ISSN 1725-2423

Official Journal of the European Union

C 224

Volume 51

English edition

30 August 2008

Information and Notices

Notice No | Contents | Page

EN

Price:
26 EUR

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

III

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

445TH PLENARY SESSION, HELD ON 28 AND 29 MAY 2008

Opinion of the European Economic and Social Committee on Eco-friendly production

(2008/C 224/01)

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 opinion on

Eco-friendly production

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 6 May 2008. The rapporteur was Ms Darmanin.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion unanimously.

1. **Conclusions and recommendations**

1.1 The Committee is strongly in favour of initiatives aimed at developing a Community policy of sustainable production and consumption, fully mainstreamed into other Community policies, with a view to:

— **converting potential challenges into opportunities for EU industry to be competitive** on the world market, by adopting environmentally friendly production methods based on ecological products and services, easily identifiable by consumers throughout the Community;

— **developing a 'green market'** to ensure that these products and services respond to definite, common definitions and are genuinely available in all the Member States;

— **raising the European public's awareness** of responsible and more 'eco-intelligent' consumption and of the need for behaviour patterns that are more respectful of the environment, by means of a strong commitment to provide information, training and education, starting with primary schools;

— **taking a more strategic approach** so as to influence the decision-making process in business, in politics, among consumers and among the general public, and securing an organic Community framework, avoiding the market fragmentation caused by divergent and misleading advice and advertising messages regarding the environmental nature of these products and the related production and distribution systems;

— **ensuring consumer choice is protected** and producers/distributors are committed to meeting environmental standards and ensuring products released onto the market conform with environmental sustainability requirements;

— **ensuring that responsibilities** for sustainable consumption policy, **in terms of decision-making and implementation,** are shared among all the stakeholders and civil society organisations: producers, distributors, consumers, teachers, public authorities, environmental and consumer organisations, and both sides of industry.

1.2 The Committee recommends adopting definitions for the concepts of 'eco-product/service' and 'eco-consumption' within the framework of sustainable development and consumption, to be **valid throughout the EU and accepted internationally**, using clear environmental criteria and indicators and standards that leave room for innovation and improvement.

1.3 The Committee calls **on European industry** and distribution and services systems to make a **clear commitment to comply** with an integrated sectoral approach, **involving a timetable of verifiable objectives:** this should incorporate the three environmental, economic and social pillars of sustainability. Environmental requirements should be factored in from the product design phase with an eye to the whole lifecycle, continually raising the bar in terms of quality, innovation and customer satisfaction targets.

1.4 The Committee recommends that companies and public and private bodies step up joint use of available Community and national instruments so as to **maximise research into clean technologies and products**.

1.5 The Committee would stress the need to strengthen and **accelerate technical standardisation** for ecological products and production processes.

1.6 The Committee calls for certainty of criteria and uniformity in minimum requirements throughout the internal market with regard to **labelling systems** for eco-products. This is to secure fairness in green consumer choices, uniform controls throughout the EU and respect for the principle of free movement for genuinely green products. The European Eco Label (eco flower) should be further marketed and should be able to co-exist with national and sectorial labelling systems.

1.7 The Committee believes it is important to strengthen the **'product dimension' in environmental management systems,** so as to promote dissemination to producers and distributors, and tailor it more effectively to the management systems of local authorities, making it better able to spark synergies with other sustainable development promotion instruments.

1.8 According to the Committee, the **dissemination of EMAS** (the eco-management and audit scheme) should be supported. This could be achieved by means of financial and fiscal measures, administrative streamlining, promotion and marketing initiatives, recognition of EMAS as a standard of excellence, also internationally, and the adoption of measures to assist small enterprises in gradually applying the scheme.

1.9 It is essential that the **performance of a product** should be **assessed in its entirety**, i.e. on the basis not only of environmental criteria but also of other important aspects such as: performance for both consumer and producer financially and regarding safety, functionality and health protection, the rational use of resources and materials, logistics, innovative characteristics, marketing, the product's capacity to broaden consumer choice, lifecycle and social aspects.

1.10 The EESC recommends promoting the development of **green public procurement (GPP)** by: defining the technical characteristics of 'green' products, starting with those with the best environmental impact; including the cost of the product or service's lifecycle in its specifications; making a dedicated database available on line; bringing EC directives on public procurement up to date by including references to standards, EMS systems, Ecolabels, and eco-design; and lastly, publishing national action plans for the adoption of green procurement.

1.11 The Committee would reiterate the importance of using Article 153 of the EC Treaty as a **legal base**, as it is the best suited when it comes to **securing a high level of consumer protection** including the safeguarding of their right to full, correct, appropriate, comprehensible, timely information.

1.12 The Committee would argue that for the purposes of self-regulation, one possible route might be to **develop a code of conduct**, as provided under Directive 2005/29/EC, so as to avoid the misuse of ecological claims in advertising and, at all events, to avoid misleading advertising. This ought to work in parallel with eco-taxes and regulation. The EESC would recommend that ecological statements should rely on a trustable and recognised label.

1.13 Alongside judicial proceedings, which ought to be accessible to all, the Committee is also in favour of naming extrajudicial **monitoring and conflict resolution** bodies for consumers, that are flexible, efficient, low-cost and credible, so as to ensure that environmental standards for products are met and that products released onto the market comply with the principles of environmental sustainability.

1.14 The Committee, given the legislative fragmentation marking both consumer information requirements and requirements for sustainable products, would argue that there is an urgent need to start work on a single, well-defined framework in the form of a **'European charter for sustainable consumption and production in the internal market'**.

2. **The current framework and prospects**

2.1 The aim of the Community eco-label award scheme ([1]) is that of promoting products with a minor environmental impact and providing consumers with precise and scientifically sound information. This label does not apply to food and drink, pharmaceutical products, medical devices ([2]) or dangerous or toxic products or substances ([3]).

2.1.1 The design, production, distribution and consumption of environmentally friendly products is an integral part of Community's environment policy as defined in the objectives and priorities set out in the sixth environment action programme ([4]), to be achieved by 2010. This programme, on which the Committee gave its opinion on a number of occasions, describes in detail plans for measures contributing to the establishment of the sustainable development strategy.

2.1.2 Of the main Community initiatives on the subject, a key position is held by integrated product policy (IPP) ([5]), on which the Committee issued an opinion ([6]), which gives consideration to all products and services having an environmental impact.

2.1.3 For the integrated product policy to be effective, it is necessary to encourage producers to make more ecological products and consumers to buy such products. Instruments that could be used to that end might include:

— encouraging use of fiscal measures to promote more eco-friendly products;

([1]) Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000, on a revised Community eco-label award scheme.
([2]) Directive 93/42/EEC.
([3]) Directive 67/548/EEC.
([4]) COM(2001) 31 final.
([5]) COM(2003) 302 final and the Green Paper COM(2001) 68 final.
([6]) OJ C 80 of 30.3.2004.

— taking environmental aspects into account in decisions on public contracts ([7]);

— promoting the application of 'lifecycle thinking';

— integrating and promoting the application of voluntary instruments such as Ecolabel, EMAS, EPDs (Environmental Product Declarations), green public procurement, etc;

— providing consumers with the necessary information for an 'informed choice of products', for purchase, use and disposal.

2.1.4 Another positive step forward was made with the introduction of a new regulatory framework on the eco-design requirements for energy-using products, governed by a 2005 framework directive ([8]).

2.1.5 With regard to implementation, under the framework directive, the first rules come into force in 2008. Measures concerning 20 groups of products are currently being studied (including lighting, computer systems and washing machines) and for 14 of them (including street and office lighting) measures should be established before the end of 2008; for others, such as domestic lighting systems, the target is 2009.

2.1.6 The sixth environmental action programme ([9]) sets out five priority avenues of strategic action: improving the implementation of existing legislation, integrating environmental concerns into other policies, working with the market, empowering people by helping them to change their behaviour favouring the demand of such people and taking account of the environment in decisions on regional land-use planning and management.

2.1.7 More generally speaking, the European sustainable development strategy, as revised by the European Council in 2006, defines 'sustainable production and development' as one of the key challenges, to be addressed by gearing economic and social development towards forms that are compatible with the eco-system. It also proposes a new action plan in this area.

2.1.8 The 2007 report on implementation ([10]) shows that sustainable consumption and production are difficult to measure in a reliable way on a broad basis. Although the number of sustainable products and services present on the market seems to be rising fast, estimated savings on the current energy bill are equivalent to approximately EUR 60 billion the year, whereas the number of products with an Eco-label remains fairly limited as does the number of EMAS registered companies. Only 14 Member States have adopted national Green Procurement plans and only 21 have completed the environmental technology action plan (ETAP) implementation road map ([11]).

2.2 On the other hand, in the sphere of technical standardisation, measures were launched some time ago to integrate environmental aspects into the new technical standards, creating an 'environmental framework' for CEN, within which its technical bodies can address environmental specifications. When the standard falls under the 'New Approach', this governs the presumption of conformity with basic requirements of the corresponding European directive. Further steps forward on this matter were then achieved with the adoption of the ISO 14001 environmental certification scheme.

2.3 On 10 October 2007, the European Environment Agency published its fourth report on 'Europe's Environment' ([12]), dedicating an entire chapter to 'Sustainable consumption and production'.

2.4 Furthermore, the Commission's 2007 annual report on the state of progress of the Lisbon strategy for growth and employment put an emphasis on the importance of climate change, eco-innovations, energy efficiency, renewable energy sources and energy markets.

2.5 Lastly, the Brussels European Council on 8 and 9 March 2007 gave special attention to the subjects of the environment and climate change. The Environment Council of February 2007, meanwhile, stressed the complementarity between the EU's sustainable development strategy and the Lisbon strategy for growth and employment, and the essential contribution that the latter makes towards the priority objective of the former, while also reiterating the need to mainstream environmental aspects into all policies. This general thrust was strongly underlined by the December 2007 European Council ([13]).

2.6 The main objectives of the Commission's 2008 work programme ([14]) clearly include that of placing the citizen at the centre of the European endeavour, starting with an evaluation of the social situation alongside a review of the internal market, with constant attention to the need for the European public to make the most of the single market.

2.7 The EESC has often called for Article 153 of the EC treaty to be used as a legal base ([15]), as it is designed to secure consumers a high level of protection and promote their right to full ([16]), correct, clear, appropriate, comprehensible and timely information.

2.7.1 When it comes to derived law, consumer rights to information are governed by Directive 2005/29/EC ([17]) on 'unfair commercial practices' that could damage consumers' economic interests. The annex to this directive lists a series of commercial practices that can be considered unfair without a case by case assessment, including for instance 'displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation'.

([7]) COM(2002) 412 final of 17.7.2002 and Directive 2004/18/EC of 31 March 2004.
([8]) Directive 2005/32/EEC (OJ L 191 of 22.7.2005). Decision 2000/729/EEC, Decision 2000/730/EC and Decision 2000/731/EC (OJ L 293 of 22.11.2000).
([9]) OJ L 242 of 10.9.2002.
([10]) Report on the Sustainable Development Strategy 2007.
([11]) Cf. footnote 18. In particular:
([12]) ISBN 978-92-9167-932-4- EEA, Copenhagen, 2007.
([13]) Brussels European Council, 14 December 2007.
([14]) COM(2007) 640 final.
([15]) OJ C 108 of 30.04.2004.
([16]) OJ C 175 of 27.07.2007; OJ C 44 of 16.2.2008.
([17]) Directive 2005/29/EC (OJ L 149 of 11.6.2005).

2.8 The Committee is however convinced that there is a degree of legislative fragmentation at Community level with regard to basic consumer information requirements, as well as the requirements for sustainable products, and considers it important to draft a 'European charter for sustainable consumption and production in the internal market'.

2.8.1 Should the results of the implementation of this charter — and the self-regulatory codes provided for under Directive 2005/29/EC — prove insufficient, the Committee believes other options should be examined, such as for instance more complete harmonisation or the establishment of a specific Community system of an operational nature.

3. **General comments**

3.1 The Committee would argue that it is essential to start with **clear and definite definitions** of concepts such as 'sustainable product', 'sustainable design, production and distribution', and 'sustainable consumption', so as to monitor throughout the EU and the European Economic Area compliance with any Community legislative, regulatory or voluntary frameworks referring to such definitions in the various national/regional spheres.

3.2 These definitions, commonly accepted at international level, are not static but are by their nature subject to **continual improvement**. In the Committee's view, however, they must be **fleshed out with**:

— a package of **environmental indicators** ([18]) to trace progress between various thresholds making it possible to assess the level of sustainability of production systems, products, and services and distribution systems;

— **Community technical environmental standards** (possibly tying in with ISO standards) with full integration of environmental aspects in the European standardisation process, as stressed a number of times by the Committee ([19]), to be incorporated within products, production systems, distribution systems and services, in accordance with the conformity guidelines of related Community directives ([20]).

3.2.1 The Committee would argue that the definitions suggested above, bolstered by appropriate indicators and standards, are essential for an effective Community policy that can enable informed consumers to be sustainable in their choices and behaviour, where production processes take care of the environment.

3.3 As the Commission itself has underlined, '**European industry** is already well positioned to build on its strong position in the market for new products, services and processes, based on environmental technologies. In addition, European companies are more and more sensitive to environmental performance as part of their corporate social responsibility approaches' ([21]).

3.3.1 The Committee agrees on the three areas of development set out in this respect: stimulating the development and commercialisation of low carbon and energy efficient technologies, products and services; creating a dynamic internal market; developing global markets low carbon and energy efficient technologies, products and services.

3.3.2 The Committee would reiterate its position already set out in a recent opinion 'Top performances in the scientific and technical field, and their conversion into a competitive, economic force, are essential preconditions to safeguarding our future, for example with regard to energy and climate issues, preserving and improving our current global position, and developing rather than jeopardising the European social model' ([22]).

3.3.3 According to the Committee, a more integrated approach is necessary, so as to overcome the difficulties and obstacles to joint, coordinated use of all possible financial instruments ([23]) at European, national, regional and local level and by individual operators, for the development of clean and efficient technologies and innovative applications able to generate processes, products and services with a high level of sustainability.

3.3.4 The Committee believes that an inter-DG Community initiative for coordination and technical assistance is necessary to optimise joint use of the Community, European and national instruments available so as to maximise efforts in the area of **research and innovation** both in companies and public and private bodies, for the purposes of environmental protection, in the sphere of the European Area for Research and Innovation.

3.3.5 As has been stated on many occasions by the Committee ([24]), the Commission, the Council and the European Parliament, it is essential to cut the red tape that slows companies down (notably SMEs), so as to unlock the economic and social potential of businesses and direct it towards the sustainable modernisation of production and organisational context and structures.

([18]) Such as the United Nations Indicator of Sustainable Development Framework and Methodologies (1996).

([19]) OJ C 48 of 21.2.2002, p. 112; OJ C 117 of 30.4.2004; OJ C 74 of 23.3.2005.

([20]) Since 2006, CENELEC has been developing an on-line database on the environmental aspects built into CENELEC standards.
Since the beginning of 2007, CEN has been working on a training programme on the incorporation of environmental standards within CEN standards.

([21]) COM(2007) 374 final of 4.7.2007.

([22]) OJ C 325 of 30.12.2006.

([23]) There are many European and international instruments that could be used here (FP7, CIP, LIFE, STRUCTURAL FUNDS, EIB, i2i, EUREKA, LEED-OECD, CEB-Council of Europe, etc.) but using them jointly would be problematic owing to divergent methods and procedures, numerous differing schedules and considerable difficulties relating to the 'simultaneous engineering' of various types of measure.

([24]) See Opinion of OJ C 120 of 16.5.2008, p. 66; rapporteur: Mr Pezzini.

3.4 The EU launched the eco-labelling system for products to boost environmentally sound production in 1997. It was then extended to services and has grown over the years. It also includes multicriteria public labels applied to groups of products/services ([25]).

3.4.1 The Committee would argue that this situation can sow confusion among producers and above all among European consumers, and that the answer is a streamlined system of minimum common criteria established at European level, setting up compulsory registration and verification for labels by an independent certifying body.

3.4.2 The labelling at a European level should not compete but co-exist with the national and sectorial labels which are sometimes more known to the consumer then the European labelling. Furthermore, there ought to be coordination on an international level with labels which have proven to be successful such as the Energy Star.

3.4.3 It is imperative that the labels are trusted and inspire confidence in the consumer. For this reason the standards setting of such labels and the monitoring of the market should be entrusted to the stakeholder (all of them) so as to be more credible.

3.4.4 It may be pertinent to start looking into labelling of products or services to identify their carbon print.

3.5 With regard to the **EMAS voluntary system**, which enables those wishing to show that they are improving their environmental performance to opt in on a Community eco management and eco audit system; thus demonstrating their willingness to respect environmental standards and their commitment to adopting an ecological management system, the Committee would argue that after adopting ISO standard 14001 it will be possible to strengthen the 'product dimension' of environmental management schemes to facilitate greater dissemination among producers and distributors and to adjust it to process management in local authorities and make it more open to synergies with instruments for the promotion of sustainable development.

3.5.1 According to the Committee, it would be worthwhile supporting the dissemination of EMAS by means of financial, fiscal, streamlining and administrative measures, publicity and marketing initiatives, and through recognition of EMAS as a 'standard of excellence' also at international level, with the possibility of helping SMEs to take a gradual approach, not least in the sphere of industrial clusters.

([25]) Examples include the *eco-flower* (a European logo in the form of a flower, used throughout Europe, http://europa.eu.int/comm/environment/ecolabel/index_en.htm); the *Nordic Swan* (used mainly in Scandinavia, http://www.svanen.nu/Eng/default.asp); the *Blue Angel* (specific to Germany, http://blauer-engel.de/englisch/navigation/body_blauer_-engel.htm); and the *Fair Flower* (native to the Netherlands, http://www.flowercampaign.org). There are also public labels focusing on specific environmental aspects, such as: the *Energy Star,* and private labels, including the IFOAM organic labelling system (http://ec.europa.eu/environment/emas/index_en.htm).

3.6 The Committee considers it absolutely essential to **develop a 'green market' for products and services**, by introducing a series of incentives and instruments designed on the supply side to encourage innovation, and on the demand side to provide consumers with appropriate information or incentives to buy more environmentally friendly products.

3.6.1 For the purposes of a competitive internal market, **product performance** should be assessed not only on the basis of environmental criteria but also on the basis of other important aspects such as: economic performance for the consumer and the producer, safety and functionality, its use of resources, logistics, marketing, its characteristics in terms of health and innovation, its capacity to broaden consumer choice, its lifecycle and disposal, and lastly, social concerns.

3.6.2 It is imperative that there is true commitment to the support to research and development and innovation within the sector of eco-production and eco services.

3.7 In the Committee's opinion, CEN, CENELEC and ETSI should play a key part in the development of the **technical standardisation** process when it comes to a product's environmental sustainability ([26]).

3.7.1 The Committee has already stressed that 'promoting the use of environmental technical standards should not be subject to top-down decisions but should be effected through widespread acceptance of eco-compatible products in order to respond as effectively as possible to the needs and interests of citizens and consumers' ([27]).

3.8 In the sphere of **public contracts**, it is important to flag up Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([28]) and the Commission interpretative communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement ([29]).

3.8.1 The Committee would argue that the public procurement sector, which accounts for approximately 16 % of Community GDP, is critical for promoting the dissemination of more ecological products and would call for measures to encourage contracting authorities to use existing possibilities in the area of green public procurement (GPP).

([26]) OJ C 74 of 23.3.2005.
([27]) Ibid.
([28]) OJ L 134, 30.4.2004.
([29]) COM(2001) 274 final; OJ C 333 of 28.11.2001.

3.8.2 The 2006 final report on GPP in Europe ([30]) names the following among the main obstacles to its dissemination: the higher cost of green products, particularly in the absence of indicators regarding lifecycle costs; the lack of environmental knowledge, and the absence of an adequate easy-access electronic database; a lack of clarity in procurement criteria and specifications, with uncertain eco-product definitions and standards; a lack of support at managerial and political level; and a lack of information and training instruments.

3.8.3 The Committee therefore recommends: defining solid criteria for green products, specifying all relevant environmental specifications; including the cost of the product or service's entire lifecycle in specifications; launching a 'European GPP knowledge Database' ([31]); introducing the requirements of ISO standard 14004, environmental management systems — EMS, Ecolabel references and eco-design to EC directives on public contracts; disseminating national action plans for adopting green public procurement among the public; focusing on products with the greatest environmental impact.

3.9 The **'fair trade'** concept is also widespread throughout Europe. Fair trade and ethical trade have been of great interest to the EESC for some time and were addressed in detail in opinion REX/196 ([32]). In the Committee's view, they are key to the success of sustainable consumption.

3.10 **Education is a key element in sustainable consumption** and the EESC insists that this education should begin in the classroom. Consumers should also have immediate access to information on the products and services chosen and their potential impact on the environment. It is also essential that this information be provided in a way that is interesting to the consumer and thus easy to absorb and understand.

3.11 The EESC believes that the Community's legislative corpus on sustainable production and consumption should be consolidated and simplified so as to make it more easily comprehensible and accessible for consumers and producers alike: "Less but better lawmaking' must translate into consolidated, consistent regulatory texts in the field of the environment, providing legal certainty and transparency for adjusting to industrial change, and focusing on how best to protect resources and the environment and apply sustainable, competitive technological innovations in the global marketplace' ([33]).

3.12 On the subject of 'green' products, it would be worthwhile **stepping up Community measures aimed at outlawing misleading advertising and unfair commercial practices** ([34]): the terms 'eco' and 'bio' are often used as simple marketing tools to increase the sales of products and services that in reality are no different to others and offer no added value.

3.12.1 In this connection, the Committee believes that developing **codes of conduct**, as set out in Directive 2005/29/EC, could be a particularly significant element in self-regulation to prevent the use of unfair ecological claims in advertising, applying the following criteria:

— Environmental advertising must not cause undue social alarm about ecological problems, or exploit unfamiliarity with this issue.

— Advertising must not encourage behaviour that would undermine environmental protection, or portray such behaviour in a non-critical way.

— Advertising cannot mislead the public about the environmental effects of the advertised product, either through misleading presentation of such effects or by concealing them.

— The eco-friendly features of a product or service must not be unjustifiably extended to other products or services provided by the company in question.

— When the environmental qualities of a product or service depend on specific conditions or methods of use or consumption, or on particular points in their lifecycle, the advertisement must make this explicit, or clearly urge consumers to seek this information.

— The use of environmental claims or slogans in advertising must be based on verifiable technical and scientific criteria. If challenged, the advertiser must provide the necessary evidence from an independent body or expert to prove the accuracy of the advertisement.

— References to ingredients added to or removed from the advertised products in order to alter their environmental effect must be clear and specific with regard to the nature and extent of such effects.

— The use of signs or symbols relating to environmental effects may not be misleading or lead to confusion about their meaning. Neither may they falsely allude to eco-labels in official use in specific countries, geographic areas or economic sectors. Testimonials and witnesses may only be used to promote the ecological characteristics of the advertised product by means of specific and verifiable claims, in keeping with the fourth from last indent.

([30]) Green Public Procurement in Europe 2006 — Conclusions and recommendations. Virage Milieu & Management bv, Korte Spaarne 31, 2011 AJ Haarlem, the Netherlands. http://europa.eu.int/comm/environment/gpp.
([31]) Also with reference to the European Platform for Life-Cycle for the environmental performance of products, technologies and services.
([32]) Ethical trade and consumer assurance schemes; rapporteur: Mr Adams; OJ C 28 of 3.2.2006.
([33]) OJ C 120 of 16.5.2008, p. 66; Rapporteur: Mr Pezzini.
([34]) Directive 2005/29/EC (OJ L 149, 11.6.2005).

3.12.2 In the Committee's view flexible, efficient and low-cost **non-judicial supervision and arbitration bodies for consumer affairs** should be promoted, that can act credibly to guarantee that products comply with environmental standards, and that sustainable products on the market meet the environmental sustainability requirements governing consumer choice. These should not replace judicial proceedings which ought to be accessible to all.

3.13 The Committee places particular importance on a **European charter for sustainable consumption and production** to protect consumers' rights to consume ecological products. A charter of this kind should include the following elements:

— sharing responsibility for sustainable consumption between all stakeholders and civil society organisations: producers, distributors, consumers, educators, public authorities, consumer and environmental organisations, and the social partners,

— mainstreaming sustainable production and consumption policy into the other relevant Community policies, in consultation with consumer, environmental, manufacturing, trade and distribution organisations, along with other stakeholders,

— a primary responsibility on the part of European industry and producers to maximise the availability of sustainable consumption throughout the lifecycle of a product 'from the drawing-board to the grave' and in the distribution and service sectors,

— EU responsibility for providing a single, clear, consistent and understandable framework for all Community legislation in this area, highlighting consumers' rights and user-friendly, cost-frees means of upholding such rights in practice,

— possible elements that could flesh out existing rights and would come under the powers of the Member States,

— possible elements that could flesh out existing rights and could be achieved through self-regulation ([35]) by private stakeholders, consumers' representatives ([36]), environmental organisations ([37]) and representatives of business,

— a responsibility on the part of the EU and Member State governments to promote dynamic, verifiable and uniformly applicable measures concerning eco-friendly design in every product sector, trustworthy eco-labels throughout the EU, widespread environmental management systems, drafting and enforcement of internationally-recognised, advanced technical environmental standards, specific and binding technical environmental requirements in public procurement procedures, misleading 'green' advertising, fair trade and international cooperation for sustainable consumption,

— speeding up research and technological development, and the introduction of innovative applications in the area of sustainable production and consumption, in terms of both Community and Member State public expenditure and private expenditure, with a view to the aim of spending 3 % of GDP as defined for the ERA ([38]),

— informing, educating and training all sustainable consumption stakeholders, and capacity-building actions for relevant administrations and organisations,

— developing publicly available indicators, methodologies and databases to measure progress towards sustainable consumption at all levels,

— promoting research into environmentally harmful consumer behaviour, in order to identify ways of making consumption models more sustainable.

3.13.1 The EESC proposes to organise a conference on the European charter for sustainable consumption and production given the importance of the subject, this with the involvement of the European Parliament and the European Commission.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([35]) See points 22 and 23 of the Interinstitutional agreement on better law-making, OJ C 321 of 31.12.2003.

([36]) In point 3.5 of Opinion the EESC discusses the characteristics used in attempting to define a uniform concept of what 'representative consumer association' means (OJ C 185 of 8.8.2006).

([37]) The EESC supports the idea of promoting the engagement of civil society in sustainable development issues. Point 4.2.6 of Opinion OJ C 120 of 16.5.2008, p. 33.

([38]) ERA: European Research Area.

Opinion of the European Economic and Social Committee on the Proposal for a decision of the European Parliament and of the Council on the participation by the Community in a research and development programme aimed at enhancing the quality of life of older people through the use of new Information and Communication Technologies (ICT), undertaken by several Member States

COM(2007) 329 final — 2007/0116 (COD)

(2008/C 224/02)

On 10 July 2007 the Council decided to consult the European Economic and Social Committee, under Articles 169 and 172 of the Treaty establishing the European Community, on the

Proposal for a decision of the European Parliament and of the Council on the participation by the Community in a research and development programme aimed at enhancing the quality of life of older people through the use of new Information and Communication Technologies (ICT), undertaken by several Member States

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 6 May 2008. The rapporteur was Ms Darmanin.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by a unanimous vote.

1. **Conclusions and recommendations**

1.1 The EESC welcomes the proposal of the Commission aimed at enhancing the quality of life of older people through the use of new Information and Communication Technologies. AAL can be one of the tools which will effectively and primarily ensure the quality of life not only of older people but of any person who is currently precluded from being able to stay at his/her residence due to health issues.

1.2 The EESC firmly believes that the approach taken to such research and development in the field of ICT should first and foremost ensure that the needs of the beneficiaries are truly understood, addressed and met. The approach should therefore be a 'bottom up' approach where primarily the needs of the users are known and subsequently research and development is carried out accordingly.

1.3 The EESC believes that one of the important stakeholder in AAL is the person who shall ultimately be benefiting of this technology. Hence it is not only important to understand the needs of such people but also prepare these people in the use of such a technology and involve them in the design and testing of the technology.

1.3.1 It is also for this reason that the EESC considers EU policies related to Life Long Learning and eInclusion as being important. To this effect the Committee believes that the Commission should also take an integrated approach between AAL and such policies.

1.4 The EESC considers that first and foremost one views this programme as a very 'Human' programme rather than another R&D programme. This is truly a research programme but it is addressing social circumstances very often encountered at a delicate stage in life.

1.5 As delineated further hereunder, the EESC believes that the four core areas to be addressed concurrently under the AAL programme are: the User needs; User safety; the Health and Social Organisations (together with associations who represent professionals in these sectors); and the Technology to be used.

1.6 The EESC emphasises that due account should be taken of ethical and privacy issues in line with international guidelines. Hence commends the recognition of such issues within the Commission's proposal.

2. **Gist of the Commission proposal**

2.1 The proposal of the Commission has the specific aim of:

— Fostering the emergence of innovative ICT-based products and services for ageing well, thus increasing the quality of life of elderly people and reducing the costs of health and social care.

— Improving conditions for industrial exploitation by providing a coherent European framework to develop common approaches, facilitate localisation and reduce the cost of services.

— Creating and leveraging a critical mass of research, development and innovation at EU level in technologies and services in the field of ageing.

2.2 This proposal follows the Commission's launch of an Action Plan on ageing well in the information society. This action plan is seen as a key component in addressing the social and economic challenges being faced by Europe due to demographic changes. It is envisaged that Europe's population between the ages of 65 to 80 will increase by nearly 40 % between 2010 and 2030 [1]. ICT is seen as a means to improve quality life at this age, increase independence and staying healthier.

[1] COM(2007) 329 final.

2.3 The Commission aims at launching a 6 year programme, Ambient Assisted Living (AAL) which complements the ICT for Ageing under FP7 and also the Competitiveness and Innovation Programme (CIP). The AAL programme shall receive funds amounting to about EUR 300 million for the period 2008-2013, these funds are made up equally from Community and Member-State funds.

2.4 The legal framework on which the AAL programme is based is Article 169 of the Treaty. Article 169 enables the European Community to participate in research programmes undertaken jointly by several Member States, including participation in the structures created for the execution of national programmes. This specific legal framework has been selected for the AAL programme in order to achieve greater effectiveness in this research area through maximisation of cross border expertise; commitment from Member States in part financing this research; ensuring a coherent approach to the issue on a European level; ensuring genuinely in the internal market for interoperable ICT solutions for the ageing.

3. **Background to the Commission proposal**

3.1 A previous article 169 initiative, quoted by the Commission proposal as clinical trials in Africa EDCTP (European and Developing Countries Clinical Trials Partnership), has highlighted the importance of clear commitment from participating Member States in multi-annual financing of the project. The AAL programme in fact intends to have a 50-50 contribution from EU funds and national funds in the programme.

3.2 The preparatory work for this programme has been carried out through a Specific Support Action project 'Ambient Assisted Living' under the IST (Information Society Technologies) priority within the FP6 carried out in the period between 1 September 2004 and 31 December 2006. The consortium was composed of partners from the following Member States: Austria, Germany, France, Finland, Italy, Belgium and Switzerland. Partners came from the private sector, the public sector and a University.

3.3 The legal body of the AAL Joint Programme is the AAL Association. This association is currently made up of 21 Member States representatives. Being a bottom up driven programme a number of contact points have been appointed in the Member States pertaining to the Association.

4. **General Comments**

4.1 The EESC welcomes this AAL initiative under Article 169. In particular we recognise that the initiative takes full cognisance of the underlying demographic trends for the European citizens.

4.1.1 The EESC considers that in order to improve the economic, social and territorial cohesion of the Member States which do not have enough infrastructure for executing the present proposal, the adoption of 'specific measures' such as those which can be found in the article 159 of the EU Treaty, would be necessary to correct the main regional imbalances within the European Union.

4.2 The EESC believes that the initiative should be viewed as more than an opportunity to build pilot systems whose purpose is to demonstrate proof of concept. It is very important that this opportunity should bring together the broad range of stakeholders that are required to be involved for the impact of this initiative to endure.

4.2.1 The main stakeholders are the ultimate beneficiaries of AAL. AAL is primarily intended at prolonging the independence of ageing people and also ensuring that this category within the population may live at home for as long a period as possible. One should bear in mind that this is not only limited to the ageing sector but also any individual who currently is impaired from residing at his/her premises independently due to health reasons. This initiative has to ensure that the needs and the exigencies of these stakeholders are truly at the heart of research.

4.3 Another important stakeholder is the health and welfare organisations. This initiative must take cognisance of their organisational needs. The EESC recommends that these organisations have opportunities to highlight issues such as integration and interoperability of systems to other project stakeholders so as to be successful.

4.4 It is highly recommended that the users of the systems that will be developed under this initiative be involved as key stakeholders in the work from the initial stages. The EESC recommends that consortia subscribe, where possible, to user-centred methods such as participative design for their development methodology, in particular to promote strong usability of devices and user interfaces. The Committee also commends the recognition that due account will be taken of ethical and privacy issues in line with international guidelines.

4.5 The EESC recognises the commitment provided to SMEs in the draft proposal, and supports the recognition of industrial organisations as key stakeholders that can support innovative, market-orientated business models that demonstrate inbuilt, clear pathways to exploitation. In particular, we commend the recognition that SMEs can contribute in particular to research that has a shorter time to markets (2+ years).

4.5.1 We encourage the recognition that SMEs are sometimes technologically agile and offer the potential to bring new technologies and business models into the market at times at a faster rate than larger companies or health and welfare organisations. This feature of SMEs is particularly resonant in this initiative. Consequently the concerted partnership between large organisations and SMEs stands to the benefit of the both.

4.6 AAL is based on the premise of supporting people to live at home for longer. To achieve this goal, there is a broad range of sensors, actuators, user interfaces, processors and communication equipment that are required, and frequently can only be provide by many different European SMEs.

4.7 Across all of these groups of stakeholders, we support measures in this initiative that encourage multidisciplinary networking between technologists, clinicians and other health and welfare organisations' staff and in particular with users, both home dwellers and their local carers and loved ones.

4.8 In the context of a European Innovation System, this initiative has the opportunity to adopt new models of innovation that reflect current progress in open and user innovation that drive progress towards connecting the Lisbon Strategy to a new and more user-driven European Innovation System.

4.9 The EESC affirms it is important that there is equal access by all types of organisations in all Member States to this initiative.

4.10 Furthermore, all national governments should be encouraged to participate. Currently Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden as well as Israel, Norway and Switzerland have agreed to co-ordinate joint activities to contribute to the AAL programme.

4.11 The EESC is concerned that some countries are not participating due to the cost of co-financing the research. Such countries ought to be able to participate at any stage of the programme once they meet the programme requirements (predominantly the co-financing).

4.12 The EESC recognises that AAL can bring about a reduction in the cost of the social care system. However it reiterates that the scope of AAL is not cost reduction but the effectiveness in ensuring quality of life for a category of citizens. The cost reduction is a gladly accepted consequence.

5. **Specific Comments**

5.1 The EESC firmly believes that the AAL programme should keep in focus the specificities of the following three sectors: the User; the Health Organisations; and the Technology used.

5.2 The beneficiary and major stakeholders at times shall be the elderly. It is paramount that the Programme keeps in focus the needs of the ultimate users. Falling into the trap that the Users should only be used in research environments so as to test the research will unfortunately create innovation that may not really suit the requirements of the main beneficiary. For this reason the needs of the Users should be kept in mind, such needs include: minimal behavioural change, mobility, choice, improved quality of life and respect for one's privacy.

5.3 One should bear in mind also that the elderly are possibly the category of the population who suffers from eExclusion and therefore the digital divide requires to be overcome. Furthermore connectivity is essential and therefore efforts should be made so as all regions, particularly the more rural ones have access to Internet connectivity (access in both physical and financial terms).

5.3.1 In essence it is essential that:

— Technology does not replace face to face contact with the carer or health provider

— The focus is preventive care, and self care

— Social inclusion is one of the main aims

— AAL should be integrated in one's way of living and together with other services

— Given the specific circumstances of the user, the technology employed should be safe and user friendly.

5.3.2 Hence the EESC firmly believes that the approach taken within AAL should be a bottom up approach. The focus and initiation of the whole process ought to be the needs of the users rather then the technology in itself. A clear study should be conducted in order to identify the whole spectrum of needs, some of which can be identified as: the need to be in touch with people particularly at a growing age (to this effect VOIPs such as SKYPE and email have proved to be effective and cheap tools); the lack of interest to update with the fast growing technological change; the ability to manage technological change; the readiness to use such technology. Furthermore the Users should be involved in the creation, implementation and evaluation of such technologies.

5.4 Health and Welfare organisations, their representatives, and the families of the Users, are ultimately the ones who shall be using the technology in order to provide care to the beneficiaries. It is essential that such organisations are involved in the various stages of the research in order to ensure that the resulting product fits into the operating system of such organisations. One may anticipate that organisational changes shall be required to be undertaken so as to implement new technologies for AAL, hence it is imperative that welfare organisations are ready for such changes and will undergo them in the smoothest manner so as to maximise the potential of technologies for AAL.

5.4.1 The Carer is truly an important factor in the whole welfare process even within AAL. Hence a paradigm shift should be aimed not only at the organisation level but also at a Carer level in order to ensure that the person who is having the direct contact with the person requiring AAL will not only be proficient in such technology but truly believes in the use of such technology so as to also further inspire the confidence of the person in such tools as a better means to quality of life.

5.4.2 The EESC also considers that the health system should be thoroughly scrutinised in order to ensure that not only there is organisational readiness for AAL but that Health and Social Care organisations can actually cope with having more people at home.

5.4.3 Furthermore with the adoption of AAL it is even more crucial that the cooperation and coordination between Health organisations and Social organisations is improved. There again technology can be a tool to improve such cooperation however more crucial is the mindset of the need and will to cooperate.

5.5 It is envisaged that AAL systems shall be complex, therefore interoperability should be one of the key objectives within this programme. The innovation and technology should be wide scaled, customised, integrated and proactive.

5.6 The EESC believes that the Commission should also adopt an integrated approach to AAL and policies such as Life Long Learning. In fact, training under such policies, in particular, should also be targeted at the stakeholders of the AAL programme as training is an integral part of the success of such technology.

Brussels, 29 May 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 taking-up and pursuit of the business of Insurance and Reinsurance SOLVENCY II

COM(2007) 361 final — 2007/0143 (COD)

(2008/C 224/03)

On 31 October 2007 the Council decided to consult the European Economic and Social Committee, under Articles 47(2) and 251 of the Treaty establishing the European Community, on the

Proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance — SOLVENCY II (*)

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 6 May 2008. The rapporteur was Mr Robyns de Schneidauer.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 67 votes, with one abstention.

1. **Recommendations**

1.1 The EESC commends the Commission for the disciplined recast of many complex directives in one clear document while taking into account the rules governing the recast parts of the work. Since the EU legislative framework should not only focus on prudential policy, which deals with the part capital plays in providing insurance services that are important to the business and citizens of Europe in many other regards, the EESC preserves its right to express its views about new features with regard to the relation between consumers and (re)insurers in due course, more specifically within the framework of the Commission's recent initiatives regarding retail financial services.

The EESC calls on the Commission to further pursue the harmonisation of legal aspects of the relationship between policyholder and insurer, as is currently being examined in the

(*) The proposal was later amended to become COM(2008) 119 final. In this opinion the numbering of the articles in the Directive relates to this, the most recent version of the proposal for a Directive.

'common framework of reference' (CFR) exercise under the conduct of DG Sanco.

1.2 The EESC broadly endorses the proposed Solvency II Framework Directive of the Commission and salutes the extensive consultation that has preceded it. The approach of the Commission has been in line with the Better Regulation principles it has set for itself. However, consultations on such reforms should pay due attention to the views of employees and consumers, who have an obvious interest in the outcome of the proceedings. The EESC invites the Commission to develop proper fora, like FINUSE, for these consultations to take place.

1.3 The EESC welcomes the adoption of a risk-based economic approach to assess the solvency capital requirements of insurance companies and a total balance sheet approach, based on a full economical evaluation of assets and liabilities, to assess their financial situation. This aims at reflecting correctly the true underlying exposures of risk and risk mitigation tools of the undertakings. This approach, besides being economically correct, has the advantage to avoid any regulatory arbitrage opportunity and, at the same time, to ensure the same adequate level of protection to all policyholders across Europe, independently of the legal status, size or location of the company.

1.4 The EESC highly welcomes the introduction of the three pillar approach to prudential supervision which is consistent with the Basel II capital requirements as introduced in the banking sector while recognising the specificities of the insurance sector. The EESC would like to underline the importance of the addition of the supervisory review process and qualitative requirements (Pillar II) as well as introducing principles to regulate supervisory reporting and public disclosure (Pillar III) in addition to the definition of the quantitative risk-based capital requirements, for the adequacy of prudential supervision of insurance undertakings.

1.5 The EESC welcomes the introduction of a solvency system based on two capital requirements, the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR), with each of them having a different purpose. The SCR should reflect a target level of capital that an entity should aim to meet under normal operating conditions, while the MCR should reflect a level of capital below which ultimate supervisory action should be triggered. The EESC would welcome Level II regulation to bring further clarity about the conditions governing the simplified SCR calculation (Art. 108), as well as about the circumstances that would trigger a request for additional solvency capital.

1.6 The EESC is of the opinion that the MCR and the SCR calculations should be aligned closely and therefore be both based on a risk-sensitive approach, in order to allow for the proper implementation of an escalating ladder of supervisory interventions which ensures that both the respective insurance company as well as the supervisory authority have sufficient time to take the adequate measures to resolve the situation after the breach of the SCR.

1.7 The EESC welcomes the principle of proportionality included in the proposed Directive, which would allow for Solvency II to be applied by all the undertakings. The EESC would welcome Level II Regulation to bring further clarity in this general principle of proportionality (Art. 28,3), so that the adequacy of requirements and, if needed, corrective measures, can be construed in a more secure way; this should, however, not lead to regulatory sclerosis. The EESC recommends that this principle is applied effectively and consistently across Europe, with effective ways of appeal by administrative process or if needed in court to guarantee this.

1.8 The EESC strongly suggests the Commission to preserve the diversity of the insurance market by taking into account the role of small and medium size insurers as well as of mutual and cooperative insurance societies. Since many of these operate in niche markets, the EESC considers it of great importance that some flexibility to the standard approach is allowed to recognise for example the use of own, more relevant, data and generally accepted methodologies, without, however, disturbing a fair competition between insurance undertakings. Due analysis and consideration should be given to the possibility of mutual insurance companies to call on their members to shore up their solvency status as has been seen in practice.

1.9 The EESC recognises the importance of the supervision of insurance groups which, while relatively small in terms of number of undertakings, do constitute a large share of the insurance market within the EU. The EESC therefore considers the introduction of group supervision as an important step forward which will allow all the group supervisors and the other supervisory authorities involved to improve their understanding of the risk profile of the group as a whole. Maximum harmonisation and transparency of these supervisory authorities and clear division of responsibilities between them is recommended.

1.10 The EESC welcomes the introduction of an optional regime that allows groups to facilitate their capital management at group level, improving the mobility of capital within the group and providing a practical and transparent system for a group to benefit from the recognition of diversification effects at group level without affecting the level of the capital requirements of the subsidiaries of the group. It will be necessary to consider the actual capital levels of the subsidiaries of the group, since a part of these will be covered by declarations of group support rather than by available liquid or equivalent assets. The EESC notes that group diversification effects will only be recognised by using the default method for the calculation of the SCR and that the proposal also should allow for the recognition of group diversification effects without the use of group support.

1.11 The Committee recommends evaluating the impact of the proposed optional regime on competition at local level, the degree of consumer protection in normal as well as crisis situations, which should not be lower than the degree provided under the default regime, and clarification of legal and practical issues, including security of cross-border fund transfers between different companies within a group, namely possible legal constraints, at national level, to capital (group support) transfers to a subsidiary located in another Member State.

1.12 The EESC expects the Level II authorities to take into account the results of the fourth phase of the quantitative impact study (QIS4) which was under way at the time of the adoption of this opinion.

1.13 The EESC insists on the need for a well harmonized application of the directive, avoiding goldplating or diverging policies through the use of options which would endanger a uniform prudential policy across the single market.

1.14 The EESC calls on the Commission to ensure the predictability of prudential practice, in order to give insurance undertakings the level of certainty they can expect in developing their risk and solvency policy.

1.15 The EESC recognises the importance for Solvency II of aspects of risk mitigation like sharing reliable data between insurers and insurance pools. They facilitate market access for newcomers to a market and smaller operators and allow them to increase available capacity as well as to reduce the uncertainty margins on their premiums. The EESC therefore urges the Commission to consider this correlation in its review of the Block Exemption Regulation for the insurance sector.

1.16 The EESC congratulates the Commission and Lamfalussy committees involved, for the leading role they have taken up in this reform process in applying best practices and raising awareness in the whole European market. The proposed directive sets a real benchmark for many other jurisdictions and financial services sectors. However, consultations on such reforms should pay due attention to the views of employees and consumers, who have an obvious interest in the outcome of the proceedings. The EESC invites the Commission to develop proper fora, like FINUSE, for these consultations to take place.

1.17 The EESC urges the Commission to bring the solvency provisions of other providers, irrespectively of their nature, of similar financial services up to the level of the Solvency II directive under the 'same risks, same rules' principle. In view of volatile financial markets, consumers or beneficiaries must not be denied the same advanced solvency protection. And a level playing field regarding solvency capital requirements is also essential to promote a fair competitive environment in the financial market.

1.18 The Solvency II principles should be the benchmark for the introduction of new solvency standards, for example in the framework of the IORP ([1]) directive review in 2008, especially with regard to the development of the duties of private pension providers throughout the Union.

2. **Introduction**

2.1 The present proposal for a Directive for a new solvency framework for private insurance and reinsurance undertakings, called Solvency II, is introducing a revised regime in order to ensure a better protection of policyholders and beneficiaries, deepen integration of the single EU insurance market and improve international competitiveness of EU insurance industry as a whole as well as of the individual insurers and reinsurers. At the same time, the proposal unifies several generations of insurance directives in one single recast directive. This framework is to be applied both to insurance and reinsurance undertakings.

2.2 Through an elaborate and ongoing consultation with all stakeholders, the Commission and the Lamfalussy committees involving regulators and supervisors have taken a leading role in setting up leading-edge practices in a global environment, particularly in the field of financial services. As a result, Solvency II is among the most sophisticated set of insurance solvency rules in the world and puts Europe well ahead of most other jurisdictions. However, consultations on such reforms should pay due attention to the views of employees and consumers, who have an obvious interest in the outcome of the proceedings. The EESC invites the Commission to develop proper *fora*, like FINUSE, for these consultations to take place.

3. **Background**

3.1 The proposed solvency framework aims at improving the financial stability and reliability of the European insurance market. This should benefit both the competitiveness of the EU insurance industry as a whole as well as of the individual insurers and reinsurers and the consumer in safety terms. Reliable insurance markets are of crucial importance for the social and economic fabric of the European Union.

3.2 First and foremost, insurance acts as a tool of individual as well as collective protection. Insurance customers include private households, SMEs, large corporations, associations and public authorities. The commitments of insurance companies concern dependents and third parties as well as the actual customers of insurance services. The EESC is particularly aware of this impact on the everyday life of the European citizens. Besides its importance in the markets of protection in the event of death, insurance has become a significant provider of savings products. Insurance takes part in the management of social security schemes, such as pensions (Nordic countries),

([1]) Institutions for Occupational Retirement Provision.

workmen's compensation (BE, FI, PT) and national healthcare systems (IE, NL), often within a framework involving workers' representatives. Insurance is a provider of employee benefits that are of rapidly increasing importance for the workforce — an important stakeholder. It does provide for protection against new risks like natural catastrophes, crop insurance and terrorism as well, sometimes through partnerships between (re)insurers and governments.

