle of European policy measures should be an energy and climate policy that encourages cooperation involving partnerships between the public and private sector and brings together and makes best use of the economic, geographic and resource-related strength of each Member State. For example, techniques for using renewable energy should be used in those locations in Europe where the best conditions (in particular weather conditions) exist, including appropriate transmission pathways, and not where the biggest national subsidies happen to be. Beyond this, however, efforts should be made towards global cooperation on the development and use of energy-saving and greenhouse gas-avoiding technologies.

1.7 Although the climate issue is urgent, the speed of the required changes and adjustments to energy supply and consumption should not overstretch the capacity of business and society to make them. Yardsticks include depreciation cycles, the time it takes to train people, the stages of development of new technologies, and, in particular, adjustments to the social contract, training measures and other societal changes. Research and development have a major contribution to make.

1.8 Reflecting a bottom-up approach, the initiative of all stakeholders and the diversity, diversification and flexibility of technical and economic methods should be facilitated and encouraged. Only from diversity and healthy competition

between the various approaches, innovations and methods will the strength needed to withstand individual crises arise and the most efficient technologies emerge. Accordingly, a wide-ranging energy mix is needed, which means that no useful technology ([1]) should be abandoned prematurely.

1.9 When establishing energy policy targets, regulations and instruments, physical limits should be taken into consideration. It is imperative that over-regulation and duplication leading to contradictions should be avoided. The latter lead to misallocation and thus to unnecessary cost increases that damage prosperity and competitiveness. Just as importantly, these targets and instruments must have long-term credibility, as very costly investments and new developments will be made based on them. An economic return on these investments, and the jobs and prosperity that follow, can only be achieved if they are used for long enough.

1.10 Wherever possible, market incentives such as sensibly defined allocation of emission rights should be used in preference to detailed regulations. Affordable energy remains a prerequisite for global competitiveness, for basic social cover, and for the accumulation of capital by European industry that is necessary to fund new investment and R&D expenditure.

1.11 In addition, significantly increased and wide-ranging research into and development of climate-friendly and resource-saving energy technologies is necessary, along with training of the necessary engineers, scientists and technicians. New techniques for using renewable energy that are still a long way from being economically viable should be actively further developed, but should not be prematurely forced upon the market through expensive subsidies (or artificial purchase prices). Instead, this money should be invested in increased research and development of sustainable and CO_2-avoiding energy technologies until these approach viability. For this reason, the emphasis of all measures should be placed on the innovative development and efficient use of energy-saving, climate-neutral and competitive energy technologies.

1.12 However, global climate change targets that are binding on all significant emitters are necessary if a global level playing field is to be created. Only then can a scenario be avoided where the — in other respects — high energy costs in the EU lead to detrimental worldwide distortions of competition, beginning with the gradual relocation of energy-intensive industries without having in any way contributed to climate protection ('carbon leakage'). The Committee supports the efforts of all European stakeholders towards this aim (e.g. Bali conference). Until it is achieved, competition-distorting burdens on these industries must be avoided. Without these industries, Europe cannot remain competitive in the long term.

([1]) Notwithstanding individual decisions by Member States on nuclear energy.

2. Starting point and general comments

2.1 **Significance of energy.** The development and intensive use of energy-consuming industrial processes, machines and transport systems has made a significant contribution to achieving our current standard of living: Energy has freed people from the burden of the heaviest physical labour, multiplied their productivity, provided heating and lighting, revolutionised agricultural yields, and made previously unimaginable mobility and communication possible. Energy has become the life blood of modern social market economies and is a prerequisite for the supply of basic needs.

2.2 **The problem.** Most forecasts predict that, as a result of population growth and the developmental needs of many countries, worldwide demand for energy will double (or even treble) by 2060. It is well known that two significant developments stand in opposition to this, which need worldwide political action if serious conflicts and economic crises are to be avoided: **the depletion of resources and the protection of the environment.** While the main environmental problem in this context is the human contribution to climate change ('climate gases' or 'greenhouse gases', in particular CO_2, methane and nitrous oxide), the impact of any measures on biodiversity, health and sustainable use of resources and waste must also be taken into account.

2.3 **European Council.** Accordingly, the following energy policy priorities were outlined in the spring 2007 Council presidency conclusions:

— enhancing the security of supply;

— maintaining the competitiveness of European economies and the availability of energy at affordable prices;

— promoting environmental sustainability and combating climate change.

2.3.1 The Committee, has drawn up major opinions on this subject that point the way forward. These are listed in the appendix ([2]).

2.4 **Request from the Slovenian Council Presidency**. The Slovenian economic minister, Mr A. Vizjak, informed the Committee in a letter that the Slovenian presidency's priorities in the area of industrial policy would include the aim of a highly energy efficient European economy emitting as few greenhouse gases as possible. For this, incentives to innovate and to use environment-friendly technologies and products were particularly important. The letter went on to say that a corresponding action plan for sustainable industrial policy was being prepared, and that the European Council would discuss it at its spring summit in 2008. In this context, the Committee was asked to produce an opinion on the *possible positive or negative impact of increased environmental and energy requirements (policies) on the competitiveness of EU industry.*

([2]) The Committee's relevant opinions from the last four years are listed in the appendix.

2.5 **Competitiveness, economic performance and social prosperity**. Recent publications ([3]) from the Committee's Consultative Commission on Industrial Change ([4]) (e.g. *58 concrete measures to ensure the success of the Lisbon strategy*) have made clear the close relationship between competitiveness, economic performance and the room for manoeuvre for the necessary social provision. For this reason, this opinion focuses on the relevant economic aspects ([5]) of the issue.

2.6 **Industrialised countries.** Highly developed, industrialised countries have a special responsibility in this area, firstly because they emit a higher proportion of these gases, and secondly because they are ahead in terms of the development of new technologies. These include energy saving, higher energy efficiency, the use of emission-free (or low-emission) energy sources ([6]) and the development of appropriate technical processes. The task is to identify the right course of action against the background of the tension between what is necessary, what is desirable, and what is economically realistic, and then to take such action in a focused and decisive manner.

2.7 **Costs** ([7]). However, the use of climate-friendly types of energy is, in most cases, associated with significantly higher costs ([8]) for individual consumers and industrial processes. Examples are wind and solar energy ([9]) (in Germany alone, around EUR 4 billion were spent in 2007 on consumer-subsidised renewable energy ([10])) or coal-fired power stations with carbon capture and storage (CCS) that are currently under development. Heat pumps and vehicles with reduced CO_2 or even CO_2-free fuel consumption also require more complex and hence more costly technology.

2.8 **Risks.** If these considerable costs are not offset by equivalent savings from reduced consumption of resources, and as long as the competing third-country economies are not bearing similar costs, this will place a burden on European competitiveness. '*Europe can be an example for the fight against climate change, but Europe cannot accept unfair competition from countries that do not place environmental limits on their businesses*' ([11]). Staff costs (wages and social security contributions) are already significantly higher in Europe than in the emerging economies of countries such as China and India, and by themselves place considerable strain on Europe's competitiveness; any further, unilateral measures inspired by climate change that increase production costs would be very dangerous.

2.9 **Opportunities.** To be sure, in the event that a significant majority of non-European states, such as China, India and the USA, adopted similar climate protection measures, the opportunity would arise for Europe to export the energy technologies that it had developed, thus not only benefiting the European economy, but even contributing to a reduction in global consumption and CO_2. Furthermore, economic history shows that periods of near-crisis were often followed by a greater willingness to innovate, and the development and use of new technologies, which then led to an upswing and economic growth in the longer term (albeit, to date, with increased energy consumption). For this reason, the emphasis of all measures within Europe should be placed on the innovative development and efficient use of energy-saving, climate-neutral and competitive energy technologies. At the same time, foreign policy efforts towards appropriate global agreements should be vigorously pursued: the results of the Bali conference demonstrate that there is at least room for further negotiation (see point 2.11).

2.10 **Problems.** However, if these efforts are not successful, serious problems will arise. Firstly, sectors of industry whose production costs are largely determined by energy and CO_2 costs will no longer be competitive on world markets. They will cease their production here and move it to countries with lower energy costs and without CO_2 costs, taking the associated jobs with them. In certain industries, such as aluminium and cement ([12]), this process has already begun. The Commission is certainly aware of the problem thanks to an impact assessment ([13]); however, in the Committee's opinion, a good solution needs to be found quickly in this area if damage to the economy is to be avoided. Above all, alongside the relocation of existing industries, international capital will no longer invest in new plant in Europe, but in regions with lower energy and CO_2 costs.

2.10.1 **Relocation and leakage.** Moreover, whilst such relocations would lead to less CO_2 being emitted in the EU, but on a global level, just as much CO_2 as ever would get into the atmosphere, if not more; if the relocated production uses cheaper technologies than those used here now or in the future, this will generally mean that even more greenhouse gases will be released (with the exception of hydro power, e.g. in Norway). Transport-related increases in CO_2 emissions must also be factored in.

([3]) Own-initiative Opinion of the Consultative Commission on Industrial Change on *European environmental rules and industrial change* CESE 696/2007, Rapporteurs: Mr Pezzini and Mr Nowicki.
([4]) CESE-2007-09, preface by Mr Sepi.
([5]) Some of the social aspects that are also relevant for this opinion will be dealt with in the forthcoming own-initiative opinion on *The social implications of transport and energy developments.*
([6]) There have been disappointments here, too, as in the recent case of the hopes sparked by biofuels. See TEN/286.
([7]) On this subject, see the European Commission's assessment of the costs of the EU climate package, published on 23 January 2008: 0,45 % of GDP or EUR 60 billion a year or around EUR 3 per citizen per week (more than EUR 600 per year per family of four).
([8]) With the exceptions of hydro power and nuclear energy.
([9]) The storage technology that would become necessary if supply were to increase would lead to a further dramatic rise in costs.
([10]) And on the jobs thus created.
([11]) From President Sarkozy's speech on 13 November 2007 to the European Parliament in Strasbourg.
([12]) See CCMI/040, *The development of the European cement industry.*
([13]) 'Commission eyes end to free pollution credits', EurActiv, 10/01/08, http://www.euractiv.com/en/climate-change/commission-eyes-free-pollution-credits/article-169434.

2.10.2 **Energy-intensity in the economy.** If this were to happen, the European economy would have lost important industrial production and jobs, without having achieved anything for the climate. At the same time, the EU would have achieved (apparent) short-term ([14]) success in the competition for economic energy efficiency, i.e. so-called energy intensity (energy consumption/gross domestic product) because energy-intensive industries would have emigrated.

2.10.3 **Service sector.** Even the service sector, which accounts for a large proportion of Europe's economic output, can only prosper in the long term if European industry remains competitive, and is thus also affected by excessively high — compared to the rest of the world — energy costs.

2.11 **Global agreements.** Thus, binding and balanced global agreements to reduce emissions of these climate gases must — not just for the climate's sake — be the priority aim of all international efforts in this area, as a noticeable impact can only be expected if the significant emitters of CO_2 such as China, India and the USA also take on board the relevant climate-protection measures. Therefore, the Committee welcomes any efforts by the Community, the Member States and such organisations as the G8, the UN, UNESCO, OECD, IEA, etc. to move in this direction, e.g. the Bali conference that has just taken place.

3. Specific comments — Analysis and conclusions

3.1 **Energy and climate policy**. An effective energy and climate policy must ensure a significant reduction in energy consumption and greenhouse gas emissions, prepare society and relevant stakeholders (e.g. architects, investors, entrepreneurs, teachers, pupils, the general public, consumers, etc. — as this is a matter that concerns everyone from one end of the chain to the other) for the necessary changes, and, at the same time, shape this process of change in such a way as not to impair the global competitiveness of the European economy, thus maintaining a balance between the objectives set out in point 2.3. This presents both challenges and opportunities.

3.2 **The challenge.** Both the growth in the global demand for energy and European energy and climate policies over the last few years have resulted in energy and its derivatives becoming significantly more expensive. In order to give equal priority to the three objectives set out in point 2.3 while generating the requisite capital for future investments in innovative technologies, energy should nonetheless be made available to the European economy at prices which are affordable as possible, notwithstanding growing global demand, and at the same time as ensuring requisite climate protection. Therefore, the cost of energy must not — beyond what is necessary to protect the climate and because of scarcity of resources — be further increased by additional state measures.

In terms of the individual measures required and their impact, there is a strong probability of clashes of interests between energy suppliers and energy users.