3.3 The insurance market functions as an important lever for the economy as a whole, supporting initiative and building trust, and it is a considerable economic factor itself, creating jobs for close to a million employees in Europe ([2]). The Commission has estimated the proposed directive to entail extra investments of 2 to 3 billion euros for insurers and supervisors. It is expected that a very large part of these investments will be spent on human capital, creating lasting highly qualified jobs locally (among which risk managers, actuaries, ICT experts and compliance officers). The EESC considers this investment should provide value to all stakeholders including consumers and beneficiaries.

3.4 In addition to this direct employment, insurance distribution through agents and brokers and their own employees adds another million jobs.

Through investments which reach an amount of more than 6 500 bn euro ([3]), insurance and reinsurance undertakings are important institutional investors. As such they are responsible for transforming individual premiums into a pool of financial assets in due proportion to the risks borne, and for the medium to long-term security of the policyholders and beneficiaries.

3.5 Households, SMEs, larger corporations, associations and public bodies contribute premiums that are equal to more than 5 % of GDP for life insurance ([4]) and more than 3 % for non-life insurance. Even in mature markets, the growth rate of insurance exceeds the growth of the economy as a whole most of the time. Insurers' investments represent more than 50 % of the GDP ([5]), half of it in fixed income assets and loans ([6]), while the total variable yield investments of the insurers are about equal to a quarter of the European stock market capitalisation ([7]).

3.6 Even if the recent history of the insurance industry has seen many mergers, there are still about 5 000 insurance companies in Europe ([8]). Large financial groups may have different insurance subsidiaries in different countries. Group structures in the insurance industry can encompass different types of activity within the insurance industry (reinsurance, life and/or non-life insurance, insurance mediation) or within the wider context of financial services (including banking — bancassurance — and mortgages). Moreover, groups can be made up of a mother and daughter companies, but also include joint ventures, holding structures and so on. The 20 largest groups collect about half of the European premium income ([9]). A significant market share resides with mutual and cooperative insurance societies. The latter are often intrinsically connected with a large number of civil society organisations, and account for 30 % of the overall premium income in Europe ([10]).

3.7 The current financial crisis, triggered by subprime mortgage lending practices in the USA, underlines the case for sound and thorough solvency standards, enabling insurance companies to meet their commitments even under duress. Rules, management methods and stress tests contribute to reaching this goal.

4. **Legislative approach**

4.1 In line with its Better Regulation agenda, the Commission has been preparing the Solvency II directive at length and in depth while taking into account the rules covering the recast parts of the work. Several waves of qualitative and quantitative impact assessments and consultations have ensured that many concerns of both the industry and the supervisory authorities have been taken into account. New waves of detailed scrutiny and consultation are coming up.

4.2 The Commission's proposal is a so called 'Lamfalussy' Directive, based on the four level structure of the Lamfalussy financial services architecture. The Level 1 provisions of the Directive are principle-based, providing the basis for adoption of implementing measures at Level 2 and with instructions for supervisory convergence at Level 3 of the process. This approach is intended to enable the new regime to be promptly adapted to reflect changes in the market, international developments in accounting and (re)insurance regulation, technological developments, emerging experiences and new methodologies. Setting detailed calculation specifications in the Directive's articles would jeopardise the very sense of this innovating legislative process. Levels 2 and 3 are more adequate to deal with them.

4.3 The new regime is structured in the form of three pillars, similar to Basel II capital requirements of the banking sector, but reflecting the specificities of insurance business. Pillar I (Articles 74-142) is defining quantitative financial requirements, Pillar II (Articles 27-34, 36-38, 40-49, 181-183) is dealing with the supervisory review process and qualitative requirements and Pillar III (Articles 35, 50-55) is regulating supervisory reporting and public disclosure. The three Pillars do not stand alone, but complement each other in pursuing the objectives of the regime. Interactions between provisions in different pillars should be duly considered.

([2]) Source: Comité Européen des Assurances, European Insurance in Figures, 2007. The figures reflect data available by late 2006.
([3]) Idem footnote 2.
([4]) Idem footnote 2.
([5]) Idem footnote 2.
([6]) Idem footnote 2.
([7]) Idem footnote 2.
([8]) Idem footnote 2.
([9]) Idem footnote 2.
([10]) Source AISAM.

4.4 The revision of the present solvency regime has also been used as an opportunity to recast 13 (re)insurance Directives into one single simplified directive in which the new solvency rules have been integrated. It contains a number of amendments of a non-substantive nature in order to improve the proposed Directive's drafting. Articles, or parts of articles, which have become obsolete have been deleted.

5. **General aspects**

5.1 Over the last 30 years, successive generations of EU Directives have created a European (re)insurance market governed by a common set of rules, among which the principles of mutual recognition and home country control. They have created a market open to non-EU operators and encouraged EU insurers to expand into non-EU markets, mostly in North America, Asia and in countries that may be considered for future EU membership.

5.2 The proposed leading edge solvency regulation ensures that insurers are financially sound and capable of withstanding adverse events in order to deliver on their contractual promises to policyholders and to guarantee a stable financial system. It is important however to stress that all consumers of these financial services deserve such enhanced protection. A number of market operators are not subject to insurance regulation, such as occupational pension providers or savings and investment institutions.

5.3 Harmonised solvency rules create trust, not only among consumers but among supervisors as well. Such trust is a determining feature in order to make a European market with mutual recognition and home country control work in practice. The current EU solvency rules (Solvency I) are outdated though. They are not sensitive to the specific risks born by the entity that provides the insurance coverage, therefore leading to equal solvency requirements to undertakings with different risk profiles. Moreover, current Solvency rules are mainly focused on financial compliance, following a rules-based approach rather than on good management and they do not properly deal with group supervision. In addition, the current EU legislative framework still leaves too much scope to Member States for national variations, thereby compromising the efficiency of supervision of multinational operations and the level playing field. In the light of these shortcomings, the present regime has been superseded by industry, international and cross-sector developments. The new Solvency standards defined by the Directive proposal reflect in other words a trend already established by risk-conscious operators and supervisors from different countries.

5.4 In contrast to the Solvency I framework, the reform concentrates on the actual quality of risk management in the undertaking and on principles and objectives rather than rules that do not take into account specific risk profiles of companies.

It also aims to align supervision practice across the EEA.

5.5 In essence, the new system will firstly provide supervisors and insurers with sophisticated solvency tools, not only in order to withstand adverse events with regard to insurance risks, such as floods, storms or big car accidents, but for market risk, credit risk and operational risks as well. Contrary to the present legislation, insurers and reinsurers will be required to hold capital in proportion to their overall solvency risk, taking into account not only quantitative elements, but also qualitative aspects that influence the risk-standing of the undertaking.

5.6 It is based on an economic risk sensitive approach, which aims to ensure that the true underlying exposures of risks and risk mitigation schemes are properly reflected, thereby eliminating regulatory arbitrage opportunities that can distort and weaken the protection available to policyholder. This also means that the capital requirements should allow for an optimal allocation of capital and give incentives to a better internal risk management.

5.7 Secondly, Solvency II emphasizes the responsibility of the management of the insurers in ensuring sound risk management and strives to enhance good practice in the industry. They will be required to focus on the active identification, measurement and management of risks and to consider any future developments, such as new business plans or the possibility of catastrophic events that may affect their financial standing. Furthermore, the proposed reform will require them to assess their capital needs in light of all risks by means of the 'Own Risk and Solvency Assessment' (ORSA), whilst the 'Supervisory Review Process' (SRP) will shift the focus of supervisors from legalistic compliance and capital monitoring to evaluating the actual insurers' risk profiles and the quality of their risk management and governance systems through for example early warning mechanisms and stress tests. In parallel, it encourages supervisory cooperation and convergence, for instance by enhancing the role of CEIOPS (Committee of European insurance and occupational pensions supervisors), as a step towards more unity in the supervision of financial services, which the EESC supports.

5.8 A third important aspect is trying to improve the efficiency of insurance groups supervision, through a 'group supervisor' in the home country. Group supervision will ensure that group-wide risks are not overlooked and enable groups to operate more efficiently at the same time, whilst providing all policyholders with a high level of protection. The group supervisor will have specific responsibilities to be exercised in close co-operation with the relevant national supervisors, while also having the responsibility to find decisions on a limited number of issues. Local supervisors are encouraged to take an active part in the college of supervisors, as they have a right of co-decision as long as an agreement can be achieved. It entails a different approach that must be used in order to be able to recognise the economic realities and risk diversification potential of such groups.

5.9 Fourth, the Solvency II Directive introduces more transparency and objectivity, both in terms of information provided by the undertaking on its financial condition and on the associated risks and in terms of supervisory review processes. At present, supervisory practices still tend to vary between Member States, leaving room for regulatory arbitrage. Both for European policy in these matters and for insurers actually wanting to accede a new national market, it seems important that supervisory practices would not only be objective and transparent, but also predictable and well documented.

6. **In depth analysis**

6.1 *Financial requirements (Pillar I)*

(Articles 74-142)

6.1.1 In defining the quantitative requirements for insurance undertakings, the new regime takes a holistic 'total balance sheet approach', under which all the assets ([11]) and liabilities are measured according to a market consistent approach and all quantifiable risks associated to them are reflected explicitly in terms of capital requirements. Valuation of assets and liabilities at levels matching their trading conditions ensures they are valued objectively and consistent between each other. It also ensures that a correct value is placed for any optionality inherent to them. The realistic forward looking valuation is the most effective protection against a possible bias that could imperil all stakeholders' rights.

6.1.2 In this valuation context, particular relevance is allocated to the calculation of technical provisions, i.e. the liabilities towards policyholders and other beneficiaries. Market consistent valuation of technical provisions is achieved through the calculation of the 'best estimate', which is the probability weighted average of future cash flows taking into account the time value of the money, and including a risk margin. This approach should ensure that the overall value of technical provisions is equivalent to the amount that a third-party would be expected to require in order to take over the insurance portfolio and meet the related obligations. The calculation must use and be consistent with information provided by the financial markets and generally available data on insurance risks.

6.1.3 As to the capital requirements, the new solvency system contains two capital requirements, the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR), with different purposes and calculated accordingly.

6.1.4 The SCR defines a target level of capital that an insurer should meet under normal operating conditions, beneath which supervisory interventions will intensify. It allows for progressive supervisory intervention before the capital reaches the MCR and thereby gives reasonable assurance to policyholder and beneficiaries that obligations will be met as an insurer falls due. Technically, the SCR intends to be designed and calibrated in order to define a level of capital that enables an undertaking to absorb significant unforeseen losses, based on a certain probability of default over a certain time horizon (0.5 % over one year horizon).

6.1.5 The MCR reflects indeed a level of capital which will trigger ultimate supervisory actions when needed. The MCR calculation should allow for a sufficient range as compared to the SCR, to ensure sufficient room for a reasonable ladder of intervention by the supervisory authorities.

6.1.6 In practice, an insurer may calculate the SCR either by using a standard formula or by using its own internal model that has been approved by the supervisory authorities. The standard formula is to reflect appropriately risk mitigation techniques and diversification effects as well as any form of loss absorption capability of balance sheet elements which are not included in the available capital. The risk oriented approach of the proposed directive implies that an internal model (either partial of full) can replace — under supervisory validation — the standard calculation, provided that it better reflects the undertaking's risk profile. This is an important incentive to a sound internal recognition and management of risks, as well as to the training and hiring of highly qualified staff.

6.1.7 Another element which is in line with the aim to encourage good internal management is the application of the 'prudent person principle' to the investment policy, which would allow not to set artificial limits to investments, while requiring high qualitative standards and duly accounting for any material risk in the calculation of the capital charge.

6.1.8 Considering the complexity of the requirements, it is important to note that the current proposal includes provisions to allow for a proportionate and manageable implementation of Pillar I requirements. This is particularly important for small and medium-sized insurance undertakings (SMEs). This proportionality principle makes reference not to the scale, however, but to the nature and complexity of the risks faced by undertakings. SMEs are subject to similar general prudential principles as far as their risk profile is the same as of other undertakings. Their customers and beneficiaries benefit from the same protection level.

6.2 *Supervisory review process and qualitative requirements (Pillar II)*

(Articles 27-34, 36-38, 40-49, 181-183)

6.2.1 The Commission's Solvency II proposal defines processes and tools for supervisory activities and reviews, including the definition of supervisory powers, provisions for cooperation between national supervisors as well as for supervisory convergence. The Pillar II provisions also address qualitative requirements on undertakings, i.e. their system of governance, including an effective internal control system, risk management system, actuarial function, internal audit, compliance function and rules on outsourcing.

6.2.2 Supervisory tools aim to identify institutions with financial, organization or other features susceptible to producing a higher risk profile, which in exceptional circumstances could

([11]) Assets held by EU insurance companies are mainly bonds (37 %), shares (31 %) and loans (15 %). Source: Comité européen des assurances, European Insurance in figures, 2007.

be asked to hold a higher solvency capital than under the SCR and/or to take measures to reduce the risks incurred.

6.2.3 The aforementioned proportionality principle applies to the supervisory review process as well. Supervisors must implement their powers taking into account the scale, nature and complexity of the risks of the individual undertaking in order to avoid a supervisory overload particularly for those small and medium sized insurance companies which are exposed to a low level of risk.

6.2.4 Solvency II is designed to enhance the qualitative assessment carried out by supervisors on the risk situation of the undertaking. It is important that supervisors are consistent in their actions and decisions across different countries, different undertakings and over time. It is worth repeating the importance of transparency, objectivity and predictability of supervisory actions. This is particularly relevant in the case of the approval of internal models.

6.3 *Supervisory reporting and public disclosure (Pillar III)*

(Articles 35, 50-55)

6.3.1 Transparency and disclosure to the public (public disclosure) of information by undertakings about their financial conditions and risks serve to reinforce market discipline. In addition, insurance undertakings should provide supervisors (supervisory reporting) with the quantitative and qualitative information they need to perform effective control and guidance.

6.3.2 The harmonization of public disclosure and supervisory reporting is an important part of the new regime, as there is a clear need for convergence in order to deliver a comparable format and content across Europe. This is of particular importance with regard to multinational groups.

6.4 *Group supervision*

(Articles 210-268)

6.4.1 The current EU legislation considers group supervision as merely supplementary to solo supervision. Supervision at solo level does not consider whether a legal entity is part of a group (e.g. a subsidiary) or not. Subsequently, group supervision is simply added on top of solo supervision with the only purpose to assess the implication of groups relationships on the single undertaking. As a result, the current EU solvency regime does not recognise the economic reality of insurance groups and neglects the fact that in many cases risk management is conducted at group level rather than at solo level. The Solvency II proposal seeks to find a more appropriate way for the supervision of groups, by changing the way — under a set of conditions — in which solo and group supervision are carried out.

6.4.2 For each insurance group, a single authority will be appointed as 'group supervisor' and is given primary responsibility for all key aspects of group supervision (group solvency, intragroup transactions, risk concentration, risk management and internal control). However, the group supervisor and solo supervisor are required to exchange essential information automatically and other relevant information on request. Moreover, the group supervisor is required to consult the relevant solo supervisory authorities prior to important decision and the supervisory authorities concerned are required to do everything within their power to reach a joint decision, though in the case of approval of group internal model, as in the case of banking regulation, the final decision will be taken by the group supervisor. These provisions should ensure that both the group and solo supervisors will get a better understanding of the risk profile of the whole group and, as a consequence, that policyholders of each entity of the group are given increased protection.

6.4.3 In addition to the improved concept of group supervision, the proposal introduces an innovative group support regime. Groups that would like to facilitate their capital management at group level can apply for permission to be regulated under the group support regime. Groups that are granted with the permission to be regulated under the group support regime will be allowed — under a clear number of conditions — to meet a part of the SCR (not the MCR) of the subsidiaries by a declaration of group support (a financial, legally enforceable commitment of the parent to a subsidiary to provide capital when necessary). In order to allow the group support regime to operate efficiently, a few additional derogations to solo supervision are included. When group support regime is in place, a specific procedure is envisaged in the case of stress conditions (breach of the solo SCR), which entails coordinated actions of the solo and group supervisors. This regime should be applied in a uniform way across the Union.

6.4.4 Because the group support regime allows for the SCR capital of subsidiaries to be held somewhere else within the group, it provides insurance groups with a practical and transparent measure to benefit from the recognition of group diversification effects while the individual subsidiaries meet the same level of capital requirements as if they were not part of a group. For these reasons, appropriate supervision should be put in place in order to ensure the prompt transferability of the capital when it is needed. The existence and use of declarations of group support shall be publicly disclosed by both the parent undertaking and the subsidiary concerned.

Brussels, 29 May 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 on the participation by the Community in a research and development programme aimed at supporting research and development performing SMEs undertaken by several Member States

COM(2007) 514 final — 2007/0188 (COD)

(2008/C 224/04)

On 11 October 2007 the Council decided to consult the European Economic and Social Committee, under Article 172 of the Treaty establishing the European Community, on the

Proposal for a Decision of the European Parliament and of the Council on the participation by the Community in a research and development programme aimed at supporting research and development performing SMEs undertaken by several Member States

On 25 September 2007 the Committee Bureau instructed the Section for Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Cappellini as rapporteur-general at its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May 2008), and adopted the following opinion unanimously.

1. **Conclusions and recommendation**

1.1 The European Economic and Social Committee (EESC), which supports the objectives of the Eurostars Joint Programme, stresses the need to take account of the different categories, sizes and sectors of SMEs when adopting new EU Research & Development and Innovation policies and programmes geared and reoriented towards SMEs' real innovation needs.

1.2 The EESC welcomes the Member States' proposal for the adoption of the Eurostars Joint Programme to support the so called 'R&D performing SMEs' and notes that it should be open to all SMEs from the countries joining the program and willing to participate in innovation processes.

1.3 The EESC underlines the necessity to identify tools in order to involve in the programme all EUREKA Member States not included in the Eurostars Joint Programme.

1.4 The EESC has concerns in relation to the Eurostars Joint Programme eligibility criterion, ([1]) which limits participation to R&D performing SMEs that, 'invest 10 % or more of full-time equivalent or annual turnover in research activities'. Even if the limitation is applied only to the R&D performing SME that proposes the project (project leader), this definition for R&D-performing SME, is based on codified indicators, ignoring all the various kinds of 'non-codified knowledge' ([2]), whilst often, highly innovative processes are strongly characterised by 'tacit knowledge' ([3]).

1.5 Therefore, the EESC reaffirms the principle that for a fair competition on project proposals the projects should be selected on the basis of excellence of their content, managerial expertise on R&D and coherence with the goals of the programme, without excluding a large proportion of the innovative SMEs willing to apply to the Eurostars programme. Furthermore, funding should be allowed for training programs aiming to prepare expert managers dealing on effective technologies transfer from research into marketable products.

1.6 In this regard, the EESC requests that, in accordance with the appropriate procedures of the Eurostars Joint Programme, a specific budget line be established for trans-national initiatives conducted by Member States in collaboration with SME organisations willing to support the dissemination of SME-friendly information on the results of Eurostars projects to a wider audience of SMEs. Another way of giving all SMEs interested in the success of the Eurostars programme more 'ownership' would be for a common data base and multilingual sector web platforms to be set up and promoted by SME organisations and the social partners.

1.7 The EESC highlights its concern regarding the criteria for setting SMEs' contribution to the total project costs related to R&D activities. It is important to clarify that, as things stand, under the Eurostars Joint Programme, SMEs would be required to contribute, collectively, at least 50 % of the R&D related project costs. Since this criterion will exclude many market-based SMEs, consideration should be given to the possibility of lowering this barrier to 25 % during the interim evaluation of the Eurostars programme ([4]).

([1]) http://www.eurostars-eureka.eu/.
([2]) Hartmut Hirsch-Kreinsen, 'Low-Tech' Innovations, Industry and Innovation, 2.2008.
([3]) Pilot Project: http://www.pilot-project.org.
([4]) A6-0064/2008 (amendment to the proposal), European Parliament, Committee on Industry, Research and Energy, 2008.

1.8 Later on, the concerns expressed by EU and national SME organisations and other research stakeholders should be taken into consideration by the interested member States and EU National Authorities during the different phases of impact monitoring and result dissemination. A regular check by the EU's Advisory Group on SMEs and R&D could become a permanent tool of technical consultation for the Member States and other authorities at EU/national level. In this regard, the EESC's Internal Market Observatory in collaboration with SMEs Category could also serve as a consultative member on the Advisory Group during the monitoring, implementation and dissemination phases.

1.9 The EESC underlines that the Eurostars Joint Programme should be implemented in a transparent and non bureaucratic way, so as to make it easier for SMEs to receive information, take part and, in particular, get involved in follow-up activities with related, interested R&D institutions. Accordingly, the projects funding should be made by lump sum payments and where a lump sum payment is not compatible with the national programmes, there should be a flat rate payment.

1.10 With a view to effective implementation of the Eurostars programme, regional innovation networks should be strengthened to enable them to provide one-stop-shop services in support of innovative SMEs, giving them effective access to European R&D funding. For instance, in order to increase awareness of the specific funding programmes for R&D performing SMEs, the links between EUREKA networks, other existing public/private bodies and EU/national/regional SME organisations should be tightened and better coordinated. A set of events through SMEs representative organisations should be funded in order to make aware the SMEs and the interested organisations of the meaning and importance of innovation and the role that innovation will play in the future of EU.

1.11 The outcome of the project selection by SME sectors in the framework of the Eurostars programme ([5]) should be made public in the Internet by the Eureka network. Furthermore, a short list of eligible projects with a high innovative content but which have not been funded should be made available. This list would indicate national public/private investors if further funding would be necessary to the programme.

1.12 Effective coordination between the national authorities in charge of SMEs and R&D policies and EUREKA must be consistent and must match the needs expressed by SME organisations and wider stakeholders (including, amongst others, private and public research bodies). The EESC calls upon interested European Institutions, the Member States and the Slovenian and French EU Presidencies to ensure that coordination is conducted in accordance with SMEs' expectations and programme objectives.

1.13 The EESC urges that, in connection with SMEs' participation in R&D funding programmes and the Eurostars Joint Programme, the long period from submission of a proposal to approval by the EU be shortened, so as to encourage SMEs to submit projects.

([5]) http://ec.europa.eu/research/sme-techweb/index_en.cfm?pg=results.

1.14 The EESC stresses that, in order to improve and increase SMEs' take up of R&D funding, the EC needs to explore the possibility of shifting the unused resources available for SMEs under the 'Cooperation' chapter of FP7 (representing 15 % of the 'Thematic Priority' budget in PF6) to the 'Capacities' Programme (CRAFT, etc.) which targets SMEs more effectively.

1.15 The EESC asks that more attention be given to the disproportionate regulatory burden on SMEs, which can be up to ten times higher than the burden on large companies ([6]). A reduction of management costs and a simplification of submission procedures for SMEs that venture into R&D programmes with other European and international partners are also desirable. The EESC would also like to see a solution to the issue of Intellectual Property Rights (IPR) and European Patents ([7]), where the current situation hinders competitiveness and innovation in Europe. Furthermore, accessible patenting and IPR ([8]) may also count as important non-monetary assets when it comes to consolidating partnerships between enterprises participating in international projects.

2. **Background to the opinion**

2.1 In the European Charter for Small Enterprises approved by EU leaders in 2000, it was agreed that small enterprises must be considered as a main driver for innovation, and employment as well as for social and local integration in Europe ([9]). In addition, in October 2007, the EC announced the preparation of a 'Small Business Act for Europe' (SBA) ([10]), which will define a set of measures aimed at promoting entrepreneurship, a culture of enterprise and access to competences ([11]). In the course of 2008, the Commission will also examine a range of initiatives with regard to SMEs ([12]) in order to increase their participation in EU programmes.

2.2 From these foundations has come a proposal for a specific Eurostars Joint Programme. The programme, which comes under Article 169 of the EC Treaty and is designed to complement and target the 'Research for the benefit of SMEs' activity under the Seventh Research Framework Programme (FP7), is managed by EUREKA and was initiated jointly by 22 Member States and five other EUREKA countries (Iceland, Israel, Norway, Switzerland and Turkey). Currently the Eurostars

([6]) Models to reduce the disproportionate regulatory burden on SMEs, European Commission, May 2007, DG Enterprise and Industry.
([7]) The Cost Factor in Patent Systems, Université Libre de Bruxelles Working Paper WP-CEB 06-002, Brussels 2006, see from p. 17.
([8]) Enhancing the patent system in Europe: COM(2007) 165.
([9]) European Charter for Small Enterprises, Feira European Council on 19-20 June 2000.
([10]) Small and medium-sized enterprises — Key for delivering more growth and jobs. A midterm review of Modern SME policy. COM (2007) 592 final, 4.10.2007.
([11]) Luc Hendrickx, 'UEAPME expectations on the proposal for a European Small Business Act', 14.12.2007.
([12]) http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm.

programme counts 30 member sates: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

2.3 FP 7 adopts many of the measures suggested during the review of FP6 ([13]) with a view to bridging the gap in policies in favour of SMEs. FP7 includes a strategy towards SMEs, incorporating both qualitative and quantitative measures to stimulate action at both national and regional levels. Its aim is to create clusters and networks of businesses, to improve pan-European cooperation between small enterprises using information technology, to disseminate best practices on cooperation agreements and to support cooperation between small businesses ([14]).

2.4 The 23 million SMEs registered in the EU account for 99 % of all enterprises and for two thirds of Europe's turnover and they are also which supports the key players in sustainable development ([15]). Yet, to become more competitive, these enterprises need to be rationalised and regrouped to form a coherent whole with a critical mass, so that they can take advantage of the development of specific risk-capital funds, science parks, incubators and regional innovation policies ([16]).

2.5 Moreover, the 'Flash Eurobarometer report' underlines that SMEs' growth may be hindered by the risk-averse nature of Europeans, who lack entrepreneurial spirit ([17]). It is therefore particularly important to take action to enhance the professional image of entrepreneurs and to raise public awareness of their key role in innovation, economic progress and prosperity in general. The Lisbon goals can be achieved only through responsible, energetic and imaginative entrepreneurship that is able to develop freely ([18]).

2.6 However, the specific measures which Member States adopt to support SMEs do not always encourage and support trans-national research cooperation and technology transfer. In view of the changes in markets and the internationalisation of value-chains, European SMEs now have to adapt to strong global competition by engaging in permanent innovative processes in an even broader international context. The Eurostars Joint Programme should reward those SMEs and public and/or private research institutions which make specific efforts to support R&D projects, disseminate their results, and transfer and help to give access to knowledge. In particular, it should reward projects involving institutions and groups and/or single SMEs which normally participate less in or have difficulty in accessing such programmes. The EESC emphasises the importance of the enlargement of the contribution to the Eurostars joint programme to all the EUREKA Member States, especially for those that recently joined the EU and that can benefit of the trans-national approach.

2.7 The Eurostars Joint Programme targets R&D performing SMEs, with an emphasis on market-oriented R&D projects and multi-partner trans-national projects (with at least two independent participants from different participating States). An important aspect of the programme is the bottom-up approach, which empowers 'R&D performing SMEs' for ownership and strategic business innovation. In such circumstances, SMEs are in control and able to influence the outcomes of ongoing research in line with commercial opportunities.

3. **Objectives of the Eurostars Joint Programme**

3.1 The participation in research and development programmes pursuant to Article 169 of the Treaty implies that the participating EU Member States integrate their national research programmes by committing themselves to a joint research programme. The Commission, under the legal basis of Article 169, has identified four potential initiatives. One of those is Eurostars, a joint research programme for SMEs and their partners.

3.2 The Eurostars programme consists of projects proposed by one or more SMEs that are established in the participating States and are actively involved in R&D. Projects can be implemented in any field of science and technology (but must have a civilian purpose). Projects must be collaborative, and must involve at least two participants from two different Eurostars participating countries which are involved in various activities in connection with research, technological development, demonstration, training and the dissemination of related information. In line with the nature of SMEs, the project life cycle is a short one. A project must have a maximum duration of three years, and within two years of project completion, the product of the research should be ready for launch onto the market.

3.3 The Eurostars Joint Programme can provide significant leverage for Community funding: the Member States and five other EUREKA countries (Iceland, Israel, Norway, Switzerland and Turkey) will contribute with EUR 300 million. The Community will top up with further one third of the Member States contribution, resulting in a programme budget of EUR 400 million of public funding. Assuming project funding rates in the

([13]) OJ C 234 of 22.9.2005, p. 14, UEAPME Position Paper on a successor to the 6th Framework Programme for R&D, 01/2005.
([14]) A midterm review of Modern SME policy, COM(2007) 592, 4.10.2007.
([15]) Implementing the Community Lisbon Programme: Financing SME growth adding European Value, COM(2006) 349, 29.6.2006.
([16]) Science and technology, the key to Europe's future, COM(2004) 353, 16.06.2004.
([17]) Observatory of European SMEs, Flash Eurobarometer 196, May 2007.
([18]) Investment in Knowledge and Innovation, OJ C 256 of 27.10.2007, p. 8

range of 50 %-75 %, 'EUROSTARS' could mobilise between EUR 133 and 400 million of additional private funding for the duration of the Programme (leverage effect). The expected participation is calculated assuming an average cost of EUR 1.4 million for each Eurostars project. With an average funding rate of 50 %, a public funding rate of EUR 0.7 per project and an overall programme budget of about EUR 400 million, 565 projects can be funded.

3.4 The Community contribution therefore fills a gap in funding at an early stage of R&D when innovative activities are relatively high risk and may fail to attract solely private investors ([19]). The Community's intervention with public investment in favour of the Eurostars programme will encourage more R&D performing SMEs to seek private investment to develop innovative products or services.

3.5 In relation to funding, consideration should be given to establishing tax breaks for R&D investments in member States which would be attractive to investors even in a worst case scenario, as at the very least they could benefit from these relieves. The benefit to the SME is an alternative form of funding.

3.6 However, there are concerns that a large proportion of SMEs may be prevented from participating in the EU's initiative for competitive innovation. Under the Eurostars programme, the eligibility criterion for research-performing SMEs is that the SME proposing the project dedicates at least 10 % of their turnover or full-time equivalent to research activities. Even if this limitation is applied to the pilot partner of the project, this still may prevent many small enterprises from proposing innovative projects. As a result, the programme may only attract already consolidated high-tech enterprises that could access other more appropriate forms of financing.

3.7 Furthermore, in some EU countries, R&D costs are very often integrated with other operational costs and can therefore not be identified separately ([20]). Therefore the definition of R&D indicators used by the OECD shows some inadequacies when applied to innovative small enterprises, because they fail to account for the part of activities characterised as non-codified knowledge, which is difficult to quantify ([21]).

3.8 Also according to the OECD, the 'High-Tech Sector' is defined as industries with an R&D share in turnover of more than 4 %. This sector accounts, even in highly developed economies, for about 3 % of GDP, meaning that 97 % of all economic activities and most of the innovative processes happened in sectors defined by the OECD as 'Mid-Tech' or 'Low-Tech' ([22]). The figures indicate that a large proportion of innovating enterprises would be excluded if the access to the funding programme is limited by a 10 % R&D threshold, failing to trigger a positive attitude for innovation at the base of the European initiative.

3.9 Therefore the EESC's view is that the projects should be selected on the basis of excellence and compliance with the programme's objectives and that the 10 % R&D threshold should be removed.

3.10 Another requirement of the Eurostars programme is that the participating R&D performing SMEs should be able to carry out the major part of the R&D work. Collaboration with other partners, which can be other SMEs, local clusters, large enterprises willing to share programme objectives, research institutions or universities, should not be excluded. Furthermore, the term cluster should also include the need for locating R&D based SME's on University/3rd Level Institutions Campus to increase the interaction between the two on a mutually beneficial basis.

3.11 With regard to the respective contributions of the innovating SMEs taking part in the Eurostars programme it is important to clarify that it is the R&D performing SMEs which must collectively meet at least 50 % of R&D costs within the project. Nonetheless, this criterion may still exclude many market-based SMEs and the possibility of lowering this barrier to 25 % during the interim evaluation of the Eurostars program should therefore be considered ([23]).

3.12 The relationship with other financial instruments covered by the CIP (Framework Programme for Competitiveness and Innovation) still needs further clarification. The funding programme also needs to be made more flexible and adapted to the needs of SMEs, while taking into consideration positive experiences with guarantee funds for research and development, in order to allow enterprises to take a longer business perspective.

3.13 A better regulatory framework, with the systematic consultation of representative SME organisations and wider stakeholders, will lower operational costs and risks, raise returns, increase the flow of venture capital and improve the functioning of venture capital markets. This will particularly benefit innovative SMEs. This funding will complement the public support for the very early (pre-seed) stages of turning research outputs into a commercial proposition.

([19]) 'Annual Survey of Pan-European Private Equity & Venture Capital Activity' 2004.

([20]) The 2007 EU R&D Investment Scoreboard p. 20, by the Joint Research Centre (JRC) and Directorate General Research (DG RTD).

([21]) H. Hirsch-Kreinsen, 'Low-Technology': A forgotten sector in innovation policy, Faculty for Economics and Social Sciences, University of Dortmund, 15.03.2006; UAPME, 'Towards an Innovation Policy for Crafts, Trades and SMEs', 27.10.04.

([22]) Towards an Innovation Policy for Crafts, Trades and SMEs, UEAPME, 27.10.2004.

([23]) European Parliament, Committee on Industry, Research and Energy, A6-0064/2008.

3.14 The Commission has made a commitment to promote measures for more cross-border investment by venture capital funds ([24]). In Europe, the venture capital market is fragmented, currently comprising 27 different operating environments. This adversely affects both fundraising and investing.

3.15 There is therefore a need for a better environment for risk capital investment and for Member States to create incentives for private investors to engage in collaborative international research ([25]) and to promote the involvement of business support services for SMEs, aimed at supporting enterprises that pass successfully through the start-up stage.

4. **Improving the coordination of the Eurostars Joint Programme**

4.1 The Eurostars programme aims to help SMEs in any technology or industrial, legal and organisational framework necessary for large-scale European cooperation among the Member States in the field of applied research and innovation. Consequently it will increase the capability of R&D performing SMEs to bring to market new and competitive products, processes and services.

4.2 The internationalisation of the project may avoid the duplication of efforts towards innovation and should be an opportunity to adopt common policies and to introduce fast track action to reduce the administrative burden ([26]). With the help of the Eurostars programme, many SMEs may be encouraged to take advantage of international collaboration, providing that they are able to propose and directly manage a project. However, the involvement in integrated projects and the network of excellence should be carefully planned, in order to avoid imbalances in project participation.

4.3 As well as support for R&D, we must also consider ways in which governments can support innovation more directly through the provision of the right infrastructure. There is a very large community of research 'institutions', some of which may be associations or research companies, whose task is to support innovation, particularly by SMEs. There are also science parks and science shops, incubators, regional and local government bodies and knowledge transfer organisations. These provide important support for young high-tech SMEs and even for more traditional ones that are contemplating transferring to innovation-based strategies. The Slovenian Presidency of the EU and the following French Presidency should monitor how the coordination of the Eurostar programme at EU and national levels could be deployed, steering it to optimal levels and avoiding any duplication of functions and risk of confusion among existing SME agencies.

4.4 The EESC has also recommended on several occasions that a much greater part of the resources of the EU's Structural Funds be used for the development of joint scientific infrastructures and specifically tailor made for SMEs. The use of funding from the European Investment Bank for this purpose could also be highly beneficial ([27]).

Brussels, 29 May 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

([24]) Commission proposes measures for more cross-border investment by venture capital funds IP/08/15, 7.1.2008.
([25]) Financing SME Growth — Adding European Value, COM(2006) 349, 29.6.2006.
([26]) European Commission proposals for administrative burden reductions in 2008, MEMO/08/152 10.03.2008.
([27]) (OJ C 65, 17.3.2006), OJ C 256, 27.10.2007, p. 17.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Overcoming the stigma of business failure — For a second chance policy — Implementing the Lisbon Partnership for Growth and Jobs

COM(2007) 584 final

(2008/C 224/05)

On 5 October 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, the European Economic and Social Committee and the Committee of the Regions — Overcoming the stigma of business failure — For a second chance policy — Implementing the Lisbon Partnership for Growth and Jobs

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 6 May 2008. The rapporteur was Mr Morgan.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 70 votes with 3 abstentions.

1. **Conclusions and Recommendations**

1.1 Since 2001 the Commission has been addressing the negative effects of business failure. In particular, it has flagged the need to improve bankruptcy procedures. Given its limited competence in this area, the Commission has concentrated on collecting data on the legal and social consequences of business failure, facilitating the identification and dissemination of good practices and to working on early warning tools as a means of reducing the stigma of failure.

1.2 The EESC endorses the emphasis placed by the Commission on the need to overcome the stigma of business failure. Good national framework conditions for entrepreneurship are crucial to the full exploitation of the EU's entrepreneurial potential and to the creation of dynamic companies. The societal appreciation of successful entrepreneurship, vital to this end, should go hand in hand with a policy of promoting a second chance for entrepreneurs who have failed.

1.3 The Commission is right to assert that business creation, business success and business failure are each inherent in the market economy. It correctly highlights that as part of the general lack of societal appreciation and understanding of entrepreneurship, events such as business distress or business failure are neither sufficiently understood as a normal economic development nor seen as an opportunity for a fresh start. The EU must change its mind set. The more the stigma of failure attaches to a former bankrupt, the more at risk any new venture may be, and this risk attaches itself to all the stakeholders in the enterprise.

1.4 The US laws seek to balance the interests of debtors, creditors and society as a whole. It is the Opinion of the EESC that Member State laws should be drafted to achieve the same balance. Insolvency and the non payment of debts can create enormous difficulties for creditors and drive them in their turn into insolvency. Stripping the debt out of a company to give it a chance to restart can be most unfair on creditors. Insolvency laws need to strike the right balance.

1.5 From the point of view of society in general, keeping all or part of the enterprise in business may be the best solution. If the company is potentially viable, then all the stakeholders will benefit furthermore, if an insolvent company can be rescued by the insolvency practitioners, then employees will continue to be employed. If a bankrupt entrepreneur goes back into business, then he creates new employment. Employment in any of these ways clearly serves society at large.

1.6 There are many ways in which an enterprise can fail, even with the best intentioned entrepreneur. In the start up phase, it may not be possible to establish a viable enterprise. Beyond the start, a flawed business model may still mean that the company has no future. On the other hand, potentially viable companies can fail because of mistakes made by the entrepreneurs as well as for reasons right out of their control. Such companies can and should be saved by receivers with most of the jobs protected.

1.7 It is important to distinguish between the company and its directors. Directors may go bankrupt while a receiver is rescuing the company and its employees. When a company fails, the entrepreneurs may well be bankrupted because of the bank guarantees which they have given, even though their personal conduct was not fraudulent. It is these non-fraudulent entrepreneurs with which the Commission is concerned. When they have created a good business and then have the misfortune to fail through inexperience or bad luck, they deserve a second chance; the economy needs their skills. Others, who fail through incompetence and a lack of vision probably have little to offer the economy, even if they can find financial backers. Not all bankrupt entrepreneurs deserve a second chance.

1.8 The Commission's initiative has helped trigger reform across the EU. Many Member States have already drawn some inspiration from the good practices and policy conclusions collected at the European level. Around one third of Member States have put forward plans to reform their national insolvency legislation. Even so, almost half of the EU countries still need to take the first steps in this direction. While the Commission has limited competency in this policy domain, the EESC urges it to use every means at its disposal to energise Member State finance ministers to act. In the opinion of the EESC, Member State progress is generally unsatisfactory.

1.9 The EESC fully endorses all the points made in the Communication in respect of insolvency law, subject of course to the detail of the laws ultimately put in place. These involve the formal recognition of non-fraudulent bankruptcies, early discharge from debts and reduction of legal restrictions, disqualifications and prohibitions with accelerated proceedings. The medium term target should be that proceedings take no more than twelve months.

1.10 The EESC believes that it is imperative that all Member States complete the revision of their insolvency laws with the least possible delay. In addition to changes in the law, it is vitally important that bankruptcies be handled expeditiously by the courts. The process needs to be well organised. These changes are the centre piece of the Second Chance programme.

1.11 Active support to businesses at risk is the second message contained in the Communication. It is not part of the Second Chance programme per se. Instead it is a programme designed to avoid bankruptcy and to preserve businesses and jobs. In section 4.0 a number of examples are given of business failures which could have been avoided. In this respect the thrust of the Communication is to head off avoidable failures through early warning, the provision of temporary funding and the services of advisors.

1.12 This programme is not very practical for the generality of SMEs since there are few mechanisms for the pro-active identification of businesses at risk amongst the tens of thousands of SMEs in each Member State. Even so, Member States are encouraged to make the most of such possibilities as do exist, e.g. the French use of the VAT authorities to provide an early warning of possible company cash flow problems. The Commission says that support measures should focus on bankruptcy prevention, expert advice and timely intervention. The problem arises when directors do not realise that their business is at risk. Member State governments will need to work with the Accountancy profession and SME support organisation to develop such pro-active measures as are appropriate to their own SME culture.

1.13 It is clear that the most important recommendation in the Communication relates to the reform of Insolvency Law. This is the key measure without which the Second Chance programme will not get off the ground.

1.14 Some of the softer recommendations in the Communication can be implemented without changes to insolvency law. When the law has been changed, the other soft measures proposed by the Commission can be undertaken. Without changes in the Insolvency Law, the main point of the Commission's Communication will be missed.

1.15 The EESC believes that each Member State should respond to this Communication by including its proposals within its National plan for the Lisbon Strategy (guideline #15 applies).

2. **Introduction**

2.1 Since 2001 the Commission has been addressing the negative effects of business failure. In particular, it has flagged the need to improve bankruptcy procedures. Given its limited competence in this area the Commission has concentrated on collecting data on the legal and social consequences of business failure, facilitating the identification and dissemination of good practices and to working on early warning tools as a means of reducing the stigma of failure.

2.2 This has helped trigger reform across the EU. Many Member States have already drawn some inspiration from the good practices and policy conclusions collected at the European level. Around one third of Member States have put forward plans to reform their national insolvency legislation. However, almost half of the EU countries still need to take the first steps in this direction. Even though the Commission has limited competency in this policy domain, the EESC urges it to use every means at its disposal to energise Member State finance ministers to act. In the opinion of the EESC, Member State progress is generally unsatisfactory.

TABLE A: CURRENT SITUATION IN MEMBER STATES

Y	Measures exist	(Y)	Measures planned/available partially	N	No measures exist

	Information/ education	Overall strategy	Publicity when non-fraudulent Court decision	Reduced restrictions, etc	Better legal treatment for honest bankrupts	Short discharge period and/or debt relief	Streamlined proceedings	Stimulate support	Foster links	Discussion within financial sector	Total Y + (Y)
Belgium	N	N	(Y)	(Y)	Y	(Y)	N	N	N	N	4
Bulgaria	N	N	N	N	N	N	N	N	N	N	0
Czech Republic	N	N	N	N	N	N	(Y)	N	N	N	1
Denmark	N	N	N	Y	(Y)	Y	(Y)	N	N	N	4
Germany	(Y)	N	N	Y	Y	(Y)	N	N	N	N	4
Estonia	N	N	N	N	N	(Y)	(Y)	N	N	N	2
Ireland	N	N	N	N	N	Y	Y	N	N	N	2
Greece	N	N	N	Y	(Y)	(Y)	Y	N	N	N	4
Spain	N	N	N	N	Y	Y	Y	N	N	N	3
France	N	N	N	N	(Y)	N	Y	N	(Y)	N	3
Italy	N	N	N	Y	Y	(Y)	(Y)	N	N	N	4
Cyprus	N	N	(Y)	(Y)	N	(Y)	(Y)	N	N	N	4
Latvia	N	N	N	N	N	N	(Y)	N	N	N	1
Lithuania	N	N	N	Y	(Y)	Y	(Y)	N	N	N	4
Luxembourg	N	N	N	N	N	N	N	Y	N	N	1
Hungary	N	N	N	N	N	N	N	N	N	N	0
Malta	N	N	N	(Y)	(Y)	N	N	N	N	N	2
Netherlands	(Y)	N	N	N	(Y)	(Y)	N	N	N	(Y)	4
Austria	N	(Y)	N	(Y)	(Y)	(Y)	Y	(Y)	(Y)	N	7

	Information/ education	Overall strategy	Publicity when non-fraudulent Court decision	Reduced restrictions, etc	Better legal treatment for honest bankrupts	Short discharge period and/or debt relief	Streamlined proceedings	Stimulate support	Foster links	Discussion within financial sector	Total Y + (Y)
Poland	N	N	N	N	(Y)	(Y)	Y	N	N	N	3
Portugal	N	N	N	N	N	N	N	N	N	N	0
Romania	N	N	N	(Y)	(Y)	N	Y	N	N	N	3
Slovenia	N	N	N	N	N	(Y)	N	N	N	N	1
Slovakia	N	N	N	N	N	N	N	N	N	N	0
Finland	N	N	N	Y	N	(Y)	Y	Y	N	N	4
Sweden	N	N	N	N	Y	(Y)	Y	N	N.	N	3
United Kingdom	N	N	Y	Y	Y	Y	Y	N	N	N	5
Total Y+(Y)	2	1	3	12	15	17	17	3	2	1	
United States	N	N	N	Y	(Y)	Y	Y	N	N	N	4

2.3 Table A is taken from the Communication. Columns 4 to 6 relate to reform of insolvency laws. It is very obvious that the Member States are very active in respect of legislation while at the same time it also shows that very few countries have put revised laws into effect. If the totals under the columns related to legislation in effect, then they would not be 12, 15, 17, 17 but rather 6, 6, 5, 10. This is a poor result from 27 Member States. Slow action or inaction is undoubtedly damaging entrepreneurial activity in Member States because until the necessary changes are made, the possibility of failure is an important barrier to enterprise.

2.4 Another feature of the table is that the six columns which surround the columns related to legislation are more or less blank. This is somewhat surprising because even though the insolvency legislation has not been changed in most Member States, the other softer measures could nevertheless be undertaken.

2.5 In order to provide a comparator, the EESC has asked the Commission to provide data for the USA equivalent to that given in the table for the EU States. The following is the explanation of the US entry on the chart:

— Reduced restrictions –Y- In the US none of the more common restrictions found in the EU (e.g. preventing a bankrupt from becoming a director of as company, preventing a bankrupt from being a trustee, and establishing some sort of credit limit for a bankrupt) apply. In fact, section 525 of the US Bankruptcy Code provides that individuals may not be discriminated against solely on the ground that they are or have been the subject of bankruptcy proceedings.

— Better legal treatment –(Y)- Like other EU countries, no discharge is granted in case of misconduct, fraudulent behaviour, etc. No other extra 'better treatment' exists.

— Short discharge –Y- There is no specified period during which the bankrupt retains the status of bankrupt before being discharged.

— Streamlined proceedings –Y- The most common form of bankruptcy procedure used by individuals is the Chapter 7 relating to liquidation or bankruptcy. Generally the process takes 3-4 months to finalise. As a safeguard against multiple filings, Chapter 7 cannot be used by any individual who has already used it in the previous 6 years.