([14]) Specifically, as long as there is no generalised recession.

3.3 **Incentives and emissions trading.** To achieve this, sufficient market incentives are needed to ensure that the investment cycles result in the use of energy-efficient technologies, even where this may involve higher investment costs. If, despite their economic viability, no such investments are made, the obstacles involved need to be analysed and removed, since, in the vast majority of cases, investments in energy efficiency (see also point 4.1) are the cheapest way of preventing CO_2 emissions. In theory, emissions trading could be one such market instrument. However, substantial improvements are needed in current usage (see also point 4.3) if a specific quantity of CO_2 is to be saved at lowest cost. The overlap with instruments to promote renewable energy, and inappropriate incentives in the allocation of certificates, in particular the lack of a correlation between allocation and actual production (so that emissions trading effectively also amounts to a decommissioning grant), results in windfall profits, which have pushed up electricity prices by billions of euros. The full-scale auctions proposed by the Commission would if anything push these up even further.

3.4 **Real opportunities.** If we succeed over the next 15 to 25 years in focusing the numerous new investments and reinvestments occurring over this period on cost-effective, energy-efficient and lower emission technologies, climate protection may well have a positive impact on the competitiveness of European industry and thus present an opportunity for greater prosperity despite higher energy prices.

3.5 **Prerequisites and recommendations**. For this reason, some of the prerequisites for capitalising on these opportunities are discussed below, along with a few appropriate recommendations. A key prerequisite is that, in the areas of energy, the economy and research, the right policy measures are taken, the right principles are applied, and overregulation is avoided. The policy instruments must stimulate and facilitate the most economically profitable solutions; the quantitative targets must take into account the pace of the requisite restructuring that is compatible with a healthy economy. Yardsticks of the possible pace include depreciation cycles, the time it takes to train people, the stages of development of new technologies, and, in particular, adjustments to the social contract, training measures and other societal changes. Research and development have a major contribution to make.

3.6 **Broad action — diversity, diversification, flexibility and reciprocity**. Reflecting a bottom-up approach, the initiative of all stakeholders and the diversity, diversification and flexibility of technical and economic methods should be facilitated and encouraged, without giving preferential treatment to individual sectors. Only from a broad-based approach and healthy competition between the various options, innovations and methods will the strength to withstand individual crises arise and the

most efficient methods, technologies and optimal combinations thereof emerge. Accordingly, a wide-ranging energy mix is needed, which means that no useful technology ([15]) should be abandoned prematurely. The most effective way to ensure security of supply is by appropriate linkage of producers, suppliers and users through the supply chain, from the wellhead to the consumer. This requires reciprocal economic relations, i.e. secure investment conditions for foreign capital in the EU, and, conversely, secure conditions for EU investments in supplier countries.

3.7 **European policy measures and global cooperation.** European energy and climate policy should encourage cooperation involving partnerships between the public and private sector, bringing together and making best use of the economic, geographic and resource-related strength of each Member State. For example, techniques for using renewable energy should be used in those locations in Europe where the best conditions (in particular weather conditions) exist, including appropriate transmission pathways, and not where the biggest national subsidies happen to be. Beyond this, however, efforts should be made towards global cooperation on the development and use of energy-saving and climate-gas-avoiding technologies.

3.8 **Contradictory** ([16]) **and overlapping quantitative targets.** Ensuring the greatest possible economic efficiency will keep the economic costs and the social burden on the public to a minimum.

However, overlapping energy and climate policy targets lead to an overregulated system and to uneconomic solutions; they should therefore be avoided. The following example may serve as an illustration:

— The overarching EU climate objective of a 20 % reduction in CO_2 emissions over the 1990 to 2020 period, in line with the Council decision of March 2007, would result in a GDP loss ([17]) of between EUR 480 billion (European Commission estimate, 23 January 2008) and 560 billion (GWS/Prognos) ([18]) over the 2013-2020 period; this needs to be accepted and should therefore be the main guiding principle for further action.

— However, an additional ambitious target of a 20 % share for renewable energy sources would increase these costs further, since the costs of avoiding CO_2 in renewables are significantly higher than other CO_2 reduction measures.

— Further disadvantages and complications arise if actual economic energy efficiency (see point 2.10.2) is set as an additional, explicitly quantified target (20 %), given that the simplest way of achieving this target is for industry to relocate or — because of the way that energy efficiency is defined — to switch the energy mix from nuclear energy and coal to (significantly more expensive) gas and renewable energy sources ([19]). These undesirable side effects show that energy efficiency should not be an end in itself, but a **means** — admittedly a very important one — of sustainably achieving the three fundamental **objectives** set out in point 2.3.

The Committee therefore recommends that any climate protection targets should first be carefully and objectively assessed for their impact on GDP so as to safeguard the competitiveness of European industry and to ensure optimal allocation of resources while at the same time achieving the necessary reductions in greenhouse gases.

3.8.1 **Studies.** Studies ([20]) suggest that

— an objective of reducing EU CO_2 emissions by somewhat less than 20 % ([21]) is economically viable if policy makers and society succeed in consistent implementation of the most cost-effective measures (McKinsey bottom-up study, which precisely identifies the necessary and possible measures for this purpose); whilst other studies exist, which portray higher reduction targets as being economically viable, these are top-down studies that do not really show how this is to be done;

— the cost of each additional percentage point of CO_2 abatement rises increasingly steeply however (a cumulative GDP loss of EUR 480-560 billion, see point 3.8); thus, a target of reducing CO_2 by 20 % requires a costly switch of the energy mix from coal to gas and renewable energy sources;

— setting an additional renewable energy target of 20 % will cost many extra billions of euros, as this goal could only be reached through massively subsidised use of uneconomic (at least at the current state of the art) technologies.

3.8.2 **Balance among the objectives set out in point 2.2.** Bearing in mind the balance that is needed among the three energy and environmental goals set out in point 2.3, the aim of

([15]) Notwithstanding individual decisions by Member States on nuclear energy.

([16]) Carbon capture and storage (CCS) technologies currently under development could be particularly effective at reducing CO_2 emissions. However, this process lowers the energy efficiency in comparison to similar plants without CCS. Thus, there is a clear contradiction between CO_2 reduction and energy efficiency. In view of the large coal reserves that are still available, this loss of energy efficiency could temporarily be absorbed. In this case, however, energy efficiency must not be called for as an additional **quantitative target**.

([17]) Speech by Commission President Barroso, 23 January 2008.

([18]) Study by GWS/Prognos on behalf of the German federal economy ministry, October 2007.

([19]) The reason for this is the definition of energy efficiency as the ratio of primary energy consumption to GDP. Primary energy consumption by electricity producers is in turn calculated using what is known as the 'efficiency method'. This means that energy efficiency can triple if for instance a nuclear power station is replaced by wind or solar energy without saving even one kWh of electricity. Replacing a nuclear power plant by natural gas would also increase energy efficiency, even although CO_2 emissions would actually increase.

([20]) McKinsey, German Cost Curve for CO_2 Reduction, September 2007; EEFA, study for energy-intensive industries, September 2007.

([21]) To be more precise: 26 % in Germany; around 15-20 % across the EU as a whole.

the policy instruments should be to use economically attractive CO_2 reduction measures to achieve everything that can be achieved without damaging the economy. However, calls for a shift in the energy mix to an excessively high share of renewable energies — which, with technology at its current state of development, would be premature and therefore costly — and for an *economically* over-prescriptive target for energy efficiency would result in a misallocation of production factors across the entire economy ([22]) and would also involve a risk that European production would, in itself, no longer be able to meet the demand for particularly efficient environmental technologies. For example, a study by the European Commission ([23]) showed that CO_2 prices of EUR 20-25/t already significantly impact on the competitiveness of many industrial sectors.

3.9 *Research and development, training*

3.9.1 Increased research and development (R&D) along the entire energy chain is an essential element of the technological developments that are needed to open up new options, cut costs and improve efficiency when tapping into and promoting resources, in energy conversion and energy storage, and in end use by industry, transport, households and the private consumer. As the Committee has repeatedly stated, R&D funding should be massively increased if this is to be achieved. Such funding should also benefit from a reduction in heavy market subsidies for technologies that are very far from attaining market viability in their own right.

3.9.2 State support for energy research should focus on crucial basic research (e.g. catalysis, white/green biotechnology, materials research, nuclear fusion, actinide decay, etc.), while support for applied R&D should primarily come from business (including SMEs). Beyond this, intensive training of all the necessary specialists, from technicians to engineers and scientists, is needed, as is awareness-raising among all those indirectly involved with energy, including consumers.

4. **Specific observations and recommendations**

4.1 *On energy efficiency, a no-regrets option*

— Energy efficiency improves security of supply, cuts pollution and stabilises energy prices.

— At global level, enhancing energy efficiency could cut CO_2 emissions by about 6 Gt (billion tonnes) by 2030, at negative costs ([24]).

— Energy efficiency is the key to including non-European countries in a global climate protection agreement.

— A sine qua non of optimum energy efficiency is the removal of conflicts between different legislative objectives: tenancy law, recycling quotas.

— 'Measuring' the energy efficiency of a given country must focus on how its consumers actually use goods, and not exclusively on energy consumption over GDP.

— Where there are conflicting aims in respect of energy-powered goods, the focus should be on the product's active life.

— Energy efficiency should be promoted most heavily where there is potential for significant savings, i.e. mainly in buildings and power stations.

— Investment cycles and payback periods determine whether or not it is economic.

— These should also be a key factor in renewable energy (see the section on renewable energy for more details).

— Industrial plants that already comply with energy efficiency benchmarks must not be burdened with any additional costs through policy instruments such as emissions trading (e.g. auctions).

— The potential for higher global energy efficiency should be explored sector by sector ([25]).

4.2 *On renewable energy*

4.2.1 Renewable energy contributes to sustainable energy supply (greater security of supply, and virtually CO_2-neutral or CO_2-free energy production). In the longer term, it must do without subsidies and thus become significantly more efficient.

4.2.2 Hence, future support for and development of renewable energies should take the following into consideration, with a view to making support more economically viable:

— Support should be geared to achieving maximum economic viability.

— Lead markets should be developed mainly by putting suitable conditions in place and should be compatible with, and not at the expense of, existing sectors which have already proved their worth.

— Support instruments should give preference to the most suitable locations in the EU. Biomass should be used for energy where it was produced (transport costs).

— Renewable energy technologies that are still a long way from being economically viable should first be further developed through R&D instruments rather than being prematurely forced upon the mass market through expensive subsidies.

([22]) This is reflected in existing short-term political measures involving five-year plans for the — often national-level — shares of renewable energies and CO_2 allocations

([23]) 'EU ETS Review. Report on International Competitiveness', European Commission/McKinsey/Ecofys, December 2006.

([24]) McKinsey, cost curve.

([25]) In line with the IEA's approach.

— Support for energy efficiency and renewable energies should be in a meaningful way; the initial priority should be energy-efficiency measures, followed by moves to promote the use of renewable energies. For example, the planned directive on renewable energy and heating should provide for support for the use of renewable energy for the heating only of buildings that have first been renovated to reduce heating requirements.

4.3 *Further recommendations for action*

— Before setting future targets, the technical prospects for implementation should be analysed, together with economic and social implications. Targets should then be set on the basis of a European agreement, or indeed preferably a global one.

— Policy instruments should therefore aim to exert the desired influence (e.g. incentives for investment in economic measures, development of new markets), while avoiding undesired impacts (e.g. relocation of investments and high costs for business and consumers).

— Policy instruments should be more consistent than hitherto in taking climate, energy efficiency and capital efficiency into account on the basis of quantifiable values. The best measure here is the cost of preventing CO_2 emissions.

— The EU should tidy up its over-prescriptive set of instruments (emissions trading, support for renewable energies, support for cogeneration of heat and power, energy taxes, and regulatory law, with its proliferation of individual directives). Clashes between differing objectives need to be resolved; cost-effective measures must be given priority over those that are not cost-effective (in general, energy efficiency should have priority over the further development of renewable energies).

— Emissions trading should be changed in order to promote energy efficiency and avoid production shutdowns. In order to ensure that businesses have the necessary capital to invest in energy efficiency, certificates should not be auctioned, but instead be issued on the basis of efficiency benchmarks linked to actual production volumes. Emissions trading would then have just as strong an impact in terms of increasing energy efficiency as in the case of full auctions, but it would avoid negative repercussions, such as consolidating unnecessary electricity price hikes — windfall profits — and placing burdens on energy-intensive industries. The overlap with instruments to promote renewable energy, and inappropriate incentives in the allocation of certificates, should be avoided. Instead, the correlation between allocation and actual production should be taken into consideration (so that emissions trading does not become a decommissioning grant). In some sectors, auctioning would see production costs alone rise by over 10 %, thus blocking plans to raise salaries.

— Support for renewable energies should be harmonised throughout the EU so that wind farms and photovoltaic plants are constructed in the most suitable locations in the EU. Extensive support for renewable sources of heat, electricity and fuel should be provided not on the basis of regional needs but of local climatic (and transmission) conditions which are most conducive to efficiency.

— Energy as a production factor should be largely exempt from additional (i.e. additional to those incurred by the energy supplier and factored in to the relevant purchase price of energy) government-imposed energy and climate costs (emissions trading, support for renewable energies and cogeneration of heat and power, energy taxes, etc.), in order not to undermine global competitiveness and to avoid relocations. Only economically sound companies are in a position to undertake the steps needed to improve efficiency, develop new technologies and raise the requisite capital.

— The focus of global agreements should be on relative targets (energy efficiency, greenhouse gas emissions/GDP) so that countries with high potential for economic growth (and thus for increases in greenhouse gas emissions) have incentives to participate. These incentives should mainly take the form of technology transfer — like, for instance, the objective set by the AP6 forum ([26]) of six countries from the Asia-Pacific region — so that efficient technologies quickly reach regions where the need to catch up is most acute.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([26]) The 'Asia-Pacific Partnership on Clean Development and Climate' is a new forum aimed at speeding up the development and use of clean energy technologies. Participating countries are Australia, Canada, India, Japan, Korea, and the USA. The aim is to work with business to achieve energy and climate goals in such a way as to promote sustainable economic development and the fight against poverty. The focus is on investment, trade and technology transfer.

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 460/2004 establishing the European Network and Information Security Agency as regards its duration

COM(2007) 861 final — 2007/0291 (COD)

(2008/C 162/15)

On 24 January 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 460/2004 establishing the European Network and Information Security Agency as regards its duration

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 442nd plenary session of 13 and 14 February 2008 (meeting of 13 February 2008), by 134 votes to 3 with 2 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on Rights-based management tools in fisheries

(2008/C 162/16)

On 27 September 2007, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

Rights-based management tools in fisheries.

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 22 January 2008. The rapporteur was Mr Sarró Iparraguirre.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 110 votes to two with five abstentions.

1. **Conclusions**

1.1 The EESC considers that, once the discussion phase is over, the Commission should conduct a study focusing on the current capacities of Community fleets and the quotas needed to ensure their competitiveness, whilst respecting the sustainability of Community fishing grounds.

1.2 This study should address the updating of Member States' rights acquired on the basis of the principle of relative stability and taking account of the 24 years that have elapsed since 1983.

1.3 This update should allow for the periodical allocation of quotas, e.g. for a period of five years, so that quotas can be redistributed in the event of any imbalances re-emerging.

1.4 The update should work out the best solutions for eliminating the imbalances currently affecting quotas for certain pelagic and demersal species in specific fishing zones, which for most Member States result in excessive quotas or deficient quotas.

1.5 In any case, the quotas involved should be based on scientifically proven data. The EESC therefore believes that greater efforts should be made to improve scientific knowledge of resources. Currently, most quotas are established on the basis of the precautionary approach, due to a lack of sufficient scientific data.

1.6 Moreover, the EESC considers that the relative stability criterion entails certain acquired rights for Member States. These rights should not disappear without trace, but could be updated in line with the sustainability of resources and competitiveness of Community fleets currently required by the Common Fisheries Policy.

1.7 The EESC believes that if the Commission finds that a rights-based management system in fisheries is necessary, then this should be at Community level.

1.8 The EESC believes that duly updated fishing rights could help cut down overfishing and discards at sea substantially.

1.9 However, taking the rights of small-scale fishermen as a priority, owing to their particular importance in island Member States and island regions, the Committee believes that small-scale fishing (understood as being that carried out by fishing vessels of an overall length of less than 12 metres ([1])) should be excluded from a Community-wide rights-based management system in fisheries.

1.10 The Committee believes that if the Commission were to establish a rights-based management system in fisheries, it should start with those fisheries for which, owing to discrepancies between excessive and deficient quotas, there is a broad consensus among the Member States concerned.

1.11 In this case, the Committee believes that it would be the Commission's duty to set the level at which fishing rights could be traded (i.e. at the level of the Community, Member States, organisations of producers or businesses), and to monitor transactions.

1.12 The Committee believes that, if the current imbalances are redressed in accordance with the criterion of relative stability, a major step will be taken towards a rights-based management system in fisheries.

2. **Introduction**

2.1 In its *Communication on Rights-based management tools in fisheries* ([2]), the Commission aimed to open discussion, for a period of around one year (27/02/2008), on the need to find ways to effectively achieve the goals set down in the new Common Fisheries Policy (CFP), i.e. sustainability of resources and competitiveness of Community fleets.

2.2 In its *Green Paper on the Future of the Common Fisheries Policy* ([3]) the Commission called for new management methods to be explored, such as 'market-based systems for allocation of quotas, such as individual transferable quotas and auctions, which generate a market in fishing rights and may increase the interest of right-holders in long-term sustainability of fishing'.

2.3 In the *Roadmap on the reform of the CFP* ([4]), the Commission considered that 'the fisheries sector is still characterised by specific features which make the application of normal economic conditions, such as free competition between producers and freedom of investment, difficult to apply in the short term'. These features relate to the structural imbalance between scarce fisheries resources and the size of Community fishing fleets and the continuing dependence of certain coastal communities on fisheries. In the roadmap, the Commission set down a calendar of initiatives, starting in 2002 with the organisation of workshops on economic management, in order to discuss a system of tradable fishing rights (individual or collective). In 2003, the Commission was to inform the Council of the outcome of these discussions. A workshop was held, somewhat later than planned, in 2007, on the economic dimension of fisheries, at which, inter alia, the subject of fishing rights was discussed ([5]).

2.4 The EESC felt that this own-initiative opinion should be drawn up order to add its views to the discussion initiated by the Commission on how to move towards more effective resource management, which should be the basic pillar of the CFP, in order to guarantee the long-term sustainability of resources while ensuring the competitiveness of Community fleets.

2.5 This opinion aims to highlight the problems that exist in implementing effective rights-based management of fishing resources and to propose possible solutions to these problems.

2.6 The EESC endorses the Commission's view that a climate must be created 'that will be more favourable to the introduction of more normal economic conditions and the elimination of such barriers to normal economic activity as national allocations of fishing possibilities and the principle of relative stability' ([6]).

2.7 Therefore, this opinion aims, firstly, to further the analysis of the criterion of relative stability which, according to the main professional fishing associations ([7]) and the Commission, is one of the main obstacles to the implementation of an EU-wide system of fishing rights: the trading or transfer of definitive ownership of rights between companies in Member States would modify the current quota distribution percentages between States and would, therefore, affect relative stability. Secondly, the opinion aims to provide information to help set up this management system, which is already operating on a national scale in some Member States and in some non-EU countries competing in the Community market.

([1]) Article 26 of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund (OJ L 223 of 15.8.2006).
([2]) COM(2007) 73 final, 26/02/2007.
([3]) COM(2001) 135 final, 20/03/2001.
([4]) COM(2002) 181 final, 28.5.2002.
([5]) Workshop held by the Commission, in Brussels, on 14 and 15 May 2007.
([6]) COM(2002) 181 final, p. 25.
([7]) At the meeting of the Advisory Committee on Fisheries' Working Group on Resources on 18.9.2007, EAPO and EUROPECHE/COGECA both presented documents (Ref. EAPO 07-29 of 17.9.2007; Ref. EUROPECHE/COGECA EP(07)119F/CP(07)1053.3, of 17.9.2007) mentioning this concern about fishing rights.

2.8 *Background*

2.8.1 In 1972 ([8]), the principle of equal access to Member States' fisheries resources, established in 1970 ([9]), was repealed by the Council for a transitional period scheduled to end on 31.12.1982.

2.8.2 Consequently, and in order to protect coastal regions when this transitional period came to an end, in 1976 the Council approved the 'Hague Preferences' ([10]) which, on an internal level, aimed to protect coastal fisheries by taking into account the 'vital needs' of local communities dependent on fishing.

2.8.3 Negotiations between the Commission and the Member States on the distribution of total allowable catches (TACs) continued until 1983, when Regulation (EEC) No 170/1983 was approved, which established a Community system for the conservation and management of fishery resources ([11]) and set down the definitive distribution in accordance with the following criteria: the traditional fishing activities of each Member State, the particular needs of regions where local populations are especially dependent on fisheries (taking the Hague preferences into consideration) and the potential loss of catches in third-country waters as a result of the extension of the exclusive economic zones to 200 nautical miles.

2.8.4 This distribution scheme, recognised as a criterion for relative stability, guaranteed each Member State ([12]) an invariable percentage of the TAC for each species. The Council understood 'relative stability' as being a concept which, 'given the temporary biological situation of stocks, must safeguard the particular needs of regions where local populations are especially dependent on fisheries and related industries' ([13]). In other words, the Hague preferences, as established by the Council in 1976, were maintained, extending the derogation of the equal access principle.

2.8.5 Under Regulation (EEC) No 170/83, the Commission was to draw up a report on the socio-economic situation of coastal regions by 31 December 1991. Based on this, the Council would decide on the necessary adjustments, although it would be possible to extend the system of access conditions and quota distribution criteria until 31 December 2002.

2.8.6 In the light of the report submitted by the Commission, the Council made the political decision to extend the system of access conditions and quota distribution criteria until 31.12.2002 ([14]).

2.8.7 Finally, Article 20 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy stated that 'fishing opportunities shall be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery.' Article 17 of the regulation further extended the derogation of the equal access principle, until 31.12.2012, and again provided for a report to be drafted on the derogation of this principle.

3. **General remarks**

3.1 The EESC believes that the relative stability criterion, i.e. the invariable percentage of TACs allocated to each Member State 24 years ago, does not take account of the economic and social development of populations which are currently dependent on fishing and its related industries. The present capacity of Community fleets, current exploitation of resources and the investments made in coastal regions have little in common with the situation in 1983, when certain Member States with fishing interests had not yet joined the Community.

3.2 In the Commission regulations on the adjustment of quotas ([15]), it is clear that in some fisheries and Community fishing areas every year there are significant discrepancies between the quotas allocated to Member States and the catches made by them, in terms of both pelagic and demersal species. These imbalances — which generate excessive quotas, deficient quotas and even, due to a lack of fleets, unusable quotas — affect most Member States for specific fisheries and fishing areas, and are due not only to biological reasons but also to the consequences of implementing the relative stability principle.

3.3 The EESC believes that the primary consideration in allocating rights within the TAC framework must be to ensure the recovery (and maintenance) of the stocks of the different fish species and other marine resources at higher and more sustainable levels. The EESC recommends that greater efforts should be made to improve scientific knowledge of the state of fish stocks, and how allocations and fishing practices can best be managed to ensure the optimum results both for the maintenance of the fish stocks themselves and of the economic prosperity of the fishing communities that depend on them. Total allocations need to be kept well within scientifically established maximum sustainable yields and individual allocation limits need to be effectively policed and enforced.

3.4 The EESC therefore considers that the Commission should conduct a study focusing on the current capacities of Community fleets and the quotas needed to ensure their competitiveness and the sustainability of fish stocks. This study should address the updating of Member States' acquired rights, based

([8]) Under the Acts of Accession signed by the Community and by Denmark, the UK and Ireland, the transitional period expired on 31 December 1982. See OJ L 73, 27.3.1972.
([9]) Regulation (EEC) No 2141/70, published in OJ L236 of 27.10.1970.
([10]) Council Resolution of 3.11.1976 (OJ C 105 of 7.5.1981).
([11]) OJ L 24 of 27.1.1983.
([12]) In 1983, the Community comprised Germany, Belgium, Denmark, France, the UK, Greece, the Netherlands, Ireland, Italy and Luxembourg.
([13]) Recitals 6 and 7 of Regulation (EC) No 170/1983. OJ L 24 of 27.1.1983.
([14]) Article 4 of Regulation (EC) No 170/1983.
([15]) Those relating to the last three years are: Commission Regulations (EC) No 776/2005, OJ L 130, 24.5.2005; (EC) No 742/2006, OJ L 130, 18/05/2006, and (EC) No 609/2007, OJ L 141, 2.6.2007.

on the principle of relative stability, in order to work out the best solutions for eliminating the imbalances currently affecting quotas for certain pelagic and demersal species in specific fishing zones. The overall aim should be to ensure the long-term sustainability of resources and the competitiveness of Community fleets — which are the main objectives of the CFP.