2.6 The US Code exhibits a completely different mind set from that which pertains in most, if not all, Member States. The legal standpoint of most Member States at the moment shows how far this issue is just not understood. The time being taken to change insolvency laws reveals that, in the vernacular, the EU just does not 'get it'. A change of mind set will accelerate the introduction of new laws. Equally, without such a change the softer measures will never get off the ground.

2.7 In the 19th Century the stigma of business failure was such that it drove failed entrepreneurs to suicide. While there are fewer suicides in the 21st Century, the social stigma remains. EU citizens need to see entrepreneurs as doing something very worth while, even when they fail. Some failure is inevitable. A little less than three quarters (73,0 %) of the 931 435 enterprises that were born in 1998 within the business economies of Spain, Finland, Italy, Luxembourg, Sweden and the United Kingdom survived two years. Slightly less than half (49.1 %) of the same cohort of enterprises survived five years through to 2003.

2.8 The Commission is right to assert that business creation, business success and business failure are each inherent in the market economy. It correctly highlights that as part of the general lack of societal appreciation and understanding of entrepreneurship, events such as business distress or business failure are neither sufficiently understood as a normal economic development nor seen as an opportunity for a fresh start. The EU must change its mind set. The more the stigma of failure attaches to a former bankrupt, the more at risk any new venture may be, and this risk attaches itself to all the stakeholders in the enterprise.

2.9 The US laws seek to balance the interests of debtors, creditors and society as a whole. It is the Opinion of the EESC that Member State laws should be drafted to achieve the same balance. As is described in Section 4 below, insolvency and the non payment of debts can create enormous difficulties for creditors and drive them in their turn into insolvency. Stripping the debt out of a company to give it a chance to restart can be most unfair on creditors. Insolvency laws need to strike the right balance.

2.10 From the point of view of society in general, keeping all or part of the enterprise in business may be the best solution. If the company is potentially viable, then all the stakeholders will benefit.

2.11 Employees' interests are served in a number of ways. In the event of an insolvency, Member States have implemented the Insolvency Directive which provides for payments to the work force. If an insolvent company can be rescued by the insolvency practitioners, then employees will continue to be employed. If a bankrupt entrepreneur goes back into business, then he creates new employment. Employment in any of these ways clearly serves society at large.

3. **Gist of the Communication from the Commission**

3.1 *Public image, education and the media*

3.1.1 The first step to tackle the negative effects of business failure is to publicly discuss it. In the EU the general public often perceives bankruptcy as a criminal affair, no matter the cause. The media have a positive role to play in tackling this misperception. The lessons to be learnt are as follows:

(a) The benefits of a fresh start should be put forward in information campaigns and education programmes, showing that making several attempts goes hand in hand with a normal learning process, research and discovery.

(b) The media can play a role in disassociating bankruptcy and fraud and disseminating the benefits of renewed entrepreneurship, thus improving the image of business restarters amongst the public at large and highlighting the value of their experience.

(c) Further discussing the issue with all relevant actors should help uncover the many facets of stigma surrounding business failure.

3.2 *The role of insolvency law*

3.2.1 Making a fresh start after bankruptcy can be challenging from a legal standpoint. In many countries bankruptcy law treats everyone in the same way irrespective of whether the bankrupt was fraudulent or irresponsible or whether the failure was through no obvious fault of the owner or the manager, i.e. honest and above board.

3.2.2 Numerous rules impose restrictions, prohibitions and disqualifications on bankrupts solely on the basis of the existence of bankruptcy proceedings. This automaticity of approach

takes no account of the risks that are an everyday fact of business life and implies a belief that a bankrupt is someone in whom society can have no trust or confidence. A radical shift in the rationale of insolvency laws is needed in the EU. The main points are as follows:

(a) It is vital to create the right framework which, while protecting all parties' interests appropriately, recognises the possibility for an entrepreneur to fail and start again. Bankruptcy law should include a clear distinction between non-fraudulent and fraudulent bankrupts.

(b) Entrepreneurs who go bankrupt through no fault of their own should be entitled to receive a formal court decision declaring them non-fraudulent and excusable. The decision should be publicly accessible.

(c) An early discharge from remaining debts subject to certain criteria should be provided for in insolvency law.

(d) Legal restrictions, disqualifications or prohibitions should be reduced.

(e) Legal proceedings should be made simpler and faster, thus maximising the value of the assets in a bankruptcy estate prior to the reallocation of the assets. Typically, proceedings should last a maximum of one year.

3.3 *Active support to businesses at risk*

3.3.1 The stigma of business failure is one reason why many SMEs in financial trouble conceal their problems until it is too late. Timely action is crucial to avoid bankruptcy and a rescue is in many cases, preferable to liquidation. The main lessons are:

(a) The number of insolvencies cannot be reduced to zero, but early support for viable enterprises will keep insolvencies to a minimum. Support measures should focus on bankruptcy prevention, expert advice and timely intervention.

(b) Attention needs to be paid to the accessibility of support, as businesses at risk cannot afford expensive advice.

(c) The networking opportunities provided by the EU and European business organisations should be fully exploited.

(d) Insolvency laws should provide an option to restructure and rescue rather than focus solely on liquidation.

3.4 *Active support to entrepreneurs restarting after failure*

3.4.1 The main constraints that entrepreneurs face when setting up a second venture — resources, skills and psychological support — are not sufficiently addressed by public support. In general, fresh starts are deterred because of the lack of resources to set up a new business, notably of financial means. The lessons to be learnt are that:

(a) Relevant authorities should devote sufficient financial means to fresh starts by removing barriers to public finance schemes for start-ups.

(b) Banks and financial institutions should reconsider their very cautious attitude towards restarters, often based on negative credit ratings. The Commission plans to put this issue on the agenda of the Round Table of Bankers and SMEs.

(c) EU countries should ensure that the names of non-fraudulent bankrupts do not appear on lists restricting access to loans in the banking sector.

(d) Those responsible for public procurement should be aware that public procurement directives do not allow for former non-fraudulent bankrupts to be disadvantaged.

(e) Adequate psychological and technical support and specific training and coaching should be available for restarters.

(f) Relevant authorities should fuel links between potential restarters and customers, business partners and investors so that the needs of the restarters may be supported.

3.5 In conclusion, good national framework conditions for entrepreneurship are crucial to the full exploitation of the EU's entrepreneurial potential and to the creation of dynamic companies. The societal appreciation of successful entrepreneurship, vital to this end, should go hand in hand with a policy of promoting a second chance for entrepreneurs who have failed.

4. **General Remarks**

4.1 The EESC endorses the emphasis placed by the Commission on the need to overcome the stigma of business failure. The Commission is correct to assert that business creation, business success and business failure are each inherent in the market economy. It correctly highlights that as part of the general lack of societal appreciation and understanding of entrepreneurship, events such as business distress or business failure are neither sufficiently understood as a normal economic development nor seen as an opportunity for a fresh start.

4.2 Even so, the EESC is of the opinion that while much of the guidance embodied in the Communication is indispensable, parts of it do not seem very credible. The Committee's reservations are highlighted at various points in sections 4 and 5 of the Opinion.

4.3 The purpose and goal of entrepreneurial activity is to create a business which is both profitable and scaleable. Entrepreneurs innovate to satisfy customer needs which are either not being satisfied, or not being satisfied in the most efficient way.

4.4 An entrepreneur may identify a trading opportunity. For example, a London entrepreneur saw the opportunity for an import/export business between the UK and India, meeting needs in both countries. It filled a gap in the market. Other entrepreneurs fill gaps in the market by, for example, opening restaurants or hairdressing salons in communities that are not well provided for.

4.5 Amazon is a prime example of meeting needs in a more efficient way. Bookshops survive for those who have the time and inclination to browse. Amazon meets the needs of a different sector of the book-buying public.

4.6 Some entrepreneurs start a business to exploit advances in science and technology. Such businesses are often spin-outs from universities, research institutes or science based companies. Four London University professors have founded a company to provide image analysis services using proprietary software to improve the ways in which the therapeutic effect of drugs under development can be measured. Software IP is at the heart of this business. One of the professors has been appointed MD and he is in the process of finding out whether or not he is an entrepreneur.

4.7 In order to succeed, the entrepreneur needs three things above all else. First, he or she must have the necessary knowledge and experience to correctly assess the market opportunity and the know-how to make a reality of the business proposition, whether it is a new restaurant, an on-line travel service or a breakthrough in the application of science. The first step in any enterprise is to prove the proposition — 'make it real'. It means developing a product or service to the point where there are customers willing to pay the price which is necessary for the business to make profits and pay its way. Many would-be entrepreneurs fail at this point. Some can learn from their mistakes and start again. Others will never learn.

4.8 The second requirement is funding. Some start-up enterprises are sufficiently attractive to venture capitalists from the beginning. Most venture capitalists will not get involved until the entrepreneur has made the proposition 'real'. We do now have the risk capital scheme proposed by the EIB but, again, its capacity will be limited. Funding usually becomes available in tranches or rounds. If first phase funding produces good results, follow on funding is much easier to achieve.

4.9 More often than not, funding for the start up phase comes from family and friends. Bank loans are available, but the banks need security. If the business has no assets, banks take the assets of entrepreneurs as security. For the entrepreneur, family and friends, the crunch comes when they give personal guarantees. These guarantees will usually carry on beyond the start up phase because private companies will generally have to rely on the support of banks until the company goes public. If the bank calls in its guarantees, the entrepreneur may lose his or her home. In these circumstances tax and social security obligations can make the situation even worse.

4.10 In the Committee Opinions on 'Tax incentives for R&D' [1] we have encouraged Member States to give tax relief to private individuals who invest in start up companies. Clearly such tax incentives could make it easier for entrepreneurs to capitalise new businesses.

4.11 Beyond the start up phase, the entrepreneur depends on the third indispensable component of success, a viable business model. This is the key to scaling up the business. The model depends on a set of ratios which encapsulate the elements of the business. Sales less product costs give a gross margin which, after the deduction of expenses, leaves a profit before tax sufficient to service and pay down bank loans. When a business model is dysfunctional, or when the management does not have the skill or experience to manage sales etc. to make it work, then those who have provided the bank guarantees are liable to be bankrupted. Clearly such a bankruptcy is a learning experience. If the entrepreneur has learnt the imperatives of the business model, there may be scope to restart.

4.12 Previously successful business models are always threatened by change in staff, customers, markets, technologies and competitors. After successfully founding a business, the entrepreneurs will be continually tested by change, particularly in businesses involved with technology. Entrepreneurs who fail the test of change may learn from the experience. Others, particularly second or third generation owners, may not.

4.13 In making the business model work, the role of the entrepreneur and his team is paramount. In particular, financial management skills are indispensable. A good business can be too successful and overtrade so that it gets to the point where it cannot pay its bills. In this case it may be put into administration by its creditors. Such businesses may offer every possibility of a successful restart.

---

[1] OJ C 10, 15.1.2008.

4.14 Another financial trap can arise when a major customer defaults and fails to pay his bills, leaving the entrepreneur unable to pay his bills and the bank ready to foreclose. According to Commission statistics, one in four insolvencies is caused by late payment. In such a case, a restart may also be viable. The vulnerability of small and young companies is well recognised by both Member State governments and the Commission. The issue is addressed by the Late Payment Directive and will be covered again in the upcoming Small Companies Act.

4.15 Some companies fail through no fault of their own for reasons that could not have been anticipated such as the fall out from the 9/11 event or the impact of extreme weather conditions. Even so, with foresight, insurance could have softened the flow. Therefore organisations which support small businesses are encouraged to introduce entrepreneurs to the benefits which prudential instruments can provide.

4.16 In summary, there are many ways in which an enterprise can fail, even with the best intentioned entrepreneur. In the start up phase, it may not be possible to establish a viable enterprise. Beyond the start, a flawed business model may still mean that the company has no future. On the other hand, potentially viable companies can fail because of mistakes made by the entrepreneurs as well as for reasons right out of their control. Such companies can and should be saved by receivers with most of the jobs protected.

4.17 It is important to distinguish between the company and its directors. Directors may go bankrupt while a receiver is rescuing the company and its employees. When a company fails the entrepreneurs may well be bankrupted because of the bank guarantees which they have given, even though their personal conduct was not fraudulent. It is these non-fraudulent entrepreneurs with which the Commission is concerned. Others, who fail through incompetence and a lack of vision probably have little to offer the economy, even if they can find financial backers. Not all bankrupt entrepreneurs deserve a second chance.

5. **Specific Comments**

5.1 *Public Image, Education and the Media*

5.1.1 Clearly the most powerful message which Member State governments can give to the general public will follow from the changes to insolvency law. When the law clearly encourages a second chance for entrepreneurs, this will be reflected in media messages.

5.1.2 Governments can also work with organisations and institutions which work closely with entrepreneurial businesses. The most clearly involved institution is the accountancy profession, while representative organisations for SMEs and sole traders can also play a part.

5.1.3 The Communication mentions the idea of an award programme for successful restarters. If the organisations mentioned above would adopt such schemes, favourable media comment might follow.

5.2 *The role of insolvency law*

5.2.1 The EESC fully endorses all the points made in the Communication in respect of insolvency law, subject of course to the detail of the laws ultimately put in place. These points are detailed in section 3.2 above and involve the formal recognition of non-fraudulent bankruptcies, early discharge from debts and reduction of legal restrictions, disqualifications and prohibitions with accelerated proceedings. The medium term target should be that proceedings take no more than twelve months.

5.2.2 The EESC believes that it is imperative that all Member States complete the revision of their insolvency laws with the least possible delay. In addition to changes in the law, it is vitally important that bankruptcies be handled expeditiously by the courts. The process needs to be well organised. These changes are the centre piece of the Second Chance programme.

5.3 *Active Support to Businesses at Risk*

5.3.1 This is the second message contained in the Communication. It is not part of the Restart programme per se. Instead it is a programme designed to avoid bankruptcy and to preserve businesses and jobs. In this respect the thrust of the Communication is to head off avoidable failures through early warning, the provision of temporary funding and the services of advisors.

5.3.2 The only problem is that this programme is not very practical for the generality of SMEs since there are few mechanisms for the pro-active identification of businesses at risk amongst the tens of thousands of SMEs in each Member State. Even so, Member States are encouraged to make the most of such possibilities as do exist, e.g. the French use of the VAT authorities to provide an early warning of possible company cash flow problems. The Commission says that support measures should focus on bankruptcy prevention, expert advice and timely intervention. The problem arises when directors do not realise that their business is at risk. Member State governments will need to work with the Accountancy profession and SME support organisation to develop such pro-active measures as are appropriate to their SME culture.

5.3.3 The EESC does not underestimate the difficulties involved in providing such support. Government intervention to reverse market forces has the potential to be counter-productive and undermine market disciplines.

5.3.4 In public limited companies there is the double obligation that accounts are filed in a timely fashion and that the accountants and management certify that the company is a going concern, i.e. that it can pay its debts. The enforcement of such disciplines on all companies, especially the early filing of accounts, would improve the system of early warning alerts.

5.3.5 To the extent possible, the EESC welcomes this focus on businesses at risk since it offers the prospect of job preservation and continuity of employment.

5.4 *Active Support to Entrepreneurs Restarting after Failure*

5.4.1 Whereas between twelve and seventeen Member States have either changed or are changing their insolvency law, there is virtually no observed Member State activity in respect of this group of Commission recommendations.

5.4.2 The reason for this low level of activity is that, once again, a number of the proposal can be seen as running contrary to market forces. This is particularly true of the proposals that banks should be less than cautious and that relevant authorities should create support networks for restarting entrepreneurs.

5.4.3 It should be possible for the proposals which fall within the competence of Member State governments — public finance schemes, access to loans by non-fraudulent bankrupts and public procurement — to be implemented without too many problems even before the insolvency laws are changed.

5.4.4 It should also be possible for those who offer training to entrepreneurs to offer training to restarters as the demand emerges.

5.5 *Other Commission Proposals*

5.5.1 The EESC is pleased to endorse the new Commission website 'for a second chance policy' at: http//ec.europa.eu/sme2chance. It will be of particular help to organisations involved in supporting Member State 2nd chance policy initiatives.

5.5.2 In its 2009 SME Spring event the Commission will feature fresh start and other second chance issues. The EESC would expect that this initiative will give added impetus to the 'soft' elements of the Second Chance programme.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on International public procurement

(2008/C 224/06)

On 25 October 2007, Mr Jean-Pierre Jouyet, the French Minister of State with responsibility for European affairs, asked the European Economic and Social Committee, on behalf of the forthcoming French presidency of the Council, to draw up an opinion on:

International public procurement.

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 6 May 2008. The rapporteur was Mr Malosse.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 70 votes, with 2 abstentions.

1. **Recommendations**

1.1 The EESC urges the European Commission to be steadfast in pursuing its goals of further opening public procurement and to ensure that the principles of transparency, equal treatment, and social and ecological responsibility are respected.

1.2 In connection with the renegotiation of the GPA, the EESC recommends that the Commission oppose vigorously the protectionist practices of some of the countries party to the agreement.

1.3 With regard to public development aid, the EESC is in favour of a gradual and reciprocal abandonment of 'tied-aid' systems and considers that the key criteria for this must be effectiveness and transparency.

1.4 At European Union level, the EESC is in favour of more transparency and modern methods of procurement and notification of tenders. In this regard, the EESC will be opposed to any moves to raise the thresholds of the European directives which provide safeguards for transparency. The EESC supports the European Commission's communication, which aims to increase the transparency of public procurement procedures that fall beneath the thresholds of the directives.

1.5 The EESC is against the introduction of a quota system for SMEs like that applied under the US Small Business Act, but in favour of a 'roadmap' for European SMEs, particularly VSEs (very small enterprises), complete with concrete initiatives, a timetable and a multi-annual budget and channelled towards encouraging innovation and business start-ups, particularly in the key areas of energy efficiency and protection of the environment.

1.6 The roadmap could be made more effective and implemented more easily if it is accompanied by information systems that draw on SMEs as natural relay points, together with genuinely transparent and equitable consultation mechanisms and simple European legal instruments.

1.7 These concrete initiatives and arrangements should, wherever possible, apply the principle of 'putting the smallest first', for example, by establishing one-stop procedures for cutting red tape. This would enable administrative and technical procedures to be designed with the scale and characteristics of small businesses in mind and would also meet the objective of reducing the burden that falls on them.

2. **Presentation**

2.1 On behalf of the forthcoming French presidency of the European Union, the French Minister of State with responsibility for European Affairs sent an official letter asking the EESC to draw up an exploratory opinion on *International public procurement*.

2.1.1 The request refers explicitly to the ongoing negotiations on the revision of the WTO (World Trade Organisation) Agreement on Government Procurement (GPA), involving twelve countries ([1]) plus the European Union (there are also eighteen countries with observer status).

2.1.2 In this regard, in the autumn of 2007, the French government was concerned that the European Union was making an overly generous offer, given that some countries (USA, Korea, Japan) have clauses restricting access to certain of their public procurement markets to their own small and medium-sized enterprises.

2.2 The French position, backed by several Member States, was to ask either for better access to public procurement markets in these countries as part of a revised GPA, or for similar restrictions to be applied in favour of European SMEs in the European Union.

2.3 At present, the GPA concerns procurement thresholds similar to those that exist to meet the requirements set out in the EU's own internal directives ([2]), meaning that, in practice, enterprises from the 12 other signatory states of the GPA may take part in any public procurement within the European Union that is above these thresholds.

([1]) Canada, Korea, the United States, Hong Kong (China), Iceland, Israël, Japan, Liechtenstein, Norway, Aruba (The Netherlands), Singapore and Switzerland.

([2]) Directives 2004/18/EC and 2004/17/EC, of 31/3/2004.

2.4 The EESC has already stated its views on the opening-up of public procurement markets in the European Union. In particular, it has deplored the low level of cross-border involvement in public procurement on the part of enterprises in the European Union ([3]).

3. **At international level**

3.1 At international level, the European Union's markets could be classed as particularly open to international competition. The same goes for a growing number of procurement contracts funded by the European Union under development aid (the EU is the world's foremost donor). However, the EESC regrets the existence of a practice in the Member States whereby the obtention of development aid is made dependent on the award of contracts to businesses from the donor country ([4]).

3.2 As well as making widespread use of 'tied aid' programmes, some of our partners have also introduced protection systems of various kinds (such as the 'Buy American' scheme and 'Small Business Act' in the USA). The opening of international public procurement markets must be seen as advantageous for the EU, in view of the fact that many of its enterprises, including SMEs, are global leaders in the fields of construction, public works, alternative energies and environmental protection.

3.3 As well as measures to support SMEs, America's 'Small Business Act' also includes a provision which reserves 25 % of federal public procurement for American SMEs.

3.4 With regard to the renegotiation of the Government Procurement Agreement (GPA), the EESC considers that, although the principle of reciprocity needs to be highlighted, the EU should not adopt protectionist measures similar to those of our competitors, since this would not help achieve the overall objective the EU must have of opening markets.

3.5 Moreover, this objective must apply not only to the signatories to the GPA but also to other countries where procurement procedures are particularly lacking in transparency and generally closed to European enterprises.

3.6 The idea of temporarily excluding from the GPA public procurement financed from European funding for countries that maintain national protection schemes is an interesting one which the EESC has already put forward in previous opinions.

3.7 The EESC emphasises that the issues of concern for the environment and the minimum social standards established by the ILO Conventions (and collective inter-sectoral, sectoral and company agreements concluded by the social partners and applicable in the countries concerned) must be taken into account in the negotiations, particularly with respect to bilateral agreements with countries which have not ratified the Kyoto Protocol or the ILO Conventions, or which fail to apply them or apply them poorly.

([3]) OJ C 287, 22/9/1997.

([4]) Tied aid: Annamaria La Chimia 'Effectiveness and legality issues in development and procurement for EU Member States', European Current Law, March 2008.

4. **In the European Union**

4.1 Drawing on the example of America, the European Commission has announced that it may introduce a European version of the 'Small Business Act', which, without offering specific public procurement quotas for SMEs as in the USA, would nonetheless give SMEs easier access to public contracts and, more generally, would propose concrete measures to support SMEs.

4.2 The question of introducing quotas for SMEs is irrelevant in Europe, since (according to 2005 sources) enterprises categorised as SMEs under EU terminology currently account for around 42 % (according to the European Commission) of the total volume of public procurement in the EU ([5]).

4.3 Within the EU, the European dimension of public procurement needs to be developed in order to make the most effective use of public money. Despite a significant increase in contracts awarded to enterprises from other EU countries, businesses are complaining of a lack of transparency and a shortage of appropriate information that would enable them to take part in cross-border procurement markets, particularly those that fall beneath the thresholds for the application of the European directives requiring Europe-wide publication. Entrepreneurs are also complaining that the European directives are made more difficult by the transposition procedures, which are not always transparent (deadlines and delays) and often result in the accretion of additional layers of specific national regulations. The Committee recognises the need for regulations on public procurement, but calls for more transparency and legal certainty.

4.4 The EESC believes that thresholds, beyond which principles of openness, transparency and notification apply, are the best possible way of ensuring that economic players, particularly very small enterprises (VSEs), can take part in public procurement procedures. Within the EU itself, it is the procurement procedures situated below these thresholds, where the principles of equal treatment and non-discrimination on the grounds of nationality ought nonetheless to apply, that are the subject of numerous complaints by SMEs because of lack of openness.

4.5 Although European entrepreneurs' federations are not in favour of establishing 'American-style' quotas, they do acknowledge the importance of a proactive support policy, particularly with regard to procurement contracts below the thresholds of the EU directives and contracts relating to new technology, energy efficiency or protection of the environment.

4.6 The EESC strongly supports a 'roadmap' for European SMEs, setting out a series of **specific and binding provisions and accompanied by a timetable and a funding plan**. This would build on the twenty years of European policy in support of small enterprises, particularly the European Charter for Small Enterprises adopted at the June 2000 European summit in Santa Maria de Feira and the conclusions of the Stuttgart Conference on Craft and Small Enterprises in April 2007.

([5]) OJO C 241, 7/10/2002.

4.7 The most appropriate measures might include:

4.7.1 *Legislative proposals with a timetable for adoption:*

— A code of conduct for public authorities awarding contracts, which would foster an interest in making it possible for the smallest SMEs to take part in public procurement awards as well as encouraging good practices with regard to the simplification and dematerialisation of procedures.

— Single European measures like the Community patent or the European statute for small and medium enterprises (Own-initiative opinion of the European Economic and Social Committee on a 'European Company Statute for SMEs', 21 March 2002) which aim to simplify the European Union's legal framework and develop a 'European identity' for enterprises.

— Strengthening the Directive on payment deadlines, as the EESC has urged ([6]).

4.7.2 **Information mechanisms on public procurement with a timetable for their implementation**:

— Supporting and developing information and mediation systems on cross-border public procurement and creating links between enterprises by making effective use of the new Enterprise Europe network and by supporting local initiatives from SME associations.

— Supporting pilot projects relating to electronic procurement, enterprise networks, information portals and one-stop-shops on cross-border public procurement, based on existing structures recognised by the economic actors concerned.

4.7.3 *Properly funded initiatives at European level*

— Introducing a financial engineering scheme encouraging SMEs to take part in public procurement, in the shape of guarantee and surety funds and credit insurance, and using the European Structural Funds for this purpose.

— Launching European training and pilot programmes for SMEs to encourage energy efficiency and protection of the environment (particularly in the construction sector). This new provision could draw on the unused EU funds which are paid back to the Member States each year.

— Extending the mechanisms for promoting the participation of SMEs to the European Union's research programmes and initiatives (feasibility subsidies and cooperative research) and encouraging the Member States to put the same kind of mechanisms in place at national level, particularly in sectors linked with new technologies, including the defence and health sectors.

4.7.4 **Consultation and mediation procedures**:

— Lastly, reviewing the European Commission's consultation and evaluation procedures, which often fail to take account of the reality of Europe's actual economic fabric, which is largely composed of SMEs, by consolidating the SME impact assessments, making more systematic use of EESC exploratory opinions and relying more on the organisations representing civil society.

— Strengthening the Enterprise Europe network, which has over 600 contact points across the EU in existing local structures recognised by local economic actors, and the enterprises involved in it, so as to develop a real Europe-wide network for alerting and providing mediation and support for small and medium enterprises.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([6]) OJ C 407, 28/12/1998.

Opinion of the European Economic and Social Committee on the

— **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Part one**

— **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part two**

— **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part three**

— **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part four**

COM(2007) 741 final — 2007/0262 (COD)

COM(2007) 824 final — 2007/0293 (COD)

COM(2007) 822 final — 2007/0282 (COD)

COM(2008) 71 final — 2008/0032 (COD)

(2008/C 224/07)

On 21 January 2008, 24 January 2008 and 4 March 2008, the Council decided to consult the European Economic and Social Committee on the:

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Part one

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part two

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part three

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part four

On 11 December 2007, 15 January 2008 and 11 March 2008, the Bureau of the European Economic and Social Committee instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pezzini as rapporteur-general at its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), and adopted the following opinion unanimously.

1. **Conclusions and recommendations**

1.1 The Committee welcomes the introduction of the regulatory procedure with scrutiny into the comitology system and the alignment to this procedure of the four proposed packages of directives and regulations.

1.2 The Committee notes that the urgent amendment of some acts proposed by the Commission ([1]) is in line with Decision 2006/512/EC and the joint statement concerning both the list of acts to be adjusted as quickly as possible and the repeal of time limits on the exercise of the Commission's implementing powers.

1.3 The Committee recommends that the regulations aligning certain acts to Decision 2006/512/EC be adopted in good time, before the Treaty of Lisbon enters into force.

1.4 Indeed, the Committee points out that the Lisbon Treaty introduces a new legislative hierarchy, distinguishing between legislative, delegated and implementing acts; the European Parliament and the Council are to have equal powers as regards establishing the procedures for scrutinising such acts.

1.5 The Committee stresses the importance of:

— fully involving the EP;

— streamlining and simplifying the procedures;

— keeping the EP more informed, both on the committees and on the measures that come before them at all stages of the procedure; and

— confirming the repeal of time limits on implementing powers, which are included in some acts, governed by the co-decision procedure and the Lamfalussy process.

1.6 The Committee stresses the importance of comitology procedures being as transparent as possible and more accessible to people living in the EU, especially those affected by these acts.

1.7 The Committee highlights the need to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as close as possible to the people, while information must be fully accessible to the public and civil society.

1.8 Finally, the Committee calls for the impact of implementing the new procedure to be assessed; a periodic report should be presented to the European Parliament, the Council and the Committee regarding effectiveness, transparency and the dissemination of information.

([1]) COM(2006) from 901 final to 926 final.

2. **Introduction**

2.1 On 17 July 2006 ([2]), the Council amended the decision laying down the procedures for the exercise of implementing powers conferred on the Commission ([3]), adding a new *regulatory procedure with scrutiny*. This procedure will allow the legislator to oppose the adoption of quasi-legislative measures, namely measures of general scope 'amending' non-essential elements of basic instruments adopted by co-decision, if it considers that the draft exceeds the implementing powers provided for in the basic instrument, is incompatible with the aim or the content of that instrument or fails to respect the principles of subsidiarity or proportionality.

2.2 This measure is typical of comitology, which refers to the procedures through which the Commission, in accordance with Article 202 of the EC Treaty, executes the powers conferred upon it to implement Community *legislative acts*, i.e. acts adopted by the Parliament and Council, or by the Council alone, under one of the decision-making procedures laid down by the EC Treaty (consultation, co-decision, cooperation and assent).

2.3 The five comitology procedures (consultation, management, regulation, regulation with scrutiny and safeguard) are regulated by Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, and oblige the Commission to submit draft implementing measures to a committee made up of Member State officials.

2.4 In October 2006, the European Parliament, the Council and the Commission adopted a joint statement ([4]), containing a list of legal instruments already in force to be given priority for adjustment under the new procedure. The statement also welcomed the adoption of Council Decision 2006/512/EC, which provided for the inclusion in Decision 1999/468/EC of a new procedure, known as the *regulatory procedure with scrutiny*, which enables the legislator to scrutinise the adoption of *quasi-legislative* measures implementing an instrument adopted by co-decision.

2.5 Without prejudice to the rights of the legislative authorities, the Parliament and Council recognise that the principles of good legislation require that implementing powers be conferred on the Commission without any time-limit. However, where an adaptation is necessary, the European Parliament, the Council and the Commission consider that a clause requesting the Commission to submit a proposal to revise or abrogate the provisions concerning the delegation of implementing powers could strengthen the scrutiny exercised by the legislator.

([2]) Decision 2006/512/EC (OJ L 200, 22.7.2006).
([3]) Decision 1999/468/EC (OJ L 184, 17.7.1999).
([4]) OJ C 255, 21.10.2006.

2.6 Following its entry into force, this new procedure will apply to the quasi-legislative measures provided for in instruments adopted in accordance with the co-decision procedure, including those provided for in instruments to be adopted in future in the financial services field (Lamfalussy instruments ([5])).

2.7 However, for the new procedure to be applicable to instruments adopted by co-decision which are already in force, those instruments must be adjusted in accordance with the applicable procedures, so as to replace the regulatory procedure laid down in Article 5 of Decision 1999/468/EC by the regulatory procedure with scrutiny, wherever there are measures which fall within its scope.

2.8 In December 2006, the Commission adopted the 25 proposals ([6]) concerned, on which the Committee expressed its views ([7]).

2.8.1 Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 of the Treaty, provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures are to be adopted in accordance with the regulatory procedure with scrutiny.

2.8.2 The Commission representative thus submits a draft of the measures to be taken to a Regulatory Procedure with Scrutiny Committee, composed of representatives of the Member States and chaired by the Commission representative.

2.8.3 If the measures envisaged by the Commission are in accordance with the opinion of the committee, the following procedure is to apply:

— 'the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;

— the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition; (…)

— if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

— if, on expiry of that period, neither the European Parliament nor the Council has opposed the draft measures, the latter shall be adopted by the Commission.'

2.8.4 If the measures envisaged by the Commission are not in accordance with the opinion of the committee, or if no opinion is delivered, the following procedure is to apply:

— 'the Commission shall without delay submit a proposal relating to the measures to be taken to the Council and shall forward it to the European Parliament at the same time;

— the Council shall act on the proposal by a qualified majority within two months from the date of referral to it;

— if, within that period, the Council opposes the proposed measures by a qualified majority, the measures shall not be adopted. In that event, the Commission may submit to the Council an amended proposal or present a legislative proposal on the basis of the Treaty;

— if the Council envisages adopting the proposed measures, it shall without delay submit them to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures for scrutiny by the European Parliament;

— the European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal, may oppose the adoption of the measures in question, justifying their opposition by indicating that:

  — the proposed measures exceed the implementing powers provided for in the basic instrument;

  — the proposed measures are not compatible with the aim or the content of the basic instrument; or

  — do not respect the principles of subsidiarity or proportionality;

— if, within that period, the European Parliament opposes the proposed measures, the latter shall not be adopted. In that event, the Commission may submit to the committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

— if, on expiry of that period, the European Parliament has not opposed the proposed measures, the latter shall be adopted by the Council or by the Commission, as the case may be.'

2.9 The proposed regulations under review here, are prompted by the need to adapt existing legislation to the procedure laid down in Article 251 of the Treaty, in accordance with the applicable procedures in the areas of: agriculture;

([5]) The so-called Lamfalussy approach is a decision-making process which applies to the adoption and implementation of Community legislation on financial services (securities, banking and insurance). Specifically, it sets out a four-level approach to decision-making:
  — level one involves traditional legislative activity (adoption of regulations and directives under the co-decision procedure). Before presenting a legislative proposal in the field of securities, the Commission consults the European Securities Committee (ESC), which comprises representatives of each Member State;
  — level two has regard to the implementing measures executed by the Commission, on the basis of the delegation contained in the legislative act, in line with the regulatory procedure (now the regulatory procedure with scrutiny). On the basis of a technical opinion from the Committee of European Securities Regulators (CESR), comprising representatives of the national regulatory and supervisory authorities for the sector, the Commission prepares a draft implementing measure to submit to the European Securities Committee (ESC), which then gives its opinion;
  — at level three, the CESR coordinates, informally, the activities of the national regulatory and supervisory authorities for the securities sector, with the aim of ensuring consistent, uniform implementation of the measures adopted at the first two levels;
  — level four involves the legislative and administrative implementation of EU legislation by the Member States, overseen by the European Commission.

([6]) COM(2006) from 901 final to 926 final.

([7]) Opinion CESE 418/2007, 14.3.2007, rapporteur: Mr Retureau.

employment; humanitarian aid; enterprise policy; environment; European statistics; internal market; consumer health and protection; energy and transport; and the information society.

3. **The Commission proposals**

3.1 The Commission proposals amend regulations and directives ([8]) subject to the procedure referred to in Article 251 of the Treaty to bring them into line with the new procedures established by Council Decision 1999/468/EC, as amended by Decision 2006/512/EC.

3.2 In general, in line with the priorities of Community policy on Better Regulation ([9]), this entails adapting and updating the instruments in question as necessary so that they can be properly implemented, in accordance with Article 251 of the TEC.

4. **General comments**

4.1 The Committee fully endorses the distinction made between legislative and implementing instruments, which, in line with the Lisbon Treaty, will lead to a new definition of delegated acts, making it possible to simplify and streamline Community law-making and regulation ([10]), preserving a system of Parliamentary democratic scrutiny of the Commission's implementing powers.

4.2 The Committee therefore welcomes the introduction of the regulatory procedure with scrutiny into the comitology system, enabling the Council and the Parliament to scrutinise and, where appropriate, amend the Commission's implementing regulations when the legislative act recognises the Commission's right to exercise implementing powers in some areas, without authorising it to make substantive amendments.

4.3 The Committee recommends that the regulations aligning the four packages of directives and regulations to Decision 2006/512/EC be adopted in good time, before the Treaty of Lisbon enters into force.

4.4 Indeed, the Committee points out that the Lisbon Treaty introduces a new legislative hierarchy, distinguishing between legislative, delegated and implementing acts ([11]) while preserving existing terminology (directives, regulations, decisions): the European Parliament and the Council are to have equal powers as regards establishing the procedures for scrutinising delegated and implementing acts (comitology) ([12]).

4.5 The Committee stresses the importance of:

— fully involving the EP, which would in the last instance have the right to reject a decision;

— reducing the number and complexity of comitology procedures;

— keeping the EP more informed, both on the committees and on the measures that come before them at all stages of the procedure;

— a consultation procedure for the Council to consult the EP when a draft implementing act is referred to the Council following a dispute within the Commission/committee of experts;

— an EP-Council consultation procedure to be followed where the EP has issued a negative opinion, giving the EP a greater role;

— confirming the repeal of time limits on implementing powers, which are included in some acts, governed by the co-decision procedure and the Lamfalussy process.

4.6 The Committee stresses, as it has in the past, that 'comitology procedures, involving only representatives of the Commission and Member State governments and tasked, according to the nature of the committee established, with the management, consultation or regulation flowing from the follow-up and implementation of legislative acts, should be more transparent and accessible to people living in Europe and especially to those affected by these acts' ([13]).

4.7 In this connection the Committee highlights the need to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as close as possible to the people, thus ensuring that Community acts are as transparent and accessible as possible for all members of the public and civil society.

4.8 Lastly, the Committee believes that the impact of implementing the new procedure needs to be assessed; a periodic report should be submitted to the European Parliament, the Council and the Committee regarding effectiveness, transparency and the dissemination of user-friendly information which is accessible to all on delegated Community acts, so that this operation, which combines regulation and actual implementation, can be monitored.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([8]) Cf. COM(2007) 740 final, p. 6, General list.

([9]) Cf. Opinion 1068/2005 of 28.9.2005, rapporteur: Mr Retureau, and Opinion CESE 1069/2005 of 6.10.2005, rapporteur: Mr Van Iersel.

([10]) Cf. EP report on the Treaty of Lisbon of 18/02/2008, rapporteurs: Íñigo Méndez De Vigo (EPP/DE, ES) and Richard Corbett (PES, UK).

([11]) Articles 249-249d of the TFEU.

([12]) Articles 249b and 249c of the TFEU.

([13]) Opinion OJ C 161 of 13.7.2007, p. 48, rapporteur: Mr Retureau.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Codified version)

COM(2008) 98 final — 2008/0037 (COD)

(2008/C 224/08)

On 22 April 2008, the Council of the European Union 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 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (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 445th plenary session of 28 and 29 May 2008 (meeting of 29 May), by 80 votes and 3 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 29 May 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Green paper: Towards a new culture for urban mobility

COM(2007) 551 final

(2008/C 224/09)

On 25 September 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

Green paper: Towards a new culture for urban mobility

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 8 May 2008. The rapporteur was **Mr Hernández Bataller** and the co-rapporteur was **Mr Barbadillo López**.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion unanimously.

1. **Conclusions and recommendations**

1.1 The EESC considers that urban mobility policy should prioritise in particular urban planning, the information society and information technologies, good practice, especially involving the creation of public areas for pedestrians and cyclists, and an integrated approach to infrastructure.

1.2 The EESC offers its support to the Commission and hopes that it will boost Community measures for mobility, in particular to prioritise public transport with a high level of quality and protection for passengers, and promoting cycling and walking.

1.3 This will require planning towns and cities in an appropriate and compact manner and restricting demand for private, motorised transport, on the basis of consistent, rational spatial and urban planning.

1.4 The EESC considers that, regardless of any other type of measure adopted, Directive 85/377/EEC and Directive 2001/42/EC should be amended in the form set out in this opinion.

1.5 The EESC endorses the use of 'green purchases' for procurement relating to infrastructure funded by European programmes, and calls for the removal of existing obstacles.

1.6 Creating a European Observatory on Sustainable Urban Mobility would bring added value, as it could gather data and facilitate the exchange of experiences.

1.7 The EESC believes that there should be general legislation at European level for the harmonisation of criteria for calculating charges and statistical data.

2. **Introduction**

2.1 Both within and outside urban areas, the last few years have witnessed a generally strong growth in traffic and often a dramatic change in the modal split, with car journeys constantly on the increase and those by public transport constantly declining in relative or absolute terms.

2.2 In 2006, when it presented the mid-term review of the White Paper on Transport ([1]), the European Commission announced its intention to draw up a green paper on urban transport. It has conducted a broad public consultation over the last few months, on which the EESC has also expressed its views ([2]).

2.2.1 The EESC considers that Community action in the field of urban mobility is needed and would prove useful, and that adopting decisions at Community level ([3]) provides European added value that could cover a wide range of both binding and non-binding measures.

3. **The substance of the Green paper: Towards a new culture for urban mobility**

3.1 The consultation process conducted by the Commission has confirmed certain strong expectations for the formulation of a genuine European urban mobility policy.

3.2 Rethinking urban mobility involves optimising the use of all the various modes of transport and organising 'co-modality' between the different modes of collective transport (train, tram, metro, bus, taxi) and the different modes of individual transport (car, cycle, walking, etc.).

3.3 Urban mobility is recognised as an important facilitator of growth and employment with a strong impact on sustainable development in the EU.

3.4 European added value may take various forms: promoting the exchange of good practice at all levels (local, regional or national); underpinning the establishment of common standards and the harmonisation of standards if necessary; offering financial support to those who are in greatest need of such support; encouraging research, the applications of which will make it possible to bring about improvements in mobility safety and the environment; simplifying legislation and, in some cases, repealing existing legislation or adopting new legislation.

3.5 The Green Paper, by means of 25 questions, deals with how to confront the challenges of creating free-flowing cities, greener cities, smarter, more accessible, safe, secure urban transport, and a new culture of urban mobility and the resources needed to achieve it. Unfortunately the Commission does not put forward a range of specific vertical and horizontal measures for urban transport.

4. **Responses to the Green Paper**

This opinion will aim to respond to all the questions put by the Commission.

4.1 Question 1: *Should a 'labelling" scheme be envisaged to recognise the efforts of pioneering cities to combat congestion and improve living conditions?*

4.1.1 The EESC considers that a labelling scheme could be set up, taking account of existing systems and displaying compatibility with them.

4.1.2 At Community level, it would be useful if the Commission were to set down indicators for performance, planning and development, creating a harmonised reference framework.

4.1.3 Voluntary quality labels, rather than incentives, could also be set up, such as those used in the field of tourism policy.

4.1.4 In all cases, the systems set up should be based on objective, transparent criteria, and should be regularly assessed and, if appropriate, reviewed, and sufficiently publicised.

4.2 Question 2: *What measures could be taken to promote walking and cycling as real alternatives to car?*

4.2.1 Given the proportion of transport that they represent, walking and cycling cannot on the whole be considered as alternatives to the use of private vehicles, unless the home and workplace are very close to each other and weather conditions are favourable. Moreover, cycling is not a universal activity as it excludes those with reduced mobility or disabilities, minors and older people. Nonetheless, in connection with public transport, walking and cycling could become viable alternatives in some cities.

([1]) COM(2006) 314 final. Communication from the Commission to the Council and the European Parliament — *Keep Europe moving — Sustainable mobility for our continent — Mid-term review of the European Commission's 2001 Transport White Paper.*

([2]) Opinion of the European Economic and Social Committee on *Transport in urban and metropolitan areas,* (Rapporteur: Mr Ribbe) OJ C 168, 27.7.2007, p. 74

([3]) Taking account of Protocol (No 30) on the application of the principles of subsidiarity and proportionality and the Interinstitutional agreement of 25 October 1993 between the European Parliament, the Council and the Commission.

4.2.2 Municipalities should draw up sustainable urban transport plans, including cycle paths, with the binding objective of successfully switching to environmentally friendly transport modes that meet minimum European requirements (which remain to be established). These plans should address situations jeopardising pedestrian safety and seek to avoid conflicts between different transport modes.

4.2.3 To this end, a quantitative target should be introduced in order to increase the proportion of transport represented by public passenger transport, cycling and walking. Failure to draw up such plans should result in loss of eligibility for financial aid from Community funds. The Commission should also verify the information that these plans contain with regard to green areas and cycle paths.

4.3 Question 3: *What could be done to promote a modal shift towards sustainable transport modes in cities?*

4.3.1 Possible solutions depend, to a large extent, on the size (area and population) of the city, bearing in mind that pollution also results from shortcomings in land-use planning, not solely from transport.

4.3.2 Considering the problem and its possible solutions through land-use and urban planning; providing secure public car parks on access routes to cities; arterial network of dedicated public transport lanes linked to different modes of transport (car parks, rail and metro), by building interchanges which encourage intermodality so as to facilitate transfers, and improving the quality of service in order to ensure that public transport is attractive for users.

4.3.3 With regard to freight transport, the Commission should promote the exchange of best practices in the field of urban logistics, such as in the Italian city of Siena where freight transport authorisations are only granted on a temporary basis.

4.4 Question 4: *How could the use of clean and energy efficient technologies in urban transport be further increased?*

4.4.1 By setting up a tax policy for transport that promotes the purchasing and use of new technologies that can reduce pollution and increase energy savings.

4.4.2 By gathering information on the environmental conduct of cities: calculation of transport emissions per inhabitant, and yearly campaigns to publicise the results.

4.5 Question 5: *How could joint green procurement be promoted?*

4.5.1 By imposing the use of 'green purchases' for procurement relating to infrastructure funded by European programmes and eliminating existing barriers ([4]).

([4]) See the ECJ 'Concordia Bus' case and the criteria applied thereto.

4.5.2 At Community level, common standards should be defined and, where necessary, harmonised.

4.6 Question 6: *Should criteria or guidance be set out for the definition of Green Zones and their restriction measures? What is the best way to ensure their compatibility with free circulation? Is there an issue of cross border enforcement of local rules governing Green Zones?*

4.6.1 The EESC believes that access to these zones should be significantly reduced. However, there is need for harmonisation in order to prevent differing legislation from hindering the free movement of people and unnecessarily restricting urban mobility.

4.7 Question 7: *How could eco-driving be further promoted?*

4.7.1 Eco-driving should be covered by duly extended mandatory instruction programmes for the initial and further qualification of drivers, and by setting up tax concessions for companies that take steps to monitor and measure driving. Directive on driving training could be amended to include these criteria.

4.8 Question 8: *Should better information services for travellers be developed and promoted?*

4.8.1 Yes, with regard to safety on board, waiting and transit times, passenger behaviour in emergencies, and all existing transport options and conditions.

4.9 Question 9: *Are further actions needed to ensure standardisation of interfaces and interoperability of ITS applications in towns and cities? Which applications should take priority when action is taken?*

4.9.1 The various ITS applications should be fully compatible so that different technologies can be used, particularly with regard to transport documents, thus facilitating transfers and improving transport access times, which would lead to quicker journeys on public transport. It is important for ITSs to support technological improvements, so that they do not quickly become obsolete and their cost may be duly redeemed.

The EESC considers that information and communication technologies should be used to improve traffic and the organisation of transport.

4.10 Question 10: *Regarding ITS, how could the exchange of information and best practices between all involved parties be improved?*

4.10.1 By publishing a digital catalogue of good ITS practices, which is regularly updated and can be consulted online.

4.11 Question 11: *How can the quality of collective transport in European towns and cities be increased?*

4.11.1 By creating bodies to coordinate the different public transport services, establishing fare integration systems, and requiring optimum transport equipment (greenest and best suited to people with reduced mobility), increasing the number of departures or frequency so as to reduce passenger waiting times, setting up dedicated bus platforms (improved safety, comfort and speed, greater energy efficiency which translates to lower pollution), building interchanges to facilitate transfers, improving training of professionals in the sector, informing and raising awareness among users, providing infrastructure for the proper distribution of traffic in transit within cities, providing park and ride facilities and applying incentives to encourage their use, setting up priority signage for public transport, creating proper areas for picking up and setting down passengers safely.

4.11.2 One method that would prove effective is to assess the impact that specific plans, programmes and projects must have on mobility.