3.5 Moreover, the Committee considers that the relative stability criterion entails certain acquired rights for Member States. These rights should not disappear without trace, but could be updated in line with the sustainability of resources and competitiveness of Community fleets currently required by the Common Fisheries Policy.

4. **Specific comments**

4.1 The EESC believes that the Commission should carry out the requested study as soon as possible, once the discussion phase is over. Given the current situation of Community fisheries resources and the competitiveness of the Community fleet, it should not be necessary to wait until 2012 for a new Commission report to be drafted and the imbalances currently affecting catch quotas and the Community fleet to be redressed.

4.2 This update should allow for the periodical allocation of quotas, e.g. for a period of five years, so that quotas can be redistributed in the event of any imbalances re-emerging.

4.3 The Committee believes that if, as a result of the discussion about solutions to the current situation, the Commission finds that a management system should be established on the basis of the updated fishing rights of the Member States, then this should be done at Community level.

4.4 The Committee considers that, since the Reform Treaty (Lisbon Treaty) was signed in December 2007, there is a very favourable attitude among the Member States towards such a management system for fisheries.

4.5 The Committee is aware of the difficulties that would be entailed by setting up a Community-wide management system, based on tradable fishing rights, but considers that it could be a means of achieving 'exploitation of living aquatic resources in a manner that provides sustainable economic, environmental and social conditions' ([16]) if, inter alia, the criteria below are taken into account.

4.5.1 In order to protect the rights of small-scale fishermen ([17]), any Community-level rights-based management system in fisheries should exclude small-scale fishing, it being an activity on which many coastal communities — particularly in island States and regions — depend.

4.5.2 So as to avoid dominant market positions arising from the possibility of buying and selling fishing rights, this could be restricted to a percentage of the maximum annual total catch per species in each Member State.

4.5.3 The Committee believes this management system should be implemented across the different Community fisheries on a gradual, step-by-step basis, starting with those for which, owing to discrepancies between excessive and deficient quotas, there is a broad consensus among the Member States concerned.

4.5.4 The Commission would have to determine, for a fishery affected by the rights-based management system, whether trading would be at the level of the Community, the Member States, organisations of producers or businesses, and clearly set out how these transactions would be monitored.

4.6 The EESC believes that duly updated fishing rights could help cut down overfishing and discards at sea substantially.

4.7 The Committee believes that, if the current imbalances are redressed in accordance with the criterion of relative stability, a major step will be taken towards a rights-based management system in fisheries. This system, duly regulated to prevent dominant market positions, will make it possible to distribute resources more fairly and evenly among the various Community fleets, which will help to achieve greater sustainability of resources and ensure the competitiveness of Community fleets.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([16]) Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, OJ L 358, 31.12.2002.

([17]) 'Small-scale fishing' is considered as being that defined by Article 26 of Council Regulation (EC) No 1198/2006, i.e. carried out by fishing vessels of an overall length of less than 12 metres.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as regards the support scheme for cotton

COM(2007) 701 final — 2007/0242 (CNS)

(2008/C 162/17)

On 4 December 2007, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as regards the support scheme for cotton

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 22 January 2008. The rapporteur was **Mr Narro Sánchez**.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 14 February 2008), the European Economic and Social Committee adopted the following opinion by 141 votes to 33 with 13 abstentions.

1. Conclusions and recommendations

1.1 The new support scheme for cotton will come into force on 1 January 2008. The Council of Ministers must adopt a decision as swiftly as possible in order to prevent uncertainty among farmers regarding the applicable legal framework for the next marketing year.

1.2 The EESC stresses that the partial 65 % decoupling rate laid down in the annulled regulation, which remains unchanged in the Commission proposal, is an inefficient way to maintain production of the crop in the cotton-growing areas of the EU. The high labour intensity, high production costs, volatility of world prices and various other factors prevent the Commission proposal from being an effective way to stop this crop from disappearing.

1.3 The EESC considers that the system that was in force before the 2004 reform, which was based on production aid, ensured the viability of farms throughout the regions of the EU where cotton is grown. However, the EESC is aware of the impossibility of returning to the previous scheme due to the new policy orientation of the CAP and the international commitments made by the EU in the context of the World Trade Organisation.

1.4 The EESC points out that there are differences in production between Greece and Spain. At present, it is difficult to conceive of a homogeneous support system that could be applied equally to both countries. As a result of this difference, the Committee calls for maximum flexibility to be brought to the cotton support scheme by dint of the subsidiarity principle, which has guided the most recent sectoral reforms of CMOs in the wine and fruit and vegetable sectors. Every Member State should be able to apply the necessary subsidiarity in order to find the best solution for their producing areas.

1.5 In order to maintain a high degree of decoupling of support, a transitional period should be set up to allow for gradual adaptation to greater levels of decoupling. Moreover, a high percentage of coupled support cannot alone guarantee that cotton production will be sustained. Nor will including the requirement to harvest and the concept of 'sound and fair merchantable quality' ensure that the production levels registered prior to the reform are maintained; as a result, eligibility conditions must be incorporated which include quantitative criteria relating to the volume of production achieved.

1.6 The EESC points out that the new system should promote a commitment to the quality of the product, in contrast to the current system, which is causing a considerable reduction in quality and making it difficult to sell European cotton. Cotton is a product used for textiles, and must meet the needs of an industry exposed to tough competition. It is therefore essential to ensure that all the factors for high-quality production are present. Moreover, efforts should be made to ease the introduction of new alternative technologies, integrated production systems and eco-friendly production wherever feasible.

2. General remarks

2.1 The cotton support scheme dates back to 1980, when Greece joined the European Community. The scheme was then extended to the two countries which joined in 1986, Spain and Portugal. The cotton sector was based on a system of 'deficiency payments', whereby support was granted for cotton processors who had paid a minimum price to cotton producers. The system was changed in 2000 when guaranteed maximum quantities were brought in, along with new environmental requirements.

2.2 In April 2004, the Council of the European Union adopted a new support scheme for cotton, inspired by the guiding principles of the 2003 CAP reform, decoupling production-related aid. This was intended to bring the decoupled payment to around 65 %, while coupled aid would increase to 35 %. The reform, which came into force on 1 January 2006, did not allow for any modification to the percentages of this partial decoupling.

2.3 On 7 September 2006, in an unprecedented decision, in the context of an appeal brought by the Kingdom of Spain, the European Court of Justice annulled the cotton support scheme approved in 2004 owing to its infringement of the principle of proportionality, which meant that, under the Treaty on European Union, the actions proposed by the reform of the Community cotton scheme were considered disproportionate to the aims pursued. The Commission had not taken into account labour costs when calculating the foreseeable profitability of cotton growing, nor had it considered the impact of the reform on the situation of the cotton-ginning sector. The Court of Justice suspended the annulment of the reform until a new proposal was put forward by the Commission.

2.4 During the drafting of the new proposal, the Commission carried out two studies on the environmental and socio-economic impact of cotton production. In conjunction with these studies, various working meetings were held with representatives from the sector, along with a public hearing.

2.5 Lastly (and to the great puzzlement of the sector), on 9 November 2007 the Commission presented a new proposal for the reform of the cotton support scheme that was almost identical to the current one — i.e. partial decoupling with 65 % of payments unlinked from crop production and the remaining 35 % coupled to production. The EESC considers that the Commission's proposal should be brought more closely into line with the different production situations in Greece and Spain.

2.6 The current cotton support scheme has witnessed a clear drop in production, reduction in revenue and the resulting gradual abandonment of the sector in various cotton-growing areas. In its opinion on the reform of 2004, the EESC warned the Commission of the significant reduction that partial decoupling would have in cotton-growing areas.

2.7 In the EU, production is concentrated almost exclusively in certain areas of two Mediterranean countries — Greece and Spain. Greece is Europe's main cotton producer with around 380.000 hectares of land devoted to the crop, while the area under cotton in Spain totalled around 63 000 hectares in 2007. Portugal no longer grows cotton, and Bulgaria produces a very small amount. On the whole, cotton is grown in particularly depressed areas with few alternatives for employment. These regions are still covered by the convergence objective for 2007-2013.

2.8 In Greece, the area under cotton has decreased by 11 % and production figures have dropped proportionately due to adverse climate conditions and, essentially, to the implementation of the 2004 reform.

2.9 In Spain, the effects of the current system have led to much more radical changes in the sector than in Greece. In Andalusia, Spain's main cotton-producing region, the sector has lost 30 % of its surface area and 65 % of production in only two marketing years, with harvested cotton dropping from 347 000 tonnes in 2004 to 130 000 tonnes in 2007. In the last two years, 30 % of producers have abandoned the crop. This drop in production makes it unfeasible in the short term for much of the industry to survive in Spain, and this will have a substantial impact on employment in the ginning industries and the use of labour in production.

2.10 In the light of the above, the EESC calls on the Commission to bring more flexibility to its proposal so as to give the Member States, through the subsidiarity principle, greater room for manœuvre.

2.11 The introduction of any degree of decoupling in the cotton sector will lead to widespread restructuring within the sector. The ginning industry will have to deal with substantial changes in order to adapt to the new situation, and will need the financial support of the Commission in order to restructure so that it can continue to maintain employment in cotton-growing areas. Financial support should be earmarked for the ginning industry to enable it to bear the costs of abandoning this activity and taking up other economic activities which would secure jobs. The conversion measures included in the last reform of the sugar CMO could serve as inspiration in this area.

3. **Specific comments**

3.1 The EESC fully agrees with the Commission regarding the importance of the tasks to be assigned to inter-branch organisations: to coordinate product marketing, draw up standard contracts and promote high-quality cotton production. However, the form these organisations have to take under the current system and the lack of integration with other measures has meant that they have carried little weight over the two years that the regime has been in effect and their activity is limited to ensuring their members' access to additional aid. Indeed, in Spain, there is only one inter-branch organisation covering 10 000 hectares of cotton crops.

3.2 In October 2008, the European Commission is to publish a green paper on the implementation of quality policy in the EU. Therefore, the related legislative proposals will not be presented before 2009. The Commission has recently announced its intention to consider the inclusion of cotton in Annex I to Council Regulation No 510/2006 on the protection of geographical indications and designations of origin.

3.3 The inclusion of cotton in the abovementioned protection scheme could be a useful tool for many producers seeking to increase the added value of their production in order to meet the challenges of a highly competitive open market and bring in a fair income from the markets. The Commission should extend the regulation to cotton by emergency procedure.

3.4 Proper certification of country of origin and European quality controls can help to bring to Community cotton production the added value sought by all European initiatives in the field. However, as the EU is a net importer of cotton, controls on imports need to be improved and strengthened. Cotton should therefore be included in the list of products eligible for information and promotion measures, although this will not in itself provide a solution for the sector.

3.5 The EESC supports all the Commission's proposals designed to improve the quality of cotton. In recent years the sector has made great environmental progress by supporting integrated production systems, agri-environmental aid and eco-friendly production. There has been an increase in integrated production systems in Spain, accompanied by application of environmental measures. In 2008 Greece will adopt a law governing integrated production systems. The new regime must provide incentives for such initiatives.

3.6 The EU should help its cotton sector to adapt to using new technological innovations.

3.7 The EU is a net importer of cotton; Community cotton production only accounts for 2 % of the cotton consumed in the world, and is a long way from the major cotton producing countries (USA, China, India, etc.). As a result, the EU is not involved in setting international prices for this raw material, and Community support for cotton producers does not distort competition. The Commission should therefore defend the European cotton sector when this is called into question in multilateral forums such as the World Trade Organisation.

Brussels, 14 February 2008.