4.11.3 In this context, it is useful to note the judgment of the ECJ (case C-322-04) regarding the omission of the environmental assessment in a project to build a shopping and leisure centre in an urban area: it was the estimated volume of passengers that would be accessing the centre by private vehicle that determined its impact on the environment and the need for an assessment.

4.11.4 Therefore, the amendment of the existing directives could be threefold:

4.11.4.1 Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment establishes, in Annex III, the criteria that Member States must apply to determine whether certain projects have a significant effect on the environment.

It is proposed that a new indent be added to this first point of Annex III, expressly mentioning the breakdown of the mobility map (projected users of facilities, place of residence, etc.).

4.11.4.2 Secondly, in Annex IV, the directive sets out the information that must be included in the environmental report.

The EESC proposes that:

a) a new indent be added to the fourth point of Annex IV, or that the third indent be amended, so as to specifically mention emissions caused by the transportation of the habitual users of the facilities;

b) point 5 of Annex IV be extended so that it covers not only the implementation of the project but also the subsequent operation of facilities and corrective measures relating to emissions caused by transport for these facilities.

Lastly, Annex III(1) and Annex IV(4) and (5) to Directive 85/337/EEC should be amended as suggested.

4.11.4.3 Thirdly, with regard to Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, similar inclusions could be made (mandatory criteria and information relating to mobility and transport modes required in the environmental report). In this case, it would make sense to include the plans' effects on mobility, as suggested, specifically in Annex I(f) and in Annex II(2).

4.12 Question 12: *Should the development of dedicated lanes for collective transport be encouraged?*

4.12.1 Yes, this measure is essential and has a strong impact on mobility. Dedicated lanes or platforms mean increased safety and speed, and less congestion and energy consumption, as well as greater comfort for passengers. This measure can help to win over private vehicle users.

4.13 Question 13: *Is there a need to introduce a European Charter on rights and obligations for passengers using collective transport?*

4.13.1 Strengthening passengers' rights is essential to ensuring that all modes of public transport improve the quality of their service (frequency, punctuality, comfort for all types of users, safety, fare policy, etc.). The Committee urges that this be done, taking into account the features of each transport mode, particularly those which share infrastructure.

4.13.2 Given the wide range of legislation existing in different texts and for different modes of transport, all the rights of passengers on public transport should be brought together in a single 'charter of rights'; scope should remain for this to be supplemented by Member States and by self-regulation through codes of conduct ([5]) followed by economic players and organised civil society (consumer bodies, environmental bodies, business organisations, trade unions, etc.). The EESC emphasises the importance of dialogue between these bodies and public transport firms, in particular, in order to improve quality of service.

Action should be taken at Community level to recast and consolidate the rights that already exist in the different legal texts, to be complemented by action on the part of the Member States and civil society organisations. The EESC stresses the need for flexible, simple instruments to ensure that passengers' rights are exercised.

4.14 Question 14: *What measures could be undertaken to better integrate passenger and freight transport in research and in urban mobility planning?*

4.14.1 Urban mobility plans in metropolitan areas should cover both passenger and freight transport, to ensure that freight logistics can operate without hindering passenger mobility.

4.14.2 Therefore, the number of agents to monitor dedicated loading and unloading bays should be increased.

4.14.3 Creation of mechanisms to facilitate and speed up offender reporting systems, so that offending vehicles can be removed as quickly as possible from dedicated bays, rendering them operational again.

4.14.4 Creation of effective mechanisms for penalising offenders, from removal of the vehicle to effective collection of fines.

4.14.5 Public information and awareness campaign to achieve general acceptance and involvement in meeting defined goals, such as gaining the cooperation of local shopkeepers to monitor dedicated loading/unloading bays, by showing them how illegal parking in these spots could be detrimental for their businesses.

4.14.6 Restriction of authorised stopping time in dedicated loading/unloading bays, more in line with the time taken for most loading/unloading operations. It could be possible to request special permission to increase the authorised stopping time, so as not to hamper certain types of transportation (e.g. removals) which require longer to load and unload goods. Also, specific time slots could be established for loading and unloading.

([5]) See opinion OJ C 151, 17.6.2008 on *The European Charter on the Rights of Energy Consumers* (Rapporteur: Mr Iozia).

4.15 Question 15: *How can better coordination between urban and interurban transport and land use planning be achieved? What type of organisational structure could be appropriate?*

Through proper coordination in the following areas:

a) Coordination between the different bodies:

— In some European cities, the creation of transport coordination bodies has greatly improved the coordination and planning of transport, ensuring that high-quality services are implemented efficiently and effectively.

— As concerns coordination with other modes of transport, there should be greater transparency in cost allocation for different transport modes.

— It would be useful for interurban transport services to have the necessary infrastructure for modal interchanges, so as to facilitate transfers between different modes of public transport, thus preventing passengers from having to use additional transport to connect from one mode to another.

b) Coordination with planning instruments:

— Taking account of the impact on mobility of certain plans and projects is a requirement already established by the landmark Court of Justice ruling of 16 March 2006 (case C-332/04): the obligation to submit a controversial project for environmental evaluation was based essentially on its estimated impact on mobility. This criterion has not yet been incorporated into positive law, however.

— As a result, two changes specific to Community legislation on environmental evaluation are considered necessary if the plan or programme's effect on mobility is to be included amongst the impacts to be considered. is proposed in particular that the changes set out in the answer to question 11 be made.

— Strategic spatial planning must be implemented in a consistent manner in order to ensure rational land use by regional authorities.

4.16 Question 16: *What further actions should be undertaken to help cities and towns meet their road safety and personal security challenges in urban transport?*

4.16.1 Road safety: at European level, promote good practices and more intensive, structured dialogue with regional and local stakeholders and Member States on new technologies (particularly ITS) in order to improve safety. Also, increase the level of driving training for industry professionals. The establishment of dissuasive measures should also be regulated to prevent cross-border traffic offences from going unpenalised.

4.16.2 Personal protection: in order to encourage good practices, physical police presence should be stepped up on public transport, particularly at night or on lines that travel to areas with higher levels of unrest and social exclusion, and the use of information technology and passenger information should be increased.

4.17 Question 17: *How can operators and citizens be better informed on the potential of advanced infrastructure management and vehicle technologies for safety?*

4.17.1 By raising public awareness through education and information campaigns, particularly those aimed at young people; and through activities to generalise the use of enforcement devices in cities for all road users. In general the EESC considers it particularly important to adopt measures aimed at strengthening the cultural and civic education aspects of all issues connected with urban mobility.

4.18 Question 18: *Should automatic radar devices adapted to the urban environment be developed and should their use be promoted?*

4.18.1 Depending on the end requirements, these devices must always be geared towards improving mobility and optimising journey speeds. Good practices should be encouraged to increase safety, as should the use of intelligent systems.

4.19 Question 19: *Is video surveillance a good tool for safety and security in urban transport?*

4.19.1 Installation of new technology-based emergency systems in public transport vehicles, so as to warn emergency services in the event of vandalism or accidents and provide information on the situation of the vehicle, and transmission of voice and image data showing what is happening inside the vehicle.

4.19.2 Adequate measures must be adopted to avoid the invasion of privacy, which is a fundamental human right.

4.20 Question 20: *Should all stakeholders work together in developing a new mobility culture in Europe? Based on the model of the European Road Safety Observatory, could a European Observatory on Urban Mobility be a useful initiative to support this cooperation?*

4.20.1 A new culture for urban mobility will require the cooperation of the European institutions and Member States, regions and local authorities, along with civil society organisations.

4.20.2 A European Observatory on Sustainable Urban Mobility would be a useful initiative and would bring added value, as it could gather data, track changes in transport demand and facilitate the exchange of experiences. It would also help to improve knowledge of mobility problems and apply policies to resolve these.

There is a need for harmonisation of urban assessment measures at European level, and the EESC would welcome the unification of criteria in this field.

4.21 Question 21: *How could existing financial instruments such as structural and cohesion funds be better used in a coherent way to support integrated and sustainable urban transport?*

4.21.1 By making an improvement in urban mobility and the gradual shift towards clean public transport facilities (low fuel consumption, low emission) objectives of the funds, and ensuring a greater return on investment for every euro spent.

The EESC is in favour of increasing the percentage of funds earmarked for education and research.

4.21.2 Financial contributions should also be reduced by establishing objective scales that allow the most cost-effective solution for the Community to be selected, in order to provide citizens with high-quality transport at an affordable price. Efficiency and compliance with public service obligations should be key concerns.

4.22 Question 22: *How could economic instruments, in particular market-based instruments, support clean and energy efficient urban transport?*

4.22.1 By requiring the inclusion of green clauses in contracts for equipment relating to infrastructure projects funded by European programmes.

4.22.2 Another possibility would be to include the criteria from *Buying green. A handbook on environmental public procurement* [SEC (2004) 1050] in a COM document, adding green public purchasing of transport equipment.

Like the public transport vehicle market, the private vehicle market is becoming more eco-friendly. The purchase of cleaner cars (fuels, engines) should be promoted, and the financial efforts made by those who buy them should be rewarded by giving these vehicles specific treatment in policies for access to city centres.

4.23 Question 23: *How could targeted research activities help more in integrating urban constraints and urban traffic development?*

4.23.1 By clearly establishing the category of projects eligible for Community public aid, and making it mandatory (with due verification) to comply (within a specific timeframe) with the objectives of such projects, so that in the event of non-compliance any funding could be recovered.

4.24 Question 24: *Should towns and cities be encouraged to use urban charging? Is there a need for a general framework and/or guidance for urban charging? Should the revenues be earmarked to improve collective urban transport? Should external costs be internalised?*

4.24.1 There should be common rules at European level, through the harmonisation of criteria for calculating charges and assessment of the useful density threshold of the public transport network.

4.24.2 However, the EESC considers that charging or toll systems for access to city centres are in the public interest and have satisfactory immediate results, but discriminate against those with lower incomes, and have little dissuasive effect on those in higher income bands.

Local authorities should adopt measures to overcome any negative effects, for example by promoting the use of public transport or providing reduced rate passes.

4.24.3 An alternative with 'cross-cutting' effects across all income bands would be a 'toll' at access points. Rather than charging a sum of money, it would calculate the available urban mileage assigned to each driver. In other words, the proposal would be to 'ration' access (mileage per unit of time). This would mean 'selecting' and managing city journeys by private vehicle, although it should be borne in mind that there would be some discrimination on the basis of place of residence/origin/destination.

4.24.4 Naturally, this would mean further zoning in addition to the proposed 'low-traffic zones' in which traffic would be essentially restricted to public transport and residents.

4.25 Question 25: *What added value could, in the longer term, targeted European support for financing clean and energy efficient urban transport, bring?*

4.25.1 The added value is enormous, although difficult to calculate, if we take health and hygiene factors (both physical and psychological) into account, along with the value of people's time (an aspect which varies depending on the time needed to get from home to work and back, which when added to the working day can create a wide range of negative factors).

Brussels, 29 May 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 — Freight Transport Logistics Action Plan

COM(2007) 607 final

(2008/C 224/10)

On 18 October 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 — Freight Transport Logistics Action Plan.

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 8 May 2007. The rapporteur was Mr Retureau.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 99 votes with 1 abstention.

1. **Conclusions and recommendations**

1.1 The Committee welcomes the Action Plan proposed by the Commission and would like to be consulted on the interim report planned for 2010 to evaluate progress made and any outstanding problems.

1.2 The EESC agrees that it is worth making separate efforts to set benchmarks for intermodal terminals, including ports and airports, in close cooperation with the sector. With a set of generic European benchmarks that leave scope for further specification at local level, it should be possible to differentiate the benchmarks sufficiently to allow for the very different characteristics of land terminals, seaports, airports and inland waterway ports.

1.3 Price-setting according to transport mode generally does not reflect the real impact of modes on infrastructure, the environment and energy efficiency, or their social, territorial and societal costs.

1.4 The comparative and evaluative tools envisaged for benchmarking should thus compare usable transport chains on the basis of their sustainability, in order to facilitate the introduction of a price-setting mechanism and develop a regulatory system which ensures that the most efficient and sustainable mode is chosen, depending on the type of goods transported and modes available.

1.5 More efficient transport logistics geared to the needs of users and society as a whole inevitably call for significantly more rapid application of existing new technologies and new research, as well as an ongoing effort to train and qualify staff and improve working conditions. At the same time it is necessary to optimise the use of existing infrastructure and develop the human, material and financial resources invested in transport and logistics. It is also necessary to upgrade these professions and make them more attractive. New investment is also essential to accelerate the integration of new Member States and strengthen the Euro-Mediterranean and neighbourhood policies. Long-term demand trends must still be evaluated in order to initiate investment spending that can be recouped over a very long timeframe.

1.6 It is necessary to strengthen road security and safety, especially near borders with third countries.

1.7 The EU's coastline has grown: it now includes the Baltic Sea and the Black Sea, connected by the major axis of the Danube, which must be revitalised. 90 % of trade with third countries and 40 % of intra-EU trade transits through Europe's port hubs, where logistics activities are growing substantially. However, many improvements are needed. It is particularly important to modernise port-hinterland connections to encourage a wider range of modes and more intermodality. Transhipment methods and organisation must also be improved. Similarly, a better balance must be achieved between different ports and more complementarity between these and land-based hubs.

1.8 The Committee supports the use of new technologies, applied research on all improvable aspects of the different modes (infrastructure, transport and handling equipment, work organisation and conditions, etc.), voluntary participation in drawing up technical standards and communicating and messaging standards to improve co-modality and traffic flows, and better articulation between production and trade growth on the one hand and the inevitable growth in transport on the other. It is essential here that logistics chains become more efficient.

1.9 Research must continue on engines and their energy efficiency, and on non-fossil fuels, both for private and public passenger vehicles, as well as goods vehicles.

1.10 Urgent measures and more sustained efforts are called for in urban transport logistics so as to prevent progressive weakening of the economy in large cities and substantial efficiency losses resulting from time lost in traffic jams,

which is unproductive and causes pollution for residents and businesses. A comprehensive approach that takes into account the needs of private and public passenger and goods transport is required for urban environments, in order to achieve a more balanced use of the road network and reverse the trend towards residents and many activities moving to the outskirts of cities and remote locations.

1.11 Sustainability and energy efficiency, and intermodality, are at the heart of this plan. The proposed timetable underlines the urgency of the policy to be pursued. The Commission's proposals prioritise cooperation and dialogue rather than compulsory measures. It is necessary to demonstrate that this approach will work. Its success will depend on operators in the transport sector and their ability to adapt to the urgent demands of civil society.

2. **Commission proposals**

2.1 *Introduction*

2.1.1 On 28 June 2006, the Commission published a communication entitled 'Freight Transport Logistics in Europe — the key to sustainable mobility' ([1]). That communication set out the role of logistics in enhancing sustainable transport, reducing transport emissions and making transport truly environment-friendly. It was supposed to be followed by consultations leading to a European Freight Transport Logistics Plan ([2]), which was published on 18 October 2007.

2.1.2 The Commission wanted to bring the logistics dimension into EU transport policy in order to decrease the persistent bottlenecks, reduce energy consumption, make better use of co-modality and multimodality of infrastructure and transport modes, protect the environment and limit damage to it, and promote continuing staff training.

2.1.3 The Committee has been asked to give its opinion on this Action Plan, which sets out the objectives to be achieved and an implementation timetable, and promotes use of new information technologies intended to improve the efficiency of transport logistics with respect to objects (individual objects, parcels, containers). A system of voluntary training certificates for logistics staff is also envisaged, and the essential qualifications and training for practising their profession and to facilitate their mobility.

2.1.4 Since 2006 the Commission has been emphasising that it is difficult to get an impression of the European freight logistics market in the absence of adequate statistics. Logistics are generally thought to account for 10-15 % of the cost of products transported.

2.1.5 The idea was to propose the development of a European framework for freight transport logistics, taking action in various areas. The Action Plan gives details and fixes very short implementation deadlines, falling between 2008 and 2012:

— identification and elimination of bottlenecks;

— use of advanced information and communication technologies — TIC (tracking and tracing) systems with Galileo, LRIT (Long-range Identification and Tracking), RIS, AIS (Automatic Identification System), the SafeSeaNet system, and telematic applications for rail freight (TAF) with its integrated logistics (ERTMS); introduction of 'intelligent' technologies, e.g. developing and standardising RFID tags ([3]);

— universal messaging and communications standards;

— research (7th Framework Programme);

— interoperability and interconnectivity;

— training of qualified logistics staff;

— benchmarking of Europe against other continents, with indicators and methodology still to be developed;

— infrastructure policy: maintenance and optimum use of existing infrastructure, and potential new investment, especially in state-of-the-art technologies and co-modal links;

— quality of performance through adequate social dialogue, cooperation and regulation;

— promotion and simplification of multimodal chains, and related loading standards.

2.1.6 The Action Plan published in 2007 sets out the measures previously envisaged in a more detailed programme of objectives, together with a timetable for implementing each of the measures.

2.1.7 In its communication ([4]) *Keep Europe moving — Sustainable mobility for our continent*, a mid-term review and revision of the 2001 Transport White Paper ([5]), the Commission emphasised the concept of 'intelligent mobility', consisting of transport logistics and intelligent transport systems (ITS), and in its Action Plan it also prioritises this dimension.

2.2 *e-Freight and Intelligent Transport Systems*

2.2.1 Broad use of current and future ITC could significantly improve freight transport, but there are still problems to be resolved, such as standardisation, user skills, regulatory or other obstacles to dematerialisation of documents, data security and protection of privacy.

([1]) COM(2006) 336 final.
([2]) COM(2007) 607 final.
([3]) See exploratory opinion on *Radio frequency identification (RFID)* (rapporteur: Mr Morgan), OJ C 256 of 27.10.2007, pp. 66-72, as well as work done at the Lisbon conference of 15-16 November 2007 (see Portuguese presidency website).
([4]) COM(2006) 314 final, 22.6.2006.
([5]) See Committee opinions on the White Paper (COM(2001) 370 of 12.9.2001: *European transport policy for 2010: time to decide*) and the mid-term review (COM(2006) 314 of 22.6.2006: *Keep Europe moving — Sustainable mobility for our continent — Mid-term review of the European Commission's 2001 Transport Paper*).

2.2.2 In the long-term, the concept of 'e-freight' will lead to an 'internet of things' (cargo: single objects, parcels and packages, containers, with the possibility of personalising, naming and identifying each component using active or passive 'smart labelling', activated by radio frequency identification, or RFID). This new 'internet of things' will allow the transfer of cargo data (geographical location, information about the nature and volume of cargo, and customs or other messages) to be automated and simplified. Existing systems must be deployed with the aim of realising this new dimension of the internet based on identifying things.

2.2.3 The Commission is preparing a major research project for 2008 based on a roadmap for deployment of ITS and transport logistics technologies.

2.3 *Looking ahead*

2.3.1 By enhancing efficiency, the Plan is intended to help resolve problems such as congestion, pollution and noise, CO_2 emissions and dependence on fossil fuels. These actions need to be accompanied by work on a long-term perspective, undertaken jointly with the Member States, in order to establish a common basis for investment in tomorrow's freight transport systems.

2.3.2 The European Commission will report in 2010 on progress made in the implementation of the Action Plan.

3. **General comments**

3.1 EU enlargement, increasing globalisation of trade, the emergence of new economic powers (not only China) and relocation are important factors affecting trade trends. Trade is increasing faster than production. In its 2001 White Paper, the Commission envisaged a 'decoupling' of transport growth from GDP growth. It is urgently necessary to revisit this issue, if only to re-introduce a 'parallelism', a 'coupling'. By combining different modes and different operators (transport flow organisers, carriers, consumers, and EU, national and international authorities) and by using new information, packaging and handling technologies, within the framework of the mid-term review of the White Paper of 2006 ([6]) logistics can be a key factor in streamlining trade and freight transport and making them more efficient.

3.2 Worldwide logistics chains require links — both physical and electronic — between global systems, which in the long run must be fully integrated so that the most effective mode or combination of modes is used and logistics are improved by setting three concurrent efficiency objectives: economic, social and environmental (including reduction of energy spending).

3.3 In most cases transport planning involves long deadlines and collaboration with a large number of stakeholders. Investment in transport infrastructure and logistics platforms is committed for very long periods and is very high, especially in the case of sea and inland ports or airports, but also of 'dry ports' or combined transport facilities. It is these platforms that are most problematic and for which reliable and permanent solutions must be found without delay. The Committee therefore believes that the first priority should be to optimise the use of existing infrastructure, where sharing experience and information can be very valuable. But it is not enough to develop existing infrastructure and use new, state-of-the-art technologies. Medium- and long-term planning is essential for new investment.

3.4 New, long-lasting infrastructure should be developed only on the basis of needs calculated for the very long term and if there is no co-modal alternative solution, e.g. using other, existing infrastructure. Road-rail transport, for example, could be an alternative to extending an existing road network or building new roads. The planning required must involve all operators in the logistics chains: Community authorities, national and regional authorities, manufacturers and distributors and other shippers, logistics experts and carriers, and the social partners. The industries and people affected must be able to take part in the various prior debates and consultations on these issues, and their views must be seriously taken into account.

3.5 The aim of this planning must be to establish long-term partnerships that can ensure permanent viability of infrastructure (economic, ecological and social). It must be consistent with the European Spatial Development Perspective and help to put investment in transport on a permanent footing and improve its structure and coordination with industrial and commercial activities and land-use and urban space planning (so as to avoid a proliferation of logistics platforms and hasty and costly relocation), bottlenecks affecting certain axes and areas, and the decline and cutting-off of other areas owing to absent or poor services.

3.6 As regards the new standards planned for loading units, these must obviously make any transhipments easier in terms of maximum manoeuvrable weight and dimensions. However, given the problems created by the fact that freight transport is almost exclusively limited to roads, these standards should not result in extra costs that might degrade infrastructure and even impair road transport safety. The standards must promote co-modality.

([6]) Keep Europe moving — Sustainable mobility for our continent — Mid-term review of the European Commission's 2001 Transport White Paper, COM(2006) 314 final, 22.6.2006.

3.7 With regard to the proposal from 2003 on a new voluntary intermodal loading unit, the Committee would reiterate its view that the combination of loading units of different dimensions is a logistical nightmare. The two obstacles mentioned in the opinion (dimensions of fixed cell guides and uncertainty as to who will pay for the new system) are in themselves grounds for concern that the system will not be used.

4. **Specific comments**

4.1 The Committee strongly wishes to be consulted on the report that the Commission will be drawing up in 2010 on progress made with the Action Plan and any problems encountered in implementing it.

4.2 The internet of things will certainly provide a means of making transport logistics, and services provided to clients, more effective. However, on the basis of experience with the internet of names, the Committee believes there are issues to discuss concerning the verification procedures and instruments to be established for 'naming'. For historical reasons, ultimate control of the internet of names lies with US DoC, the Department of Commerce of the United States. The Committee supports the option of European governance with respect to naming and managing databases, as well as formulating technical standards.

4.2.1 The Committee is pleased that the Commission relates the development of logistics to the renewed Lisbon agenda on growth and jobs. However, in the light of experience it asks the Commission to make up the delays in implementing new technologies, especially with respect to Galileo, as soon as possible.

4.3 The Committee believes that, in view of its economic importance and the fact that most exchanges are intra-regional, the internet of objects should be based on a multi-polar system (regional or sub-regional naming bodies, for example) rather than placed under the ultimate control of a single additional authority outside the EU.

4.4 It is also necessary to elucidate privacy and business confidentiality issues relating to diversification of information instruments introduced for identifying the content of cargo, e.g. to avoid leaking information to criminals, especially in third countries, (taking customs and insurance questions into account), and monitoring cargo and its consignors, intermediaries and recipients, in the context of promoting information technologies and services (ITS) and related information technologies.

4.5 This is particularly relevant to detailed logistics relating to e-commerce.

4.6 The Committee welcomes the Commission's intention to modernise logistics professionals through a system of definitions and certification for operators, and would like these to produce high added value.

4.7 The Committee also welcomes the Commission's proposal to work with the social partners on drawing up qualification and training requirements. In this connection, the Committee hopes that the qualifications and training required will be lifelong, with advances in knowledge and technology being taken into account as appropriate. It also welcomes the fact that the Commission will provide for mutual recognition of these voluntary certificates.

4.8 It is essential to improve logistics performance through greater use of new technologies, reducing red tape, pooling experience, developing qualifications and training, and co-modality. However, the Committee would point out that the positive impact of progress in these areas cannot be fully realised unless the transport logistics sector is subject to re-balancing of intramodal and intermodal transport and 'regulated competition', as advocated by the Commission in its 2001 White Paper, which means re-assessing the relative prices of transport, and properly harmonising intramodal and intermodal competition conditions within the EU.

Brussels, 29 May 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 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services**

— **Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation**

— **Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority**

COM(2007) 697 final — 2007/0247 (COD)

COM(2007) 698 final — 2007/0248 (COD)

COM(2007) 699 final — 2007/0249 (COD)

(2008/C 224/11)

On 10 December 2007, the European Commission 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 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services.

Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation.

Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority.

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 8 May 2008. The rapporteur was Mr Hernández Bataller.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May 2008), the European Economic and Social Committee adopted the following opinion by 80 votes and 1 abstention.

1. **Conclusions and recommendations**

1.1 The EESC shares the Commission's goals of enabling users to derive maximum benefit from the electronic communications market, ensuring that there is no distortion or restriction of competition, encouraging efficient investment in infrastructure and fostering innovation, promoting efficient use and management of radio frequencies and numbering resources.

1.2 Given the high level of technological innovation and highly dynamic markets in the electronic communications sector, the EESC accepts the regulatory model for the electronic communications framework and the proposed modifications, which are based on the following aspects:

1.2.1 decentralised regulation in the Member States, giving national authorities the task of overseeing markets in accordance with a common set of principles and procedures. The independence, day-to-day management and discretion of NRAs are also strengthened, ensuring that they have their own budgets, sufficient human resources and stronger enforcement powers in order to improve the implementation of the regulatory framework;

1.2.2 strengthening of the internal market, assigning certain powers to the Commission for transnational markets that fall outside the responsibilities of a Member State;

1.2.3 improvement of legislative consistency, modernising specific provisions to bring them into line with technology and market developments, including the deletion of a number of obsolete or redundant provisions;

1.2.4 the definition of an efficient spectrum management strategy in order to achieve a Single European Information Space;

1.2.5 in exceptional cases, functional separation, adopted by NRAs subject to the Commission's approval, to ensure the provision of fully equivalent access products to all downstream operators, including the vertically integrated operator's own downstream divisions;

1.2.6 the achievement of reliable, effective communication over electronic communications networks. To this end, the Authority should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice;

1.2.7 reinforcement of consumer rights with regard to certain aspects of contracts, transparency and publishing of information, availability of services, information and emergency services and number portability. However, the proposals do not attain a high level of consumer protection as set down in the Treaty on consumer protection, as they do not cover other aspects such as regulation of customer services, minimum quality levels, penalty clauses or potential joint procurement of services and terminals;

1.2.8 greater protection of privacy, although not all the proposals are sufficiently ambitious, for example in terms of spam protection which, the EESC believes, should be unequivocally based on the principle of express prior consent from the consumer to receive commercial communication.

1.3 The EESC welcomes the inclusion of terminal equipment within the scope of the regulatory framework, as this will improve electronic access for disabled end-users. It also welcomes the establishment of binding measures for disabled end-users in terms of universal service, improving the accessibility of publicly available telephone services, including emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users, along with other specific measures.

1.4 The simplification and reduction of administrative costs is important, and increased flexibility in spectrum management tasks will facilitate administrative procedures and spectrum use for operators. The EESC believes that limited technical exceptions should exist, along with broader exceptions for the pursuit of general interest objectives (to be imposed by the Member States) in areas such as cultural and linguistic diversity, freedom of expression and plurality in the media, the promotion of social and territorial cohesion, and human safety, taking account of the technical, social, cultural and political needs of all the Member States, according to the provisions of national legislation in accordance with Community law.

1.5 The establishment of a European Electronic Communications Market Authority, as a body which is independent from the Commission and reinforces the powers of the NRAs, could be useful, as it would provide the means for effective partnership between the Commission and national regulators for issues in which EU consistency is required, such as market definitions, analysis and solutions, the harmonisation of radio spectrum use, and the definition of cross-border markets.

2. **Introduction**

2.1 In 2002 a reform of the telecommunications market was approved, which led to the establishment of a regulatory framework for electronic communications (including all satellite and terrestrial networks, both fixed and wireless), comprising the Framework, Access, Authorisation and Universal Service Directives and the Directive on the Processing of personal data and the protection of privacy in the sector.

2.2 This EU regulatory framework was designed to facilitate new operators' access to existing infrastructure, encourage investment in alternative infrastructures, and offer consumers greater choice and lower prices.

2.3 The regulatory model for the current framework is based on the principle of decentralised regulation in the Member States, giving national authorities the task of overseeing markets in accordance with a common set of principles and procedures.

2.4 The framework sets down a *minimum level of harmonisation*, leaving it to the national regulation authorities (NRAs) or the Member States to define the implementing measures.

2.5 The aim of the regulatory framework is to progressively reduce *ex ante* sector-specific rules as competition in the market develops; this is done by means of a Commission recommendation identifying the product and service markets in which *ex ante* regulatory obligations could be justified.

2.5.1 The aim of any *ex ante* regulatory intervention is to benefit consumers and ensure that retail markets are competitive. The definition of *relevant markets* can change over time as the characteristics of products and services evolve and the possibilities for demand and supply substitution change, as pointed out in the Commission Recommendation of 17 December 2007 ([1]).

([1]) OJ L 344, 28.12.2007, p. 65.

3. **Commission proposals**

3.1 The Commission is proposing a broad revision of the European legislation governing electronic communications (hereinafter 'regulatory framework'), through the joint submission of:

— two proposals for a directive: one amending the Framework, Access and Authorisation Directives, and the other amending the Directives on Universal service and on the Protection of privacy;

— a proposal for a Regulation establishing the European Electronic Communications Market Authority (hereinafter the 'Authority').

3.2 In short, these proposals aim to regulate the 'amended' European regulatory framework for electronic communications, bringing it into line with the demands of national regulators, and operators and consumers of goods and services.

3.3 The objective is to establish a consistent 'amended regulatory framework' for the digital economy, which makes the most of the progress achieved from the development of the internal market. The proposals affect the following:

3.4 The proposal amending the Framework, Authorisation and Access Directives:

a) ensures, with regard to spectrum management, that Member States shall consult interested parties when considering exceptions to the principles of technology and service neutrality, including when pursuing general interest objectives;

b) increases the consistency of the regulatory framework by rationalising some procedural elements in the market review process, including the possibility for the Commission to take over a market analysis if an NRA is significantly late in performing its duties;

c) improves network integrity and security by reinforcing existing obligations, and extends the scope of integrity requirements from telephone networks to mobile and IP networks;

d) strengthens the legal guarantees of interested parties by defining various criteria relating to the independence of the NRAs, and recognises the right of appeal against NRA decisions and the possibility of suspending measures adopted by them in order to prevent serious and irreparable harm, in urgent cases;

e) caters for the needs of vulnerable groups, by including technical requirements for terminal equipment in order to improve e-accessibility for disabled persons, and updating NRAs' objectives regarding older users and users with social needs;

f) enables the NRAs to impose functional separation with the prior agreement of the Commission;

g) establishes a common selection procedure;

h) lastly, strengthens the enforcement powers of the NRAs, which are to have the ability to impose specific conditions for general authorisations in order to ensure accessibility for disabled users, protect copyright and intellectual property, and guarantee communications by public authorities in the event of imminent threats.

3.5 The proposal amending the universal service scheme, the processing of personal data and protection of privacy and users' rights in electronic communications and consumer protection cooperation builds on progress already achieved in the Commission's legislative approach in the sector.

3.5.1 It is recognised that competition alone is not sufficient to satisfy the needs of all citizens and protect users' rights; specific provisions are therefore included which safeguard universal service, users' rights and the protection of personal data.

3.5.2 In particular, the proposal aims to improve the transparency of prices and the publication of information for end-users, by requiring operators to publish comparable, adequate and up-to-date information in an easily accessible form, and empowering NRAs to enforce operators' compliance with these obligations.

3.5.3 Number portability provisions are included, so that consumers may change provider easily (the maximum time limit for the effective porting of numbers is set at one working day, and NRAs are given powers to prevent dissuasive practices by providers); improvements are made to requirements for information regarding the location of callers to the emergency services, such as the obligation to pass information to emergency authorities.

3.5.4 The 'possibility' for Member States to adopt specific measures in favour of disabled users is replaced by an explicit 'obligation' to do so, enabling NRAs to require operators to publish information of interest to disabled users.

3.5.5 Moreover, NRAs will have powers to prevent the degradation of service quality by setting minimum quality levels for network transmission services for end-users, and will be able to monitor retail tariffs if no undertakings are designated as a universal service provider.

3.5.6 Steps will also be taken to ensure that end-users are notified about breaches of security resulting in their personal data being lost or otherwise compromised, and are informed about precautions that they may take in order to minimise the resulting damage.

3.5.7 In line with this, use of 'spyware' and other malicious software is prohibited, regardless of the method used for its installation on a user's equipment; the fight against unsolicited commercial communications in Europe is reinforced with the provision for Internet Service Providers to take legal action against spammers.

3.6 Lastly, it is worth pointing out the proposal to create an 'Authority', accountable to the European Parliament, which will include a board of regulators comprising the heads of the NRAs of all EU Member States and will replace the European Regulators Group (ERG) ([2]).

3.6.1 This Authority will advise the Commission on the adoption of certain decisions, act as a centre of expertise for electronic communication networks and services at EU level, and take over the functions of the European Network and Information Security Agency (ENISA).

4. **General comments**

4.1 The EESC welcomes the Commission's proposals in that they aim to respond to the need for regulation and management of the pan-European electronic communications market.

4.1.1 The EESC endorses the Commission's goal of further opening up the telecommunications markets to competition and boosting investment in high-speed networks (including all fixed, mobile and satellite technologies ([3])), and its aim of furthering the Internet of the future (the Internet of things and the semantic web) and optimised spectrum management in the internal market, also in the context of audiovisual service digitisation. This is in the common interests of consumers and businesses which need access to high performance telecommunications networks and services.

4.1.2 The EESC notes that, under the current regulations, the regulatory framework in the telecommunications sector has made it possible to:

— make substantial progress towards more open, dynamic markets, as pointed out by the Commission in its 12th Report on the Implementation of the Telecommunications Regulatory Package;

— combat the severe inequalities between operators, which are the legacy of the advantages enjoyed by the old State monopolies.

4.2 The EESC also considers it positive that the regulatory scheme set down in the proposals is extended to the field of electronic communications and, therefore, to all the transmission and service provision networks that this comprises.

4.3 In addition to the improvement of the purely technical and management aspects mentioned above, the Committee also welcomes the wide range of provisions which specifically aim to strengthen the rights of the users of electronic communication services, and the procedural and administrative guarantees for operators to ensure that these provisions are properly implemented (right of affected parties to be heard, reasons for decisions, precautionary measures and right of appeal). The introduction of these guarantees complies with the '*right to good administration*' stipulated in Article 41 of the Charter on Fundamental Rights.

4.4 The EESC especially welcomes the fact that the proposals take into account requests that it had made in previous opinions, regarding:

— the requirement that Member States adopt specific measures to help disabled users ([4]), in order to meet the objectives of the European Charter on Fundamental Rights and the United Nations Convention on the Rights of the Persons with Disabilities;

— general spectrum management principles (as the spectrum is of public interest and should be managed from an economic, social and environmental perspective) which, in addition to neutrality in terms of technology and service, should ensure cultural and linguistic diversity, freedom of expression and plurality in the media, and reflect the technical, social, cultural and political needs of all the Member States ([5]).

4.4.1 Preserving cultural and linguistic diversity also means ensuring that alphabetical letters which contain diacritical marks, as well as Cyrillic, Greek and any other characters, appear in legible form in emails. Sending mobile phone text messages containing such letters should not be more expensive.

4.5 The EESC also endorses the Commission's proposals regarding, in particular:

a) the simplification of market analysis procedures which streamlines the administrative burden for NRAs and reduces administrative costs for operators;

b) the improvement of network security and integrity, guaranteeing reliable use of electronic communications;

c) reinforcement of the independence of NRAs by limiting the possible influence of other public bodies on the NRAs' day-to-day management, and ensuring that they have their own independent budget and sufficient human resources.

5. **Specific comments**

5.1 As the purpose of the Commission proposals is, firstly, to adopt measures for the approximation of national legislation in the field of electronic communications and, secondly, to create a new supranational body, the EESC wishes to emphasise that the proposals are based exclusively on Article 95 TEC.

([2]) Established by Commission Decision 2002/627/EC of 29/07/2002, as last amended by Commission Decision 2004/641/EC of 6.12.2007, OJ L 323, 8.12.2007, p. 43.

([3]) See opinion OJ C 44, 16.2.2008, p. 60, rapporteur: Mr Retureau.

([4]) Exploratory Opinion on 'The Future of eAccessibility' OJ C 175, 27.7.2007, p. 91-95.

([5]) Opinion OJ C 151, 17.6.2008, p. 25.

5.1.1 While this provision may well be an appropriate, sufficient basis for the objectives pursued ([6]), according to the case law of the European Court of Justice, the Commission will have to ensure that the measures adopted actually have an impact on internal laws (enabling them to be amended) and exhaustively regulate at supranational level all those aspects which should benefit consumers and users of electronic communications, along with the aspects relating to the legal and procedural guarantees established in the proposals ([7]).

5.1.2 In short, the adoption of the future supranational regulatory framework in this field should not become a simple cosmetic reworking of the current supranational regulatory framework in the electronic communications sector.

5.1.3 The above also applies to the creation of the Authority, whose existence is fully justified insofar as it is able to help to consistently, efficiently implement the wide range of provisions proposed and for which it is responsible by virtue of the specific powers assigned to it.

5.1.4 The creation of this Authority complies with the principle of subsidiarity, as the current cooperation system:

a) lacks structure and efficient mechanisms, and fragments the internal market;

b) does not guarantee equal conditions between operators established in different Member States; and

c) prevents the benefits that competition and cross-border services would bring the consumer.

5.1.5 It also complies with the proportionality principle, as it will make it possible to establish an effective partnership between the Commission and the National Regulators on issues where European consistency is needed.

5.2 The Authority should serve as the exclusive forum for cooperation between NRAs in the exercise of the full range of their responsibilities under the regulatory framework.

5.2.1 The EESC is awaiting the forthcoming assessment of the operation of the Authority, in order to ensure that it is based on transparency, accountability and independence, and that the powers of the NRAs have been strengthened by giving them a robust and transparent foundation in Community law.

5.3 With regard to the legislative approach of the regulatory framework proposed, it is important to recognise the benefits of applying specific criteria for the regulation of the sector, together with the principles and rules of free competition within the internal market ([8]). This applies particularly to the sector in question, which requires *ex ante* administrative interventions involving sophisticated economic analyses of the relevant market, which are not necessary in other sectors of the internal market ([9]).

5.3.1 The EESC endorses the regulatory framework's aim to progressively reduce *ex ante* sector-specific rules as competition in the market develops, as the Commission has been gradually doing, for instance in its recommendation of 17 December 2007. The EESC hopes that, given the dynamism of the electronic communications market, the characteristics of products and services and the possibilities for substitution will evolve in such a way as to make such intervention measures unnecessary.

5.3.2 The EESC believes that 'functional separation' is an exceptional measure that should be applied sparingly. It should only be imposed by the NRA, subject to the prior approval of the Commission, which should request an opinion from the new Authority.

5.3.3 This type of solution may be justified as a remedy where there has been persistent failure to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable timeframe after recourse to one or more remedies previously considered to be appropriate.

5.4 However, the specific provisions proposed for this sector do not cover certain significant issues affecting the efficient, transparent implementation of free competition between operators and service providers in the pan-European market, or certain substantive aspects of user rights.

5.5 Firstly, there should be clarification of the scope of 'national security' for which, according to Article 3a(2) TEU, as amended by the Lisbon Treaty, Member States have 'sole responsibility' to safeguard.

5.5.1 Recognising non-regulated powers would allow for considerable discretion when establishing causes and measures which, for national security reasons, could result in exceptions to the application of the sectoral and competition law rules and principles embodied in the Commission proposals.

5.5.2 National regulations currently exist in the electronic communications sector which leave it to the Member States to identify the telecommunications networks, services, facilities and equipment which carry out activities essential to national defence and public security ([10]). In this context, the EESC points out that the practice followed for the Galileo project could serve as a useful reference.

([6]) ECJ judgment of 2.5.2006, case C-436/03.
([7]) Ibid. Legal background, points 44 and 45.
([8]) See A. Bavasso, 'Electronics Communications: A New Paradigm for European Regulation', *CML Rev.* 41, 2004, p. 110 *et seq.*
([9]) A De Streel, 'The Integration of Competition Law Principles in the New European Regulatory Framework for Electronics Communications', *World Competition*, 26, 2003, p. 497.
([10]) For a more detailed analysis of these issues, see Carlos J. Moreiro González, *Las cláusulas de Seguridad Nacional*, Iustel, 2007, pp. 26-31 and 53-64.

5.6 In order to preserve social, economic and territorial cohesion when setting up the new network infrastructures, particularly the 'new generation networks', public authorities need to promote economic and social progress and a high level of employment, in line with Community law and democratic principles, in order to create a high-tech electronic communications market.

5.6.1 Intervention measures must, with public funding, especially from local authorities, serve to boost the future rollout of new-generation networks, ensuring that there is no impact on technological neutrality, and that, in line with the proportionality principle, unnecessary duplication of network resources is avoided.

5.7 With regard to the effect on user rights of the proposed regulatory framework, it will in some cases be necessary to specifically analyse the protection of access rights for services of general economic interest ([11]) (which, as well as being recognised as a fundamental right in Article 36 of the EU Charter of Fundamental Rights, will be regulated through Article 16 TEU and a protocol (No 9) appended to the Treaties), and the protection of free competition, which will not be listed as a specific objective of the EU in Article 3 of the Lisbon Treaty, but will be the subject of an *ad hoc* regulation following the Protocol on the internal market and competition appended to the Treaties.

5.7.1 Although the EESC welcomes the fact that the proposal on universal service establishes a consultation mechanism in Member States ensuring that due consideration is given in the decision-making process to consumer interests, it regrets that none of the provisions refers to the role of organised civil society when it comes to consultation and participation in the process of adoption by the competent supranational bodies, in order to select suitable measures which guarantee effective implementation in the EU.

5.7.2 With regard to the physical aspects of universal service, the EESC is waiting for the Commission's proposal on the subject, to be issued this year, before stating its position definitively. Provisionally, the EESC reiterates ([12]) the main principles that it considers applicable:

a) access to high-quality services at fair, appropriate and affordable prices;

b) rapid public broadband access to information and advanced telecommunications services in all regions;

c) access for all consumers, irrespective of their income and geographical location, with the right to price equalisation;

d) fair and non-discriminatory contribution by all telecommunications service providers to maintaining and advancing universal service;

e) the existence of specific, predictable and adequate mechanisms guaranteeing that universal service is maintained and extended, in line with technology and social developments;

f) any additional principles deemed necessary by the NRAs to protect the public interest;

g) the creation of a telecommunications forum or observatory at Community level, in order to take into account the opinions of all economic and social players and other civil society organisations.

5.7.3 In terms of universal service, the Directive should cover the following aspects:

a) the need for the regulation of customer services provided by operators, including the possibility of imposing quality levels on customer service, when service begins to deteriorate;

b) the definition of penalty clauses, so as to provide greater legal certainty;

c) contract amendments;

d) minimum quality levels for certain aspects, empowering NRAs to impose minimum quality levels for all services if they so desire;

e) detailed invoicing and improved pricing services, ensuring that invoices include a breakdown of any non-electronic-communication services;

f) joint procurement of services and terminals, which should be subject to more transparent contractual arrangements.

5.7.4 The increase in consumer protection provided for in the universal service proposal does not *fully* guarantee consumers a high level of protection as required by Article 153 TEC, since the proposal does not, as a general principle, give subscribers the right to withdraw at any time, without penalty, from contracts with electronic communications network or service providers.

5.7.5 However, there are some aspects for which this protection is improved, such as:

— pricing information, with transparent, updated or comparable rates and information on the type of services provided;

— the reform of Regulation No 2006/2004 which makes international cooperation possible, in order to prevent undesirable practices such as 'phishing' ([13]), 'cyberstalking' and 'spoofing'.

([11]) See opinions CESE 267/2008 (adopted on 14.2.2008), rapporteur: Mr Hencks.

([12]) EESC opinion adopted at the Plenary Session on 28 February and 1 March 2001. OJ C 139, 11.5.2001, p. 15.

([13]) A type of fraud that involves falsely obtaining a person's bank details in order to access their account and divert the funds.

5.8 When it comes to the privacy of electronic communications, the EESC considers that the proposal is a step forward from existing legislation, and calls on the Commission to strengthen the confidentiality of communications made via public communications networks and publicly available electronic communications services, and of related traffic data, in accordance with the criteria stipulated in ECJ case law ([14]).

5.8.1 The EESC endorses strengthening the regulation of fundamental rights relating to electronic communications, such as the protection of privacy, protection of personal data, secrecy of communications and confidentiality, and certain commercial aspects relating to intellectual property.

5.8.2 When it comes to security ([15]), the relevant measures should be adopted to guarantee network security ([16]) and the use of sufficiently robust encrypted material, so as to strengthen the protection of privacy.

5.8.3 The EESC considers it positive that the protection afforded by this directive also applies to public communications networks supporting data collection and identification devices (including contactless devices such as Radio Frequency Identification Devices) ([17]).

5.9 With regard to unsolicited commercial communications (spam), the EESC reiterates ([18]) its belief that legislation should be unequivocally based on the principle of the consumer's express prior consent: it is the consumer's interests that should prevail in order to prevent unwanted commercial communications. Therefore, all necessary steps should be taken in order to guarantee that this principle is obeyed, establishing, where relevant, effective, proportionate, dissuasive penalties.

Brussels, 29 May 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

([14]) In particular, see the ECJ ruling of 29 January 2008 (case C-275/06).
([15]) The EESC is drawing up opinion (INT/417) DT R/CESE 80/2008 on *Combating fraud and counterfeiting of non-cash means of payment*.
([16]) See opinion on 'Network and information security', rapporteur: Mr Retureau, JO C 48 of 21.2.2002, p. 20.
([17]) See opinion on 'Radio Frequency Identification (RFID)', rapporteur: Mr Morgan, JO C 256 of 27.10.2007, p. 66.
([18]) Opinion adopted at the Plenary Session on 24 and 25 January 2001. OJ C 123, 25.4.2001, p. 53.

Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council on a Code of Conduct for computerised reservation systems

COM(2007) 709 final — 2007/0243 (COD)

(2008/C 224/12)

On 5 December 2007, the Council decided to consult the European Economic and Social Committee, under Articles 71 and 80, paragraph 2, of the Treaty establishing the European Community, on the

Proposal for a regulation of the European Parliament and of the Council on a Code of Conduct for computerised reservation systems.

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 8 May 2008. The rapporteur was Mr McDonogh.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 75 votes with 1 abstention.

1. **Recommendations**

The EESC agree and support the Commission's recommendations, but recommend the following should be added:

1.1 Introduce legislation for the complete divestment of CRS (Computerised Reservation Systems) ownership by parent carriers in the EU and measures to prevent future investments by carriers, directly or indirectly, in the CRS.