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 contained use of genetically modified micro-organisms (Recast)

COM(2007) 736 final — 2007/0259 (COD)

(2008/C 162/18)

On 10 January 2008 the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the contained use of genetically modified micro-organisms (Recast)

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 1235/1988, adopted on 24 November 1988 [1], and CESE 887/1996, adopted on 10 July 1996 [2], it decided, at its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), by 133 votes to 2 with 3 abstentions to issue an opinion endorsing the proposal and to refer to the position it had taken in the above-mentioned documents.

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

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[1] Opinion of the Economic and Social Committee on the proposal for a Council Directive on the contained use of genetically modified micro-organisms — COM(1988) 160 final (OJ C 23 of 30.1.1989, p. 45).

[2] Opinion of the Economic and Social Committee on the proposal for a Council Directive amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms — COM(1995) 640 final (OJ C 295 of 7.10.1996, p. 52).

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on the establishment of the European Environment Agency and the European Environment Information and Observation Network (Codified version)

COM(2007) 667 final — 2007/0235 (COD)

(2008/C 162/19)

On 22 November 2007 the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council on the establishment of the European Environment Agency and the European Environment Information and Observation Network (Codified version)

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, the Committee decided, at its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), by 132 votes to two with two abstentions, to issue an opinion endorsing the proposed text.

Brussels, 13 February 2008.

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 (EC) No …/… of the European Parliament and of the Council concerning the general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails (Recast)

COM(2007) 848 final — 2007/0287 (COD)

(2008/C 162/20)

On 22 January 2008 the Council decided to consult the European Economic and Social Committee, under Articles 37 and 95 of the Treaty establishing the European Community, on the

Proposal for a Regulation (EC) No …/… of the European Parliament and of the Council concerning the general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails (Recast)

Since the Committee unreservedly endorses the contents of the proposal and has already set out its views on the subject in its earlier opinion CESE 413/1996, adopted on 27 March 1996 (*), it decided, at its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), by 131 votes to 1 with 8 abstentions to issue an opinion endorsing the proposal and to refer to the position it had taken in the above-mentioned document.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

(*) Opinion of the Economic and Social Committee on the Proposal for a European Parliament and Council Regulation (EC) to amend Regulation (EEC) No 1601/91 laying down general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-based cocktails — COM(1995) 570 final (OJ C 174 of 17.6.1996, p. 30).

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast)

COM(2007) 858 final — 2007/0292 (COD)

(2008/C 162/21)

On 30 January 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast)

Since the Committee unreservedly endorses the contents of the proposal and has already set out its views on the subject in its earlier opinion, adopted on 24 February 1971 (*), and in the opinion CESE 196/1995, adopted on 23 February 1995 (**), it decided, at its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), by 133 votes to 2 with 2 abstentions to issue an opinion endorsing the proposal and to refer to the position it had taken in the above-mentioned documents.

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

(*) Opinion of the Economic and Social Committee on the proposal for a Council Directive on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters (OJ C 36 of 19.4.1971, p. 14).

(**) Opinion of the Economic and Social Committee on the proposal for a European Parliament and Council Directive amending Council Directive 80/777/EEC on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters — COM(1994) 423 final (OJ C 110 of 2.5.1995, p. 55).

Opinion of the European Economic and Social Committee on The Perspectives of European Coal and Steel Research

(2008/C 162/22)

On 27 September 2007 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an additional own-initiative opinion on

The Perspectives of European Coal and Steel Research.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 February 2008. The rapporteur was Mr Zboril and the co-rapporteur was Mr Gibellieri.

At its 442nd plenary session, held on 13 and 14 February 2008(meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 158 votes to 1 with 3 abstentions.

Part one — Conclusions and recommendations

A. The EESC is satisfied that the proposed revision of the technical guidelines on the Research Fund for Coal and Steel (RFCS) research programme, submitted by the European Commission for a Council Decision, looks to further improve the good results already achieved to date. No major overhaul is needed, taking into account the position of the Commission, which is keen to make the programme as straightforward for its participants as possible.

B. The EESC agrees with Commissioner Potočnik that the RFCS research programme remains separate and complementary to the Research Framework programme and covers all aspects related to coal and steel.

C. The EESC welcomes the fact that the proposed Decision simplifies administrative procedures, inter alia by deleting some accompanying measures since they are already covered by the 7th Framework Programme (RTD FP), increasing financial support from 40 to 50 % for pilot and demonstration projects, and allowing dedicated calls on priorities identified by the coal and steel industries on the basis of their strategic needs that converge with the 7th Research Framework Programme and dovetail with the strategic research agendas of the relevant European Technology Platforms.

D. The EESC stresses the need to meet the request from the industrial sectors concerned to give a more important and proactive role to both the CAG (Coal Advisory Group) and the SAG (Steel Advisory Group) in the management of the RFCS research programme, enabling them to:

— exercise their roles as outlined in Decision 2003/78/EC;

— propose lists of experts from industry, research centres and the academic world to be involved in the evaluation of research and pilot/demonstration projects;

— establish priorities for the research programme complementary to the relevant European Technology Platforms (ESTEP-European Steel Technology Platform, ZEP-Zero Emission Fossil Fuel Power Plants Platform, SMR-Sustainable Mineral Resources Platform) [1];

— decide on the need to launch dedicated calls for very specific and relevant issues;

— modify, where appropriate, the definition of 'coal and steel' appended to the Decision.

E. The EESC calls on the Commission to re-insert into the rules of procedure for the consultation of the Coal and Steel Programme Committee (COSCO) the comments and proposals concerning the evaluation of research and pilot/demonstration projects from both the CAG and SAG.

1. Part two — Background

1.1 On 1 July 2004 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The Perspectives of European Coal and Steel Research.

[1] The SRA (Strategic Research Agenda) priorities of the European Steel Technology Platform (ESTEP) are focused on sustainable growth, emphasising the enduring competitiveness of the industry based on innovation, cooperation with partners, keen environmental awareness and its strong connection with steel producers; this is how it contributes to the EU's research programmes.
In parallel, the priorities of the Technology Platform for Zero Emission Fossil Fuel Power Plants (ZEP) aim at identifying and removing the obstacles to the creation of highly efficient power plants with near-zero emissions which will drastically reduce the environmental impact of fossil fuel use. This will include CO_2 capture and storage, as well as clean conversion technologies leading to substantial improvements in plant efficiency, reliability and costs. The Sustainable Mineral Resources Platform (SMR) will also be taken into account.

1.2 The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion (CCMI/018 — CESE 845/2005) on 13 June 2005. The rapporteur was Mr Lagerholm and the co-rapporteur was Mr Gibellieri.

1.3 At its 419th plenary session, held on 13 and 14 July 2005 (meeting of 13 July 2005), the European Economic and Social Committee adopted the above mentioned opinion by 57 votes to none with 3 abstentions.

1.4 More than two years since the publication of the above mentioned EESC opinion, some changes to the RFCS research programme are under way. In fact, on 10 July 2007, after consultation with the Coal and Steel Programme Committee (COSCO), the European Commission adopted a proposal for a Council Decision on a revision of the technical guidelines on the RFCS research programme for spending funds on coal and steel research.

1.5 This revision is required by Council Decision 2003/76/EC, 2003/77/EC, 2003/78/EC of 1 February 2003, which created the RFCS. It should be recalled that Council Decision 2003/76/EC also transferred the assets and liabilities of the ECSC to the European Community and allocated the net worth of these assets to research in the sectors related to coal and steel.

2. **Part three — Motivation**

2.1 The Research Fund for Coal and Steel (RFCS) has an annual budget of between EUR 50 million and EUR 60 million for research in these two areas, financed by interest on the assets of the now-expired European Coal and Steel Community Treaty. The RFCS programme is a separate, complementary programme to the Research Framework programme and covers all aspects of coal and steel, from production processes to application, looking at the utilisation and conversion of resources, safety at work and environmental protection by improving the use of coal as a clean energy source and reducing CO_2 emissions from coal use and steel production.

2.2 The proposed Decision simplifies some administrative procedures, inter alia by:

— deleting some accompanying measures since they are already covered by the 7th Framework Programme (RTD FP);

— increasing financial support from 40 to 50 % for pilot and demonstration projects, and allowing dedicated calls on identified priorities that converge with the 7th Research Framework Programme and dovetail with the strategic research agendas of the relevant European Technology Platforms.

2.3 Participation is simple: proposals can be submitted any time with a cut-off date of 15 September each year. There is no ceiling either for the project budget or for the number of participating partners in each project. Third countries may participate, but do not receive any European financial support. Projects are evaluated by external experts and selected based on the quality of the research proposed. The monitoring of projects is done according to an annual 'peer review' process.

2.4 It has also been necessary to make some changes to the rules governing membership of the advisory groups and the role of Member States in the Coal and Steel Programme Committee (COSCO), particularly in the light of recent enlargements of the European Union (periodicity of revisions, duration of mandates, system of selection of proposals and monitoring of projects to avoid conflicts of interest, etc.).

2.5 This revision is required by the legislative Decision that created the RFCS. In the Commission's view the RFCS has so far worked well and so a major overhaul is not required.

2.6 In the meantime the European Steel Technology Platform (ESTEP) has continued its own work. The ESTEP press release of July 2007 shows the first results of its long-term commitment to a sustainable future. ESTEP proposed a Strategic Research Agenda (SRA) in December 2003 and was then inaugurated in March 2004.

2.7 ESTEP was among the first technology platforms to step forward and publish its vision of the future. The priorities of its SRA are focused on sustainable growth: they emphasise the enduring competitiveness of the industry based on innovation, cooperation with partners, keen environmental awareness and its strong connection with steel producers; this is how it contributes to the EU's research programmes.

2.8 In line with the proposed priority on 'Near Zero Emission Power Generation' (ZEP) in FP7, the initial scope of the Platform aims at identifying and removing the obstacles to the creation of highly efficient power plants with near-zero emissions which will drastically reduce the environmental impact of fossil fuel use. This will include CO_2 capture and storage, as well as clean conversion technologies leading to substantial improvements in plant efficiency, reliability and costs.

2.9 As regards the industrial side, there are references to the time of the European Coal and Steel Community (ECSC, ended in July 2002) where the R&D projects covered by the relevant R&D support programme were largely evaluated and chosen with a significant input from the steel producers involved. The coal part of the programme was handled along the same lines as the pertaining technical guidelines. This role of the industry was legitimated by the fact that the ECSC funds came exclusively from the levy on the coal and steel industry.

2.10 The situation greatly changed when the Research Fund for Coal and Steel (RFCS) was established in 2003 (Council Decision 2003/76/EC, 2003/77/EC, 2003/78/EC of 1 February 2003, published in OJ L 29/22, OJ L 29/25, OJ L 29/28 of 5 February 2003). At that time the remaining ECSC funds were transferred to the new fund and the Commission was charged with administering the funds and the pertaining R&D programme in line with the essential elements of the previous ECSC research programmes.

2.11 The Commission's conception of the influence of the coal and steel industry on the RFCS programme is different from that of the industry. In keeping with the provisions of Decision 2003/78/EC, COSCO and the two advisory groups CAG and SAG should be enabled to fully exercise their allocated roles, which should not be curtailed by shifting their influence from direct evaluation only to the aspects before the call for proposals.

2.12 By means of the recent proposal to revise the technical guidelines for the RFCS programme, the Commission is seeking to adapt, wherever deemed beneficial, the formal procedures and structures to those in use in the 7th Research Framework Programme (FP7) of the EU. Therefore, any harmonisation with rules and procedures of the FP should be strictly limited to areas where a genuine simplification and/or increased effectiveness can clearly be demonstrated. Whilst advantage should be taken of existing synergies between FP 7 and the RFCS where possible, the role of the RFCS as a complementary and independent programme needs to be preserved (see Part one — B).

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council repealing Council Decision 85/368/EEC on the comparability of vocational training qualifications between the Member States of the European Community

COM(2007) 680 final — 2007/0234 (COD)

(2008/C 162/23)

On 27 November 2007 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Decision of the European Parliament and of the Council repealing Council Decision 85/368/EEC on the comparability of vocational training qualifications between the Member States of the European Community

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 January 2008. The rapporteur working without a study group was Mr Metzler.

At its 442nd plenary session, held on 13-14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 156 votes to three with five abstentions.

1. **Conclusions**

1.1 The Committee has thoroughly examined the reasoning of the European Commission and the European Parliament and, in particular against the backdrop of the reports and the experiences — to be confirmed by the Committee — of the work to create common career profiles, finds it to be conclusive, sound and properly argued. The Committee emphasises this in view of the creation of a new set of instruments designed to strengthen and facilitate the mobility of persons, i.e. the European Qualifications Framework.