1.2 Retain the rules for parent carriers until these airlines have divested their ownership in CRS.

1.3 Abolish neutral display provisions. Maintaining a principle display is of limited use in practice due to each individual or corporate traveller's preferences or policies, while in the online travel environment, neutrality rules are rarely adhered to or not covered by the Code of Conduct.

1.4 Enforce the display of fares that are inclusive of all taxes, fees, surcharges and CRS costs at all times. Also ensure flight information is transparent especially with deceptive practices such as code sharing where the operating carriers must be clearly displayed to the consumer.

1.5 Allow travel agencies and airlines to negotiate terms freely with the CRS as to how MIDT data (Market Information Data Tapes) can be used and purchased.

1.6 Strengthen data privacy rules to specifically protect all data subjects within a PNR (Passenger Name Record), not just the traveller.

1.7 Enforcement of the data privacy section of the Code, in particular the transfer of personal information contained within airline to third countries (commercial and government organisations) needs to be guaranteed by the EU and recognised in the form of bilateral treaties with the third country's government, rather than as undertakings which are not legally binding.

1.8 Introduce new regulations whereby all PNRs created by CRS subscribers must be protected by the Code's Data Privacy articles without exception, including airlines who outsource the hosting of their PNR databases to CRS providers, as well as travel agencies, tour operators and corporations.

1.9 Remove the provision for subscribers to terminate contracts with CRS providers with three months notice.

1.10 Formally recognise the CRS as data controllers, not only for air and train data, but also hotels, cars, ferry, insurance and other data contained within their systems.

1.11 Encourage new CRS entrants into the market thereby increasing competition between the system vendors. Subscribers and consumers will be better served by improved service, technology and competitive pricing.

1.12 Encourage rail providers to distribute their content via the CRS and promote such greener modes of travel within the EU.

2. **Introduction**

2.1 On the 15 November 2007 the Commission proposed a revision of the Code of Conduct No 2299/89 for CRS. This regulation was established in order to prevent anti-competitive behaviour in a unique market for which general competition rules would not be sufficient. At that time, the CRS was the only viable channel through which consumers could access travel information, and crucially, the CRSs were owned and controlled by the airlines.

2.2 The CRS is a computerised system used to store, retrieve, distribute and reserve travel inventory.

2.2.1 The four CRSs in existence today are SABRE, Galileo, Worldspan and Amadeus. All are US owned apart from Amadeus which is European owned. Galileo and Worldspan have merged in 2007 but still operate as separate entities.

2.3 The CRS conditions have thoroughly changed as:

2.3.1 Most of the airlines have sold their shares in the CRSs, with the key exception of Air France, Lufthansa and Iberia ([1]).

2.3.2 With the advent of the Internet, the CRS is no longer the only channel available to make air bookings. As Internet access continues to grow throughout the EU states ([2]), and online travel technology improves, the sole reliance on CRSs for access to travel data will continue to erode..

2.4 The CRS market in the US has been deregulated since 2004 and was granted on the basis that parent carriers divested in the CRS completely. Since then, booking fees have dropped between 20-30 %. The EU carriers are struggling to compete with the US carriers as they are unable to negotiate more favourable contracts with the CRS providers.

2.5 As a result of the Code of Conduct, the CRS market in the EU remains dominated by an oligopoly and the bargaining power between the main players is unevenly balanced. The CRSs have a guaranteed market and own the relationship with the travel agencies, while the airlines have increased their bargaining position by developing internet distribution capabilities.

2.6 Aside from the parent carrier rule, it is assumed that general competition laws in the EU would be sufficient to prevent abuses such as price-fixing in the absence of sector specific regulations.

3. **Observations**

3.1 *Parent Carriers*

3.1.1 Airlines with ownership in a CRS are known as 'parent carriers'. The lifting of parent carrier rules would be too hazardous because three of the largest European airlines (Iberia, Lufthansa, Air France) hold significant stakes in Amadeus. The risks for anti-competitive behaviour are too great and dominance in home markets remains a real threat to the other CRS and non-owning carriers.

3.1.2 The EU should introduce a complete restriction on CRS ownership or shareholding (existing and future) by all airlines.

3.1.3 A complete separation of ownership between CRS and airline or other transportation provider will ultimately eliminate the possibility of collusion or unfair competition by parent carriers. In that scenario, the Code of Conduct can be simplified even further by removing the numerous safeguards the Commission proposal 709-2007 has in place for the parent carriers. The travel distribution market as a whole would benefit from this development as both CRS and airlines would compete on an equal basis without suspicion or fear of abuse

3.1.4 Until those conditions are met, the specific provisions for parent carriers in Article 10 must be retained in order to prevent anti-competitive behaviour.

3.2 *Neutral Displays for online and offline travel agencies*

3.2.1 The Code ensures that all CRS flight displays are neutral and are ranked without bias or discrimination. Travel agents are required to inform their customers of flight options in order of shortest elapsed flying times (non-stop direct followed by direct flights and indirect flights). However the customers can request to have the display ranked according to their own individual needs.

3.2.2 Maintaining display neutrality in today's market is ineffective especially as neutrality provisions do not exist for the online distribution channels such as airline websites and corporate self-booking tools.

3.2.3 Market demand ensures that the customer will have access to all the carriers, even with CRS-owned online agencies such as Lastminute.com and ebookers, all bookable airlines are generally available even if ranking is biased.

3.2.4 Online travel comparison sites ([3]) allow carriers or travel agencies to pay for prime position in the search results, regardless of price or schedule. The consumer can rank the order of the flights from a range of criteria including i.e. total price, departure time, carrier or elapsed flying time. The consumer is therefore not denied access to neutral information, as the information is still available to them. The consumer will ultimately choose the option that is most suitable to them.

([1]) Combined ownership of 46.4 % of Amadeus.
([2]) Currently at 50 % penetration for all EU members.
([3]) e.g. Kelkoo (http://www.kelkoo.fr).

3.2.5 Business travellers' flight displays are typically governed by company travel policy, fares and carriers, rather than neutrality.

3.2.6 Abolishing display neutrality would allow carriers to pay for 'premium' position in CRS displays. However, it is unlikely the smaller carriers would lose significant market share, for the reasons stated previously: the consumer will choose based on their travel needs, not display ranking. This can be likened to Google search results, where information is freely available while certain providers can pay for position. The travel industry need be no different.

3.2.7 Due to these conditions it is recommended that Article 5 on Displays is repealed. The information need not be regulated as market forces and consumer choice will ensure a fair representation of the available travel information.

3.2.8 Ensuring maximum transparency of fares by including all taxes, fees and charges, including CRS fees from the initial results display is in the consumers interest. This will prevent airlines from biasing displays by only including surcharges at a later stage in the purchasing process.

3.3 *MIDT rules*

3.3.1 MIDT data contain detailed information about global booking activity of travel agencies and airlines. This information is collected by the CRSs and sold to the airlines. MIDT provide airlines with valuable competitive information including travel agency bookings, revenue and traffic patterns.

3.3.2 To obtain an equilibrium between the airlines and travel agencies, and in the consumers' interest, obscuring the identification of travel agents, either directly or indirectly would benefit the market overall. However, recognising that MIDT data can also be obtained from other sources such as IATA means that so as not to devalue this information too greatly, subscribers should also be allowed to negotiate without regulation with the CRS how the data will be used.

3.3.3 Add a clause in Article 7 to that will allow airlines and subscribers to negotiate freely with the CRS the terms of purchase for MIDT data.

3.4 *CRS-subscriber regulations*

3.4.1 Today's regulations attempt to protect the travel agencies by enabling them to terminate a contract with a CRS within a three-month notice period.

3.4.2 Repeal of Article 6.2 is recommended thereby enabling free negotiations between the parties without the need for regulation.

3.5 *Hosting Agreements*

3.5.1 Hosting should remain separate from CRS contracts in order to eliminate preferential treatment for hosted airlines especially parent carriers. If parent carriers divest their CRS stakes, this rule can sunset.

3.6 *Data Privacy*

3.6.1 A PNR is a document created by the CRS once a passenger has booked travel for flights, rail, accommodation, car rental, insurance and any other travel related content. The information contained within this document is highly sensitive and it should therefore be subject to stringent personal privacy laws. The information contained in a PNR includes inter alia the traveller's name, contact details, date of birth, personal preferences that can reveal the person's religion (e.g. requesting a kosher meal), the details of the person paying for the tickets, credit card details,, friends, family or business colleagues booked on the same itinerary, the travel agent name and contact details, and in the case of corporate travellers, codes are often added to the PNR indicating to which department or client the cost of the trip is expensed, or that they may belong to a trade union. It is possible to compile a highly detailed profile of both travellers and non-travellers connected with the booking and the EU must guarantee the protection of this personal data as stipulated in the Code.

3.6.2 The Code of Conduct privacy laws are broken systematically by the CRS when:

a) data is transferred from the EU to a third country;

b) personal information is processed without the consent of the data subject;

c) information under the control of the CRS is processed for purposes other than making a reservation.

3.6.3 The EU Directive 95/46/EC (which is complementary to the Code of Conduct's privacy provision) is also broken as it states that as a 'data controller', the CRS must obtain consent from the data subject about disclosing personal information and that it shall not be transferred outside the EU, unless that country provides a similar level of protection for the data. In the US, there is no such law protecting personal data, where it can be used by the US government or US commercial entities to create profiles on travel data originating from the EU, and this data can be kept forever. An example is the US scheme called APIS (Advanced Passenger Information) requiring EU passenger data to be processed by the US government in order to permit entry into the country.

3.6.4 Strengthen data privacy rules to specifically protect all data subjects within a PNR, not just the traveller.

3.6.5 Enforcement of the data privacy section of the Code, in particular the transfer of personal information by the CRS contained within PNRs to third countries, needs to be guaranteed by the EU, and recognised in the form of bilateral treaties with the third country's government. The agreements in place between the US and the EU are 'undertakings' which are unenforceable and not legally binding.

3.6.6 New regulation should be introduced whereby all PNRs created by CRS subscribers must be protected by the Code's Data Privacy articles without exception, including airlines who outsource the hosting of their PNR databases to CRS providers, as well as travel agencies, tour operators, corporations and any other source of booking connected to the CRS.

4. **Conclusion — next steps**

4.1 Simplification of the Code of Conduct aims to create a more natural economic environment in which CRSs compete based on prices and service quality, while ensuring the consumer interests remain the top priority.

4.2 The degree of content consolidation (such as new rail providers or low cost carriers) as a result of pricing freedom should be closely monitored. Rail and low cost carrier integration will provide the customer with lower prices (and more travel options) via a CRS for short/mid distance destinations. This may result in network carriers competing on price and generally reduce the cost of airfares in the medium/long term. For those reliant on CRS providers for travel information, this would be a key benefit.

4.3 Rail content integration into the CRS display should be encouraged, as it is a key factor to reduce the environmental impact of air travel and promotes 'greener' modes of travel.

4.4 Monitor the impact of abolishing display neutrality. Market forces should counteract the possibility for anti-competitive behaviour even by parent carriers. It should not be a regulatory goal of the Code to enforce a single, consolidated and neutral source of information via the CRS — due to the changing market conditions, especially the Internet, this becomes increasingly irrelevant.

4.5 The socio-economic impact of the proposed changes to the Code of Conduct should also focus on the small to medium enterprises, including carriers and travel agents, who may be vulnerable to the new flexibility allowed in the CRS marketplace.

4.6 The EU must create public awareness about the use of personal data contained within their booking records. The public is largely unaware of the existence of CRS systems and what happens with the personal information they process. Without this awareness, the right of data subjects to have access to data relating to them, as proposed by the Code, will be meaningless. It is unlikely that a passenger has ever requested a CRS for their personal records, simply because they do not know what happens to it, and if they did, would not consent to its usage

4.7 Increasing the representation of groups not directly part of the travel distribution system, such as consumer groups and data privacy experts in the consultation process. This will result in a more balanced view of the state of the CRS market in the EU.

4.8 Review the progress of online travel technology. Improvements in availability, booking and post-booking functionality developed by the CRS and other travel technology companies are very significant. These improvements in online technology will empower the consumer and possibly force further regulatory changes.

4.9 In further technological developments, airlines in the US have connected directly to travel agencies (and bypass the CRS) in a move that further changes the CRS landscape. The reliance on CRS providers diminishes while the consumer, travel agent and airline gain leverage.

4.10 Encourage new market entrants. Increasing the competition among the oligopoly in the EU will stimulate the CRS market. A new generation of CRS providers have appeared in the US ([4]) since deregulation and due to their use of new technology are able to offer highly attractive services at lower cost to the airlines.

4.11 Assess the impact of lowering distribution costs both on the internal market and in international markets in terms of airfares and competitive positioning with the US carriers.

4.12 Review code of Conduct in 2-3 years to assess position of parent carriers, personal data protection enforcement and market conditions and consultations with additional lobby groups before considering further revision.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([4]) e.g. G2 Switchworks, Farelogix — these are known as GNEs — GDS New Entrants.

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council establishing a multiannual Community programme on protecting children using the Internet and other communication technologies

COM(2008) 106 final — 2008/0047 (COD)

(2008/C 224/13)

On 7 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 153 of the Treaty establishing the European Community, on the

Proposal for a Decision of the European Parliament and of the Council establishing a multiannual Community programme on protecting children using the Internet and other communication technologies.

On 11 March 2008 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms Sharma as rapporteur-general at its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May 2008), and adopted the following opinion unanimously. votes

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee praises the Commission for its work already done towards addressing the issues of child protection in regards to 'online technologies' ([1]), specifically noting that the average awareness level in the population has been increasing thanks to campaigns by social partners, in particular NGOs and the Commission's annual Safer Internet Days.

1.2 The EESC itself has drafted many opinions to highlight the issues ([2]). Additionally it recommends an international partnership approach which encourages:

1.2.1 International sharing of data and pooling of ideas across governments, law enforcement, Hotlines, banking/financial/credit card institutions, child abuse counselling centres and child welfare organisations and the internet industry.

1.2.2 EU and/or international 'taskforce' which meets quarterly to facilitate the sharing of data, expertise and good practice between stakeholders, including Hotlines, law enforcement, governments and, particularly, the international internet industry.

1.2.3 Definition and promotion of an International and European good practice model as regards the combating child sexual abuse content on the internet by Hotlines.

1.2.4 A review of all existing and future Hotlines in light of currently accepted good practice and the evaluation of Hotlines' performance against new good practice models.

1.2.5 A streamlining of Programme resources and funding allocation in the future as a result of Hotline review.

1.2.6 Participation by Hotlines in the European database project.

1.2.7 Encouragement of Hotline, and other relevant organisations, partnerships with national domain name registries to de-register domain names advocating the sexual abuse of children or providing access to this content.

1.2.8 United efforts in raising awareness of the problems of 'grooming' and 'cyber-bullying' ([3]) and sign-posting to the relevant law enforcement agency and children's charities where appropriate.

1.2.9 Introduction of support procedures for analysts and those viewing the images working within the Hotline environment.

1.2.10 Work to ascertain and ensure the harmonisation of legal frameworks in this area across member states.

1.2.11 Establishment of a Networking Office at Commission level to act as independent assessor, coordinate research, review Programme implementation and achievement of recommendations.

1.2.12 Establishment of an annual 'Experts' panel to intensify the transfer of knowledge.

([1]) For the purposes of this document, 'online technologies' refers to technologies that are used for accessing the Internet and to other communication technologies. In addition, in certain cases such as video games, there are both 'online' and 'offline' uses of content and services and both may be relevant to child safety.

([2]) 'Illegal content — Internet' OJ C 61, 14.3.2003 p.32 and 'Safer use of the Internet' OJ C 157, 28.6.2005 p.136.

([3]) 'Grooming': Direct contact by predators who will befriend children in order to commit sexual abuse; 'cyber-bullying': bullying in the online environment.

1.2.13 Establishment of Youth Forum to ensure the inclusion of children and young people's views and experiences in research and future Programme implementation.

1.2.14 Proactive and collaborative use of funding streams, such as Daphne and Safer Internet Programmes.

1.2.15 Establish liaison with relevant US authorities to encourage reduction in the hosting of child sexual abuse content in the US and establish active trans-Atlantic data exchange.

1.3 Working with a partnership approach ensures maximisation of expertise, knowledge dissemination and funding. Most importantly it guarantees the involvement of stakeholders and social partners in overall EU efforts to minimise illegal online content and reduce access to it.

2. **General Comments on the Commission's Proposal:**

2.1 The internet and communication technologies (hereafter referred to as 'online technologies') ([4]) were envisaged and designed as communications tools for academics and researchers; however, they are now used in homes, schools, businesses and public administrations in most parts of the world.

2.2 Children are active users of online technologies, and increasingly so. But, beyond the benefits of interactivity and participation in the online environment, they also face some serious risks:

a) Direct harm, as victims of sexual abuse documented through photographs, films or audio files and distributed online (child abuse material).

b) A perpetuation of victims' sexual abuse by the repeated viewing of the records of their abuse due to widespread online distribution and global availability.

c) Direct contact by predators who will befriend them in order to commit sexual abuse ('grooming').

d) Victims of bullying in the online environment ('cyber-bullying').

2.3 Further trends (see Appendix 1) ([5]) include:

a) The fast and dynamic evolution of new technological landscapes, increasingly shaped by the digital convergence, faster distribution channels, mobile internet, Web 2.0, Wi-Fi access and other new content formats and online technological services.

b) Recognition of the very young age of child victims and the extreme severity of the sexual abuse they are suffering.

c) Clarification of the scale of the problem as regards publicly available websites depicting the sexual abuse of children, that is, a concrete 'manageable' target of around 3 000 websites per year hosted around the world facilitating access to many hundreds of thousands of child sexual abuse images.

d) Recent data regarding the regional hosting of child sexual abuse networks suggests the majority of this content is hosted in the US.

e) Recent data suggests that online child sexual abuse content regularly hops host company and host country in order to avoid detection and removal, thereby complicating law enforcement investigation at a solely national level.

f) Lack of international efforts by domain name registries to de-register domains advocating the sexual abuse of children or providing access to such content.

g) The remaining and potentially, widening 'generation gap' between young people's use of online technologies and their perception of risks verses the adults' understanding of its use.

h) Public exposure to child sexual abuse material may be reduced by voluntary industry blocking of individual URLs by service providers.

i) The benefit of national recommendations regarding online tools, such as filtering products, search engine security preferences and the like.

2.4 Protecting internet users, particularly children, from exposure to illegal and 'harmful' content and conduct online, and curbing the distribution of illegal content is a continuing concern for policy and law-makers, industry, end-users and particularly parents, carers and educators.

2.5 From a legal point of view an essential distinction has to be made between what is illegal on the one hand and 'harmful' on the other, since they require different methods, strategies and tools. What is considered to be illegal may vary from country to country, is defined by the applicable national law and is dealt with by law enforcement, other government bodies and those Hotlines with the appropriate authority.

2.6 The EESC requests that the legislative harmonisation across Member States is implemented and enforced at National level and includes the following as minimum as set out in the Council of Europe Cybercrime Convention ([6]):

a) What constitutes child sexual abuse material.

b) That the age of a child for the purposes of the victims of child sexual abuse material is 18.

c) That the possession and viewing/downloading of online child sexual abuse material is an offence and warrants severe custodial penalties.

([4]) As 1.

([5]) This appendix is available only in EN and can be found attached to the electronic version of this Opinion on the Web.

([6]) Council of Europe ETS 185 Convention on CyberCrime 23 XI 2001, http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm.

2.7 Although certain Europe-wide standards have been established, clarifying legal issues through various recommendations and directives, it should be established whether this data has been converted into practice throughout member states.

2.8 'Harmful' content refers to content that parents, teachers and other adults consider to be potentially harmful for children. Definitions of such content vary across countries and cultures, and can range from pornography and violence to racism, xenophobia, hate speech and music, self-mutilation, anorexia and suicide sites. As such, the EESC acknowledges it is difficult to establish international partnerships regarding such material but that national efforts could be made to raise awareness of tools, methods and technologies to protect children from exposure to it.

2.9 The EU has been a forerunner in the protection of children online since 1996, and the successive Safer Internet programmes (Safer Internet Action Plan 1999-2004, Safer Internet plus 2004-2008) have been major features in this field. The Commission adopted a Communication on the implementation of the Safer Internet plus programme in 2005-2006 ([7]). Additionally, an impact assessment between April and July 2007 ([8]) confirmed that the actions carried out have been effective, while stressing the need to adapt them to emerging internet technologies and dynamic criminality in this area.

2.10 The objective of the new programme will be to promote safer use of the Internet and other communication technologies, particularly for children, and to fight against illegal content and illegal and 'harmful' conduct online facilitating cooperation, exchange of experiences and best practice at all levels on issues relating to child safety online, thus ensuring European added value.

2.11 The programme will have four actions encouraging international cooperation as an integral part of each of them

a) reducing illegal content and tackling harmful conducts online,

b) promoting a safer online environment,

c) ensuring public awareness,

d) establishing a knowledge base.

([7]) COM(2006) 661. Communication from the Commission on the implementation of the multiannual Community Programme on promoting safer use of the Internet and new online technologies (Safer Internet plus).

([8]) http://ec.europa.eu/saferinternet.

2.12 However the EESC would ask for definitions and legal clarifications in respect of the words 'harmful' and 'conduct', particularly considering transposition into national law. Further clarification is also required on the role of Hotlines, which do not investigate suspects and do not have the necessary powers to do so (See Appendix 2) ([9]).

3. **An International Model**

3.1 The internet is not owned or managed by huge multinationals which control the content. It is made up of hundreds of millions of pages posted by a multitude of publishers, making it difficult to monitor or control illegal content. However, action is possible from local (the home) to national and international level (including cyber space) to reduce the availability of illegal content if all stakeholders work together.

3.2 The Internet Watch Foundation identified a core of 2 755 child sexual abuse websites hosted internationally during 2007; 80 % of these websites are commercial operations, which frequently hop host company and region to avoid detection ([10]). These tactics, coupled with the complex multi-national nature of the crimes, mean that only a united global response involving law enforcement authorities, governments and the international online sector will enable effective investigation of these websites, their content and the organisations behind them.

3.3 The EESC recognises that 'A partnership approach' is required to ensure child protection. The Social partners, including Government, the online industry, law enforcement agencies, child protection charities, businesses, employee representatives, NGOs including consumer organisations, and the public must work together to highlight the dangers and risks, whilst at the same time allowing young people to gain from the benefits of this revolutionary tool of socialising, learning and innovation.

3.4 The internet can be accredited with improving the quality of life for many but especially for young people, the elderly and many disabled people. It is a unique communication tool, and more and more these days a 'social network'. Changing dynamics in lifestyles, families and employment patterns have led to more independent or isolated periods of time. Therefore protecting the user, in particular the vulnerable, especially children, is a priority which cannot be left solely as a responsibility of their guardians.

([9]) This appendix is available only in EN and can be found attached to the electronic version of this Opinion on the Web.

([10]) The UK Hotline for reporting illegal content specifically: Child sexual abuse content hosted worldwide and criminally obscene and incitement to racial hatred content hosted in the UK * See Appendix 1 and 2 (available only in EN, can be found attached to the electronic version of this Opinion on the Web).

3.5 The emergence of new technologies and services is key to innovation and growth of business globally. Young people are often the first to understand the capabilities and take up these innovations. However, along with development comes abuse and this is a mounting concern. Self regulatory bodies of both industry and stakeholders, have the in depth knowledge of these technologies, with the possibility to develop counter measures to combat this abuse. The sharing of knowledge, raising of awareness and signposting consumers as to how to report sites, together with a distribution of funds where possible to eradicate such abuse, but especially in the context of child abuse, is an essential duty and part of the internet industry's corporate social responsibility.

3.6 The scale and scope of the online problem of the distribution of child sexual abuse content is the subject of much speculation. However, as recognised in the Commission's report, there is a lack of statistical information across the EU member states. Efforts should be directed at tracking the movements and activities of websites associated with the distribution of child sexual abuse content in order to provide information to authorised bodies and international law enforcement to effect the removal of such content and the investigation of its distributors.

3.7 Such organisations must be established at national levels and meet regularly with the EU Commission to formulate strategies. A Platform at EU level, with industry, government, banking/financial/credit card institutions, NGOs, education, employer and employee representation, could be a valuable tool for rapid analysis and action across the Union, with dissemination of information beyond EU borders to facilitate international law enforcement cooperation.

3.8 An EU 'expert meeting' every year regarding the developments surrounding technology, psychosocial factors and law enforcement should be encouraged in order to intensify the transfer of knowledge. Conclusions from these meetings would be disseminated to all European Member States, and platform members, in order to be adapted, integrated or used at National and local level.

3.9 The establishment of a 'Networking Office' in Brussels which researches projects not only from Europe but globally, would support the Platform to ensure knowledge is up to date and relevant, including statistics, with the dissemination of effective processes which combat the issues and can be quickly transferred to active partners. Visits and monitoring would also be the role of the network office. Additionally, the Office could act as an independent Hotline assessor, and review applications for new projects to ensure the prevention of duplication of work already done, and effective and efficient usage of funds. Partnerships could also be proposed by the Office. The role of the network office would be to react to new challenges at the same speed as their developments.

3.10 The establishment of a 'youth forum' may be valuable in the involvement of young people and the dissemination of information to social networks utilised by those most vulnerable. Youth have their own language and are often reluctant to listen to authority but welcome advice from their peers within their social environment. The 'Rights of the Child' must be taken into account and therefore young people must be involved in the process.

3.11 An effective model is required with commitment from stakeholders to sharing information for adaptation to new and emerging forms of internet criminality around the world and the exchange of knowledge.

4. **Guidelines for Hotline Implementation**

4.1 A good practice model for Hotlines:

4.1.1 Hotline analysts trained and recognised in the assessment of illegal online content.

4.1.2 Hotline analysts with expertise in the tracing of potentially illegal online content.

4.1.3 An evidenced partnership approach with all key national stakeholders including government, banking/financial/credit card institutions, law enforcement, organisations working with families, children's charities and, particularly, the internet industry.

4.1.4 Co- and self-regulatory Hotline, showing evidenced effective partnership with the national internet industry and adherence by them to a Code of Practice.

4.1.5 Universal 'notice and take-down' of illegal online content hosted by any national company.

4.1.6 Participation in the centralised European database project of child sexual abuse URLs.

4.1.7 Commitment to achieving blocking at network level by national internet companies of a dynamic list of child sexual abuse websites to protect users from accidental exposure.

4.1.8 Hotlines to have comprehensive websites in their national language providing a simple, anonymous reporting mechanism with clear sign-posting to Helplines and other relevant organisations regarding off-remit issues such as grooming and cyber-bullying.

4.1.9 Awareness-raising of the Hotline function and related issues.

4.1.10 Evidence of European and international data, intelligence and expertise sharing.

4.1.11 Participation in European and international partnerships with stakeholders to share data, intelligence and pool ideas in order to combat the cross-border nature of these crimes.

4.1.12 Action at a European and international level to enable the removal of child sexual abuse content on the internet and investigation of its distributors, wherever that content is hosted around the world.

4.1.13 Contribution to any national or international bodies set up to take international ownership of combating these websites and facilitate the collaboration of multi-national law enforcement agencies.

4.1.14 Dissemination of guidelines to employers, teachers, organisations, parents and children such as the 'ThinkuKnow' education programme by the CEOP — The Child Exploitation and Online Protection Centre (UK police).

4.1.15 Awareness raising focus on internet users, particularly in partnership with or with sponsorship from national online companies.

4.1.16 Organisations to be a member of INHOPE, the International Association of Internet Hotlines, ensuring that international good practice sharing between Hotlines and industry can be used to remove content ([11]).

4.1.17 Reporting procedures must be simple, upholding individual anonymity for reporters and with rapid processing.

4.1.18 Hotline operators must provide processes that ensure a level of support and counselling for analysts working within the viewing and data processing environment.

4.2 In addition, Hotlines should:

a) Develop partnerships with their national domain name registry companies to ensure that domains regularly providing access to child sexual abuse content, or with names advocating sexual activity with children, are investigated and de-registered.

b) Seek to obtain voluntary funding on a self-regulatory basis from national internet companies who benefit from the Hotline's operation of a reporting mechanism, a 'notice and take-down' service and the provision of dynamic block lists.

c) Encourage or facilitate the blocking of child sexual abuse websites by the internet industry in that country.

d) Encourage the fostering of positive relations between Hotlines and Helplines offering signposting facilities with victim support organisations, in order to promote complementary awareness raising of relevant and up-to-date issues.

5. **Specific Comments: Commission Proposal**

5.1 The Proposal of the Commission leaves several issues unanswered:

a) Who will coordinate the proposed measures, and with what qualification?

b) How are the criteria for the single areas being formulated? Many programmes already established would fit more than one criteria of the proposed Knowledge Database ([12]).

c) Who chooses the appropriate candidates?

d) Who is responsible for a continuing evaluation and networking of these projects?

5.2 Addressing the above questions would prevent reinvention of the wheel, duplication of work already done, and ensure effective and efficient usage of funds. Most importantly it must be guaranteed that experts from the field will be actively involved in the initiative in close co-operation with consultants or civil servants. This would also hold true of the proposal above for a 'Networking Office' at Commission level which researches such projects, gets to know them, visits them and keeps in contact.

5.3 Consideration must be given by the Commission in towards more proactive and collaborative use of funding streams, such as Daphne and Safer Internet Programmes.

5.4 Finally the Committee requests the Commission to stress the importance and impact of:

— Adoption throughout member states of the 'notice and take-down' by Hotlines and the internet industry of child sexual abuse content.

— Wider adoption of the initiative to protect internet users by blocking access to child sexual abuse URLs.

— International effort by domain name registries and relevant authorities to de-register domains associated with child sexual abuse.

([11]) Sept 2004-Dec2006 INHOPE processed 1.9 million reports, 900 000 from the general public, 160 000 forwarded to law enforcement agencies for action.

([12]) For example: Innocence in Danger 'Prevention Project' would fit more than one of the criteria. There are many other such examples.

5.5 The above measures would reduce the occasions when innocent internet users might be exposed to traumatic and unlawful images, diminish the re-victimisation of children by restricting opportunities to view their sexual abuse, disrupt the accessibility and supply of such content to those who may seek out such images and disrupt the dissemination of images to internet users for commercial gain by criminal organisations.

5.6 Importantly, the implementation of the activities would make operations increasingly difficult for those behind the distribution of child sexual abuse content. Whilst the dynamic nature of the crime and the technological sophistication of the offenders make it difficult to wipe out entirely, the more costly, risky and transient operations are made, the less likely this appears to be an easy route for gain, whether financial or otherwise.

5.7 Recent data regarding the scope and scale of child sexual abuse websites (not individual images or URLs) provide further encouragement in the fight towards total eradication. Concrete targets can now be set to demonstrate the benefits of data sharing and 'ownership' at the highest international level and the impact of a positive and successful united international partnership in substantially reducing the numbers of child sexual abuse websites.

Brussels, 29 May 2008.

The Chairman
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 roadworthiness tests for motor vehicles and their trailers

COM(2008) 100 final — 2008/0044 (COD)

(2008/C 224/14)

On 16 April 2008, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers.

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 445th plenary session of 28 and 29 May 2008 (meeting of 29 May 2008), with 85 votes in favour and two abstentions, to issue an opinion endorsing the proposed text.

Brussels, 29 May 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 European Parliament and the Council addressing the challenge of water scarcity and droughts in the European Union

COM(2007) 414 final

(2008/C 224/15)

On 18 July 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 European Parliament and the Council addressing the challenge of water scarcity and droughts in the European Union.

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 29 April 2008. The rapporteur was Mr Buffetaut.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 97 votes, with 1 abstention.

1. **Conclusions and recommendations**

1.1 It is clear that the issues of water scarcity and drought must be addressed not only as an environmental issue but also as a key element of sustainable economic growth in Europe, in short as an issue of strategic importance.

1.2 Whilst people need water to live, it is also a vital resource for many economic sectors, starting with agriculture and the agri-food industry, which work with living things.

1.3 Commendably, the Commission communication highlights the importance of the problem and sets out a number of ways forward with regard to, on the one hand, combating water scarcity and drought and, on the other hand, the possibilities of adapting to the new circumstances.

1.4 Climate change, recognised as a problem by scientists and the general public alike, could make matters worse and the measures proposed by the Commission need to be introduced swiftly.

1.5 Admittedly, the situation is not the same in all the Member States, and the circumstances vary in Europe from north to south and east to west. Nevertheless, all the Member States are affected and all have experienced periods of summer drought, including the Nordic countries.

1.6 That is why these differences in circumstances must not be allowed to stand in the way of the adoption of a concerted policy in Europe and the implementation of practical measures, adapted, of course, to the specific conditions prevailing in each Member State, as there is no catch-all solution for the whole of the European Union.

1.7 The EESC therefore calls for close and systematic monitoring of the measures which will be taken on the basis of the present communication.

1.8 As regards the price of water, the Committee would point out that pricing policies can prove ineffective if a major part of water abstraction is not metered or registered. It therefore recommends that the Commission propose an appropriate definition of water use to Member States.

1.9 The EESC recommends the creation of a European website dedicated to river basin plans, where local authorities would be able to find specific examples which they could use to draw up their own plans and to improve the information they provide.

1.10 As concerns the allocation of water-related funds, the Commission could differentiate its assistance rates in accordance with the criterion of rational water use and conservation of water resources so as to encourage local authorities who do not behave responsibly to change their practices, without penalising regions which already make efforts in this field.

1.11 In order to improve drought risk management, the Committee calls on the EU to encourage the interoperability of means of preventing and fighting fires within the framework of the European Mechanism for Civil Protection.

1.12 In discussions on supply infrastructure, the EESC recommends that the possibility of using underground water storage and re-injection of groundwater be explored. The Committee does not believe that water transfers within one and the same Member State should be excluded *a priori* but that they must be regulated with a view to avoiding an extravagant approach towards the use of water resources, which must be managed with the ongoing aim of saving water and using the most advanced techniques for controlling water use ([1]).

1.13 To promote rational water use, the EESC recommends the introduction of the techniques of smart metering and bespoke billings. It would also stress the importance of good practice in the agricultural sector and recommends reforestation, the planting of hedges in areas where it is useful and feasible

([1]) The public hearing held in Murcia on 3 April 2008 and the associated study visit indicated that techniques for the responsible and rational use of water resources are already available on the market. In addition, land cultivation and, in particular, afforestation help to combat desertification.

and the promotion of sustainable drainage and irrigation techniques, with the support of rural development policy funds. Water use in agriculture is gradually becoming more efficient but needs to improve further through, for example, modernisation and more sparing use of watering and irrigation. In this context, it is worth stressing the need for deepening and developing research and new technologies in agriculture. The Committee believes that individual systems for water saving, recycling and sanitation could be useful, particularly in the case of dispersed housing.

1.14 With regard to improving knowledge and data collection, the EESC proposes the creation of a website where climatic parameters, drawn from the IPCC's global models, would be downloadable and available to local and regional players.

2. **Gist of the communication**

2.1 Problems of water scarcity and increased frequency of droughts have now emerged as a major challenge in Europe, not only for traditionally vulnerable regions but also for the continent as a whole. The proportion of European river basin areas suffering from severe water stress could increase from 19 % today to 35 % by 2070. Especially, southern, central and eastern Europe are likely to be severely affected.

2.2 The number of areas and people affected by droughts has risen by 20 % in the space of thirty years. In addition to the human cost drought brings with it an economic cost. In 2003 the cost of the damage to the European economy was at least EUR 8.7 billion. A study of water use worldwide reveals a wide variety of situations. An American consumes 600 litres a day on average, a European 250 to 300, a Jordanian 40 and an African 30. Faced with the threat of water shortage, everyone must try to change their habits, but action must be taken where efforts are likely to have the greatest impact. Agriculture is the biggest user (71 % of water abstraction), followed by industry (20 %) and domestic water consumption (9 %) ([2]).

2.3 In response to a request for action from the Environment Council in June 2006, the Commission therefore presents an initial set of policy options at European level:

— putting the right price tag on water;

— allocating water and water-related funding more efficiently;

— financing water efficiency;

— developing drought risk management plans;

— further optimising the use of the EU Solidarity Fund and European Mechanism for Civil Protection;

— fostering water-efficient technologies and practices;

— introduction of a water scarcity and drought information system in Europe;

— RDT opportunities.

2.4 In so doing, the Commission seeks to establish the foundations of an effective strategy for promoting efficient water use, as part of efforts to combat climate change and reinvigorate the European economy.

2.5 The Council of the European Union ([3]) stressed that the issue of water scarcity and droughts should be addressed separately, not only from a European perspective but also at international level, and acknowledged the need for full implementation of the Water Framework Directive (WFD).

2.6 The Council asked the Commission to present a follow-up report on the implementation of the communication and to flesh out the EU strategy in these areas by 2012.

2.7 The EESC does not intend to make its own diagnosis of the situation, which would be superfluous, preferring instead to comment on and complement the proposed ways forward and, above all, to put forward practical recommendations and incentives.

2.8 The issues of water scarcity and drought in the EU impact on several policy areas. Thus, for example, depending on the case at hand, the competent Commission bodies could be DG AGRI, DG ENV and DG REGIO, since these issues concern agriculture, water policy, climate change, crisis management and the organisation of European civil defence. It would be desirable if the Commission were to ensure that water-related concerns are taken on board in a cross-cutting manner.

3. **General comments**

The EESC's comments follow the structure of the communication.

3.1 *Price of water*

3.1.1 The Commission's thinking in this respect is in line with the WFD. The Commission regrets that not enough use has been made of economic instruments and points out that pricing policies can prove ineffective if a major part of water abstraction is not metered or registered by the authorities.

3.1.2 Moreover, many Member States have adopted restrictive definitions of waters uses and users. By adopting a restrictive definition of water users — distribution of drinking water and sanitation — and omitting to take into account irrigation, navigation, hydro-electric schemes, flood protection, etc., some Member States have limited the scope for full cost recovery and effective pricing of different water uses.

([2]) Source: Atlas pour un monde durable. Michel Barnier. Edition Acropole.

([3]) Brussels European Council, 14 December 2007, Presidency conclusions 16616//1/07 REV1, p.17.

3.1.3 Consequently, the EESC suggests that the Commission urges Member States with overly 'restrictive' definitions of water uses and users to modify their approach, for example by relating it a list of water uses where they would have to justify the exclusion of any particular use from that list. It would be useful to define criteria for establishing a hierarchy for water use, which would also serve as an aid in introducing a smart pricing system.

3.1.4 The EESC also recommends the setting-up of a research programme in applied economics for modelling financial flows and social utility flows associated with different water uses and water circuits at the level of a river basin as a whole.

3.1.5 Discussions on a fair price for water must be clarified by analysing the economic costs and benefits incurred or received by all sectors of activity, consumers, users and taxpayers, in relation to water usage.

3.1.6 The Committee would also draw the Commission's attention to the tendency, resulting from the over-restrictive definition of water uses, for some Member States to pass on the cost of water conservation to urban consumers, to the benefit of agricultural or industrial users. Should prices for agricultural users increase, then there would be a need for a balanced tariff.

3.1.7 The EESC notes that pricing incentives to save water must be powerful enough to prevent their impact from being mitigated by costs arising from any complexities generated by such schemes. The Committee would recall that the first source of saving is to be found in the proper maintenance of networks and tackling leaks, which sometimes lead to unacceptably high levels of wastage. Finally, the Committee would point out that pricing cannot solve everything and that regulation has a role to play in situations where a balance has to be struck between different water uses.

3.1.8 Where the demand for non-agricultural use of water is seasonal, which is often the case in holiday resorts, a two-part pricing system would be advisable. It would constitute an element of fairness between resident consumers and holiday-makers with regard to sharing the fixed costs of the system.

3.2 *Allocating water and water-related funding more efficiently*

3.2.1 The Commission notes that the economic development of some river basins can lead to adverse effects on water resource availability and points out that particular attention needs to be paid to river basins facing 'stress' or scarcity.

3.2.2 The EESC recommends the creation of a European website dedicated to river basin plans, under the control of the European Environment Agency and/or the Commission and intended in particular for local and regional authorities and other relevant authorities, on which specific examples of such plans would be publicly available.

3.2.3 The website could be a source of methodologies, objectives, solutions to problems and economic figures for players at local level. Considerable time could be saved in drawing up such plans.

3.2.4 The impact of agriculture on water resources is well known. Steps should be taken to promote more efficient water use, including sustainable irrigation and drainage (for example, the drop-by-drop irrigation technique). The 2008 CAP Health Check must be used as an opportunity for more mainstreaming of quantitative water usage issues into CAP instruments. Thus the aim to achieve the total decoupling of aid should be accompanied by an increase in support for water management within the framework of rural development programmes. Similarly, specific instruments should be introduced for drought risk management in the agricultural sector.

3.2.5 Generally speaking, the Commission could differentiate its assistance rates in accordance with the criterion of rational water use and conservation of water resources (5 to 10 percentage points within the maximum rate of assistance, for example). This criterion, established at the time of the project study or when put out to tender in the case of construction, would be audited, at the initiative of the authority receiving European assistance, on completion of the project and after an interval of five years. The additional assistance would take the form of a deduction in the cost of reimbursing investment, as a reward for observed performance.

3.2.6 The Committee believes that containing the overall costs of projects pertaining to the supply of drinking water or purification is the appropriate approach both from the economic point of view and in terms of sustainable development. Overall cost is understood here to mean the net present value of the investment and the operating, maintenance and renewal costs over a long period.

3.2.7 Therefore, projects offering selection criteria and guarantees based on them should be promoted, in particular by the Commission, in order to disseminate good practices relating to rational water use and conservation of water resources.

3.2.8 The whole approach is in line with the Commission's desire to give first priority to supporting water saving and efficiency measures. Consistency will have to be established between this policy and the policy with regard to biofuels, which are consumers of water.

3.3 *Improving drought risk management*

3.3.1 The Commission wants to foster exchanges of good practice.

3.3.2 The EESC would like to see maps drawn up each spring, with the aid of satellites and backed up by local meteorological analyses, showing the risks of drought, shortfalls in agricultural production and fire. Data from river basins plans already drawn up should also be used in this context. This data should be accessible to farmers or farmers' associations in connection with their risk management.

3.3.3 The Committee believes it would be desirable to move from crisis management to drought risk management. As far as the former is concerned, there is still room for improvement, as demonstrated during the catastrophic fires in Greece summer 2007. The EU could facilitate and encourage the interoperability of means of preventing and fighting fires, the standardisation of equipment, the containerisation of diesel pumps, and the carrying-out of joint exercises. This would entail the practical application of the European Mechanism for Civil Protection.

3.3.4 The Commission's proposal to apply for assistance from the EU Solidarity Fund, as amended and adjusted, to deal with the consequences of severe droughts should clearly be retained. It would also be advisable to set up an insurance scheme to offset the consequences of drought periods, particularly for farmers, who are the first victims.

3.4 *Additional water supply infrastructures*

3.4.1 The Commission has in mind here projects of a collective nature. In certain cases individual initiatives could also be considered, giving prominence to the notion of a hierarchy of water uses.

3.4.2 Whatever the case, the communication considers not only water transfers from one river basin to another and the construction of dams and micro-dams under highly regulated conditions as potential options, but also the reuse of waste water and desalination. As regards the reuse of waste water, the problem is the accumulation of pollutants over successive reuse cycles. Consequently, it would be useful to launch or support a research programme on modelling concentrations after multiple cycles, in order to derive stabilisation criteria to determine when concentrations reach limit values compatible with the system's self-purifying capacity.

3.4.3 In the case of desalination there are two types of problem: on the one hand, energy-related ones and, on the other hand, environmental ones relating to by-products and the mixture of saline concentrates.

3.4.4 One option that could be considered is a programme for the development of solar desalination, with a range of micro installations which would represent a technological contribution by Europe to developing countries facing drought.

3.4.5 In general, there is a need to encourage research and development into water-saving techniques or techniques fostering the replenishment of groundwater (surfacing of roads in urban areas, for example) and biotechnologies enabling the development of less water-consuming agricultural crops.

3.4.6 Finally, there is also a need to explore the possibility of underground water storage and re-injection of groundwater. Here pilot projects should be selected and standards established for stored water which are both realistic and protect the subsoil. This concerns both the quantity and quality of underground water as water tables are also victims of pollution. Special attention should be paid in this context to high water-consuming industrial activities, which both tap groundwater supplies and have the potential to pollute them.

3.4.7 In addition, the EESC calls on the Commission to explore the possibility of inter-regional water transfers. A transfer from a surplus to a deficit basin could be desirable, also from a European viewpoint in terms of, for example, agricultural self-sufficiency, if water use in the recipient basin is efficient and water-saving. Technical, pricing or regulatory measures must be designed to prevent wastage elsewhere, that is collective aid granted to a 'deserving' sector must not lead to increased water consumption in non-priority sectors.

3.4.8 The EESC believes that possible measures should be agreed to regulate water flow between third countries and EU Member States through which a river flows across the external EU border.

3.5 *Fostering water-efficient technologies and practices*

3.5.1 The Commission feels that the use of water-efficient technologies could be increased substantially. In addition to tackling the problems of leakages, which are considerable in some networks, and wastage, the upgrading of water management practices offers interesting possibilities.

3.5.2 The measures proposed by the Commission are clearly desirable (standards for water-using devices and equipment, water performance of buildings, a performance indicator, adaptation of economic activities to water scarcity and droughts, etc.).

3.5.3 The possibility of using grey water should also be explored, whilst bearing in mind that this would require investment, particularly with regard to installing separate piping and adopting precautionary measures. Consideration should also be given to how rainwater could be recovered in a more systematic way.

3.5.4 One potentially promising technique is smart metering and bespoke billings. Metering technology and remote transmission of consumption data suggest the possibility of introducing several kinds of pricing, as is already the case with electricity. The customer could then have an account tailored to his specific circumstances, but nevertheless conducive to energy-efficient behaviour: seasonal tariff, permanent tariff, off-peak tariff, etc.

3.5.5 With a view to conserving water resources, combating floods and the erosion and pollution which accompany them, policies for the protection of the rural environment should strongly encourage reforestation and the planting of hedges, where such practices would be feasible and useful, and the maintenance of agriculture. Applications and checks could be made on the basis of the most advanced systems for defining geographic areas. It would be desirable to encourage basic agricultural research under the Seventh Framework Programme for Research and Development, with the aim of creating plant varieties which are more resistant to drought.

3.5.6 Continuing on the subject of agricultural practices, there is a need to promote sustainable drainage and irrigation and, in general, the use of best available techniques. Drainage ditches, particularly at points where there are crossings, should be equipped with sections where water can be held back and stored locally so as to limit the concentration of waters, and the erosion and pollution which go with it, and foster re-infiltration. Storing water locally in this way would, of course, bring with it clean-up obligations, which would have to be studied with professionals.

3.6 *Fostering the emergence of a water-saving culture in Europe*

3.6.1 The comments made by the Commission can only be welcomed: certification and labelling to foster water efficiency and saving are appropriate ways forward. However, in the case of labelling, it should be borne in mind that there is a vogue for ecological labelling and there is a danger here that excessive labelling could make the information provided incomprehensible.

3.6.2 The whole of organised civil society, i.e. the social partners and associations, together with the world of education and training, should be mobilised to contribute to the emergence of a water-saving culture. Training and the diffusion of new technologies in the relevant sectors must avoid making the mistakes of the past, particularly in the area of urban hydraulics.

3.6.3 It is worth noting that there is a growing market today for equipment for the recovery of rainwater and recycling of grey water in individual homes. This points to the emergence of a water-saving culture as advocated by the Commission. However, the justified concern to save water must not lead to an individualist quest for self-dependence, which would undermine, technically and economically, the public provision of water supply and sanitation services, which was and still is at the root of major advances in hygiene and life expectancy. In fact, it has been forgotten in our developed societies that, while water is necessary for life, it can also be the bearer of death.

3.6.4 Thus individual (non-collective) systems for water saving, recycling and sanitation would seem to be an interesting option and suited to dispersed housing. But they would appear to be less attractive, in economic and social terms, in an urban environment, unless water collected and recycled using such systems, even if they capture run-off on private property, is treated and used by public services.

3.7 *Improving knowledge and data collection*

3.7.1 The Commission notes that reliable information on the extent and effects of water scarcity and droughts is essential. The Committee fully endorses the idea of producing an annual European assessment and making better use of the services of the Global Monitoring for Environment and Security (GMES) initiative to provide satellite-based data and monitoring tools to support water policies. Universities and scientific research centres should be encouraged to produce studies on water-related issues, preservation of water resources and ways of increasing them through the development of new technologies.

3.7.2 There is a need to standardise the status criteria used in the inventories of water bodies provided for in the WFD. In practice, the reports produced by Member States are disparate both in terms of the size of the water basins studied and the density of measurements of water quality and biodiversity.

3.7.3 The EESC therefore encourages the Commission to go ahead with the work of the specialised committees monitoring application of the WFD and to publish scoreboards showing the progress made by the Member States, with a view to stimulating efforts in this area and bringing about their convergence.

3.7.4 From a realistic point of view, there is a need to focus efforts in the most vulnerable areas, without waiting for the achievement of uniformity and quality in all assessments and action plans. The selection of these areas could be made on the initiative of Member States, but in accordance with common criteria (rainfall deficiency and definition of geographical area).

3.7.5 Raising local and regional players' awareness of the risk of water scarcity and the effects of climate change more generally would be easier if information on climate trends were made accessible to as large an audience as possible.

3.7.6 The EESC therefore proposes, as a practical step, the creation of a website, possibly as part of the Water Information System for Europe (WISE), where climatic parameters, such as rainfall, evapotranspiration, temperature, wind speed and hours of sunshine, drawn from the global models of the Intergovernmental Panel on Climate Change (IPCC), would be downloadable (along the lines of the PRUDENCE or ENSEMBLES projects but more systematic in their coverage, and providing numerical data in addition to geographical data).

3.7.7 The responsibility for the scientific character and updating of the data made available online would be entrusted to a group of European laboratories which are members of the IPCC.

3.7.8 The EU could finance the initial setting-up of the website and modest fees for downloading could be used to support the work of the research laboratories contributing to the models.

Brussels, 29 May 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 Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

COM(2007) 602 final — 2007/0223 (CNS)

(2008/C 224/16)

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 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

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 29 April 2008. The rapporteur was Mr Sarró Iparraguirre.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May 2008), the European Economic and Social Committee adopted the following opinion by 70 votes in favour, with three abstentions.

1. **Conclusions**

1.1 Given that the persistent practice of IUU fishing requires a comprehensive response, based on an effective regulatory instrument to be applied throughout the supply chain, from catch to sale, the EESC believes that, in general, the proposed Regulation provides the necessary framework to prevent, deter and eliminate IUU fishing and therefore supports it. It believes that the proposed measures strengthen the Community's role as a flag state, port state, market state and beneficiary state.

1.2 The Committee believes that the success of the proposed Regulation is based on four pillars:

— determination of Member States to combat IUU fishing;

— cooperation between Member States;

— international cooperation;

— an ongoing and constant effort to implement it.

1.3 Without seeking to exclude the Community fleet from the scope of the proposed Regulation, the EESC believes that the proposal should distinguish more clearly between IUU fishing by third country vessels, which flag states do not monitor, and other acts of illegal fishing carried out by Community vessels which violate the Common Fisheries Policy and are presently covered by legal instruments provided for under Regulation (EEC) 2847/93 ([1]).

1.4 The Committee believes that implementing all of the proposed control and inspection measures will involve a significant increase in spending and bureaucracy for Member States, as well as an extension of administrative monitoring infrastructure. It therefore calls on the Commission to take this into account so as not to impair the end result and, in any case, to take the proper precautions so that the implementation of the proposed Regulation does not lead to increased operational costs for businesses whose fishing vessels practise legal fishing.

1.5 Furthermore, the Committee believes that the proposed measures should not, under any circumstances, affect legitimate commercial traffic in a way that could present a barrier to trade, contravening the rules governing international trade.

1.6 The Committee believes that the proposed Regulation does not properly explain how the flag state authority should validate the catch certificate requested by the European Community. Given that this validation must be carried out electronically, the EESC believes that the proposed Regulation should clearly explain the method of validation both for vessels transporting fresh catches as well as those which transport frozen fisheries products.

1.7 The EESC believes that the monitoring of fishing vessels from third countries should be carried out uniformly in all 'designated ports' across the various Member States. Furthermore, it believes that the proposed Regulation should spell out more clearly that the inspections will be carried out at sea, on land and from the air.

1.8 The EESC reiterates the point it made in other opinions that the Community Fisheries Control Agency should play a key role in coordination, monitoring and control of IUU fishing. In order to do this, the Agency must be provided with more financial and human resources.

([1]) Council Regulation (EEC) No 2847/93 of 12.10.1993.

1.9 The Committee believes that the level of sanctions imposed on third country vessels should be harmonised in all EU Member States. In the case of non-compliance by states, the Committee believes that the possibility of applying sanctions unrelated to fishing should be considered.

1.10 In any case, the EESC believes that the guarantees involved in the procedures for identifying IUU vessels and non-cooperating states should be reinforced, particularly the guarantees of protection, and that these should be based on solid evidence to prevent courts from later revoking measures adopted by Member States.

2. **Introduction**

2.1 For more than ten years, the Community has been engaged in a fight against IUU fishing. Since 2002 this fight has taken the form of a Community action plan to prevent, deter and eliminate IUU fishing within the Community itself and at regional and international level ([2]).

2.2 In its resolution ([3]) of 2005 on the application of the Community action plan stipulated in the above-mentioned Communication, the European Parliament stated that the European Union had to expand and step up its efforts to combat IUU fishing.

2.3 Although there have been significant improvements, IUU fishing has not disappeared. The Commission believes that the persistence of the practice requires a firm and urgent response on the part of the European Union.

2.4 Accordingly, last year the Commission drew up a new Communication ([4]) on a new strategy for the Community to prevent, deter and eliminate illegal, unreported and unregulated fishing.

2.5 Following extended consultations throughout last year, in which the Committee played an active role ([5]), the Commission has drawn up the current proposed Regulation ([6]), which seeks to achieve the following:

— improve control of the legality of the activities of third country fishing vessels and of their catches accessing fishing ports of the European Community;

— improve control of compliance with conservation and management measures by third country fishery products imported into the Community by other means than fishing vessels;

— close the EU market to IUU fisheries products;

— address IUU activities carried out by nationals from the European Community outside its territory;

— improve the legal means to ascertain IUU fishing activities;

— introduce an efficient regime of penalties aiming to deter serious infringements to fisheries measures;

— improve action against IUU fishing within Regional Fisheries Management Organisations;

— support the policy and means of developing countries against IUU fishing;

— increase synergies in the field of monitoring, control and surveillance among Member States and between Member States and third countries.

2.6 The proposal thus relies on the principle that an efficient strategy against IUU fishing should be comprehensive and cover all the facets of the problem, along the whole supply chain.

3. **General comments**

3.1 The EESC considers that the worrying environmental and socio-economic consequences of IUU fishing make it essential for the European Union to take decisive action, and thus broadly supports the Commission.

3.2 Current Community rules, under which a monitoring system for the Common Fisheries Policy ([7]) was established, provide for a broad-based system to monitor the legality of catches by Community fishing vessels, but do not authorise a similar degree of monitoring and sanctions for fisheries products caught by vessels from third countries and imported into the EU.

3.3 This loophole is a way for economic players, both from within and outside the EU, to introduce IUU fishing into the Community, the world's largest market and main importer of fisheries products, thereby increasing the profitability of their activities. For this reason, the Committee believes that it is right for the proposed Regulation to focus on IUU fishing activities by third country vessels, without excluding the Community fleet from the scope of its application, as stipulated in Article 1(4) of the proposal.

([2]) COM(2002) 180 of 28.5.2002 and Council Conclusions of 7.6.2002.
([3]) European Parliament Resolution 2006/2225, adopted 15.2.2007.
([4]) COM(2007) 601 final of 17.10.2007.
([5]) EESC conference on the responsibility of the flag state, 30.1.2007.
([6]) Proposal for a Council Regulation 2007/0223 (CNS) establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
([7]) Council Regulation (EEC) No 2847/93 of 12.10.1993.

3.4 The proposed Regulation establishes a new monitoring system which will apply to all IUU fishing activities and to all associated activities carried out within the territory or within the maritime waters subject to the sovereignty or jurisdiction of the Member States or by Community fishing vessels or nationals. It will also apply, without prejudice to the jurisdiction of the flag state or coastal state concerned, in relation to IUU fishing activities carried out by non-Community vessels on the high seas or in the waters under the jurisdiction of a third country, as stipulated for the Community fleet under the Common Fisheries Policy.

3.5 Without seeking to exclude the Community fleet from the scope of the proposed Regulation, the EESC believes that the proposal should distinguish more clearly between IUU fishing by third country vessels, which flag states do not monitor, and other acts of illegal fishing carried out by Community vessels which violate the Common Fisheries Policy and are presently covered by legal instruments provided for under Regulation (EEC) 2847/93 mentioned above.

3.6 The proposed Regulation also establishes a proper system for monitoring the supply chain of fisheries products imported into the Community. The Committee believes that the proposed measures should not, under any circumstances, affect commercial traffic in a way that could present a barrier to legitimate trade.

3.7 The EESC welcomes the Regulation proposed by the Commission. It is clear and broad in scope, it provides for the monitoring of illegal fishing activities at EU and international level and it is backed up with immediate enforcement measures and effective, proportionate and dissuasive sanctions for natural and legal persons who have carried out serious infringements of the Regulation or are responsible for them. However, in the case of non-compliance by states, the Committee believes that the possibility of imposing sanctions that differ from those applicable to fishing should also be considered.

3.8 The EESC believes that the order of the chapters in the proposed Regulation should be changed, with chapters IV and V on the *Community Alert System* and *Identification of vessels engaged in IUU fishing activities* following on from chapter I.

3.9 At the same time, the Committee believes that Article 13 (1) of chapter III should make it clear that the ban on importing IUU fisheries products covers imports by sea and by land and air.

3.10 In the Committee's view, the main difficulty in implementing the proposed Regulation is that it requires general consensus and the support of Member States as well as an effective cooperation network at international level.

3.11 The Committee believes that implementing all of the proposed control and inspection measures, both in port and at sea, as well as measures on the certification, monitoring and verification of vessels and catches, and on the control of imports by land, sea and air, will involve a significant increase in spending and bureaucracy for Member States, as well as an extension of administrative monitoring infrastructure. It therefore calls on the Commission to take account of their impact in the proposed Regulation so as not to impair the end result.

3.12 In this connection, the Committee urges the Commission to take proper precautions to ensure that the implementation of the proposed Regulation does not lead to increased operational costs for businesses whose fishing vessels practise legal fishing.

3.13 In short, the EESC believes that the proposed measures strengthen the Community's role as a flag state, port state, market state and beneficiary state.

4. **Specific comments**

4.1 As we have seen so far, the proposed Regulation, if applied correctly, consistently and continuously, is capable of making the European Union a leader or standard-bearer in the international struggle against IUU fishing.

4.2 After several general provisions on implementation, the Regulation turns directly to EU port control of third country fishing vessels. It is important to point out here that transhipments between third country fishing vessels or between the latter and Community vessels are to be prohibited. The ban extends beyond Community waters to transhipments at sea of catches from third country vessels to Community vessels.

4.3 The EESC welcomes this ban on high seas transhipment; it has repeatedly urged the Commission to introduce such a ban since it is the source of much IUU fishing.

4.4 The Regulation states clearly that vessels from third countries will be able to enter only 'designated ports' in the European Union, specified in advance by Member States, and provided that they have met a set of requirements concerning notice of entry and authorisation, a validated certificate of catches and inspection. Access to ports of Member States, the provision of port services, and the conduct of landing, transhipment or on-board processing operations in such ports will be prohibited for third country fishing vessels unless they comply with the requirements and provisions of this Regulation.

4.5 The Regulation attaches particular importance to close and rigorous monitoring of notification of entry, certification of catches and inspection in port.

4.6 With regard to the verification of catch certificates, which must be sent 72 hours prior to arrival in port, the Committee believes that these should be validated electronically by the validating authority. The Committee feels that the proposed Regulation does not make it sufficiently clear how these certificates will be validated. Furthermore, the Committee believes that the Commission should indicate any exceptions to the given time frame of 72 hours.

4.7 The Committee supports the Commission's guidelines on monitoring fishing vessels and calls for consensus among all Member States to ensure uniform application in all 'designated ports'.

4.8 Breaches of the Regulation in which a fishing vessel from a third country has been involved in IUU fishing activities will result in that vessel being banned from landing, transhipping or processing its catches on board, in the launch of an investigation and, where appropriate, the imposition of sanctions under the national legislation of the Member State concerned. In the event of serious violations, the proposed Regulation provides for immediate enforcement measures.

4.9 The aim of this rigorous monitoring of third country fishing vessels, which follows exactly the same procedure as the monitoring of Community vessels, is to identify fisheries products obtained in illegal, unreported and unregulated fishing operations. Under the Regulation, it is prohibited to import these products into the Community.

4.10 The EESC believes that imports throughout Community territory should be inspected, and for this reason chapter III should also cover inspection of containers imported into the European Community by land or by air. Furthermore, a minimum figure should be set for the percentage of containers to be inspected each year.

4.11 The Regulation stipulates that when fisheries products are considered to be the result of IUU fishing under the terms of the Regulation and are therefore banned from being imported, while paying due consideration to the right of appeal, Member States may confiscate and dispose of these products in accordance with national rules.

4.12 To ensure correct application of the Regulation in all matters concerning the import and re-export of fisheries products and, where appropriate, a ban on imports, it is stipulated that the Commission will be able to sign administrative cooperation agreements with flag states.

4.13 The system established by the Commission under this Regulation requires broad cooperation at international level between the EU and flag states, states cooperating in regional fisheries organisations and with the regional organisations themselves. Furthermore, as a consequence of this cooperation non-cooperating states must be identified, and the Regulation provides for ways to deal with these states.

4.14 The first internal consequence of this international cooperation is the creation of a Community alert system, warning economic players and Member States of any reasonable doubt that the Community may have as to compliance with laws, regulations or international conservation and management measures in respect of fishing vessels or fishery products from certain third countries.

4.15 The warning will result in Community and international monitoring of the imports which provoked the alert and previous imports, and of the fishing vessels concerned by the warning. If the enquiries, inspections and verifications prove that IUU fishing activities have taken place, the Commission may adopt other measures, such as including the vessel or vessels concerned in a Community list of IUU fishing vessels.

4.16 The Regulation specifies that it will be the Commission or a body designated by it that will gather and analyse all information on IUU fishing activities.

4.17 The EESC believes that the body best placed to carry out this task is the Community Fisheries Control Agency, which should be provided with more human and financial resources.

4.18 The Regulation deals very extensively with all aspects of compiling, updating, and publicising the Community list of IUU fishing vessels as well as its content; vessels included in lists of IUU fishing vessels adopted by regional fisheries management organisations will be added automatically. The EESC believes that instead of including Community fishing vessels in this list automatically, the Commission should make sure in advance that the relevant Member States have not adopted effective measures, as indicated in Article 26 of the proposed Regulation.

4.19 The Committee believes that the system established under the Regulation is appropriate since it is a serious attempt to register fishing vessels and non-cooperating states in IUU fishing lists, with all the guarantees of prior information and protection this entails, and taking into account the measures applicable to vessels and states involved in IUU fishing activities. However, the EESC believes that the guarantees involved in the procedures for identifying IUU vessels and non-cooperating states should be reinforced, particularly the guarantees of protection, and that these should be based on solid evidence to prevent courts from later revoking measures adopted by Member States.

4.20 Given the serous consequences of being included in a list of non-cooperating states and that the requirements of this Regulation should apply equally to all States, the EESC accepts that the Commission should help developing countries to meet the requirements relating to monitoring, control and surveillance of fishing activities.

4.21 The Committee believes that the Vessel Monitoring System (VMS) is an important tool for monitoring IUU fishing activities, and that in order for a country to be removed from the list of non-cooperating states, it should be required to install VMS in all its fishing vessels.

4.22 The Committee approves of the strict measures established under the Regulation for fishing vessels and non-cooperating states involved in IUU fishing activities.

4.23 The Regulation also prohibits nationals of Member States from in any way offering support to or becoming involved in IUU fishing activities, as well as any activity relating to the chartering, export or sale of fishing vessels included in Community lists of IUU fishing vessels.

4.24 Finally, the Regulation places an emphasis on serious infringements, harmonising the minimum level at which maximum fines are to be set in all Member States, both for natural and legal persons, as well as the immediate enforcement measures and accompanying sanctions to prevent the reoccurrence of the infringement and to allow the competent authorities to investigate.

4.25 The Committee believes that the level of sanctions imposed on third country vessels should be harmonised in all Member States of the European Union.

4.26 With the aim of simplifying Community rules, the Commission's proposed Regulation includes the main rules on control, inspection, and enforcement adopted by the regional fisheries management organisations to which the Community belongs, thus broadening the scope of the Regulation's application to take in all waters covered by these organisations.

4.27 The EESC considers that at some future point the Commission should study the possibility of extending the Regulation to freshwater fisheries.

4.28 The EESC believes that the Regulation proposed by the Commission represents a very useful tool for preventing, deterring and eliminating illegal, unreported and unregulated fishing. A sustained and steadfast effort will be required in order to implement it. The Committee considers that cooperation among Member States is essential here.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRADIS

Opinion of the European Economic and Social Committee on the

— **Proposal for a Council Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears and the**

— **Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems**

COM(2007) 605 final — 0227/0224(CNS)

COM(2007) 604 final

(2008/C 224/17)

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 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears.

On 17 October 2007, the European Commission decided to consult the European Economic and Social Committee, under the Cooperation Protocol signed on 7 November 2005, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems.

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 29 April 2008. The rapporteur was Mr Espuny Moyano, and the co-rapporteur was Mr Adams.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 101 votes in favour, with one abstention.

1. **Conclusions and recommendations**

1.1 The EESC supports the general policy orientation set out by the Commission in this Proposal and Communication but believes the content, effectiveness and impact of the proposed regulation could be improved by incorporating the recommendations set out in sections 4 and 5 of this Opinion.

2. **Introduction**

2.1 It has become clear in recent years that ecosystems in deep waters can be the source of immense biodiversity and abundant marine life. They are one of the world's last remaining, significant groupings of natural resources. Cold water reefs, seamounts, corals, hydrothermal vents and sponge beds are increasingly at risk from human activities. Such systems exist in much less productive environments than those found in shallow waters and consequently may take centuries to regenerate. Hydrocarbon exploration, cable laying, waste dumping and particular types of bottom fishing activity ([1]), as well as other human activities, can have negative effects. Cold-water corals are also found in continental shelf areas in temperate latitudes ([2]).

2.2 Bottom fishing requires highly specialist gear, which generally can be used without serious damage where the sea bed is sandy or muddy. However, some types of gear are necessarily heavy and robust and in fragile deepwater ecosystems can severely degrade habitats and destroy ancient and largely irreplaceable structures, particularly coral.

2.3 As is often the case with global environmental issues it was understood that only by introducing balanced, effective, enforceable measures on a worldwide basis could this problem be comprehensively tackled. The UN General Assembly has been discussing the problems posed by high seas fishing practices since 2004. On 8 December 2006, it adopted Resolution 61/105 on Sustainable Fisheries, which issued a strong call for action by states and organisations with authority over bottom fisheries on the high seas to regulate such fishing to protect vulnerable marine ecosystems from damage ([3]).

2.4 This Opinion deals with two Commission documents on the protection of vulnerable marine ecosystems. The first, (COM (2007) 604), details the general policy orientation which it is proposed should guide and inform specific actions to be taken by the EU. This results from FAO recommendations developed

([1]) These include bottom trawls, dredges, bottom-set gillnets, bottom-set longlines, pots and traps. See Friewald, A., Fosså, J.H., Koslow, T., Roberts, J.M. 2004. *Cold-water coral reefs*. UNEP-WCMC, Cambridge, UK.

([2]) Ibid.

([3]) UN General Assembly resolution 61/105,. Paragraphs 83-86.

after extensive consideration of this issue by the UN General Assembly ([4]), in which the EU played a major role. The second document (COM(2007) 605), is a proposed Council regulation which will apply to EU vessels operating in the high seas not covered by a Regional Fisheries Management Organisation (RFMO) and should be seen as a direct legislative response.

2.5 It is in the long-term interest of both the industry and the conservation community to see seabed habitats protected to ensure the long-term sustainability of fish stocks as well as the conservation and protection of marine biodiversity.

3. **Summary of the Commission's general approach (COM(2007) 604) and specific proposal (COM(2007) 605)**

3.1 The two key elements of the framework for the management of bottom fisheries on the high seas are the prior environmental impact assessment of a proposed fishing area as a condition for the authorisation of individual fishing activities and the ability to demonstrate no significant adverse impacts as a condition for continued fishing. In support of this, improved research and data collection must be developed to identify the known or likely locations and ecological dynamics of vulnerable systems.

3.2 A particularly valuable measure is the adoption of geographically-based closures or special management areas. This would take place, by agreement, within an RFMO. Protection outside an RFMO is the responsibility of individual States in respect to vessels which carry their flag.

3.3 The proposed Regulation will impose the stringent control of high seas bottom fishing through measures similar to those already adopted by nations fishing on the high seas in the Northwest Pacific, South Pacific and Antarctic waters and which have been tabled for adoption in RFMOs in the North and Southeast Atlantic, the Antarctic and the Mediterranean.

3.4 The Commission received wide-ranging representations from member States, industry and environmental conservation bodies during the three years the issue was under negotiation at the UN General Assembly. It promoted a regulatory approach (as opposed to a ban) with the intention that this be applied by flag States through RFMOs and by flag States where their vessels operate on the high seas in areas where no RFMO currently exists.

3.5 In the proposal, the management of deep sea fisheries will largely be left to EU member states and linked to the issuing of special fishing permits. When applying for a permit, a vessel will have to submit a fishing plan setting out where it will be fishing, which species it will target, the depth at which it will fish and a bathymetric profile of the seabed in the area. The authorities will then have to assess the fishing plan and its potential impacts on any vulnerable marine ecosystems, relying on the best scientific information available.

3.6 The proposal also sets out a few clear limitations. Use of bottom gears at depths beyond 1 000 metres shall be prohibited. Use of bottom gears at depths beyond 1 000 metres shall be prohibited. Fishing vessels encountering vulnerable marine ecosystems will be required to cease fishing immediately and will only be allowed to resume fishing five nautical miles or more away from the site. The responsible authorities should be informed of the location of the encounter, and may then decide to close the area for fishing with bottom gears. All vessels will also be required to use satellite-based Vessel Monitoring Systems (VMS) as well as have scientific observers onboard.

3.7 Member States will be required to report to the Commission on the implementation of the Regulation every six months. The Commission will then prepare a report to the European Parliament and the Council before June 2010, including proposals for any necessary amendments.

4. **General comments**

4.1 The EESC supports the general policy orientation set out by the Commission which is consistent with its previously expressed position on halting the loss of biodiversity (NAT/334).

4.2 In recent years the EESC has thoroughly explored in various opinions ([5]) the positive and problematic issues arising from the objectives of the Common Fishing Policy (CFP), and how to sustainably exploit aquatic resources in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner. These aspects should all be taken into account when analysing the Commission's proposal for a Regulation.

4.3 Both the Communication and the Commission staff working document assessing the impact of the proposed Regulation mention that it will apply at present only to Community bottom trawlers fishing in the Southwest Atlantic (SWA) outside Argentina's Exclusive Economic Zone (EEZ).

([4]) Resolutions 59/25 (2004) and particularly 61/105 (paras. 80-95) of 8 December 2006.

([5]) NAT/264 — Regulation on the European Fisheries Fund (OJ C 267, 27.10.2005); NAT/280 — Regulation establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea (OJ C 65, 17.3.2006), NAT/316 (OJ C 318, 23.12.2006), NAT/333 (OJ C 168, 20.7.2007), NAT/334 – Halting the loss of biodiversity (OJ C 97, 28.4.2007); NAT/364 — Regulation concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (OJ C 10, 15.1.2008).

4.4 This fishing is carried out by around 30 Community vessels in the Southwest Atlantic (SWA), where a RFMO has not yet been set up, owing to the long-standing political conflict between the United Kingdom and Argentina over the Falkland Islands. This fishing activity can be described as follows:

— The high seas portion of this fishery is conducted on the continental shelf and upper slope of the Patagonian Shelf. It has existed for 25 years and the fishing industry and scientists assure that it covers the same sandy and flat bottom areas. Two types of fish are caught: shortfin squid (*Illex*) and common squid (*Loligo*), and hake (*Merlucius hubsi*). None of these species are classified as deep-water fish: classification is based either on the criterion of depth ([6]) (now rejected by the FAO) or biological nature (high longevity, late maturity, slow growth or low fecundity ([7])), which argues against additional protection. ([8]) In other words, it involves species of medium and high productivity, without significant by-catches, in areas which are not thought to contain especially vulnerable ecosystems.

— This fishing began thanks to EU funding of exploratory fishing voyages intended to redistribute the Community fleet. These voyages took place with on-board observers, and the European Commission should have comprehensive information about them.

— The Commission has also funded assessment studies, and Spain — through the Spanish Oceanographic Institute (IEO) — has run a programme of on-board scientific observers over the entire period to provide continuing information on these fishing activities, in addition to other information. ([9])

— The species caught incidentally (by-catch) are minimum, the main ones being pink cusk-eel or conger eel (*Genipterus blacodes*) and rock cod; the latter is a non-commercial species and attempts are being made to introduce it to the Community market.

— All the Community vessels work with special fishing permits issued by individual Member States and controlled by satellite (VMS). Moreover, around 20 % of the fleet carries scientific observers on board.

— Both fishing for cephalopods (shortfin and common squid) and hake takes place in two small high-sea areas that are part of a much larger area of fishing activity that includes both the Argentinean and Uruguayan EEZs, as well as the area controlled by the Falklands government, where around 100 vessels from Argentina, third-countries and the Falklands ([10]) operate.

— Of the deep-water species listed in Annexes I and II of Council Regulation (EC) No 2347/2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks ([11]), only wreckfish (*Polyprion americanus*) live in Patagonian waters, but no captures of this species have been recorded either by the IEO or by the Community fleet.

— The jobs and wealth generated by these vessels are concentrated in a region of the Community that is highly dependent on fishing ([12]).

4.5 In view of the above, the EESC suggests that should the comprehensive oceanographic survey of this area being presently conducted conclusively demonstrate no evidence of vulnerable marine ecosystems then the area (specifically geographically defined) should be exempted from the requirements of the proposed regulation.

4.6 Moreover, the EESC considers that the Commission's proposal does not ensure effective application and harmonisation of the regulations by Member States. As a result, the EESC calls on the Commission to play a more prominent role in coordinating and ensuring the effective implementation of the regulation by Member States.

4.7 The EESC considers that the Commission should encourage independent scientific assessments in addition to the impact studies provided by the Member States. To this end, it should make provision for the necessary funds to cover these assessments.

4.8 Lastly, the EESC points out that the FAO is drawing up a series of International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, and suggests that the Commission take into consideration the conclusions thereof.

5. **Specific comments**

5.1 The EESC considers that Article 1.1 of the proposal for a Regulation refer to Community fishing vessels which carry out fishing activities with bottom gears on virgin, unexploited fisheries in the high seas and that should take into account what is mentioned in point 4.5 above.

([6]) Data collected by the Spanish Oceanographic Institute (IEO observers), which is consistent with satellite information from 'blue boxes', show that over 95 % of fishing by the Spanish bottom trawling fleet fishing on the high seas of the Patagonian shelf takes place at depths of less than 400 metres.

([7]) Study by Koslow et al., published in 2000 in the ICES Journal of Marine Science: J.A. Koslow, G.W. Boehlert, J.D.M. Gordon, R.L. Haedrich, P. Lorance and N. Parin, 2000. Continental Slope and deep-sea fisheries: implications for a fragile ecosystem.

([8]) See recital (10) of the proposal for a Regulation.

([9]) See point 2.2. of the Commission Staff Working Document.

([10]) Korea, Japan, China, Taiwan and Uruguay

([11]) OJ L 351, 28.12.2002, p.6.

([12]) Input-output tables on the fish-canning industry in Galicia, published by the regional government, show that of the 74 activities comprising the Galician economy, 61 are dependent on fishing.

5.2 The EESC believes that the definition of 'vulnerable marine ecosystem' in Article 2 of the proposal for a Regulation is vague and unclear, and could cause problems of interpretation. The work being carried out by the FAO could help to clarify it.

5.3 Under Article 4, paragraph 5, the EESC is concerned to ensure that any amendments to fishing plans should also be reviewed to make certain there are no significant adverse impacts — i.e. that the amendments effectively address the potential problems identified in the impact assessments. The EESC is also concerned that the system set up will not be flexible enough to adapt to fishing activities, which can be very changeable and hard to predict.

5.4 The EESC believes that Article 5 could also be confusing, as it does not differentiate between expiry and withdrawal of the permit. The special fishing permit is an administrative authorisation that will be valid if the procedures required for its issue by the competent administration are met, as long as it is not suspended or withdrawn by this administration. The administration should expressly inform the permit-holder of the withdrawal or suspension of the fishing permit, and grant him/her a hearing. Therefore, the EESC proposes the following wording: 'The special fishing permit provided for in Article 3(1) shall be *withdrawn* if the fishing activities fail to conform at any time to the fishing plan submitted in accordance with Article 4(1)'.

5.5 Consequently, the second sentence of Article 5(2) should read 'The competent authorities shall examine such alterations and *may only modify the conditions* of the permit if they do not entail a relocation of the activities to areas where vulnerable marine ecosystems occur or are likely to occur.'

5.6 Article 6 proposes that the use of bottom gears at depths beyond 1 000 metres be prohibited. The EESC believes that this provision should be deleted because there is not sufficient scientific evidence to back this restriction, as has emerged from the FAO's discussions on the International Guidelines for the Management of Deep-Sea Fisheries in the High Seas. The fact that there is currently no fleet operating at depths beyond 1 000 metres does not mean that the Regulation should prevent this in the future, as long as the activity is sustainable. Moreover, as the Commission itself acknowledges, this measure is not recommended by Resolution 61/105 of the UN General Assembly.

5.7 The EESC is concerned about the ambiguity of Article 8 of the proposed regulation. There seems no guarantee that all areas where vulnerable ecosystems occur, or are likely to occur, will be closed to fishing with bottom gear. There is no clear obligation on Member States, having identified likely vulnerable areas, to close them to their flagged vessels.

5.8 Article 10 (as is the case with Article 5) confuses expiry with the revocation or withdrawal of a permit. The EESC therefore suggests the following wording for Article 10(1): 'Failure to conform to the fishing plan provided for in Article 4(1) in circumstances other than those specified in Article 5(2) shall entail the *withdrawal* of the special fishing permit issued to the fishing vessel concerned. Any fishing activities carried out from the time *of withdrawal of the special fishing permit* shall be considered as fishing without holding a fishing permit …'.

5.9 With regard to Article 12, proposing the assignment of observers on board 100 % of fishing vessels, the EESC considers this measure disproportionate, unnecessary and, in some cases, unenforceable, as not all vessels are equipped to accommodate an extra person on board. Moreover, this aspect would mean a further increase in running costs for enterprises. On the whole, scientific bodies consider that a specific percentage of on-board observers is sufficient to meet the proposed objectives.

5.10 With regard to Article 14, the EESC would also recommend that the Commission provide a report to Council and Parliament by 30 June 2009 as opposed to 30 June 2010, the date currently stipulated in the article. The UN General Assembly has agreed to review the implementation of the 2006 resolution in 2009 and it would be important for the Commission to provide a report in time for the UN General Assembly Review.

5.11 The EESC believes that the timeframe for entry into force (seven days after publication in the Official Journal of the European Communities) is not sufficient to allow vessels to submit fishing plans and the Commission to assess and approve them, and therefore proposes that a reasonable, realistic deadline be set, making it possible for the obligation to be complied with and the permit granted by the Commission.

5.12 Finally, the EESC considers that the regulation should incorporate a provision or article requiring that an assessment be conducted to ensure that the regulation of the fisheries will provide for the long-term sustainability of the fish stocks and the conservation of bycatch species. The former is called for in the UN General Assembly resolution and both the former and the latter are obligations contained in the 1995 UN Fish Stocks Agreement for fisheries on the high seas.

Brussels, 29 May 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 of the European Parliament and of the Council on novel foods and amending Regulation (EC) No XXX/XXXX (common procedure)

COM(2007) 872 final — 2008/0002 (COD)

(2008/C 224/18)

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 Regulation of the European Parliament and of the Council on novel foods and amending Regulation (EC) No XXX/XXXX (common procedure).

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 29 April 2008. The rapporteur was Mr Espuny Moyano.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 71 votes to one with two abstentions.

1.1 The EESC considers an update of legislation on novel foods to be necessary and appropriate, as this would achieve greater food safety and legal certainty, and thus endorses the Commission proposal, although a number of suggestions should be taken into account.

1.2 The Committee supports the creation of a web page containing the 'whitelist' of authorised foods that can be consulted by consumers and businesses but wishes to draw the Commission's attention to the importance of this page being easy to find amongst the mass of Commission pages and of it giving clear explanations, to ensure that it is genuinely useful.

1.3 Because the regulation makes a distinction between two categories of novel foods (according to whether or not they originate in an EU Member State), the EESC suggests that the whitelist of authorised foods be divided into two parts, so that it is easier to access and understand by consumers and operators alike.

1.4 The EESC considers that businesses' efforts in the field of R+D+I should be safeguarded by the authorities through the adequate protection of the data they provide and respect for the intellectual property of these data.

1.5 In the Committee's view, the deadline for evaluation (before 1 January 2015) lies too far in the future.

1.6 The EESC considers that the phrase 'that has not been used for human consumption to a significant degree …' is too ambiguous and could lead to error, confusion and dubious practices.

1.7 The EESC notes that there is no system or deadline for the revision of the list. It therefore proposes that the regulation establish a procedure for its revision as and when necessary.

1.8 The Committee wonders whether the deadline set by the EFSA for evaluation, where necessary, will be adequate.

2. Gist of the Commission proposal

2.1 The original European regulations on novel foods date back to 1997. With the passing of time, it has become clear that some aspects of these regulations need to be updated and amended.

2.2 The aim is to improve the efficiency, transparency and application of an authorisation system that should ensure the safety of novel foods and include a procedure for scientific assessment by the EFSA (the European Food Safety Authority), thus reducing the administrative burden on businesses and enabling them to be more competitive.

2.3 The Commission proposal lays down harmonised rules for the placing of novel foods on the market in the EU with a view to ensuring a high level of human health and consumers' protection, whilst ensuring the effective functioning of the internal market.

2.4 The regulation will not apply to food additives, flavourings, extraction solvents, enzymes, vitamins and minerals or genetically modified food and feed, because specific procedures already exist for these products.

2.5 The proposal considers 'novel food' to mean:

— food that has not been used for human consumption to a significant degree within the Community before 15 May 1997;

— food of plant or animal origin, when a non-traditional breeding technique not used before 15 May 1997 is applied to the plant or animal; and

— food to which a new production process not used before 15 May 1997 is applied, where that production process gives rise to significant changes in the composition of the food which affect its nutritional value, metabolism or level of undesirable substances.

2.6 The proposal also contains definitions of basic concepts such as 'traditional food from a third country' and 'history of safe food use'.

2.7 It lays down that only novel foods included in the Community list of novel foods may be placed on the market and only if they meet the following conditions:

— they do not, on the basis of the scientific evidence available, pose a safety concern;

— they do not mislead the consumer;

— they are not nutritionally disadvantageous for the consumer in cases where it is intended to replace a traditional food.

2.8 These conditions will also apply to the inclusion in the Community list of both novel foods produced by new breeding methods or new production processes and to traditional foods from third countries considered to be novel foods. In both cases, novel foods must observe the applicable rules and adhere to the established procedure (which involves the Commission, the EFSA and the Member States).

2.9 The Commission will, where appropriate (in cooperation with the EFSA), provide tools and technical guidance to operators — and especially to SMEs — in the process of applying for authorisation.

2.9.1 Again where appropriate, the Commission may, for food safety reasons and following the opinion of the EFSA, impose a requirement for post-market monitoring (Article 11).

2.10 The proposal aims to ensure that the right to data protection is respected (Article 12) and establishes that the national authorities will lay down the corresponding framework for penalties applicable to infringements of Community provisions (Article 13).

2.11 The Commission will be assisted by the Standing Committee on the Food Chain and Animal Health (SCFCAH) and, lastly, a deadline is set for submitting the assessment of this Regulation's implementation (2015) with a view to making any changes that might be needed.

3. **General comments**

3.1 *Centralising evaluation and authorisation procedures*

3.1.1 The proposal puts forward a centralised framework for assessing and authorising novel foods, which would be carried out by the EFSA (scientific assessment) and the European Commission (authorisation). This model, involving assessment by the EFSA (Article 10), should help to standardise the safety of novel foods in the EU, simplify the procedures to be followed by businesses and speed up the pace of authorisations for novel foods in Europe. In short, the proposal indirectly stimulates businesses' investment and interest in developing novel foods.

3.2 *The need for a centralised procedure for authorising novel foods that ensures their safety and simplifies authorisation procedures for novel foods*

3.2.1 With the publication of the Regulation on novel foods and novel food ingredients in 1997, Community law acquired the new instrument it needed to ensure the free movement of safe food products.

3.2.2 The passing of time and the regulation's implementation have highlighted a number of aspects that need to be improved in order to ensure a high level of public health protection and wellbeing and the free movement of goods and to establish efficient authorisation mechanisms that help businesses to innovate.

3.2.3 The proposal sets out two authorisation procedures, to be selected according to the type of novel food in question: a procedure for traditional foods from third countries that producers wish to place for the first time on the EU market and a procedure for novel foods produced by non-traditional breeding techniques or by new production processes.

3.2.4 With regard to the former (Article 8), there is a need to simplify the existing authorisation procedure, which validates the safety of such products on the basis of a history of safe food use over a period of time (one generation) in third countries and on the basis of proof that such food has not been used for human consumption to a significant degree within the European Union before 15 May 1997. This notification procedure to a large extent simplifies the requirements that traditional foods from third countries have until now had to meet to in order to be placed on the market in the European Union.

3.2.5 With regard to foods in the latter category (novel foods produced by non-traditional breeding techniques or by new production processes), which are the focus of the R&D carried out by the EU's food industry, the requirement is for a single safety assessment by the EFSA and a procedure (Article 19) that is clear, straightforward and effective and which helps to speed up the hitherto lengthy authorisation procedures. Nevertheless, despite the importance of this aspect, the proposal does not fully develop the procedure to be followed in such cases, in that it refers to the common authorisation procedure for additives, enzymes and flavourings. Referring to this authorisation procedure (which has not yet been adopted in the EU) looks to be an interesting proposal, but its scope does not appear to have been considered in sufficient detail.

3.2.6 Centralising the assessment and authorisation of novel foods (involving the EFSA and the European Commission) is essential, but a simple, clear, effective, detailed procedure with deadlines also needs to be established (along the lines of the notification procedure for traditional foods from third countries) to authorise novel foods produced by non-traditional breeding techniques or by new production processes, which lie at the heart of innovation in the food industry.

3.2.7 This procedure could be included in the proposal or could refer to another regulation. In both cases, however, the proposal should contain all of the details needed to ensure that the operator is familiar with the procedures to follow in order to obtain the appropriate authorisations.

3.2.8 The proposal should be sufficiently clear and comprehensive as to enable operators to apply it, although this does prevent the Commission from drawing up relevant guidelines at a later date (Article 9).

3.3 *Community lists*

3.3.1 The initiative to draw up lists of novel foods (Articles 5, 6 and 7) will help to improve consumer information and provide operators with greater legal certainty. The list-based model is by no means new, since the use of such lists has become increasingly common (for example, the Regulation on nutrition and health claims and the Regulation on the addition of vitamins and minerals to foods, amongst others). Where traditional foods from third countries are concerned, the model appears to be quite thoroughly developed in the proposal, in terms of the list content and publication on DG SANCO's website, but the same cannot be said of other novel foods (it is not known whether the list will be published on DG SANCO's website, …). It would be useful for this to be clarified.

3.4 *Protection of intellectual property*

3.4.1 Developing novel foods requires considerable commitment to and investment in R&D on the part of businesses and they therefore require not only straightforward, swift and economically feasible procedures; knowledge and developments must also be protected to ensure that competitiveness does not suffer. No clear definition is provided for the scope of the data protection to which, according to the proposal, businesses will be entitled (it refers only to authorisations, what becomes of applications that are ultimately rejected, etc.).

3.4.2 Providing the future regulation with a tool such as data protection will help to give businesses some security as regards the economic and human resources they channel into new projects. They will see data protection as a tool that affords them the protection they need to continue innovating and to become increasingly competitive, given the ever-more demanding nature of both the market and consumers.

Brussels, 29 May 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 Directive simplifying procedures of listing and publishing information in the veterinary and zootechnical fields and amending Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, Decision 2000/258/EC and Directives 2001/89/EC, 2002/60/EC, and 2005/94/EC

COM(2008) 120 final — 2008/0046 (CNS)

(2008/C 224/19)

On 11 April 2008, 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 Directive simplifying procedures of listing and publishing information in the veterinary and zootechnical fields and amending Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, Decision 2000/258/EC and Directives 2001/89/EC, 2002/60/EC, and 2005/94/EC.

On 21 April 2008, the Bureau of the European Economic and Social Committee instructed the Section for Agriculture, Rural Development and the Environment to undertake the preparatory work.

In view of the urgency of the matter, the European Economic and Social Committee, at its 445th plenary session held on 28 and 29 May 2008 (meeting of 29 May), appointed Mr Nielsen as rapporteur-general and unanimously adopted the following opinion.

1. **Conclusions**

1.1 The EESC fully recognises the need identified by the Commission to harmonise and simplify procedures for listing and publishing information in the veterinary and zootechnical fields. Hence, the rules for the listing, update, transmission and publication of information should be amended as quickly as possible.

1.2 Member States should continue to be responsible for compiling information and making it available to the other Member States and to the public at large. Harmonisation and simplification should be achieved through the regulatory procedure and, in the interests of clarity and consistency, this new procedure should also apply in the zootechnical field.

1.3 However, the Commission proposal is unnecessarily complicated and bureaucratic. It should be possible to secure the sought-after simplification and harmonisation more quickly and more easily by providing the Commission directly with the desired legal basis, including the remit to undertake the process of simplification and harmonisation in cooperation with the Member States using the regulatory procedure. In that way, the objective can be reached more quickly and more directly, thereby enabling the quickest possible application of the procedures for the listing, update, transmission and publication of information. Moreover, the information available on Member States' websites should be made more easily accessible and more readily understandable for all.

1.4 This is all the more necessary given the overall desire that has been expressed for simpler, more readily accessible legislation in the EU as a whole, and not least the Commission's intention to draw up a common legislative programme in the veterinary field, in conjunction with the new Animal Health Strategy, which seeks to consolidate EU legislation in the veterinary and zootechnical fields. If the proposal is implemented as it stands, this consolidation of legal instruments into a common framework will necessitate a revisiting of the entire issue in just a few years' time and will again mean new and time-consuming changes in Member States' legislation and administrative practice.

1.5 In this connection, there is also a need to specify as quickly as possible the procedures to be followed for the approval of — and the update of information on — assembly centres and the requirements to be met by the national reference laboratories.

2. **Background**

2.1 Trade in live animals and breeding material in the EU requires approval and monitoring by the institutions, businesses, installations and associations concerned (referred to hereinafter as *relevant bodies*) ([1]). It is vital to maintain adequate security and

([1]) These include:
- — state-run laboratories responsible for matters relating to serious contagious animal diseases (monitoring, test methods and preparedness, use of reagents, vaccine testing etc.);
- — bovine and porcine semen collection centres, semen storage centres, sperm banks and embryo collection or production teams;
- — breeding organisations and associations officially approved for maintaining or establishing herd books, flock books or stud books;
- — all kinds of approved assembly centres for bovine, porcine, caprine and ovine animals, poultry establishments;
- — approved dealers and registered premises used by dealers in connection with their business.

avoid any risk of spreading contagious animal diseases. The relevant bodies therefore have to meet a range of conditions and must be approved by the Member States to conduct internal EU trade in live animals and breeding material, including, not least, genetic material from animals in the form of semen and embryos.

2.2 EU veterinary legislation has grown up over time through the successive adoption of a significant number of legal instruments. As a result, a number of different procedures are in place for Member State registration of the relevant bodies and for the listing, update, transmission and publication of information. This makes the practical use of the information difficult for the national authorities and for the stakeholder organisations and operators. In some cases, there is no legal basis for the reporting involved.

2.3 The proposal seeks to harmonise and simplify the rules using the regulatory procedure ([2]), thus easing the administrative burden by putting in place more systematic, coherent and uniform rules for the registration, listing, update, transmission and publication of information. This formally requires the amendment of 20 directives and one decision. ([3]) In the interests of clarity and consistency, the Commission feels that this new procedure should also apply in the zootechnical field and to breeding associations approved for maintaining or establishing herd books, flock books or stud books in the Member States, and to trade in equidae intended for competitions and to participation in such competitions.

2.4 Bodies in third countries also have to meet a range of conditions for the export of semen and embryos to the EU. These are monitored by the national authorities of the third country concerned and in line with Community veterinary inspections, where appropriate. In the case of concerns with regard to the information communicated by the third countries, safeguard measures are to be adopted in accordance with Directive 97/78/EC. For reasons of clarity and consistency, the Commission considers that the procedure should also apply to authorities in third countries approved for the purpose of keeping a herd book, a flock book or a stud book in accordance with Community zootechnical legislation.

2.5 The Commission feels that, in contrast to the current position, the Member States should be responsible for drawing up and updating information on approved national reference laboratories and other approved laboratories. On the other hand, under the current proposal, the Commission will continue to be responsible for drawing up and publishing information on approved laboratories situated in third countries. Lastly, transitional measures are proposed to ensure continuity in the serological tests for rabies vaccines ([4]).

3. **General comments**

3.1 EU veterinary and zootechnical legislation is exceptionally complex and comprehensive, not only because the provisions have been drawn up gradually to meet developments, but also because of the complex nature of the diseases involved and the need for reliable preventive action and monitoring. The outbreak and spread of infectious animal diseases may have a significant economic and social impact, and it is vital, therefore, to secure the optimum operation both of the legislation in place and of the relevant administrative procedures. There is also an increased global risk as a result of the constant population growth and pressure on livestock production, coupled with more trade and increasing international communication. Climate change too is leading to changes in the geographical distribution of diseases.