1.2 The Committee believes that this decision helps secure better lawmaking in that it critically examines unused and unworkable rules and replaces them with better instruments.

1.3 The Committee backs Commission moves to establish a system to help people make better use of their practical experience and skills for the purposes of mobility and easier migration within the single market in services. It particularly welcomes the fact that the system is initially voluntary.

1.4 In the light of past experience, the Committee calls for action to counter the uncertainty caused by the repeal of legislation by increasing transparency and reporting on the impact of such a move, and to ensure that any confusion with Directive 2005/36/EC on the recognition of professional qualifications is avoided.

2. **General comments**

2.1 The Parliament and the Council have agreed to repeal Decision 85/368/EEC. Their action has been prompted by the fact that the rules in place are representative of a system for creating comparable professional qualifications that has proven difficult to implement and hard to manage in practice. Following the introduction of these rules, the European institutions identified 219 qualifications from 19 professions whose workers were most likely to move to other countries. By 1990, data on the comparability of qualifications had been published for only five of the specified sectors, covering 66 occupations.

2.2 As the Commission notes, this number, which was already too low, was subsequently reduced still further by the Member States as they made a rapid succession of changes to the professions covered by the common career paths. The centralised design meant that this resulted in the need for considerable changes. The system was not able to cope with this additional workload. Therefore, the current situation is that, in the more than 20 years since its introduction in 1985, the system has not proven effective enough in increasing mobility of workers in the cross-border provision of services or in facilitating migration in the area of personal services.

2.3 The European Community has replaced this system of harmonisation with the European Qualifications Framework (EQF). Thanks to its simple classification structure, this enables the Member States to categorise their own qualifications and thus to establish comparability. The body set up by the European Community to supervise the classification has the task of ensuring quality and standards. The European Community has put in place two further instruments to complement the EQF: the Europass and the European Credit Transfer System. In addition, it has set up the Ploteus portal for the comparison of formal and informal learning. The Commission has made its activities and efforts fit in with the European Community's overall Lisbon goals to improve the single market and to cut red tape.

3. **Recommendations**

3.1 The Committee welcomes the fact that the European Union is paying more attention to the question of facilitating migration in a bid to enhance the opportunities of the single market both for workers and in the area of personal services.

3.2 The Committee agrees that practical experience should be included in transparency comparisons. The Committee emphasises that the EQF operates at a level downstream of Directive 2005/36/EC on the recognition of professional qualifications, on which the Committee has issued a separate opinion, and that the two should be kept separate.

3.3 The Committee welcomes the fact that the EQF is to be implemented on a voluntary basis until 2012. This leaves time to gather practical experience and to improve acceptance of the new system through transparency and communication.

3.4 The Committee welcomes the involvement of the social partners in the work, not least because the EQF classifications may well impact on collective agreements in the medium term. The same goes for developments relating to the Blue Card.

Brussels, 13 February 2008.

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 Decision on guidelines for the employment policies of the Member States (under Article 128 of the EC Treaty)

COM(2007) 803 final/2 (Part V) — 2007/0300 (CNS)

(2008/C 162/24)

On 17 January 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Council Decision on guidelines for the employment policies of the Member States (under Article 128 of the EC Treaty)

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 January 2008. The rapporteur was **Mr Greif**.

At its 442nd plenary session, held on 13 and 14 February 2008 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 147 votes to five, with seven abstentions.

1. Conclusions and recommendations

1.1 The EESC has welcomed the new integrated approach and multi-annual cycle both in its opinion on the adoption of the guidelines for 2005-2008 ([1]) and in numerous other opinions, and pointed out, *inter alia*, that national parliaments, the social partners and civil society must be genuinely consulted and involved in all stages of employment policy coordination.

1.2 The EESC has pointed out that one key to the success of the national reform programmes is the widest possible involvement of all relevant social players — in particular the social partners — in every phase of the process. In this regard, the Committee has expressed regret that, in the last few years, the level of consultation with the social partners and debate with civil society has not been satisfactory. The EESC therefore feels it is important to strengthen industrial relations systems at EU and national level.

1.3 Against this background, the Committee regrets once again that the extremely tight timetable between the publication of the proposal for a Council Decision and the decision itself does not allow sufficient time for in-depth discussion and consultation. The Committee therefore reserves the right to revisit the strategy in the light of the 2008 Spring Summit.

1.4 The Committee has made numerous proposals concerning the previous set of Employment Guidelines within the European Employment Strategy in various opinions. Anticipating the limited timetable outlined, the EESC put together all of these proposals in a compilation which was sent to, and was well-received by, the relevant Commission services ([2]).

1.5 Although the guidelines have by no means lost their basic validity the Committee notes that the new set of employment guidelines is identical to the previous package. The accompanying text, however, has been slightly updated and a few of the Committee proposals are reflected in the text.

1.6 The Committee suggests that the Commission produces an annex with a list of all quantifiable targets in the guidelines as a matter of standard procedure in order to make them more transparent.

1.7 Given the timescales involved, the Committee reiterates its main views on certain aspects that need to be accounted for in the decision, arising from a general need to adapt the Employment Guidelines. These are set out in the summary of proposals below ([3]).

([1]) EESC opinion of 31.5.2005 on the *Proposal for a Council Decision on guidelines for the employment policies of the Member States, in accordance with Article 128 of the EC Treaty*, rapporteur: Mr Malosse (OJ C 286 of 17.11.2005).

([2]) A booklet with the proposals of the EESC will be published imminently. For EESC opinions on employment and related issues, see http://eesc.europa.eu/sections/soc/index_en.asp.

([3]) The following opinions are quoted in the summary: EESC opinion of 25.4.2007 on the *Proposal for a Council Decision on guidelines for the Employment Policies of the Member States*, rapporteur: Ms O'Neill (OJ C 168 of 20.7.2007); EESC opinion of 12.7.2007 on *Employment of priority categories (Lisbon Strategy)*, rapporteur: Mr Greif (OJ C 256 of 27.10.2007); EESC opinion of 26.10.2005 on the *Communication from the Commission to the Council on European policies concerning youth — Addressing the concerns of young people in Europe — Implementing the European Youth Pact and promoting active citizenship*, rapporteur: Mrs van Turnhout (OJ C 28 of 3.2.2006); EESC opinion of 13.9.2006 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — A Roadmap for equality between women and men 2006-2010*, rapporteur: Ms Attard (OJ C 318 of 23.12.2006); EESC opinion of 11.7.2007 on *Employability and entrepreneurship — The role of civil society, the social partners and regional and local bodies from a gender perspective*, rapporteur: Mr Pariza Castaños (OJ C 256 of 27.10.2007); EESC opinion of 17.1.2007 on *Equal opportunities for people with disabilities*, rapporteur: Mr Joost (OJ C 93 of 27.04.2007); EESC opinion of 26.9.2007 on *Promoting sustainable productivity in the European workplace*, rapporteur: Ms Kurki (OJ C 10 of 15.1.2008); EESC opinion of 11.7.2007 on *Flexicurity (internal flexibility dimension — collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets)*, rapporteur: Mr Janson (OJ C 256 of 27.10.2007); EESC opinion of 17.5.2006 on *Proposal for a Council Decision on guidelines for the employment policies of the Member States*, rapporteur: Mr Greif (OJ C 195 of 18.08.2006); EESC opinion of 30.5.2007 on the *Proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning*, rapporteur: Mr Rodríguez García -Caro (OJ C 175 of 27.7.2007); EESC opinion of 6.4.2005 on the *Proposal for a Recommendation of the Council and of the European Parliament on further European cooperation in quality assurance in higher education*, rapporteur: Mr Soares (OJ C 255 of 14.10.2005).

2. **Summary of specific EESC proposals**

2.1 *Ambitions and measurable targets*

The Committee reiterates the need for:

— much more ambitious, effective and measurable targets which can be benchmarked in the new guidelines at EU and Member State level, and for more enforcement powers for the Commission; in this context, serious efforts should be made to avoid watering down the goals of the new Lisbon strategy and therefore to focus again on quantitative European targets, in particular in the fields of activation, education and life-long learning, youth employment and gender equality;

— a timetable and process that can be properly circulated to all relevant stakeholders in order to ensure maximum participation and allow sufficient time for responses at EU and national level at the development stage; above all, in this context, the involvement of the social partners, civil society and the EESC at the earliest possible stage in the development and implementation of the guidelines, as well as in the follow-up;

— an improvement in data collection, facilitating monitoring and evaluation by both Member States and the Commission;

— National Reform Programmes that include more concrete evidence of defined objectives, timescales, cost and budget provision in this way becoming more ambitious with noticeable qualitative improvement with regard to timing, responsibility, commitment of resources and financing, including specific objectives for the earmarking of appropriate budgetary resources for active labour-market policy in the individual Member States;

— stronger emphasis on the inclusion of people with special needs, with specific targets and greater recognition of social policy requirements; in this context, much more effort must be made to ensure that the positive developments in the economic and employment fields also reinforce social inclusion within the Lisbon strategy; for this reason, there should be much more emphasis on the common social objectives of Member States to promote active social inclusion (e.g. fighting poverty and the exclusion of people and groups that are most marginalised) in the new set of guidelines.

2.2 *Youth employment*

The Committee reiterates the need for:

— targets for each Member State to reduce the number of young people unemployed by a minimum of 50 % in the period 2006-2010 in order to make it clear that fighting youth unemployment requires more efforts by all stakeholders;

— a much stronger emphasis on integrating young people into the labour market, with a guarantee of a first job with future prospects; and, in this context, on the implementation of measures that reduce the risk of young people remaining trapped in short-term and insecure employment;

— a much more rigorous and focused approach to vocational training, to build employment pathways for young people, and to life-long learning to reduce youth unemployment; the basis of education as it relates to the modern labour market is also a major issue in that basic and intermediate skills are lacking and there is a mismatch between skills and qualifications in relation to the employment market;

— the development of social protection systems that enable young people to be in a position to make choices to determine their own future; in this context, measures to promote the social inclusion of young people, in particular to combat the problem of young people who are not in education, training, employment or registered as unemployed;

— a reduction in the level of early school leaving by 50 % in the period 2006-2010 and the promotion of work experience in companies;

— the development of appropriate incentives and support for firms to employ more young people and older workers experiencing particular difficulties in finding employment;

— a reduction in the maximum six-month period of seeking employment/training places after which young people are offered a new start (it is noted that under Guideline 18 this period will be reduced to 4 months by 2010);

— the promotion of equality, support for people with disabilities and the integration of immigrants.

2.3 *Gender equality*

The Committee again stresses that:

— common priorities in the coordination of employment policies are necessary to increase the female participation rate; inter alia, there should be concrete policy proposals aimed at encouraging single parents to develop marketable skills and to facilitate their access to employment;

— the social partners should be consulted on the aspects concerning the incorporation of gender criteria;

— national governments, national equality bodies and the social partners of all Member States have a clear obligation to ensure that the pay systems they put in place do not lead to pay discrimination between women and men; in this context, the EU guidelines should reinforce, both at national and company levels, objectives for equal pay between men and women, by means of specific indicators; consequently, targets should be introduced to reduce the gender gap as regards access to vocational and technological training, and reduce wage differences at the time of recruitment;

— there is a need for measures to eliminate existing labour-market discrimination and the structural causes of gender-specific income disparities, especially the promotion of social safeguards for women, via measures to reduce short-term, insecure part-time work and to improve the regulation of part-time work (e.g. extension of the right to part-time work for parents, with the right to return to full-time work later; improved involvement in in-house further training programmes);

— new specific objectives are needed for gender equality in employment policies, with qualitative and quantitative indicators, to eliminate gender stereotyping and restrictions on women starting a career in specific sectors and becoming entrepreneurs ([4]);

— the national curricula should include entrepreneurship education at second and third levels, especially among females, and that measures should be taken to increase the number of female graduates in scientific/technical disciplines in order to address the employment gender gaps that exist in technical areas like engineering and ICT-related services;

— more attention should be given to gender equality and the need to balance work and family life; in this context, it is necessary to reduce the gender-specific segmentation of the labour market, especially through effective measures for reconciling career and family (in particular massive development of widely available, high-quality and affordable childcare facilities and various forms of support for those in need of care and their families, including 24-hour facilities);

— there is a need to effectively promote shared parenting (especially incentives for increasing the father's contribution to parenting) and to eliminate family-policy measures that encourage parents to leave the labour market permanently or for long periods of time; parents should be enabled to return to the labour market; parental leave allowances should not adversely affect income, create incentives for women to leave work or create new obstacles to the sharing of childcare by both partners.

2.4 *Older workers, disabled workers, immigrant workers*

The Committee has called for:

— greater efforts to combat the many continuing forms of discrimination and disadvantage suffered on grounds of age, gender, disability or ethnic background, particularly with regard to access to education, access to the labour market and continuing employment; existing EU legislation and its implementation should be properly monitored;

— more attention on the impact of demographic change and the challenges of an ageing workforce; in this context, more investment in the quality of jobs and in working conditions favourable to older workers; in order to make workers physically and mentally capable of remaining longer in active employment, particularly by encouraging older workers to be more involved in further training and by reducing pressures at work and adapting working conditions (e.g. incentives to develop health protection in the workplace, widely available company health promotion, preventative medicine and employee protection programmes);

— measures to raise awareness of the value of older workers (appreciation of experience and transfer of skills acquired in the course of a working life to younger workers) and advice and support for companies, especially SMEs, in forward personnel planning and the development of forms of work organisation favourable to older workers;

— a higher priority for disability issues in national reform plans and greater involvement of national disability associations in drawing up the reform plans; in this context the Commission was asked to analyse the impact and exploit possible synergies that flexible working and supportive measures may create for increasing the employment rate of people with disabilities;

— strengthening and monitoring the implementation of immigration policies and the impact on national workforce planning; particular attention should be paid here to individual (pre-)school support and early investment in language and vocation-related skills as well as to the elimination of institutional obstacles to and discrimination regarding labour market access in the Member States and prevention of wage dumping;

— monitoring and action in order to ensure that a balance of skilled and qualified workforce is retained to ensure sustainability; whilst the EESC supports the mobility of workers across the Member States, it is concerned about the impact that the transfer of skilled workers and the withdrawal of competence from one EU country to another has on the country of origin.

2.5 *Quality jobs and transitional labour markets*

The Committee reiterates the need for:

— measures to improve the quality of jobs and therefore the establishment of a European index describing the quality of working life, built on research-based 'good work' criteria and compiled and published on a regular basis, to shed light on changes and improvements in the quality of working life and the effects on productivity;

— increasing employment security and preventing 'insecure employment traps', *inter alia*, by ensuring that the unemployed are not obliged to take on jobs offering no security, by combating undeclared work and by preventing the exploitation of workers employed on short-term contracts;

([4]) In this context see also the following opinions: EESC opinion of 6.7.2006 on *Fostering entrepreneurial mindsets through education and learning*, rapporteur: Ms Jerneck (OJ C 309 16.12.2006) and EESC opinion of 25.10.2007 on *Entrepreneurship mindsets and the Lisbon Agenda*, rapporteur: Ms Sharma, co-rapporteur: Mr Olsson (SOC/267). (The opinion has not been published yet.)

— the protection of workers against discrimination;

— many additional measures to improve operative health protection systems, for the employment objectives to promote prevention and a healthy lifestyle in order to reduce illness burdens, increase labour productivity and extend the working life;

— measures to modernise and improve, where necessary, the social safeguards attached to non-standard forms of employment;

— the dismantling of obstacles facing people with care obligations when (re-)entering the labour market and seeking to remain in employment (and incentives for greater participation of fathers in care responsibilities);

— the development of transitional labour markets for socially excluded groups with appropriate incentives for companies to take on more workers, with simultaneous support for workers in overcoming the problems which are the source of their social exclusion (undesirable exploitation of these arrangements as well as distortions of competition will need to be guarded against);

— non-profit employment initiatives, especially in the social economy, which have a particular role to play here; provision should be made in labour-market policy budgets for appropriate support.

2.6 *Flexicurity*

The Committee has made the following proposals:

— the social partners should be a protagonist in any debate on flexicurity and should have a privileged role in the European Commission's consultations and definition of the concept;

— strengthening industrial relations systems at European and national levels is essential; the social partners must actively participate, negotiate, influence and take responsibility for the definition and components of flexicurity; therefore when evaluating national reform programmes it should be discussed how social dialogue and collective agreement systems can be strengthened;

— the Commission and the Member States should give more attention to gender equality and intergenerational solidarity in the context of flexicurity; women, older workers and young people are often at a disadvantage in the labour market in terms of flexibility and security, and upward convergence should be sought for these groups together with measures which are as favourable as possible;

— Member States and the Commission should explore the enhancement of adaptability through internal flexibility and make this a viable and acceptable dimension of flexicurity; internal flexibility can play a key role in advancing productivity, innovation and competitiveness, and can thus contribute to reaching the goals of the Lisbon strategy;

— a balance between working time flexibility and worker protection should be pursued; this is best guaranteed through regulations established by collective bargaining, in line with national practices; such bargaining on working time flexibility requires a solid context of rights, well-functioning social institutions and employment-friendly social security systems to back it up.

2.7 *Investment, innovation and research*

The Committee has called for:

— a favourable macroeconomic backdrop, with the emphasis on a growth-oriented economic policy in order to overcome persistent cyclical weaknesses and realise the full potential of active labour market policies;

— more consistency in integrating investment in research and development and innovation both to stimulate the economy and to develop new jobs; in this context it must be noted that many of the reform programmes continue to pay too little attention to the need to adopt demand-oriented measures to stimulate growth and employment alongside structural reforms on the labour market;

— increased budgetary leeway for appropriate infrastructure investments in the Member States; in this context, the national reform programmes could as far as possible be designed in such a way that they result in a Europe-wide programme for stimulating the economy;

— appropriate framework conditions which are conducive to both external and internal demand in order to fully exploit the potential for growth and full employment; in this respect it has been pointed out that only a few Member States give sufficient emphasis to economic stimulation in their reform programmes;

— the importance of having appropriate funding at national and EU level in order to implement the employment policy measures; in this respect it has been pointed out that existing disparities between proposals for labour market initiatives and a lack of budgetary provision must be eliminated in many Member States.

Brussels, 13 February 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on Financial integration: the case of European stock markets (own-initiative opinion)

(2008/C 162/25)

On 16 January 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:

Financial integration: the case of European stock markets

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 January 2008. The rapporteur was Mr Lehnhoff.

At its 442nd plenary session of 13 and 14 February 2008 (meeting of 13 February 2008), the European Economic and Social Committee adopted the following opinion by 103 votes to 4, with 9 abstentions:

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee recommends that the European institutions step up their efforts to explain to the citizens of the EU the advantages that a harmonised legal framework for dealings in securities would offer to them. This will help counteract the still widespread 'home bias' that exists, where investors only invest in their own domestic market.

1.2 The Committee recommends that the Commission pay special attention in the *ex-post* evaluation of the Financial Services Action Plan (FSAP) announced in the White Paper on Financial Services Policy ([1]) to whether the many changes that have been made to the basic provisions of European law relating to on- and off-exchange trading venues are conducive to any meaningful integration of European stock markets and facilitate cross-border capital investment.

1.3 This applies above all to the impact of the Markets in Financial Instruments Directive ([2]), the Prospectus Directive ([3]) and the Transparency Directive ([4]) — which all feature as part of the Financial Services Action Plan — and also to ongoing efforts to facilitate the cross-border clearing and settlement of transactions in financial instruments (in this case in particular the implementation of the infrastructure operators' voluntary commitment under the Code of Conduct for Clearing and Settlement and moves by the European Central Bank to establish a uniform European clearing and settlement platform (*Target2/Securities*)).

1.4 The Committee thinks it is necessary to wait for this evaluation process before taking any additional or supplementary steps to promote integration. If the EESC deems it necessary it will come back with proposals to make progress on the integration of stock markets.

1.5 The 2005 communication on industrial policy ([5]) announced seven horizontal initiatives to support those of a sectoral nature. The Committee feels that efficient and accessible stock exchange markets at a cost that European companies, particularly SMEs, can afford should be added to the list of cross-sector measures. The MIFID Directive is supposed to improve the operation of these markets, but an all-round reflection on the role they have to play in promoting European competitiveness is essential because of the associated effects on the financial markets. The Committee regrets that the mid-term review of industrial policy ([6]) has not led to such a debate.

Special attention should be paid to stock exchanges because of their central role in any market economy. The activities of the funds of sovereign issuers in emerging countries or countries that are richly endowed in natural resources must be the subject of a certain level of vigilance, particularly when they invest massively in the stock markets, as has been the case with the London Stock Exchange, where funds from Dubai and Qatar now hold 48 % of the securities traded. Generally speaking, the Commission should work together with the Member States and the supervisory authorities to improve the transparency of these funds, understand their motives and make sure they are not pursuing political objectives. Generally, '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' ([7]).

([1]) http://ec.europa.eu/internal_market/finances/policy/index_en.htm.

([2]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1-44.

([3]) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345, 31.12.2003, p. 64-89.

([4]) Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers.

([5]) COM(2005) 474 final: Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy.

([6]) COM(2007) 374 final: Mid-term review of industrial policy.

([7]) ECO/202 — The economic and social consequences of financial market trends — CESE 1262/2007 — OJ 2008/C 10/23 and INT/332 — Review of the Single Market — CESE 89/2007 — OJ 2007/C 93/06.

2. **Arguments to support the opinion**

2.1 *Opinion remit*

2.1.1 Financial integration is a basic component of European Economic and Monetary Union. Since the introduction of the euro, the integration of the European financial system has become an important goal. Most studies agree that such integration clearly has positive effects on the European economy.

2.1.2 In view of the substantial advantages that European financial integration can have for the entire economy, the present situation marked by insufficient integration of a number of market segments requires an unwavering commitment from all participants to continue this process until its completion.

2.1.3 The creation of integrated, competitive and effective financial markets is an essential element of the internal market and the Lisbon goals, so that the advantages for growth and jobs can be exploited fully.

2.1.4 All financial centres fulfil important public-service functions. Because of the major role which they play on domestic financial markets, stock exchanges are often equated with public institutions of national importance. The European stock exchange sector is dominated by traditional and frequently national actors. Despite some stock exchange mergers and alliances this market is still split up into a dozen different financial centres. However, the constraints and conflicts of a concrete geographical location are avoided by transactions being performed electronically.

2.1.5 Financial integration is above all else a market-driven process, though it also requires effective interaction between market forces and the actions of public bodies. Moreover, state authorities too in the EU must be firmly resolved to strengthen the process of integration. This particularly applies to the imperturbable will of national and European authorities to use a legal and regulatory framework that is designed to foster the integration of the internal market and financial stability.

2.1.6 The importance of European stock markets as a source of business finance has grown over time, sometimes spectacularly. A well developed stock exchange market will thus increase aggregate investment and reduce costs. The stock market can make a major contribution towards providing extra outside resources. So, the financial sector is also important because it ensures the allocation of resources, which enables other branches of the economy to grow further.

2.1.7 The highly disparate national rules of the financial markets represent an obstacle. Stock exchange mergers alone — as strategic aspects of financial adjustment — are not enough to fulfil the political requirements of orderly harmonisation.

2.1.8 For securities markets, such as those for bonds and shares, it is extremely important to continue integration of the infrastructures for clearing and settlement. The number of inadequately integrated clearing and settlement systems is still high.

2.1.9 At a time when monetary union actually favours a pan-European procedure for securities management, the continental European stock markets are in the paradoxical situation of being computerised but still burdened with high transaction costs. This contradiction is due mainly to the continuing excessively high costs for cross-border transactions.

2.2 **General comments** — *European stock markets*

2.2.1 Stock exchanges (securities markets) bring together supply and demand through financial instruments (i.e. they have a market role). From an investor's point of view, stock exchanges are forums for the buying and selling of financial instruments. For companies, stock markets are a key prerequisite for acquiring both own and outside capital. Thus, alongside credit financing by banks, stock markets are the central plank of entrepreneurship funding through the issuing of financial instruments. Without properly working stock market trading, the scope for the placement of new financial instruments would be extremely restricted. The emergence of a genuine European stock market can offer companies new possibilities for financing their business activities by issuing securities. This also applies for companies in countries where up to now stock trading has shown little liquidity, so that issues can only be carried out with limited success. In addition, a European stock market should help investors to move away from the concentration that is still evident on their respective home markets and profit from growth throughout the whole European Economic Area.