3.2 The EESC thus feels that there is a clear need to act without delay to simplify and harmonise the rules for the listing, update, transmission and publication of information. However, the EESC feels that the desired objective can be achieved more quickly and much more straightforwardly by removing the existing provisions on the procurement and publication of information from the relevant legislative instruments and replacing them with a single piece of legislation that gives the Commission the requisite legal basis and remit to start work on simplification and harmonisation as quickly as possible and to carry it through using the regulatory procedure. This has the same result without the need to wait for the time-consuming administrative implementation in Member States' legislation and administrative practice.

3.3 The Commission's current proposal provides for the introduction of new provisions into each of the 21 legislative instruments, with repeated allusions to new rules, which in turn refer to the use of the regulatory procedure. This seems an unnecessarily complicated approach, whereby the procedural rules are first adopted through appropriate references in each of the 21 legislative instruments, followed by a delay while the necessary implementing provisions are adopted in the national legislation and administration of the 30 EEA countries. Only at the end of that process does the Commission have the requisite remit, and the real work of drawing up the common rules using the regulatory procedure can begin.

3.4 This matter is all the more important given the overall desire that has been expressed for simpler, more readily accessible legislation in the EU as a whole, and not least the Commission's proposal to draw up a common legislative programme in the veterinary field, in conjunction with the new Animal Health

([2]) Regulatory procedure under Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

([3]) Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, 2001/89/EC, 2002/60/EC, 2005/94/EC and Decision 2000/258/EC

([4]) Council Decision 2000/258/EC of 20 March 2000 designating a specific institute responsible for establishing the criteria necessary for standardising the serological tests to monitor the effectiveness of rabies vaccines, including which tests may replace the existing IF tests or national provisions.

Strategy, which seeks to consolidate EU legislation in the veterinary and zootechnical fields ([5]). It would be quicker and more straightforward to replace the existing rules directly and give the Commission, through the adoption of a legal instrument to that effect, the remit it needs to begin work as quickly as possible without waiting for the introduction of amended rules as part of the national implementation of the 21 legislative instruments concerned, with the delays and administrative complications that would entail.

3.5 The EESC therefore feels that the Council and the Commission should seize the opportunity to make good use of the planned common legislative framework in this area. Otherwise, the provisions will have to be revised again in conjunction with the consolidation of the legislation, with the concomitant administrative complications that this will entail for the Member States, which will again have to revise their legislation and administrative practice.

4. **Specific comments**

4.1 The Commission proposal repeatedly uses the term 'listing', which gives the impression that this is an agreed term. The main thrust of the proposal, however, relates to procedures for the listing, update, transmission and publication of the relevant information and the laying-down of a model form of this information using the regulatory process.

4.2 To make the information on Member States' websites more easily accessible and more readily understandable, the Commission should, without delay, start developing the technical aspects and the model forms of the information concerned. It is also important to provide a clear link from the Commission's home page to the information compiled and updated by the Member States. Otherwise, there is a risk that Member States will continue to present the information in different ways, making it difficult for the authorities and other stakeholders to make use of it in practice.

4.3 There is also a need to specify the procedures to be followed for the approval and update of information on approved assembly centres. Thus, uncertainty about compliance with the rules for the unloading of animals during long-distance transport is due to gaps in the information on useable assembly centres. The rules are frequently misleading as to the species and number of animals that can be accommodated in the assembly centres.

4.4 No reason is given for the Commission's proposal to allow Member States to approve reference laboratories. This is probably due to a desire to reduce the Commission's workload and the expediency of obliging the Member States to shoulder this responsibility. However, it is necessary as soon as possible to specify the requirements to be met by the national reference laboratories, in the light, among other things, of international standards for laboratory facilities, quality assurance and methodology.

Brussels, 29 May 2008

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

([5]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a new Animal Health Strategy for the European Union (2007-2013) where 'Prevention is better than cure', COM(2007) 539 final.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (Recast)

COM(2008) 154 — 2008/0060 (COD)

(2008/C 224/20)

On 8 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 251 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (Recast).

Since the Committee endorses the contents of the proposal and has already set out its views on the subject in its earlier opinions: CES 522/84, adopted on 23.5.1984 (*), CES 633/92, adopted on 26.5.1992 (**), CES 230/94, adopted on 23.2.1994 (***), CES 1385/96, adopted on 27.11.1996 (****), CESE 1599/2003, adopted on 10.12.2003 (*****), it decided, at its 445th plenary session of 28 and 29 May 2008 (meeting of 29 May 2008), by 85 votes with 4 abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned documents.

The opinion of the Committee on the regulatory procedure with scrutiny is currently under preparation [COM(2007) 741 final, COM(2007) 822 final, COM(2007) 824 final and COM(2008) 71 final].

Brussels, 29 May 2008

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

(*) EESC opinion on the proposal for a Council Directive on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients, OJ C 206 of 6.8.1984, p. 7.

(**) EESC opinion on the proposal for a Council Directive amending for the first time Council Directive 88/344/EEC of 13 June 1988 on the approximation of the laws of the Member States relating to extraction solvents used in the production of foodstuffs and food ingredients, OJ C 223 of 31.8.1992, p. 23.

(***) EESC opinion on the proposal for a European Parliament and Council Directive amending for the second time Council Directive 88/344, of 13 June 1988, on the approximation of the laws of the Member States relating to extraction solvents used in the production of foodstuffs and food ingredients, OJ C 133 of 16.5.1994, p. 21.

(****) EESC opinion on the 'Proposal for a European Parliament and Council Directive amending for the third time Council Directive 88/344/CEE on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients', OJ C 66 of 3.3.1997, p. 3.

(*****) EESC opinion on the 'Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients, OJ C 80 of 30.3.2004, p. 45.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work

COM(2007) 62 final

(2008/C 224/21)

On 21 February 2007 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2008. The rapporteur was Ms Cser.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May 2008), the European Economic and Social Committee adopted the following opinion by 80 votes to 20 with 8 abstentions.

1. **Executive summary**

1.1 Healthy and safe work for European citizens as employees is an essential precondition for achieving the objectives of the renewed Lisbon strategy on increased productivity and competitiveness. Community legislation together with national measures ensure the health and safety of employees at work. This is what the new 2007-2012 Community strategy on health and safety at work must put into practice.

1.2 Health and safety at work should be seen as a key factor for economic growth and productivity. It involves considerable costs and the losers are not just businesses and workers but society as a whole. These costs need to be better analysed. This is important in that it would show how much insufficient safety at work and a bad working environment cost all the parties concerned and thus reduce productivity.

1.3 The EESC welcomes the goal to cut accidents at work by 25 %; a comparable target for reducing occupational illnesses should also be set. Special attention should be paid to work related cancers. A specific action plan, with measurable objectives and credible and comparative reporting mechanisms, should be introduced, checked and adjusted.

1.4 The rights of employees must be respected and effectively applied, bearing in mind new forms of employment and the need to ensure that legislation and therefore inspection covers all workers, irrespective of the type of work or the form of employment: Failure to do so would amount to a violation of fundamental rights.

1.5 The EESC supports appropriate implementation of Community legislation, in particular through the development and implementation of national strategies.

1.6 Priority target groups — workers with disabilities, women, older workers, young workers and migrant workers — need specific regulation, policies and support.

1.7 In order to implement and monitor the strategy, specific minimum standards concerning the number of labour inspectors are needed to ensure effective and standardised Community and national supervision/inspection ([1]).

1.8 The Senior Labour Inspectors Committee (SLIC) staffing levels and the staff of the relevant national and EC authorities should not be cut, but increased in line with the working and total population of the enlarged EU.

1.9 Member States should promote social dialogue at Community, national, local and employer levels, as an essential instrument in ensuring health and safety at work for individual employees.

1.10 Cooperation between Member States must be stepped up. In particular, requisite provision must also be made in EU budgetary policy to secure the systematic and effective implementation of the Community strategy on health and safety at work.

1.11 By means of coordinating Community policies to develop a culture of risk prevention, training programmes must be launched and stepped up, building on local, regional and national experience, while taking risk prevention into account in educational programmes — starting from nursery education, and including basic and vocational training — and ensuring coordination with public health policies.

([1]) At least one inspector per 10 000 employees is needed (in many EU Member States the ratio is lower than this).

1.12 Crucial to the success of prevention efforts are the health and safety culture in the workplace and the health and safety bodies and persons responsible for health and safety in workplaces. It is important to ensure that health and safety training in the workplace is up to date. Key target groups are superiors and staff responsible for health and safety. They must be provided with adequate training, allowed sufficient time to carry out their health and safety responsibilities and given the opportunity to influence the development of, inter alia, work processes. Here the social partners have a major role to play in terms of reaching agreements and practical implementation in the workplace.

1.13 SMEs, which employ over 80 % of workers, are at an immense disadvantage compared to multinational companies in terms of financial resources and possibilities. Such companies are highly vulnerable and need special support, on condition that they undertake to respect social dialogue and comply with social agreements on occupational health and safety.

1.14 New and rapidly changing forms of work organisation and new technologies bring new risks, which require a response at Community level. According to the Scientific Committee on Occupational Exposure Limits (SCOEL) health criteria-based exposure limits should be adopted. The Committee welcomes that the social partners have made a significant contribution to improving the mental health of workers through their agreements on stress, and violence and harassment which should be implemented at national level.

1.15 CSR is to be welcomed as a method, but it cannot take the place of existing and future legal rules.

1.16 Especially in view of globalisation, the problems targeted by Community policies cannot be solved only within the EU. Fair globalisation and decent work for all employees guarantee that EU objectives are achieved at international level. EU institutions must encourage Member States to ratify ILO conventions.

2. **General comments**

2.1 In the context of the Lisbon strategy, Member States have acknowledged the significant contribution of policies on health and safety at the workplace to economic growth and employment ([2]). Improving health and safety at work is also part of the European social model. The past has been characterised by the need to restore trust and support on the part of the European public ([3]).

2.2 An ambitious and sensitive social policy not only contributes to greater productivity and growth, but also promotes social cohesion, and thereby social harmony and political stability, without which there can be no lasting or sustainable development. In other words, social policy is a factor which influences productivity ([4]). Thus, health and safety at work are not just ends in themselves; in the long-term, expenditure in this area will not only be recouped but can also have a definite positive influence on economic performance.

2.3 Working conditions are especially important for health, given that adults spend one-third of their lives at the workplace. Hazardous and unhealthy conditions at work cost 3-5 % of GNP. Prevention, general healthcare expenditure and employment-related healthcare expenditure are to be seen as investments. In response to demographic changes, sustainable development must be taken into account ([5]), as Europe needs more investment and more jobs ensuring individual health.

2.4 A comprehensive occupational health and safety framework must continue to be developed and properly implemented throughout the EU, reaching out to vulnerable groups not yet adequately covered, who experience difficulties with exercising their rights in the area of safety at work, including, in particular, those in precarious employment and in a high-risk work environment or put at risk for short-term competitive advantage.

2.5 Promoting health and safety at work and ensuring it on a permanent basis is one of the conditions for protecting and preserving employees' health. It is also cost-effective. Prevention is one of the main means of achieving this. Prevention — as the approach which offers the best return on investment –, together with proper standards of protection in all workplaces, yields significant long-term returns or savings, including for major healthcare and welfare systems and accident insurance premiums for companies or other costs directly or indirectly related to the effects of accidents at work. The quality of

([2]) See EESC opinion of 26.9.2007 on 'Promoting sustainable productivity in the European workplace'. Rapporteur: Ms Kurki (OJ C 10 of 15.1.2008). http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:010:0072:0079:EN:PDF.

([3]) See COM(2005) 33 final and European Council Conclusions in March 2007. http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/93135.pdf.

([4]) As stated by Anne-Marie Sigmund in: 'The European Social Model', 26-27 June 2006, Joint EESC and ILO conference.

([5]) See ILO: Demographic change — Facts, Scenarios and policy responses (April 2008).

preventive services, employee health and safety training, better and more effective safety standards, competent ongoing inspections and cooperation with the social partners are essential and interdependent aspects in ensuring health and safety at work.

2.6 The PROGRESS programme states that the main objective of European social policy is the constant improvement of working conditions, while listening to employees and their representatives, and involving them in the decision-making process. Community-level social dialogue across all sectors should guarantee equal rights in all Member States. Social dialogue agreements, (for example on teleworking, on combating violence at the workplace and on work-related stress), need to be consolidated and followed by effective measures, irrespective of the type of work or the form of employment. For public sector employees, despite the use of social dialogue, there are huge inequalities not only in legislation but also in practice. A specific institutional feature of social dialogue is involvement of a permanent employee representative in regular monitoring and managing of health and safety risks at work.

2.7 The EESC recommends that the Member States take a serious approach to penalising infringements of the rules and that an analysis be carried out of expenditure on health and safety at work, given that the consequences of occupational accidents and illnesses represent a burden on society as a whole and that they also affect productivity and consequently competitiveness.

2.8 Despite general improvements in health and safety at the workplace in recent years, in both the number and the seriousness of accidents and occupational illnesses, occupational hazards have not been reduced in a uniform way. For certain sectors, certain categories of workers and certain types of companies the situation remains worrying, with figures well above average ([6]). Evaluation shows that national programmes fail to take into account certain vulnerable groups for example false self-employed. This has to be changed.

2.9 Although the previous strategy offered scope for developing a culture of prevention, this has not become widespread. SMEs in particular should benefit more from regular financial support, on condition that they undertake to respect social agreements on occupational health and safety.

2.10 In connection with inspections, the EESC stresses the fact that companies also have an obligation to a carry out in-house monitoring on their own initiative.

2.11 For Community policy and legislation to be implemented at national level and to be effective, application and monitoring must be ensured at national level. The EESC welcomes the fact that the Member States produce regular reports on the implementation of directives.

2.12 The EESC supports the European Commission's proposal on Community statistics on public health and health and safety at work (COM(2007) 46 final), and cannot sufficiently emphasise the importance of joint definitions and recognition systems ([7]). Uniform legislation is needed to ensure that appropriate, differentiated data can be compiled so that standards and indicators can be put in place.

3. **Specific comments**

3.1 The Commission's communication has set the goal of improving the quality of work and productivity for the 2007-2012 period as the basis of the Community strategy on health and safety at work, following on from the 2002-2006 Community strategy based on framework directive 89/391/EEC.

3.2 An evaluation report has been produced on the implementation and impact of the objectives set by the strategy for 2002-2006 ([8]). During this period ten new Member States joined the EU. In the absence of statistics and information, the situation in the ten new Member States was not included in this evaluation, and also the new strategy was prepared on the basis of 1999 figures. In view of this, the EESC is very disappointed that, although the new Member States arrived halfway through the strategy, the Commission did not take the chance to plan on a rolling basis and to adapt the strategy accordingly.

3.3 One positive point is that the Community strategy has set an objective of reducing occupational accidents by 25 %. A specific action plan with measurable objectives and indicators and with credible and comparative reporting mechanisms as well as monitoring mechanisms will be needed to implement this goal. Consideration should also be given to internal causes of work accidents, such as pressure of time and short delivery times, and extraneous causes, due to negligence arising, for example, from domestic stress. In addition to work-related accidents, it is equally important to address the much larger proportion of work-related illnesses. The first step towards prevention is to acknowledge occupational illnesses and to up-date the

([6]) The rate of accidents in the construction industry is twice the average. The figures in the services sector show an upwards tendency which calls for closer analysis; the numbers are also growing in healthcare and education. This has mainly to do with violence, stress, and musculoskeletal disorders.

([7]) See EESC opinion of 25.10.2007 on 'Proposal for a Regulation of the European Parliament and of the Council on Community statistics on public health and health and safety at work'. Rapporteur: Mr Retureau (OJ C 44 of 16.2.2008). http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:044:0103:0105:EN:PDF.

([8]) SEC(2007) 214.

definition of such illnesses. If the causes of illnesses are known in good time, timely action can be taken to eliminate them. A specific target figure should, therefore, also be set for the number of persons employed in hazardous work conditions, as this has a decisive impact on the number of future occupational illnesses; equally, the number of occupational illnesses should be quantified.

3.4 *Legislation and monitoring*

3.4.1 The EESC emphasises the need for a balanced health and safety strategy of legislative and non-legislative measures, depending on which is the most effective in terms of practical implementation. It would especially be useful to focus on new and altered working conditions. The impact of those changes on health and safety has to be considered systematically. On the basis of research it must be considered whether appropriate measures should be developed in response to widespread and exponential changes in the circumstances and conditions of work, and in particular the faster and more intensive pace of work. The EESC would point out that all employees have the same rights and that those rights should be respected at EU and national level.

3.4.2 In the course of implementing the new strategy, young people, migrant workers, women, elderly employees, and persons with disabilities are in need of specific regulation and policies to support them, given that they are groups most exposed to risks as well as occupational accidents and illnesses. The lack of training, retraining and information, failure to provide work induction and guidance as well as inadequate language skills all present risks. In the case of migrant workers, language skills are an important factor in ensuring prevention and disseminating information; equal treatment must be ensured.

3.4.3 Sufficient funding and staff must be provided to ensure coordination and monitoring of the directives. But despite the 2004 enlargement, job cuts are planned at the Senior Labour Inspectors Committee (SLIC). There should be no cuts here or in the number of representatives to the Committee. Also in the relevant European Commission authority there are only 26 staff working, 4-5 of which deal with implementing legislation. This was already criticised in an EESC opinion of 2002, at which time there were only 15 Member States, whereas now there are 27. This situation definitely needs to be improved. Reductions in the number of inspectors at Member State level must also be prevented.

3.4.4 The main objective should be to ensure compliance with legislation on protecting employees. Inspections by competent authorities need to be stepped up as regards both employers' and employees' health and safety obligations. A more widespread culture of occupational health and safety needs to be nurtured through education, training and a more accessible regulatory framework.

3.4.5 Besides monitoring compliance with safety rules, national labour inspectorates can play a positive role by providing employers with advice and consultancy. Adequate funding is needed to ensure that national labour inspections are effective and independent.

3.4.6 As long ago as 2002, the Senior Labour Inspectors Committee (SLIC) decided to improve the effectiveness of workplace inspections, given that one of the main instruments is the development of indicators enabling evaluation of the quality of inspections. The EESC supported this decision in a previous opinion ([9]). The EESC agrees with the SLIC's conclusions and backs its proposals, and is therefore disappointed that they have been left out of the strategy.

3.5 *Implementation and national strategies*

3.5.1 Social dialogue on health and safety at work must be encouraged, and European-level measures developed by the social partners are needed. Candidate countries should be supported — not least financially — through EU social funds, and twinning relations between old and new Member States. In the case of candidate and potential candidate countries, the transposing of legislation has begun together with the strengthening of workplace inspections.

3.5.2 Doctors and healthcare professionals are aware of the identification of phenomena caused by working conditions, but what needs to be considered is the generally costly healthcare situation. The costs of prevention should not be imposed on employees, given that due to financial reasons many would neglect their illnesses, which subsequently might result in higher treatment costs. In relation to employee health promotion, employers offer a wide range of measures drawn up jointly with employees to promote a healthy lifestyle. These include for example free screening, as well as smoking cessation programmes, advice on healthy eating and exercise, and stress prevention ([10]).

3.5.3 The strategy calls for significant measures to improve the rehabilitation and reintegration of workers excluded from labour markets because of an occupational illness or disability. The EESC agrees with the Commission's ideas, but Community policy has not put in place the necessary financial conditions for this to happen.

([9]) See EESC opinion of 17.7.2002 on 'Communication from the Commission — Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006'. Rapporteur: Mr Etty (JO C 241 of 7.10.2002). http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:241:0100:0103:EN:PDF.

([10]) Link to the homepage of the European Network for Workplace Health Promotion: http://www.enwhp.org/index.php?id=4.

3.5.4 The EESC concurs with the point of view of the European Commission that with regard to mainstreaming health and safety issues into other EU policies much work remains to be done, for example on measures to be developed jointly with public healthcare systems.

3.5.5 The EESC supports the work of the group comprising several organisational entities from DG Employment, Social Affairs and Equal Opportunities, in order to ensure synergies and achieve specific results.

3.6 *Prevention, education and training*

3.6.1 Developing the protection of health and safety at work at national level is an integral part of a general culture of health. It is also in the interests of Member States. Besides, employees can benefit from continuous participation in training and education on this subject; indeed, they are required to do so. In complying with their obligation to keep employees constantly informed and cooperate with them, employers are also key players in shaping and developing a national culture. Collective bargaining agreements are also an important instrument here.

3.6.2 The EESC would remind Member States and the social partners of the importance of prevention, education and training, and of their responsibilities in this field. Health and safety issues should be introduced or developed in nurseries, primary schools, vocational education, tertiary education, adult education and further training.

3.6.3 Education, training and further training must take the needs of the various target groups into account; the EESC is pleased that the new strategy and preventive approach take lifelong learning into account.

3.6.4 In general, health and safety at work is not taken into account either in primary education or in the context of retraining, and therefore the EESC is pleased that lifelong learning has been included in the new strategy and the preventive approach.

3.6.5 With regard to particularly dangerous workplaces, where most accidents and occupational illnesses occur, the EESC recommends that national strategies pay particular attention to new risks when identifying or preventing dangers. It would also be very helpful to set up sectoral databases.

3.6.6 The Committee believes that illnesses caused by carcinogens in the workplace are a significant problem. Some 2,3 million new cases of cancer were diagnosed across the EU's 25 Member States in 2006 alone, which means that they are the principal cause of early death. It is estimated that approximately 9,6 % of all cancer-related deaths are linked to working conditions ([11]). The Committee therefore urges the Member States to take concrete action to reduce the number of employees exposed to carcinogens.

3.6.7 The EESC feels that there is a need to develop a general culture of health to achieve greater awareness of health among employees. For this to happen, support must be provided not only by employers, but also at national and European level, and employees should be educated about their rights in this field under national, Community (EU) and international (ILO) law.

3.6.8 At Community and national level, a conscious effort must be made to develop preventive policies and to provide adequate support from budgets/social security. For a stronger culture of prevention, a comprehensive and preventive approach must be developed. Steps must be taken to ensure that all employees have access to training so that the vulnerability of certain groups can be reduced. In view of changing forms of employment, this is particularly important for employees who, through no fault of their own, are often not covered by training and further training on employee safety, medical examinations at the workplace, prevention and checks.

3.6.9 The EESC recommends that particular attention be paid to the influence of the mass media when it comes to better informing the public of the need to observe regulations relating to health and safety at work. More use should be made of European Commission campaigns, the European Agency for Safety and Health at Work, the ILO and trades unions (including events such as the International Commemoration Day for Dead and Injured Workers).

3.7 *New risks*

3.7.1 The EESC suggests that scientific methods be used to assess new work-related risks, such as occupational stress or new arduous conditions. The psychosocial and physical repercussions of new fields of work and conditions on employees must be examined using scientific methods; to this end, new indicators must be developed. The EESC feels that all occupational physicians should be given training to help them diagnose mental stress arising from working conditions and the resulting problems.

3.7.2 The EESC agrees with the Commission in its expectations of a more health-conscious attitude on the part of employees; however, there is no chance of this happening in the absence of the requisite conditions. Precarious and fixed-term contracts, actual working time and constant stress due to fear of

([11]) Report by Hämäläinen P., Takala J. for the ILO http://osha.europa.eu/OSH_world_day/occupational_cancer/view?searchterm=occupational %20cancer

losing one's job, ignorance of and lack of information on employees' rights and the disadvantageous situation of migrant workers when they use healthcare services are among the problems which stand in the way of promoting the right attitudes.

3.7.3 In the course of implementing its 2002-2006 strategy for well-being at work, the EU has not yet fulfilled its tasks with regard to ensuring a workplace in which mental health is not threatened by stress and depression. The EESC deplores this and urges the Commission to come up with specific proposals.

3.8 *Protecting health at international level*

3.8.1 The EU is responsible not only for the working conditions of its own citizens, but also for those of people living outside its borders. As the previous strategy already pointed out, respect for fundamental labour rights also has to be taken into account in external trade and development policies, even though there are possible conflicts in these fields with the principle of free markets ([12]).

3.8.2 In international policies, adoption of ILO measures/recommendations must be encouraged together with EU achievements such as REACH. Policies and legislation on reducing hazards and illnesses caused by asbestos, carcinogenic materials, and silicon must be developed.

3.8.3 In providing State or public services, Member States should set a good example by favouring companies which comply with legislation on employees' health and safety at work (as suggested in the 2002-2006 strategy on health and safety at work).

3.8.4 All EU Member States must be urged to ratify existing ILO conventions.

Brussels, 29 May 2008.

The President

of the European Economic and Social Commit

Dimitris DIMITRIADIS

([12]) Dr. Jukka Takala, EP 390.606v01-00

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Point 2.4

'A comprehensive occupational health and safety framework has already been created ~~must continue to be developed~~ and must be properly implemented and monitored throughout the EU. This applies particularly to ~~reaching out to~~ vulnerable groups ~~not yet adequately covered,~~ who experience difficulties with exercising their rights in the area of safety at work and those, ~~including, in particular, those in precarious employment and~~ in a high-risk work environment ~~or put at risk for short-term competitive advantage.~~'

Reason

Self-explanatory.

Voting

For: 41 Against: 45 Abstentions: 10

Point 3.3

'One positive point is that the Community strategy has set an objective of reducing occupational accidents by 25 %. A specific action plan with measurable objectives and indicators and with credible and comparative reporting mechanisms as well as monitoring mechanisms will be needed to implement this goal. Consideration should also be given to internal causes of work accidents, such as pressure of time and short delivery times, and extraneous causes, due to negligence arising, for example, from domestic stress. In addition to work-related accidents, it is equally important to address the much larger proportion of work-related illnesses. ~~The first step towards prevention is to acknowledge occupational illnesses and to up-date the definition of such illnesses.~~ If the causes of illnesses are known in good time, timely action can be taken to eliminate them. A specific target figure should, therefore, also be set for the number of persons employed in hazardous work conditions, as this has a decisive impact on the number of future occupational illnesses; equally, the number of occupational illnesses should be quantified.'

Reason

Self-explanatory.

Voting

For: 46 Against: 48 Abstentions: 12

Opinion of the European Economic and Social Committee on the Posting of workers in the framework of the provision of services — Maximising its benefits and potential while guaranteeing the protection of workers

COM(2007) 304 final

(2008/C 224/22)

On 13 June 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, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2008. The rapporteur was Ms Le Nouail Marlière.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 116 votes to 1, with 4 abstentions.

On 13 June 2007, the Commission published the aforementioned Communication, in which it assesses the measures taken by the Member States to transpose Directive 96/71/EC on the posting of workers in the framework of the provision of services in the European Union and suggests improvements to its implementation.

Directive 96/71/EC aims to reconcile the exercise of the fundamental freedom to provide cross-border services under Article 49 TEC for service providers, on the one hand, with the need to ensure an appropriate level of protection of the terms and conditions of employment of workers temporarily posted abroad to provide these services.

According to the Commission, a worker is said to be 'posted' when he is sent by his employer to a Member State in order to perform work there, in the framework of the contracted provision of services. This cross-border provision of services implies the sending of employees to a Member State other than the one in which they usually work, and creates a specific category of workers, known as 'posted workers'. However, Member States had been left some scope for interpretation as regards the definition.

This Communication follows on from two communications ([1]), which included guidelines pursuant to Directive 96/71/EC which stipulated that the Commission should review the text by 16 December 2001 with a view to submitting proposals to the Council for any amendments which might be needed.

The Committee had issued an opinion ([2]) wherein it recommended that the Commission should 'submit a new report so that the following can be verified:

— if real transparency of rights is applied,

— if the positive rights of workers are guaranteed,

— if workers' mobility is promoted or hindered by application of the provisions arising from transposition in the Member States of the directive, given the risks of protectionist restrictions on the labour market,

— if distortions of competition in connection with free movement of services were prevented,

— and lastly if small businesses enjoy proper and adequate access to the information they need in order to implement the transposed directive'.

The Committee also suggested 'a more detailed analysis regarding the economic and social partners, an evaluation of workers' and businesses' information mechanisms with a view to their improvement, promotion of local, regional or cross-border networks of information centres, drawing on an inventory of best information-sharing practices for both employers and employees, a legal study to ensure that the Member States' framework of legislation and information on applicable collective agreements is sufficiently clear, accessible and up-to-date in the context of enlargement'.

1. **General comments**

1.1 This Communication is based on a third assessment completed many years after the date set by the directive itself (16 December 2001 at the latest) which takes account of transpositions and enactments in all Member States, thus highlighting

([1]) COM(2003) 458 The implementation of Directive 96/71/EC in the Member States, and COM(2006) 159 of 4.4.2006 on Guidance on the posting of workers in the framework of the provision of services.

([2]) EESC opinion of 31 March 2004 on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: The implementation of Directive 96/71/EC in the Member States, rapporteur: Ms Le Nouail Marlière (OJ C 112 of 30.4.2004).

the specific character of this sector which is not only legal, technical and economic, but primarily social and human, resulting in difficulties in assessment, transposition, implementation and supervision. This highly legal Directive involves interpretations and scope for interpretation at several levels as regards its transposition and case-law, which leads to practical problems for businesses, posted workers and work supervisors, as was pointed out by the social partners and local and national authorities during parliamentary hearings. The European Parliament ([3]) issued a number of recommendations, including one which stipulated that the social partners should be given a stronger role, without however providing details on how this should be achieved.

1.2 The Committee points out that one way to ensure that certain freedoms considered on the same footing (personal freedom and the freedom to provide services) remain equal in reality is to ensure that the directive guarantees compliance with a significant level of protection of the rights of posted workers and fair competition between all service providers. The Committee does not feel that it is possible to calmly envisage free movement of services at the expense of certain workers. Recent case-law ([4]) may be interpreted as moving along these lines, but the Committee would point out that ILO conventions No 87 on the Freedom of Association and No 98 on Collective Bargaining state that the process of framing social legislation must follow the customary procedures for such legislation, including collective bargaining at enterprise or any other level, and in areas as varied as setting minimum wages in a sector or company. Since the transposition of Directive 96/71/EC came under this customary lawmaking framework in each Member State, the Commission should enforce international law, as interpreted by ad hoc supervisory bodies, and labour standards ratified by all Member States, in accordance with primary law.

1.3 Currently, in addition to the new Communication under examination, the Commission has proposed a recommendation ([5]) for adoption by the Council on enhanced administrative cooperation, an information exchange system and the sharing and exchange of best practice.

1.4 Taking into account all these new proposals, the Committee stresses that the Commission is moving in the right direction, in particular with the proposal to boost administrative cooperation and set up an information exchange system between Member States to exchange information on labour law useful to workers posted to that State and on relevant collective conventions, to provide workers and service providers with access to this information in languages other than the official language or languages of the country in which the services are being provided, to set up liaison bureaux with appointed representatives and to involve the social partners in the high ranking committee, etc.

1.5 The Commission however has submitted the document assessing the measures to implement and transpose these rules in English only, thereby minimising the assessment's potential contribution to the Member States and the social partners at all levels. The Committee suggests that the Commission take into account the specific area in question (mobility, freedom of movement), and make the effort to publish the attached document ([6]) in at least three languages, including one southern romance language and one Slav language, in addition to English. The matter of language will arise in any event, and if the new provisions are to have the anticipated impact, the Committee recommends that appropriate language arrangements be introduced both when providing information for the social partners who play a major role in the field and for the information exchange system between the Member States. The Committee refers to its opinion on the implementation of the Commission's multilingualism strategy and the new exploratory opinion ([7]) requested by the Commission, and will certainly raise the matter of communication and the information necessary for the application of the provisions on the posting of workers, of which institutional communication is one aspect.

1.6 General nature of the information system and specific nature of the system of social registers:

1.7 The Commission proposes to do away with those control measures regarding the posting of workers that it considers unnecessary, while continuing to guarantee appropriate protection for posted workers. In its Communication, the Commission stresses that its purpose is not to question the Member States' social models, but, referring to part of the ECJ's case-law, it considers that certain control measures are unjustified since they would exceed what would be needed for the social protection of workers.

1.8 The Committee emphasises the lack of consistency in proposing to do away with the obligation to keep social registers in the Member State in which the service is being provided. While an information exchange system provides information on the legislation in force as well as on the rights and obligations of service providers and workers, it does not allow for the individualised monitoring of rights in the area of social protection, including immediate and long-term protection, illness, accidents, pensions and social insurance, nor of the social security and tax contributions which are mandatory in the country in which the service is being provided, these contributions being regulated by the labour law in force, specifically that of the country in which the service is being provided. The Committee therefore advises against the abolition of this obligation.

([3]) And more recently B6-0266/2007 of 11 July 2007.
([4]) Laval c) Svenska Affaire C-341/05.
([5]) Commission Recommendation of (…) 'on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services' IP/08/514.
([6]) Sec 2008_747.
([7]) EESC exploratory opinion on multilingualism, rapporteur: Ms Le Nouail-Marliére, ongoing.

1.9 The Committee points out that the objectives of Directive 96/71/EC have not been fully realised even 10 years after its enactment. Diverging attitudes regarding the type and extent of social protection of posted workers persist in Europe, for both EU and third country workers.

1.10 In its Green Paper on Modernising labour law to meet the challenges of the 21st century, the Commission states that black labour, especially within the context of cross-border posting of workers, is an extremely disturbing and persistent phenomenon in today's labour markets and is also responsible for distortions of competition ([8]) as well as for the exploitation of employees. In the Green Paper, the Commission called for enforcement mechanisms able to secure the efficiency of the labour markets, avoid violations of national labour law and protect the social rights of employees.

1.11 The Committee points out that the economic and social partners in the building industry are particularly alert to the enactment of Directive 96/71/EC owing to the social dumping as well as to possible distortions of competition, due to the specific conditions in which the workforce in this sector is posted, especially as regards cross-border postings ([9]). Control measures adjusted to the particularities of the building industry are essential to protect domestic and posted workers affected by this. With this in mind, the Commission's plans should not weaken Member States' control mechanisms which have proven themselves over a long period of time, since the Commission would thus contradict its declared intention not to change the social models in the Member States.

1.12 The Committee quotes the EP view according to which the Commission should moderate its interpretation of ECJ case-law when evaluating the compatibility of certain measures with Community law ([10]).

2. **Specific comments**

2.1 With regard to the obligation to keep certain documents in the language of the host Member State, the Commission considers the obligation to translate to be an unjustified limitation on the free provision of services. In contrast to this, the ECJ recently decided in a decision of 18 July 2007 (C-490/04) that this controversial obligation is in keeping with Community law.

2.2 The Commission also quotes another ECJ ruling, whereby measures which are automatically and unconditionally applicable, based on a general presumption of tax evasion or fraud by a person or company exercising a fundamental freedom guaranteed by the Treaty, constitute an unjustified limitation of the free provision of services ([11]). The Committee doubts that the Court of Justice's interpretation is applicable to measures which are subject to Directive 96/71/EC, since the directive authorises Member States to 'take appropriate measures in the event of failure to comply with this directive'. This provision does not lead to a general presumption of fraud. On the contrary, it states that the substantive law content of the directive would be void if the Member States were unable to police compliance with the provisions of posting with the appropriate means.

3. **Improved cooperation as a solution for the existing problems when applying Directive 96/71/EC**

3.1 The Committee welcomes the Commission's clear recognition of the considerable deficiencies that currently exist in cross-border administrative cooperation and of the need for action on this front, and is convinced that effective cooperation regarding the sharing of information between Member State authorities may contribute to overcoming the problems arising from difficulties in the practical implementation of the directive regulating the posting of workers, not least in relation to compliance monitoring.

3.2 However, the Committee does not feel that improved cooperation may void national control measures. The cooperation mechanisms within the framework of Directive 96/71/EC have so far proven to be unworkable; they have been unable to guarantee the social protection of employees in the same way and to the same extent in all domestic provisions.

3.3 This situation is particularly important for the building industry, where preventive checks carried out on building sites to assess the effectiveness of posted workers' rights are vital.

3.4 Handing responsibility for checks back to the Member State of origin would lead to undesirable delays in the protection of workers' rights. This is one of the reasons why the ECJ in the above-mentioned decision of 18 July 2007 granted Member

([8]) Green Paper, COM(2006) 708 final, paragraph 4.b) p. 11 and following pages; EESC opinion of 30 May 2007 on the Green Paper on Modernising labour law, rapporteur: Mr Retureau (OJ C175 of 27.7.2007).

([9]) Particular reference should be made to one study: 'Free movement of workers in the EU', by Jan Cremers and Peter Donders, European Institute for Construction Labour Research, Editeurs et Werner Buelen, FETBB Auteur.
Other sectors are also victims of this social dumping, but the conditions of posting are not governed by the same Directive. EESC opinions 1698/2007 on the Cross-border agricultural workforce, rapporteur: Mr Siecker, and 1699/2007 on the Agricultural employment situation, rapporteur: Mr Wilms.

([10]) European Parliament Resolution B6-0266/2007 of 11 July 2007.

([11]) Point 3.2 of the Communication.

States the authority to maintain the obligation to keep certain documents on building sites in the language of the host Member State. The Committee advises against abolishing this obligation, and indeed would recommend making recruitment and employment data, or in this case data on the posting of workers, more accessible by maintaining the obligation to make this data available for inspection by employment, vocational training and social protection authorities, in the host country and the country of origin. It will become increasingly important for this information to be clear and accessible to companies and workers in an expanded internal market with a trend towards still greater mobility.

3.5 Data on pension or health protection rights (shipyards, chemicals, agriculture, etc.) could be collected and checked more easily if there were several additional entries: country of origin, company, social services and organisations, in line with the principle of transparency.

3.6 The Committee also believes that the difficulties arising from the practical implementation of the directive regulating the posting of workers cannot be resolved bilaterally by the Member States alone. Consideration should therefore be given to establishing a European body to act as a logistical hub, relay point, catalyst and information centre for cross-border cooperation between authorities in connection with the posting of workers. This body should also draw up periodic reports on any difficulties arising and on the measures proposed to resolve them.

4. **Commission recommendations to improve the implementation of Guideline 96/71/EC**

4.1 The Committee applauds the Commission's intention to set up a high ranking committee in cooperation with Member States, trade unions and employers. The purpose of this committee would be to support the exchange and identification of proven processes, through the thorough examination and solution of problems connected to the cross-border enforcement of civil and administrative sanctions imposed in the context of the posting of workers. The Committee emphasises that European sectoral social partners have so far carried out the bulk of the work as regards surveillance and implementation, and so they should be explicitly involved in the process, by being automatically represented on the committee as soon as it is set up. They have already expressed their views in a joint European declaration. The Committee supports the Commission's initiative in view of the experience which has been acquired, but does not prejudge the hoped-for level of participation by inter-sectoral European social partners.

4.2 This committee should ensure that de facto conditions are not imposed on Member States, which would normally require the participation of the national or European legislator. The measures necessary to comply with Directive 96/71/EC are not sufficiently harmonised throughout the EU, and the committee could help correct this situation.

4.3 Finally, the Committee is pleased that the Commission fully takes into account the European Parliament resolutions on the posting of workers, in particular the resolution on the recognition of the commitment of the social partners, and suggests that their experience be put to good use, inter alia by providing them with additional resources to allow them to divulge examples of best practices.

4.4 In order to guarantee equal rights for all workers, the Commission should encourage efforts to adopt measures to improve controls and cooperation between Member States.

5. **Unresolved issues**

5.1 *Bogus self-employment*

5.1.1 The Committee has expressed concerns about the problems of detecting bogus 'self-employed workers' and their legal reclassification, in the case of those established outside or inside the Member State in which they are detected, or in cases where the posting is in some way bogus. It calls on the Commission to consider possible legal and practical solutions. Posted workers are sometimes encouraged to declare themselves to be self-employed when they are in fact entirely dependant on one single contractor, and are sometimes not declared to be either posted or self-employed, occasionally in dangerous professions in which complete social security coverage is vital.

5.1.2 National rules should contain clear and feasible definitions, as well as clear rules about liability in the event of bogus self-employment and/or bogus posting, so as to guarantee the payment of salaries, fines, taxes and social contributions which can be claimed by the worker and the authority, to ensure that the authorities can check that this obligation is complied with, to minimise the profit made by using fraudulent practices and to enhance the economic sanctions on people who commit fraud, in the event of collusion between companies and bogus 'self-employed workers' with the purpose of avoiding the obligations of social protection.

5.2 *Subcontracting and liability*

5.2.1 At Member State level, some national or sectoral partners have endorsed the principle of general or principal contractors having joint and several liability for subcontractors. This principle has been included in national law and deserves to be

mentioned as good practice. The European Parliament report ([12]) highlights several advantages for posted workers under a regime of joint and several liability. In its communication, the Commission takes the view that the issue of whether principal contractors having subsidiary liability could constitute an effective and proportionate way to increase the monitoring and enforcement of compliance with Community law merits further examination and reflection. For its part, the European Parliament has endorsed such a move.

5.2.2 Practical experience shows that the directive on the posting of workers is sometimes circumvented by long chains of subcontracting combined with the use of cross-border service providers.

5.2.3 The Communication indicates that the Commission intends to engage with the Member States and social partners in an in-depth examination of cross-border enforcement problems (sanctions, fines, joint and several liability). In this way, the Commission takes up the consistent call of the European Parliament to take a legislative initiative on joint and several liability in order to minimise the possibilities of circumventing legal or collectively agreed standards, in accordance with the directive on the posting of workers. The Committee would ask to be informed of the outcome of this process.

Brussels, 29 May 2008.

6. **Conclusions**

6.1 The Committee supports the Commission's initiatives which have been proposed to the Council, but expresses concern that they are too one-sided in their approach, focusing primarily on the removal of the restrictions or obstacles that supposedly exist for companies posting workers to other countries. However, given the recognised shortcomings in the monitoring of working conditions, in cross-border administrative cooperation and in the enforcement of fines, the Committee feels that the same degree of importance should also be attached to enforcing employees' protected rights under the directive regulating the posting of workers. In particular, the Committee has its misgivings about the abolition of the obligation to keep social registers in the Member State in which the service is being provided; encourages the Council to adopt the proposed recommendation for enhanced administrative cooperation between Member States, improved access to information by service providers and posted workers with wider language cover, and the exchange of information and good practice between Member States within a tripartite high ranking committee, including representatives of the Member States and economic and social partners at national and European level, with the purpose of reinforcing Directive 96/71/EC and the protection of posted workers in the context of the free provision of services.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([12]) The European Parliament report on corporate social responsibility: A New Partnership (2006/2133(INI)), the European Parliament report on the application of Directive 96/71/EC relating to the posting of workers (2006/2038(INI)) and the European Parliament adopted the report (A6-0247/2007) on modernising labour law to meet the challenges of the 21st century calls 'on the Commission to regulate joint and several liability for general or principal undertakings, in order to deal with abuses in the subcontracting and outsourcing of workers and to set up a transparent and competitive market for all companies on the basis of a level playing field regarding respect for labour standards and working conditions, in particular calls on the Commission and the Member States to clearly establish at European level who is responsible for compliance with labour law and for paying the associated wages, social security contributions and taxes in a chain of subcontractors'. A practical example is the building site of the Council of Ministers' headquarters (Justus Lipsius) in Brussels during the 1990s. At a certain moment the site board included 30 to 50 subcontractors, and not everyone was on the board. Another example is the renovation of the Berlaymont building (headquarters of the European Commission) where a German company, specialised in removal of asbestos, engaged via subcontracting some 110 Portuguese workers, who were not trained at all for their task and worked in dreadful conditions. Other practical cases can be found in 'The free movement of workers', CLR Studies 4 (2004), pp. 48-51, Cremers and Donders eds.

Opinion of the European Economic and Social Committee on Better promoting the mobility of young people in Europe: practicalities and timetable

(2008/C 224/23)

In a letter dated 25 October 2007, Mr Jouyet, French Minister of State with responsibility for European affairs, asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on:

Better promoting the mobility of young people in Europe: practicalities and timetable.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2008 The rapporteur was Mr Rodríguez García-Caro.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 117 votes to four with one abstention.

1. **Conclusions**

1.1 The European Economic and Social Committee welcomes the interest and support shown by the future French presidency of the Council towards the mobility of young Europeans. In December 2000, a resolution was adopted by the European Council of Nice listing 42 measures to boost and encourage the mobility of young people. Some years later, with France's new presidency, there is once again a clear interest in solving the problems affecting the mobility of Europe's younger citizens.

1.2 The EESC believes that the main problem faced by the EU in terms of young people's cross-border mobility is the clear lack of solutions to the problems that have already been described on numerous occasions, and the difficulty in applying the measures adopted to solve these problems. The list of problems identified is as long as the catalogue of measures that must be adopted to resolve them. Therefore, the EESC considers that the issue is not to look for further barriers to mobility and list actions to promote it but, rather, to address the basic question of what has been achieved, what remains to be achieved, and how can the results be assessed?

1.3 Thus, the EESC considers that there is no need to set up further expert or high-level groups which are likely to revisit issues that have already been addressed in the past. What is necessary, in the EESC's opinion, is to set up a working group representing the different Commission DGs with responsibilities in the area of mobility, which would conduct an analysis of the situation and address the following points in a methodical manner:

— determine the obstacles that have already been identified and described previously;

— identify effective measures approved at EU level in order to overcome these (regulations, directives, decisions, resolutions, recommendations, etc.);

— identify as yet unsolved problems which have been defined and are in the process of being resolved by means of legislation;

— identify problems which have been defined but for which there are no pending solutions;

— identify measures which have been proposed but not taken into account, or not implemented by the Member States.

1.4 Likewise, the situation of young people should be methodically defined, dividing them into different target groups with comparable circumstances and subject to similar issues. This would make it possible to find out what affects different groups of young people and thus selectively adopt specific measures targeted at these groups, with a view to improving effectiveness and efficiency, and avoiding 'one-size-fits-all' decisions.

1.5 The target groups for this analysis should include:

— university students;

— young people who have finished their university education or vocational training and are starting work for the first time;

— students on work-linked training schemes;

— artists;

— young volunteers;

— young entrepreneurs;

— young people without financial means;

— young couples trying to reconcile family life and work or education;

— young people in situations of social exclusion;

— young people looking for work and in their first years of employment.

1.6 The EESC considers that what is needed is not so much to continue to identify obstacles and solutions but, rather, to implement the right measures in a reasonably short time so that all that has already been said about mobility can be legitimised as solutions to the mobility problems faced by young people in Europe.

1.7 By involving all stakeholders in making mobility a reality for young people and taking a more proactive approach to the different EU policies in the field, it could be possible to bring about a fundamental change to the status quo.

2. **Introduction**

2.1 *Reason for the exploratory opinion*

2.1.1 This document has been drawn up in response to the request made to the European Economic and Social Committee by the French Minister of State with responsibility for European affairs. On 25 October 2007, the Minister of State asked the Committee to draw up an exploratory opinion on ***Better promoting the mobility of young people in Europe: practicalities and timetable***. The opinion has been requested in the light of France's presidency of the Council of the European Union in the second half of 2008.

2.1.2 Meanwhile, the European Commissioner responsible for education and training has promoted the creation of a high-level expert group on improving mobility among Europeans. The high-level group held its first meeting on 24 January 2008, and has the aim of identifying the measures that could be introduced to increase exchanges among young people, improve assistance for mobility in vocational training and adult education, and increase the mobility of young artists, business managers and volunteers. It intends to complete its work by the middle of the year, when it will produce a strategic report.

2.2 *Mobility in the European Union: more than a right to free movement*

2.2.1 Mobility is a right which is enshrined in Article 18 of the Treaty establishing the European Community. This right is further defined with regard to education and training in the provisions of Articles 149(4) and 150(4) TEC. Therefore, from this perspective, both the EU and the individual Member States must take the necessary steps to guarantee this right to mobility, whether for work, training, volunteering or simply leisure purposes.