2.2.2 However, at an overall level, it should be noted that companies fund only a small part of their investments (gross fixed capital formation) from the stock markets. In addition, net share issues are negative in the United States and zero in the euro area. This cannot be explained by a variation in the number of listed companies because this has not varied substantially. But it may be due to the fact that companies buy back their own shares with the aim of increasing their earnings per share, which is the headline indicator on stock markets.

2.2.3 In order that stock exchanges might fulfil their public role, two things are needed: (i) there must be a transaction (i.e. trading); and (ii) the financial instrument must be exchanged for its monetary equivalent (i.e. clearing and settlement) ([8]). Although both aspects are needed for a stock exchange to function, the two — trading on the one hand and clearing and

([8]) The English term *clearing and settlement* is also frequently used in German.

settlement on the other — are quite distinct operations and, in point of fact, are also conducted on two different technical platforms. Trading is organised by stock exchanges themselves, while clearing and settlement is conducted through central counterparties (CCPs) and central securities depositories (CSDs). The latter act as central facilities for holding securities and also conduct book-entry securities transfers ([9]).

2.2.4 Each Member State has at least one stock exchange ([10]). There are also multilateral trading facilities (MTFs) which, like stock exchanges, bring together purchase and sale orders through financial instruments and 'internalisers', who conclude deals directly with their clients. Clearing and settlement is conducted largely through national CSDs, which for certain services have a monopoly in their respective countries.

2.2.5 The large number of trading venues must not *per se* be seen as detrimental to the European capital market. On the contrary, effective competition between trading venues should, as a rule, mean lower transaction charges for investors in a market economy. It is therefore quite right that the Markets in Financial Instruments Directive (MiFID) ([11]) should also seek to boost competition between trading venues ([12]).

2.2.6 However, competition among trading venues can only work if European stock exchanges are, in fact, in a practical position to compete with one other. One obstacle to competition so far has been the so-called 'concentration rule' existing in many Member States, whereby all orders have to be placed on regulated markets — usually the local stock exchange. The possibility of such a national settlement has been taken away by the MiFID. A continuing obstacle to European competition may be that, given their history as purely national institutions, individual stock exchanges are able to offer only a limited, national range of tradable financial instruments. Competition would be impossible, for instance, if a German stock exchange were unable to trade in French financial instruments.

2.2.7 However, if the financial instruments traded on the major European stock exchanges are anything to go by, it is clear that, despite some potential legal barriers, there are no real obstacles to competition among trading venues. For instance, over 13 000 foreign financial instruments are traded on German stock exchanges ([13]). Even if comparable figures for other stock exchanges are not available, this example clearly shows that the conditions are in place for effective competition between trading venues. Any national legal obstacles become less important with the implementation of the financial services action plan (FSAP). Thus, with the Prospectus Directive the marketing of financial instruments throughout Europe is made possible through a single prospectus. The MiFID harmonises not only investor protection requirements, but also the rules for operations and trading on stock exchanges and off-exchange trading venues. Finally, the Transparency Directive standardises capital market information. It will now be the task of the European institutions to assess the concrete impact of the new basic legal conditions and correct any shortcomings. The aims of the FSAP, particularly the cross-border organisation of financial markets, will be the yardstick here.

2.2.8 The question can be asked whether, in terms of quality, competition between stock exchanges does not endanger price determination mechanisms (and thus the public operations of the exchanges) and whether this can be countered by a strict promotion of consolidations. At first glance, this does seem indicated, because of the dispersal of liquidity across a number of different trading venues. However, it does not necessarily follow that price determination is any the poorer simply because there are so many trading venues in Europe. Trade mechanisms, such as arbitrage trading, provide a counterbalance. Moreover, trading venues have been subject to extensive harmonised transparency requirements before and after trading since 1 November 2007 (MiFID, Article 27 et seq.). These are supposed to ensure the comparability of prices at different trading venues and thus counteract the fragmentation described earlier. As far as can be judged shortly after the implementation of the MiFID in the Member States, this approach seems to be working. Data streams from OTC trades are published and consolidated with the data from stock exchanges and MTFs by large financial information service providers, such as Project Boat, a consortium of nine investment banks. In this way a mutual influencing of prices at different venues is ensured. Consolidations between exchange owners are therefore not needed to boost liquidity.

2.2.9 Decisions for or against mergers or acquisitions are rather — as even Commissioner McCreevy put it — simply business decisions taken by the stock exchange operators, and they should therefore be strictly market-driven. From a political angle, the only important question is whether there are any legal obstacles to mergers or acquisitions and, if so, to what extent these can be overcome.

2.2.10 Mergers and acquisitions among trading system operators are subject to the same legal hurdles as any other mergers or acquisitions under company law. Current examples — such as the planned acquisition of the Borsa Italiana by the London Stock Exchange and the merger of the New York Stock Exchange and Euronext — show this to be true even beyond the European judicial area.

2.2.11 Particular legal difficulties may arise, however, in the establishment of a common Europe-wide trading platform.

([9]) These depositories also have other functions connected with holding securities, e.g. corporate actions.

([10]) A list of the various stock exchanges is given in the Commission's presentation of regulated markets (OJ C 38, 22 February 2007).

([11]) Directive 2004/39/EC (OJ L 145, of 30 April 2004, p. 1).

([12]) Cf. MiFID, recital 34 and the market transparency provisions set out in Article 27 et seq.

([13]) Source: Deutsche Börse Info Operation, Total Turnover Foreign Shares, March 2007 www.deutsche-boerse.com/dbag/dispatch/de/notescontent/gdb_navigation/listing/50_Reports_and_Statistics/60_Order_-Book_Statistics/INTEGRATE/statistic?notesDoc=/maincontent/Monatsstatistik+auslaendischer+Aktien&expand=1.

Obstacles include differing listing requirements, trading practices, tax provisions and accounting rules ([14]). No detailed analysis has so far been conducted into the importance of these obstacles, particularly in the wake of the adoption of the MiFID and the Prospectus Directive. However, there is good reason to doubt whether these obstacles are, in practice, so serious as to be insurmountable. The case of Euronext — the successful merger of the trading systems of the Amsterdam, Brussels, Paris and Lisbon stock exchanges — and the merger of exchanges in the Baltic and Nordic countries to form the OMX Nordic Exchange bear this out. Moreover it is clear, even a relatively short time after the adoption of the MiFID that, in future, stock markets will be facing increasingly tough competition from MTFs, which may be active in all Member States on the basis of a European passport. Examples here are the ongoing *Turquoise* initiative launched by seven investment banks and the Chi-X platform launched by Chi-X Europe Ltd in London in March 2007. This suggests that greater integration of European stock markets is not only possible, it should already have taken place in the near future ([15]).

2.2.12 The promotion of stock market integration should not, however, be misunderstood as a call for trading and settlement venues to be concentrated on **one** commercial pan-European platform. It should not be forgotten that both the new off-exchange trading platforms and the established stock exchanges are businesses geared to making a profit, and a monopoly would lead to worse conditions for issuers and investors ([16]).

2.2.13 The Committee recommends that the European institutions should look at alternatives to promoting integration through competition if stock exchange concentration might lead to access being made noticeably more difficult for regionally active small and medium-sized firms. It should be remembered that for small and medium-sized enterprises it is often easier to gain access to a regional stock exchange than to the large European stock exchanges. Regional investors can be reached more directly through a regional stock exchange because of the close local connection. The actual developments to be expected should therefore be assessed carefully and thoroughly to see whether stock exchange access is made more difficult for small and medium-sized enterprises. If this should be the case, a solution could lie in setting up one or more none-public stock exchanges that are particularly committed to the interests of small and medium-sized enterprises.

3. **Specific comments — Clearance and settlement on stock markets**

3.1 The main obstacle to a more efficient European stock exchange system, however, is felt to be not so much the traditional regional orientation of stock exchanges as the different clearing and settlement arrangements within Europe. In the vast majority of cases, these systems are organised along national lines and this makes the cross-border clearing and settlement of stock exchange transactions more difficult and expensive. (That said, the clearing and settlement arrangements in place for purely national securities transactions often provide effective and low-cost solutions that must not be ruined by any consolidation.) A range of key initiatives is already in place to overcome this fragmentation and thus to secure a more efficient system for European clearing and settlement.

3.2 Barriers to effective clearing and settlement arrangements for stock exchange transactions have been identified and analysed in the Giovannini reports ([17]), which suggest that national differences exist in particular in relation to *technical standards and market practices* and in the different national *tax and legal bases* ([18]). In the first of these areas, infrastructure operators and market participants (mainly banks), coordinated by the European Commission within the Clearing and Settlement Advisory and Monitoring Expert Group (CESAME), are currently working to find solutions ([19]). Uniform practices, such as standard public holidays on which the clearing and settlement systems are closed, are to a large extent already in place, while work is currently under way to secure further standardisation, for instance in the clearance and settlement of corporate actions.

3.3 Technical standards and market practices would also be harmonised to a large extent if a current plan to set up a Europe-wide platform for the clearing and settlement of securities transactions proves successful. In July 2006, the European Central Bank (ECB) and the national central banks in the euro area proposed a common European platform for the clearing and settlement of securities transactions ([20]). Since, at a technical level, this is linked to the existing Europe-wide payment platform *Target,* it has been dubbed *Target2/Securities.* In January 2007, the European Central Bank also published initial studies on the economic, legal and technical impact of the planned platform ([21]). The technical specifications for a system of this kind are currently being developed in conjunction with users ([22]).

3.4 In the future, the ECB would like to see the *Target2/Securities* system cover all securities transactions cleared and settled in central bank money. The planned platform is, in principle, to be rolled out in a uniform way across Europe, thus significantly simplifying cross-border securities clearing and settlement in particular.

3.5 If successful, *Target2/Securities* would overcome critical obstacles to cross-border securities clearing and settlement in central bank money in Europe. Assuming various factors are in place, this would also bring major cost benefits to the parties conducting a securities transaction.

([14]) McAndrew/Stefanadis, Current Issues in Economics and Finance (Federal Reserve Bank of New York), June 2002, 1.3 seq.
([15]) See too ECB Monthly Bulletin November 2007, pp 67, 77 et seq.
([16]) See too ECB Monthly Bulletin November 2007, pp 67, 74 et seq.
([17]) Cf. http://ec.europa.eu/internal_market/financial-markets/clearing/communication_en.htm.
([18]) For clearing and settlement, national rules for the transfer of ownership, the posting of securities (deposit law) and insolvency law are important.
([19]) Cf. http://ec.europa.eu/internal_market/financial-markets/clearing/cesame_en.htm.
([20]) Cf. http://www.ecb.int/paym/market/secmar/integr/html/index.en.html.
([21]) Cf. http://www.ecb.int/paym/market/secmar/integr/html/index.en.html.
([22]) Extensive information about this can be found on the European Central Bank website (www.ecb.int).

3.6 The European CSDs, the central counterparties (CCPs) and the stock exchanges have also given the Commission an undertaking that they will comply with a range of measures set out in a code of conduct ([23]). The particular aim is to boost efficiency and interoperability among infrastructure operators. The costs of cross-border European clearing and settlement are expected to fall as a result. The first wave of commitments became operative at the start of 2007. Pricing has become more transparent thanks to the undertaking to publish standardised price lists, thereby making it easier for users to compare prices. Infrastructure operators have also pledged to improve access to their system and interoperability between systems. The manuals published at the end of June 2007 enshrine this obligation to such an extent that effective networking of systems is made possible. Given the very favourable assessment of the development of the Code of Conduct to date, and of its implementation in practice — as reflected, not least, in the speech given by Commissioner McCreevy to the European Parliament on 10 July 2007 — it would appear that a sound method is now in place to promote the cost-effective Europe-wide clearing and settlement of securities transactions.

3.7 Other than the initiatives outlined above, there is no need, from a policy perspective, for any additional action at the moment to promote consolidation of the stock markets. For now, it is important to await the conclusion of the various initiatives in place to help consolidate the European stock exchange environment, particularly in the clearing and settlement of transactions in financial instruments, and then to analyse their findings. If these moves prove a complete failure or if they do not ultimately result in more efficient European stock exchange trading, consideration could be given to whether further regulatory measures might not be brought in to remedy the situation.

Brussels, 13 February 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

([23]) Cf. http://ec.europa.eu/internal_market/financial-markets/clearing/communication_de.htm#code.