2.2.2 Initially, the free movement of workers was, as one of the four basic freedoms of the European Economic Community along with free movement of goods, capital and services, the basis for the mobility of EU nationals. In order to guarantee the free movement of workers, significant advances in Community legislation were made (particularly with regard to social services) which also affected the movement of family members within the EU. Subsequently, as Community programmes were implemented in the fields of education, training and research, many other obstacles to cross-border mobility began to emerge.

2.2.3 Over the years, numerous documents in various fields have pointed out the obstacles to mobility, and effective solutions have been proposed, described and sometimes implemented, making it possible to remove the impediments to the movement and residency of EU citizens outside their countries of origin.

2.2.4 However, time has also shown that identifying the obstacles and putting forward proposals have not always been enough to bring down these barriers or definitively eliminate the problems hindering free movement and mobility. In the various documents issued by the European institutions, the same problems have been reiterated, and corrective measures have even been proposed despite already having been put forward — but often not implemented — in the past.

2.2.5 The EESC is aware that it can be tricky to solve certain problems affecting mobility. However, it has also noted on occasion that the willingness to solve these problems does not always match up to the importance for citizens of removing administrative or legal barriers to mobility.

2.2.6 From a legal point of view, the likelihood of adopted measures solving mobility problems depends directly on the form of legislation used. The more recommendations or resolutions are used, the more likely it is that the measures proposed will not be carried through in all the Member States. While the Commission must sometimes appeal to the Court of Justice in order to ensure the content of a directive is transposed to the national law of a Member State, more importantly, simple recommendations may not be applied, thus rendering the recommended measures ineffective.

2.2.7 While it is true that, over time, the legal obstacles have given way to more practical ones relating to language knowledge, the availability of financial resources making mobility possible, information and the interest of young people, etc., it is also true that other aspects which are both legal and practical in nature, such as the recognition of qualifications, continue to be an ongoing issue in the EU.

2.2.8 On a number of occasions, the EESC has, at the request of the European institutions and on its own initiative, expressed its opinion on this important subject which directly affects the lives of EU citizens. In its opinions, the EESC has identified or confirmed the existence of all kinds of barriers, and has supported or proposed various solutions. As the representative of organised civil society, the EESC will continue to work actively to resolve any problems affecting EU citizens when it comes to exercising the right to mobility in the EU.

3. **Obstacles to mobility in the European Union: analysis**

3.1 The *Green Paper on education, training and research: obstacles to cross-frontier mobility* [1] brings together antecedents, obstacles and potential solutions for the mobility of persons travelling within the EU for educational reasons. The EESC issued an opinion on the subject [2] in which it provided various additional solutions to those posited by the Green Paper, and in which it stated that: '*The more material provisions of the Treaties have been implemented more effectively than its human aspects. As a result goods move more easily within the Community than people. What is needed is a move towards political agreement that paves the way for a more genuine Citizens' Europe*'.

3.2 Some of the obstacles described therein have been removed, others are still being resolved, while others still remain just as problematic as ever, if not more so. These obstacles relate to issues such as the right to residence, recognition of qualifications, the lack of portability of scholarships, tax systems in each Member State, social protection, etc. In addition to these legal problems are obstacles concerning linguistic and cultural difficulties, the lack of available information on the place of destination, daily life at the destination, etc. These are problems which, in many cases, are still encountered today.

3.3 On 14 December 2000, the Nice Council adopted a resolution on the Action Plan for Mobility [3]. The resolution follows on from the conclusions of the European Council held in Lisbon in March 2000, which recognised the urgent need to overcome the mobility obstacles faced by citizens within the EU in order to create a true European area of knowledge. The resolution listed 42 measures designed to overcome the obstacles to mobility.

3.3.1 These measures were grouped according to the following objectives:

— adopt a European mobility strategy;

— train people to act as contacts for mobility;

— development of multilingualism;

— make it easier to find information on mobility;

— draw up a mobility chart;

— look into the financing of mobility;

— democratise mobility by making it financially and socially accessible to all;

— introduce new forms of mobility;

— improve reception facilities for people;

— simplify the mobility calendar;

— provide a proper status for people opting for mobility;

— develop the system of recognition and equivalence of diplomas and training;

— recognise the experience acquired;

— gain more from periods of mobility.

3.3.2 The measures defined as priorities by the resolution include the following:

— development of multilingualism;

— establishment of a portal giving access to the different sources of information on mobility;

— recognition of periods of mobility, especially in diploma courses;

— training of mobility organisers able to provide advice and guidance and draft mobility projects;

— definition and adoption of a mobility quality charter;

— drawing up of an inventory of existing mobility circuits and good practices in exchanges;

— creation of linkage between mobility funding from the various stakeholders.

---

[1] COM(96) 462 final.

[2] See the EESC opinion of 29.2.1997 on the Green Paper on education, training and research — the obstacles to transnational mobility, rapporteur: Mr Rodríguez García-Caro (OJ C 133, 28.4.1997), point 3.1.2.

[3] OJ C 371 of 23.12.2000.

3.4 The first recommendation adopted by the European Parliament and the Council with a view to facilitating Community action to promote mobility was Recommendation No 2001/613/EC on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers ([4]). The EESC issued an opinion ([5])on this recommendation, in which it observed that: '*Virtually unimpeded mobility is a prerequisite for achieving European integration — a Citizens' Europe — and for strengthening international competitiveness*'.

3.4.1 The recommendation calls on Member States to:

— remove the legal and administrative obstacles to mobility;

— reduce linguistic and cultural obstacles by encouraging the learning of at least two languages;

— promote the various arrangements for financial support, by facilitating the portability of scholarships;

— promote a European qualification area;

— promote access to any useful information.

3.4.2 Moreover, a series of specific measures are proposed for students, persons undergoing training, young volunteers, teachers and trainers.

3.5 In its own-initiative opinion ([6]) on the *White paper: youth policy*, the EESC stated, with regard to mobility, that: '*Currently this right remains theoretical for most young people. The reasons can be found in the lack of opportunities and resources, lack of recognition of the value of mobility as such and the skills acquired through mobility, uneven distribution of opportunities, social and cultural resistance to the idea of mobility, legal and administrative barriers. Particular attention should therefore be paid to administrative obstacles, which exist in the Member States in regard to social security (unemployment insurance in particular), taxation, residence rights and the recognition of skills acquired both formally as well as through means of non-formal and informal education*'.

3.6 Although the European institutions have made numerous efforts to solve the problems identified in the Green Paper as making mobility difficult for young people, teachers, trainers and researchers, and despite the good intentions of the Action Plan for Mobility, a number of these problems persist today.

3.7 Nonetheless, some examples of legal solutions to existing problems can be cited. For instance:

3.7.1 Legislative acts adopted:

— Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ([7]);

— Regulation 1408/71 and its successor, Regulation 883/2004, on the coordination of social security systems ([8]);

— Decision No 2241/2004/EC on a single Community framework for the transparency of qualifications and competences (Europass) ([9]);

— Directive No 2005/36/EC on the recognition of professional qualifications ([10]);

— Recommendation 2006/961/EC of the European Parliament and of the Council on transnational mobility within the Community for education and training purposes: European Quality Charter for Mobility ([11]);

— Recommendation 3662/07 of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning ([12]).

3.7.2 Measures on which work is in progress:

— European credit system for vocational education and training;

— Recognition of competences acquired through voluntary activities ([13]);

— Framework strategy for multilingualism ([14]).

([4]) OJ L 215 of 9.8.2001.
([5]) See the EESC opinion of 27.04.2000 on the Proposal for a recommendation of the European Parliament and of the Council on mobility within the Community for students, persons undergoing training, young volunteers, teachers and trainers, rapporteur: Ms Hornung-Draus (OJ C 168, 16.6.2000), point 1.3
([6]) See the EESC opinion of 29.11.2000 on 'White Paper: Youth Policy', rapporteur: Ms Hassett (OJ C 116, 20.4.2001).
([7]) OJ L 158 of 30.4.2004.
([8]) OJ L 166 of 30.4.2004.
([9]) OJ L 390 of 31.12.2004.
([10]) OJ L 255 of 30.9.2005.
([11]) OJ L 394 of 30.12.2006.
([12]) PE-CONS 3662/07.
([13]) See the EESC opinion of 13.12.2006 on 'Voluntary activity: its role in European society and its impact', rapporteur: Ms Koller, Co-rapporteur: Ms zu Eulenburg (OJ C 325, 30.12.2006).
([14]) See the EESC opinion of 26.10.2006 on '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', rapporteur: Ms Le Nouail-Marlière (OJ C 324, 30.12.2006).

3.8 The Committee has expressed its views on these issues in various opinions, stating its position on a number of aspects which directly affect the mobility of EU citizens in general, and young people in particular. In concrete terms, there is a decision-making process underway which is designed to resolve problems relating to the mobility of young Europeans, but leaves certain important aspects poorly defined with regard to the stated aim of promoting and facilitating mobility.

3.9 Lastly, it is important to bear in mind that certain instruments are available to the public, which could be promoted and their operation improved. One noteworthy example is the European Job Mobility Portal (EURES). Its databases should be easier to access and regularly updated; the information they contain should be monitored, as it can sometimes be too concise; and, above all, it should be visible to the public as a portal and network.

3.10 In this context, perhaps the EU institutions should ask how much Europe's young people actually know about the different initiatives that exist to encourage their mobility. Who knows what Europass, Youthpass or the European Quality Charter is? Do Member States disseminate their knowledge sufficiently? Apart from Erasmus, what other mobility schemes do Europe's young people know about? The EESC believes that promoting knowledge of the multiple resources at our disposal is another way to remove obstacles to mobility.

4. **Cross-border mobility of young Europeans: position of the European Economic and Social Committee**

4.1 The EESC believes that the main obstacle to mobility for young Europeans is the lack of solutions to the problems so often raised, and the inability to carry out the measures so often proposed as solutions.

4.2 The EESC believes that it is more important to gear efforts towards effectively implementing proposed measures than to set up further groups of experts who identify the self-same, previously described obstacles as are already being resolved.

4.3 This is not to say that there is no need to highlight the real difficulties faced by Europe's young people when they take part in mobility and exchange activities connected with the lifelong learning ([15]), Erasmus Mundus ([16]), Youth in Action ([17]) and Culture ([18]) programmes. However, the EESC believes that a preliminary assessment should be conducted, as a priority. It is necessary to stop and think actively about where we are with regard to this important issue that affects young people in Europe so directly.

4.4 The EESC considers it necessary to set up a coordination group for the different Commission DGs with responsibilities in the area, with the specific task of conducting an exhaustive analysis of the situation, with the following basic objectives:

— to determine the obstacles that have already been identified and described previously;

— identify effective measures approved at EU level in order to overcome these (regulations, directives, decisions, resolutions, recommendations, etc.);

— to identify as yet unsolved problems which have been defined and are in the process of being resolved by means of legislation;

— to identify problems which have been defined but for which there are no pending solutions;

— to identify measures which have been proposed but not taken into account, or not implemented by the Member States.

4.5 Once this general analysis has been conducted, the next step should be to methodologically define the situation of young people, dividing them into different target groups with comparable circumstances and subject to similar issues, as set out in point 1.5 above.

4.6 On the basis of this analysis and bearing in mind that the circumstances of the different groups mentioned are completely different, it could be possible to gear the action of the EU institutions and Member States towards more specific, less generic measures. This could improve the effectiveness of measures and increase efficiency in resolving mobility problems.

4.7 As the representative of organised civil society and a consultative body with extensive experience in analysing and proposing solutions to problems relating to mobility in general and, more specifically, to the improvement of young people's situation in the labour market ([19]), the EESC would be willing to work with the European Commission towards the abovementioned goals. The mobility of young employees should be covered by specific measures, which would be enhanced by provisions applicable to all citizens regarding the portability of rights. The EESC's experience and proximity to society make it a key partner in this field.

([15]) OJ L 327 of 24.11.2006.
([16]) OJ L 345 of 31.12.2003.
([17]) OJ L 327 of 24.11.2006.
([18]) OJ L 372 of 27.12.2006.

([19]) See the EESC opinion of 12.3.2008 on 'Role of the social partners in improving the situation of young people on the labour market', rapporteur: Mr Soares, Co-rapporteur: Ms Päärendson, CES 500/2008.

4.8 Nonetheless, the EESC is aware that measures are being adopted to overcome specific situations which in the past were real legal/administrative obstacles to mobility, and that these obstacles are diminishing. However, it is important to stress that significant obstacles do continue to exist: one clear example that can be cited is the recognition and validation of knowledge and skills. The European Qualifications Framework could be one way of overcoming this obstacle, but the difficulties that its implementation entails have already been highlighted in the EESC's opinion on the subject ([20]).

4.9 In addition to the above, in the spirit of constructive criticism that always governs the EESC's opinions, the Committee will always support any initiative designed to eliminate obstacles preventing people from exercising their right to mobility and to free movement. However, sometimes these obstacles involve situations which do not fall into the legal/administrative sphere: for instance, the lack of resources for young people who wish to participate in mobility initiatives, which prevents them from travelling under the abovementioned programmes; the language-learning difficulties that pose an insurmountable barrier to accessing other countries; the uncertainty about what lies ahead in the host country, about which absolutely nothing may be known. Clearly, these are situations that do not require major legal agreements but do need every effort to be made in order to resolve them. Documents such as the Action Plan for Mobility already include proposed measures for developing mobility, financial associations, democratising mobility by making it financially accessible, improving reception facilities for people, granting proper status, etc.

4.10 The EESC stresses that what is needed is not so much to continue to identify obstacles and solutions but, rather, to implement the right measures in a reasonably short time so that all that has already been said about mobility can be legitimised. By involving all stakeholders in making mobility a reality for young people and taking a more proactive approach to the different EU policies in the field, it could be possible to bring about a fundamental change to the status quo.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([20]) See the 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, 27.7.2007).

Opinion of the European Economic and Social Committee on the Proposal for a decision of the European Parliament and of the Council on the European Year for Combating Poverty and Social Exclusion (2010)

COM(2007) 797 final — 2007/0278 (COD)

(2008/C 224/24)

On 30 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 decision of the European Parliament and of the Council on the European Year for Combating Poverty and Social Exclusion (2010).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2008. The rapporteur was Krzysztof Pater and the co-rapporteur was Erika Koller.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May 2008), the European Economic and Social Committee adopted the following opinion by 116 votes to 1, with 5 abstentions:

1. EESC's position in brief

1.1 The European Economic and Social Committee welcomes the Commission proposal establishing the European Year 2010 for Combating Poverty and Social Exclusion. It is a valuable initiative to raise public awareness of persistent pockets of poverty and marginalisation in Europe and to build support for effective ways of tackling these problems.

1.2 The EESC welcomes the multifaceted approach to poverty and social exclusion, which cannot be reduced only to the persistence of relative income inequalities. In order to get more effectively across the message of intolerability of poverty and social marginalisation in a continent as wealthy as Europe, as well as to win the public support required for their effective resolution, the events of the European Year 2010 should, apart from relative poverty, be based on measures of poverty reflecting the scale of actual deprivation, the areas affected and the depth of the problem, while taking into account disparities across the EU.

1.3 The European Year 2010 should have clear, select, overarching themes. First, to reduce poverty and social exclusion through professional and social activation, more and better social support systems and programs are needed. Thus, social policy is truly a productive factor. Second, reduction of poverty and social exclusion is in the interest of every citizen and that is why everyone should contribute to the achievement of this objective. It should be borne in mind, however, that the task of tackling poverty and marginalisation is primarily a job for political decision-makers, and thus for government bodies and other bodies involved in subsequent implementation as well as all social actors.

1.4 The European Year 2010 should be an opportunity to raise public awareness of the need to modernise and strengthen the European social model and of the resulting consequences. Active inclusion is crucial in preserving and consolidating the cohesion and solidarity of society as the world faces a financial and food crisis at a time of globalisation and demographic change in Europe. However, this will involve changes to the current lifestyles of many Europeans. Fears about job precariousness are rising. The events of the Year should be used to broaden public support for those reforms.

1.5 The European Year 2010 should also provide a platform for public debate on the ways of protecting and advancing social cohesion amidst growing income disparities among Europeans. Innovative and integrated public policy responses will need to be found.

— The EESC points out that a successful campaign against poverty and exclusion requires the involvement of many areas of policy. Thus, the fair distribution of prosperity must be given much greater political priority than hitherto, also at EU level.

— The objectives of the Year set out in the proposal for a decision should better reflect the importance of an active policy to tackle poverty and social exclusion in achieving the goals of the EU growth and jobs strategy. ([1])

Their effectiveness will be predicated on continuous involvement of the social partners and civil society organisations as well as on active involvement and participation of citizens in local community-building.

([1]) See for example the EESC opinion of 18.1.2007 on Taking stock of the reality of European society today, point 2.2. Rapporteur: Mr Olsson (OJ C 93, 27.4.2007); the EESC opinion of 13.7.2005 on the Communication from the Commission on the Social Agenda, point 6.1. Rapporteur: Mrs Engelen-Kefer (OJ C 294, 25.11.2005).

1.6 The EESC believes that the operational side of the planned initiative is well thought-out. Worthy of special mention is the fact that the proposal takes proper account of country-specific features assuming close cooperation with social partners and other civil society institutions as well as direct participation of people affected by poverty and social exclusion.

1.7 The EESC welcomes the fact that the funding earmarked for implementing the goals of the Year is the largest amount ever assigned to such an initiative in the EU, but given the scale of the planned measures, it nonetheless calls for this funding to be increased.

2. **Summary of the Commission proposal**

2.1 The aim of the decision to designate 2010 as the European Year for Combating Poverty and Social Exclusion is to contribute to the attainment the goal of making 'a decisive impact on the eradication of poverty', which was established in the Lisbon Strategy and reaffirmed in the new European Social Agenda for 2005-2010 ([2]).

2.2 Measures relating to the Year will concentrate on four objectives: (1) **recognition** that poor and socially excluded people are entitled to a dignified life and to participate in society, (2) **ownership**, i.e. all members of society taking joint responsibility for reducing poverty and marginalisation, (3) **cohesion**, the belief that maintaining social cohesion is in everyone's interest and (4) **commitment**, stressing the political will of the EU to treat combating poverty and social exclusion as a priority.

2.3 These measures, to be taken at EU and national level, will include meetings and conferences, information and promotional campaigns as well as studies and reports. They should involve all the stakeholders and provide an opportunity that the needs and views of those affected by poverty and exclusion be voiced and heard.

2.4 A sum of EUR 17 million from the EU budget has been earmarked for projects relating to the Year. With the addition of anticipated co-funding from public and private bodies in Member States this figure may increase to EUR 26.175m.

([2]) Communication from the Commission on the Social Agenda, COM (2005) 33 final, 9.2.2005, point 2.2., p. 9.

3. **General observations on the objective of the planned initiative**

3.1 The European Economic and Social Committee welcomes the Commission proposal, which, if implemented properly, could help to raise public awareness and stimulate public discussion how to resolutely and effectively tackle poverty and social exclusion.

3.2 The EESC believes that the theme of the Year is important and topical. Not only will it be noticed by the public, but will also help keep it focused. The EESC supports the general and detailed objectives, the specific themes of the Year as well as the proposed methods of implementation. The remarks below are intended to enhance the public profile and political effectiveness of the Year.

3.3 The protection and improvement of the quality of life of all Europeans are predicated on their commitment that poverty and social marginalisation need to be dealt with effectively in the relatively affluent Europe. The events of the Year should reinforce this commitment among Europeans of all social and economic strata.

3.4 It is, therefore, important that the events of the year built on the knowledge and experience accumulated since the launch of the European strategy to combat poverty and social exclusion by the 2000 Nice European Council. Synergies should be ensured with the events organised by others, e.g., the Council of Europe, in the context of the High-Level Task Force report on social cohesion in the 21st century ([3]), and the United Nations, in the context of the annual observance of October 17 — the International Day for the Eradication of Poverty.

3.5 The EESC recalls that a number of issues and themes dealt with in previous opinions ([4]), should find its rightful place in the events of the Year:

— supporting modernised social policy as a truly productive factor capable of professional activation of all able-bodied people and social activation of all;

([3]) Cf. 'Towards an Active, Fair and Socially Cohesive Europe' Report of High-Level Task Force on Social Cohesion in the 21st Century, Council of Europe, Strasbourg 26 October 2007, TFSC (2007) 31 E.

([4]) EESC opinion of 13.7.2005 on 'Communication from the Commission on the Social Agenda', rapporteur: Mrs Engelen-Kefer (OJ C 294 of 25.11.2005); EESC opinion of 29.9.2005 on 'Poverty among women in Europe', rapporteur: Mrs King (OJ C 24 of 31.1.2006); EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006); EESC opinion of 13.12.2006 on 'Voluntary activity: its role in European society and its impact', rapporteur: Ms Koller and co-rapporteur: Ms Gräfin zu Eulenburg (OJ C 325 of 30.12.2006); EESC opinion of 18.1.2007 on 'Taking stock of the reality of European society today', rapporteur: Mr Olsson (OJ C 93 of 27.4.2007); EESC opinion of 25.10.2007 on 'Credit and social exclusion in an affluent society', rapporteur: Mr Pegado Liz (OJ C 44 of 16.2.2008); EESC opinion of 13.12 2007 on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Promoting solidarity between the generations', rapporteur: Mr Jahier (OJ C 120 of 16.05.2008).

— modernisation of the European Social Model, broadly conceived, so that it can successfully address the new challenges in the areas of employment, social inclusion and combating poverty, and the social effects of globalisation, to maintain Europe as 'a democratic, green, competitive, solidarity-based and socially inclusive welfare area for all [its] citizens …' ([5]);

— the need for more effective policies directed at labour market integration of groups discriminated against or otherwise disadvantaged, in particular the working poor and people in precarious jobs ([6]);

— the need for an open public debate and support for the direction of that modernisation toward activation to employment and social participation; EESC has stressed that if 'the European Social Model is to be of value in the shaping of the European society of tomorrow, it has to be a dynamic model, open for challenge, change and reform' and that 'the European Social Model will be relevant only as long as it is appreciated and supported by the citizens of Europe'; ([7])

— strong emphasis on local action, social partner, civil society involvement and encouragement as well as appreciation of civic activism, especially in combating poverty and social exclusion;

— the need for comprehensive approaches, reaching beyond traditional employment and social policies, toward economic, educational, regional, cultural, and infrastructural policies, especially in combating poverty and social exclusion;

— acknowledging and recognising that men and women experience poverty differently and that social policies should be crafted accordingly;

— the need for a more effective Open Method of Coordination at the European level in the area of combating poverty and social exclusion;

— placing action against poverty and social exclusion in the international context, especially by promoting basic rights at work and decent working standards throughout the world.

([5]) See EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', § 2.1.2.5. Rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006).

([6]) Cf. EESC own-initiative opinion of 12.7.2007 on Employment of priority categories (Lisbon Strategy), rapporteur: Mr Greif (OJ C 256, 27.10.2007).

([7]) See EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', §§ 1.8, 1.9. Rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006).

Below, the EESC develops some aspects of those ideas, as especially relevant to the events of the Year.

3.6 During the Year, particular attention should be drawn to the following possible positive measures:

— the impact of the fight against undeclared work;

— active measures to help people back into work;

— investment in industrial activities and services that generate jobs and an assessment of potential negative or exacerbating impacts, including:

— the future economic growth, during and after the Year for Combating Poverty and Social Exclusion;

— the energy and food situation of the most vulnerable communities or communities living in poverty or extreme poverty.

4. **Get the message across more effectively**

4.1 The decision establishing the Year for Combating Poverty and Social Exclusion highlights that 78 million people in the EU, i.e. 16 % of the population, are at risk of poverty. The EESC believes that to convey the political message of the Year effectively, alongside the usual indicator of relative income poverty, other measures of poverty, showing its persistence and actual deprivation many Europeans still suffer from should also be referred to and used. Consequently, the events of the Year should equally refer to a comprehensive set of indicators of relative and absolute poverty to sensitise the general public to the situations which they represent and instil the sense of their intolerability.

4.2 Furthermore, the EESC points out that the indicators used 'describe' the problem of poverty and social exclusion. With the challenges to social cohesion in the EU and the resulting modernisation of the European Social Model, it is important that those indicators imply a balanced public policy response, comprising of better income redistribution and properly financed and managed policies of flexicurity in the labour market and of active inclusion. Such 'dynamic model' of social and employment policies the EESC suggested in its respective opinion ([8]).

([8]) See EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', § 2.4. Rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006).

4.3 The EESC welcomes the fact that the Commission has recognised that the multifaceted nature of poverty and social exclusion requires adequate measures. In the Communication on the European Social Agenda for the period 2005-2010, which set out, *inter alia*, to persuade Member States to consolidate, integrate and streamline measures to combat poverty and social exclusion, the Commission rightly complemented the relative poverty indicator with that of persistent poverty ([9]). When later proposing that social protection, healthcare and long-term care also be subject to enhanced coordination, the Commission drew attention to the need for greater emphasis on 'indicators measuring deprivation' ([10]).

4.4 In view of the above, the EESC believes that the decision on the European Year 2010 should be based on measures of poverty which better bring out the scale of deprivation, the areas affected and the depth of the problem. This would increase public awareness and support for labour market and social protection policies at EU and national levels, addressed to people and communities threatened or affected by deep and absolute poverty ([11]).

5. **The main themes of the Year, its objectives and types of activities**

5.1 Poverty is a multifaceted phenomenon with risks distributed unevenly in society. Especially when compounded, they render certain groups particularly vulnerable.

5.2 Poverty is usually related to unemployment, especially long-term unemployment. Therefore, as the 2007 *Joint Report on Social Protection and Social Inclusion–JIR* reads, '[a] job is the best safeguard against poverty and social exclusion....' ([12]) But, as the *JIR* also states, it cannot be the only safeguard. The phenomenon of the working poor makes that strikingly evident.

5.3 Poverty may also be related to low skills or lack of skills required in an available job or to skills not adequate to hold a quality job, offering adequate wage. Groups especially susceptible to this risk are young people, particularly early drop-outs, and the older workers.

5.4 People may be trapped into poverty by poorly structured income support systems which discourage activity in the official labour market and ultimately condemn them to poverty also in the old age.

5.5 Family structure may also be a risk: single-earner families, especially when headed by single-parents, families with three or more children. Family breakdown or loss of job, causing the loss of home is a potentially dangerous situation.

5.6 Similarly, persons of poor health (e.g. due to age), cognitive limitations, persons with disabilities, especially when low-skilled, substance abusers, are also groups at great risk.

5.7 Also at risk are persons living in peripheral or otherwise underprivileged areas.

5.8 A special at-risk-of-poverty category form migrants and ethnic minorities who apart from often inadequate social and language skills and/or cultural adjustment, may be also discriminated against.

5.9 The examples listed above show the magnitude of the challenge involved and the complexity of effective public policy responses. If poverty and social exclusion are to be significantly reduced, efforts by public authorities of all levels need to be complemented by these of the social partners, the civil society organisations, and of the individuals. They also reveal a paradox:

([9]) The rate of persistent poverty shows the number of people affected by relative poverty in two of the last three years. (definition by EUROSTAT).

([10]) Communication from the Commission Working together, working better: A new framework for the open method of coordination of social protection and inclusion policies in the European Union, COM (2005) 706 final, 22.12.2005, point 3.5, p. 9.

([11]) In its opinions the EESC has often referred to more specific descriptions of poverty, e.g., turning attention to categories of people who 'suffer hardship' and 'are greatly disadvantaged' (EESC opinion of 13.12.2007 on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Promoting solidarity between the generations', §2.5, rapporteur: Mr Jahier, OJ C 120 of 16.5.2008), to persistent poverty (EESC opinion of 29.9.2005 on 'Poverty among women in Europe', §1.7, rapporteur: Mrs King, OJ C 24 of 31.01.2006), and to poverty 'in qualitative terms', meaning 'a lack or inadequacy of material resources for meeting the vital needs of an individual' (EESC opinion of 25.10.2007 on 'Credit and social exclusion in an affluent society', §3.1.3, rapporteur: Mr Pegado Liz, OJ C 44 of 16.2.2008). On one occasion it even stated: 'The Committee strongly recommends that the Commission revisits the definition of poverty as it only highlights the overt causes of poverty and underestimates the level [of] the poverty of women and the impact of that poverty' (EESC opinion of 29.9.2005 on 'Poverty among women in Europe', §2.1, rapporteur: Mrs King, OJ C 24 of 31.1.2006). Naturally, that deficiency of the relative poverty measure does not only apply to women poverty, but to poverty generally.

([12]) *Joint Report on Social Protection and Social Inclusion 2007*, European Commission (European Communities: 2007), p. 45.

if all able-bodied persons are to be socially integrated primarily through employment to contribute to Europe's economic growth and alleviate its population decline, more and better support systems and programs are needed, rather than less. Those should be the two leading themes of the Year.

5.10 The EESC believes that the general and specific objectives of the Year as well as the chosen activity themes seek to achieve a new balance between the social requirement to be economically active and the individual's need for security. The need for such an adjustment stems from globalisation, demographic change, technological progress and the evolution of the European labour market, involving significant changes in the life style of many Europeans. Furthermore, labour market and social policies need to be modernised and improved to facilitate the necessary transitions and provide people with a sustainable safety net that is properly managed and financed. While some take advantage of the opportunities of the new labour markets and activation programs, others perceive them as threatening to their social and professional status. In view of the EESC, the events of the Year ought to address those genuine concerns ([13]).

5.11 When it comes to people at risk of unemployment and/or social exclusion, current emphasis on labour market activation of all people capable of working allows the society to make use of their talents while satisfying the individual need for vocational and social advancement ([14]). Apart from appropriate income support, an increasing emphasis is also being placed on better access of all to social services, particularly to those which help individuals to improve, update or change their qualifications or help them to maintain their health. Yet, to benefit from those opportunities, one is asked for far more individual activity, initiative, intellectual effort and cooperation with various support services than ever before. There is a real need to communicate the purpose of policies requiring that effort to gain public support for them ([15]). Events of the Year should help to achieve this. The objectives of the Year should better reflect the importance of an active policy to tackle poverty and social exclusion in achieving the goals of the EU growth and jobs strategy ([16]). That a modernised and enhanced social policy improves the functioning of the labour market and contributes to job creation should be better communicated and convincingly evidenced in the events of the Year. Likewise, that properly designed income support measures benefit those at risk of unemployment and social marginalisation by reducing the various pressures that displace them from the official labour market; they thus contribute to the reduction of the informal economy.

5.12 The draft decision includes several statements which require further clarification.

5.13 The EESC points out that referring to 'children, lone parents, the elderly, migrants and ethnic minorities, disabled people, the homeless, prisoners, women and children who are victims of violence, and severe substance abusers' ([17]) as groups that are particularly at risk of poverty and social exclusion, without further qualifying them, might have the opposite of the desired effect. These groups encompass both people who are at risk of poverty and those who are not. As indicated above, it is usually the lack of adequate skills and/or high ratio of family members to income-earners that put these categories of people at risk of poverty.

6. **Social cohesion and the persistence and growth of income disparities**

6.1 The European Year 2010 can also provide an opportunity for public debate on the existing and new challenges to social solidarity and social cohesion as Europe moves toward the knowledge-based society and economy and cope with the demographic change ([18]). Such reflection is particularly needed in a continent which does have the means to decisively reduce poverty and social exclusion.

([13]) See EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', esp. §§ 1.6–1.8, 2.3.1–2.3.5. Rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006). See also EESC opinion of 18.1.2007 on 'Taking stock of the reality of European society today', esp. § 2.4. Rapporteur: Mr Olsson (OJ C 93 of 27.4.2007).

([14]) *The social situation in the European Union 2005-2006: The Balance between Generations in an Ageing Europe*, European Commission, (European Communities: 2007), p. 17, summarizes the survey of life satisfaction of EU citizens, that 'the importance of jobs for life satisfaction goes far beyond the income they procure'.

([15]) 'Take the issues to the citizens of Europe' was a key recommendation of the EESC opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', §2.6. Rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006).

([16]) Cf. e.g., EESC opinion of 18.1.2007 on 'Taking stock of the reality of European society today', § 2.2. Rapporteur: Mr Olsson (OJ C 93 of 27.4.2007); EESC opinion of 13.7.2005 on 'Communication from the Commission on the Social Agenda', § 6.1. Rapporteur: Mrs Engelen-Kefer (OJ C 294 of 25.11.2005).

([17]) Proposal for a Decision of the European Parliament and of the Council on the European Year for Combating Poverty and Social Exclusion (2010), [COM(2007) 797 final, 2007/0278 (COD)], 12.12.2007, Preamble, para. (11), p. 9.

([18]) The EESC was concerned with some 'social effects of the knowledge revolution' and suggested that they need to be addressed by the social dialogue already in its opinion of 6.7.2006 on 'Social cohesion: fleshing out a European social model', §2.4.5. Rapporteur: Mr Ehnmark (OJ C 309 of 16.12.2006).

6.2 Meanwhile, too many young people do not have, upon leaving schools, the literacy and numeracy skills required for a successful career in the new economy. Effective remedies are needed not only to stave off their social marginalisation but also to satisfy the economy's demand for quality workers. Furthermore, Europe faces growing bifurcation of the labour market into the high-skilled, high-paying segment and the low-skilled, low-paying one, resulting in income disparities. A vision of maintaining social justice and social cohesion while preserving the competitiveness of EU in the global economy needs to be developed and accepted by the Europeans.

6.3 Top-down measures by governments will not ensure social cohesion unless complemented by grassroots initiatives of the citizens. In the same way that the Nice European Council of 2000 recognised the participation of civil society organisations as the key to effectively mobilising efforts to combat poverty and social exclusion, the EESC believes that the importance of individual involvement of all citizens in building inclusive communities should also be acknowledged and encouraged throughout the Year. In this context, it would be important to convey the message that civic involvement is in the interest of every member of the community, irrespective of their economic or social status.

6.4 EESC recalls its opinion on voluntary activity which, *inter alia*, reads that 'governments of the Member States should be encouraged to frame national policies on voluntary activity and strategies ensuring that voluntary activity is encouraged and recognised. These national policies should also cover the role of infrastructure in facilitating voluntary activity.' ([19]) It implies that people wishing to offer their time and skills for the communities in which they live should, at the minimum, not be deterred from doing so by any legal or bureaucratic obstacles. ([20]) While the EESC still holds that voluntary activity deserves a separate European Year, relevant aspects of civic participation should be highlighted also in the events of the Year 2010.

6.5 EESC urges that the events of the Year should avoid giving an impression that under the currently promoted policies of flexicurity and active inclusion, the requirement of effort to climb out of unemployment and poverty (thus contributing to societal cohesion) is restricted to employers, governments and the beneficiaries of labour market and social protection programs. Instead, they should drive home the message that this responsibility rests with every citizen.

6.6 Another issue worth considering is that amidst persistent or even growing economic disparities, maintenance of social cohesion may also be facilitated by developing high-quality public spaces (urban spaces, schools, universities, libraries, parks, recreational facilities), where people of various walks of life and varying social and economic status would want to congregate and spend time.

6.7 Most of the new challenges and dilemmas facing social cohesion and public policy may be addressed under the general objectives of the draft decision. They should, however, be better articulated to stimulate useful public debate over the course of the Year. The possible courses of action to promote social cohesion proposed here may complement the 2010 debate on the ideas of active social inclusion and effective labour market policies.

7. **Social policy in the broad sense**

7.1 In the EESC's view, the proposed concept for the Year, particularly the range of activities, will also make it possible to highlight and raise awareness of the fact that achieving the Lisbon Strategy goal of making a decisive impact on eradicating poverty and social exclusion by 2010 will require multi-facetted measures ([21]).

7.2 Educational measures carried out over the course of the Year should include building public awareness in individual Member States of the factors that determine the size of a future pension and encourage people to take steps that can secure them a decent life in retirement.

7.3 The EESC believes that the issue of how the European Central Bank might use its powers under the Treaty to join in efforts to combat poverty and social exclusion also deserves attention in the events of the Year.

([19]) EESC opinion of 13.12.2006 on 'Voluntary activity: its role in European society and its impact', § 1.2. Rapporteur: Ms Koller and co-rapporteur: Ms Gräfin zu Eulenburg (OJ C 325 of 30.12.2006).

([20]) EESC opinion of 13.12.2007 on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Promoting solidarity between the generations' stresses the benefits of civic involvement also by elderly people and urges more research into the issue of active aging, § 4.5., rapporteur: Mr Jahier (OJ C 120 of 16.5.2008).

([21]) Although the Lisbon Strategy ends in 2010, it is a permanent point of reference as regards programme documents and concrete measures at EU and national level. Although no decision has yet been taken, the Lisbon Strategy can be expected to continue in some form after 2010, especially as the Strategy's employment and social goals will not be fully realised by 2010.

7.4 The EESC believes it needs to be shown that social marginalisation could be curtailed by policies transcending the traditional realm of labour market and social protections, such as spatial planning policies preventing ghettoization of poverty, transportation policies reducing geographic barriers to social mobility, and economic policies developing peripheral areas and underpinning services of general interest and distribution policy, in order to reverse the trend which has been observed for years towards ever greater disparities between rich and poor.

7.5 In this connection, the EESC draws attention to differences between national circumstances, which have become more marked since EU enlargement. As stated in one study, 'even "the poorest" in "rich" Member States suffer less deprivation than "the most well-off" in "poor states"' ([22]). This highlights the importance of effective action toward socio-economic cohesion and reduction of current economic disparities across the EU to diminish the areas of deprivation and social exclusion. This, in turn, would enable further development of the Open Method of Coordination of social policy in the EU. ([23]) It is a point worth special attention and consideration in the events of the Year.

8. **Comments on the implementation of the planned initiative**

8.1 The EESC believes that the operational side of the Year has been well thought out as it takes appropriate account of national priorities and sensibilities (such as the delicate matter of the labour market and social integration of immigrants and ethnic minorities). The fact that it establishes close cooperation with social partners and civil society institutions is also important.

8.2 The emphasis placed on the participation of the social partners and civil society organisations in achieving the objectives of the Year reflects their indispensability in achieving the social agenda of the Lisbon Strategy, which has been affirmed in 2000 by the Nice European Council in the European strategy to combat poverty and social exclusion. Today more than ever, government action must be complemented, corrected and consolidated by means of grass-root initiatives. It is also important that in the design and implementation of social policy, the voice of those it seeks to support is duly heard. It is therefore appropriate that these organisations have been invited to actively cooperate in implementing the goals of the European Year 2010.

8.3 The Committee welcomes the fact that the funding earmarked for implementing the goals of the Year is the highest amount ever appropriated in the EU to such an initiative. However, having considered the detailed measures listed in the Annex to the proposed decision, the EESC calls for increased funding for measures associated with the Year to ensure effectiveness.

8.4 The EESC also welcomes the fact that in designing and implementing the activities of the Year, the different ways in which men and women experience poverty and social exclusion will be recognised.

8.5 The EESC believes that the priorities of the European Year, listed in the Annex, should be expanded to cover poverty among people in precarious employment. The issues surrounding persons with disabilities should be considered separately and not lumped together with those concerning other vulnerable groups.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

([22]) Anne-Catherine Guio, 'Material deprivation in the EU', *Statistics in Focus: Population and Social Conditions, Living Conditions and Welfare*, 21/2005, Eurostat, p. 9.

([23]) EESC opinion of 18.1.2007 on 'Taking stock of the reality of European society today', § 2.7, 5.3. Rapporteur: Mr Olsson (OJ C 93 of 27.4.2007).

Opinion of the European Economic and Social Committee on the Proposal for a decision of the European Parliament and of the Council amending Decision No 1719/2006/EC establishing the Youth in Action programme for the period 2007 to 2013

COM(2008) 56 final — 2008/0023 (COD)

(2008/C 224/25)

On 6 March 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 decision of the European Parliament and of the Council amending Decision No 1719/2006/EC establishing the Youth in Action programme for the period 2007 to 2013.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2008. The rapporteur was Mr Czajkowski.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 78 votes to 0 with 1 abstention.

1. **EESC opinion**

1.1 The European Economic and Social Committee welcomes the Commission's initiative to change the procedures for awarding project-based grants and for the management of the Youth in action programme, which should ensure that funds are distributed more quickly to applicants under the programme.

1.2 The Committee supports this departure from the previous procedure, as prolonged decision-making, the lengthy project evaluation process, data verification by the programme committee and the National Agencies lead, at best, to delays and — at worst — to substantial financial problems or even bankruptcy for some of the applicant organisations, as well as the non-utilisation of funds.

2. **Introduction**

2.1 The Youth in Action programme, planned for the period 2007-2013 and adopted by Decision No 1720/2006/EC of the European Parliament and of the Council, is an EU programme for non-formal learning. It is primarily aimed at those persons for whom non-formal education is the only opportunity available for individual and personal development and the acquisition of the knowledge and skills needed in the modern world.

2.2 The principal objectives of the programme are to overcome the barriers, prejudices and stereotypes which exist among young people, to support their mobility and to promote active citizenship, seen as a dynamic learning process. The programme provides funding for projects which support the personal development of young people. It acts as a stimulus for people to get involved in their local communities and helps promote tolerance. It encourages various kinds of action promoting the idea of a united Europe.

2.3 The European Commission has ultimate responsibility for the operation of the **Youth in action** programme. The Commission oversees the day to day management of the budget and sets the programme's priorities, objectives and criteria. In addition, it directs and monitors the programme's overall implementation, as well as project follow-up activities and programme evaluations at EU level.

2.4 The Commission's tasks also include the comprehensive monitoring and coordination of the activity of the National Agencies — the offices established by the authorities responsible for youth policy in each country participating in the programme. The European Commission works closely with the National Agencies and supervises their activities.

2.5 The EU Member States, as well as the other participating countries, are jointly involved in managing the Youth in Action programme, particularly through the programme committee, to which they appoint representatives. The authorities in these countries also appoint the National Agencies and monitor their activities; the latter task is carried out jointly with the European Commission.

2.6 The Youth in Action programme is primarily realised on a decentralised basis, which makes it possible to cooperate as closely as possible with beneficiaries and to take account of the specific nature of the various systems and conditions governing young people's lives in the different countries. A National Agency has been set up in each participating country. These National Agencies are responsible for the promotion and implementation of the Programme at national level and act as a link between the European Commission, project promoters at local, regional and national level, and the young people themselves.

2.7 Project promoters wishing to receive grants are required to follow a procedure for calls for proposals established and published by the National Agencies. Under the procedure, the Commission subsequently makes selection decisions concerning proposals for the award of grants; as measures to implement the programme, these must follow a specific inter-institutional procedure.

2.8 The Council, in the acts which it adopts, confers on the Commission powers to implement the rules which the Council lays down and may impose certain requirements in respect of the exercise of these powers; these requirements come under the heading of 'comitology'. This means that it is compulsory to consult a committee on the implementing measures which are determined by the basic instrument. Before the consultations are completed, the Commission already formally has at its disposal the resources earmarked for the projects. The committee which assesses the projects is composed of representatives of the Member States and is chaired by a representative of the Commission.

2.9 There are various types of committee procedure; the basic instrument establishing the Commission's implementing powers may provide for the application of these various procedures in order to carry out the implementing measures

3. **Conclusions — in view of the new situation**

3.1 The Committee welcomes the Commission's initiative to change both the procedures for awarding project-based grants and management procedures. The Parliament's right to monitor the implementation of legislative instruments adopted under the co-decision procedure, which allows it to contest any measures envisaged by the Commission combines responsibility for projects with a safeguard mechanism under the co-decision procedure.

3.2 The European Parliament has one month in which to examine a draft measure before the Commission takes the formal decision, in accordance with the procedures provided for in the Council decision.

3.3 At present, the management procedure used for the Youth in Action programme for 2007-2013 applies to all decisions, including those for high-value grants, politically sensitive projects and grants in excess of EUR 1 million, as well as smaller-scale projects.

3.4 The Commission proposes that decisions relating to smaller projects of under EUR 1 million should not be subject to the comitology procedure. In return, the Commission has undertaken to inform the programme committee and the European Parliament immediately of any selection decisions which have not been subject to the management procedure. The EESC fully endorses this declaration addressed to the Council and the European Parliament.

3.5 The Committee supports this departure from procedure in the case of small-scale projects, as prolonged decision-making, the lengthy project evaluation process, data verification by the programme committee and the National Agencies lead, at best, to delays and — at worst — to substantial financial problems or even bankruptcy for some of the applicant organisations, as well as the non-utilisation of funds.

3.6 The Committee, after consulting the statistical data provided by the individual National Agencies, notes that the vast majority of applicants are small organisations, associations and foundations for whom the whole procedure and process of waiting for the results are sufficiently costly and time-consuming to a decline in interest in the programme over the long term. The administrative costs of servicing the programme could have a negative impact on the programme budget in the future.

3.7 The EESC welcomes the Commission's arguments which provide an accurate assessment of the consultation procedure. Projects are usually realised over a very short time frame after the submission of an application; accordingly, a consultation process of at least two to three months can jeopardise the execution of many projects, which will have a negative impact on the effectiveness of the programme as a whole.

3.8 The EESC also welcomes the fact that the programme committee has agreed to amend its rules of procedure in order to reduce the time required for consultations concerning selection decisions which are subject to the consultative procedure. The committee now uses the written procedure and has a period of five days in which to comment on the selection decisions submitted for its opinion. The European Parliament has also accepted a temporary arrangement which reduced the time required for its right of scrutiny from one month to five days during the previous summer period. This development has allowed the Commission to speed up work on adopting projects for realisation, but it is treated as a temporary solution.

3.9 In view of the above arguments, the current consultation procedure should be lifted and be replaced, on the basis of a Commission declaration, by a procedure whereby the Commission provides the programme committee and the European Parliament with immediate information on the selection decisions which it adopts.

Brussels, 29 May 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 amending Decision no 1720/2006/EC establishing an Action programme in the field of lifelong learning

COM(2008) 61 final — 2008/0025 (COD)

(2008/C 224/26)

On 6 March 2008 the European Commission 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 amending Decision no 1720/2006/EC establishing an Action programme in the field of lifelong learning.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2008. The rapporteur was Ms Le Nouail-Marlière.

At its 445th plenary session, held on 28-29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 80 votes to one with no abstentions.

1. **Conclusions**

1.1 The EESC supports this step, endorses the present procedure and recommends that the Commission also undertake to inform the Programme Committee and the European Parliament immediately of any decisions it might take under amended Article 9.1 of Decision 1720/2006/EC.

2. **Simplification of the grant allocation procedures in the various multi-annual programmes**

2.1 This proposal is part of a series of four proposals aimed at making the rules more flexible on the allocation of grants involving small sums, which are set down in the following four multi-annual programmes for the 2007-2013 period:

— 'Youth in action'

— 'Culture'

— 'Europe for citizens' and

— the current 'Action programme in the field of lifelong learning'.

2.2 In accordance with the rules on committee procedure set out in Article 202 of the TEC, the Council confers certain powers on the Commission, assisted by a Programme Committee — exclusively comprised of representatives from Member States and chaired by the Commission — for implementing the rules which the Council lays down in co-decision with the European Parliament; the European Parliament is consulted on the implementation of legislative instruments adopted in co-decision. The Commission has noted that when the four programmes were being negotiated, the legislator intended only to submit i) decisions on the allocation of grants involving substantial sums (more than EUR 1 000 000 for projects and multi-lateral networks) and ii) politically sensitive decisions (on cooperation and political innovation) to the comitology procedure (*management* procedure with a qualified majority vote).

2.3 The Commission undertook to *inform* the Programme Committee and the European Parliament without delay of any selection decisions not subject to the *management* procedure. The Commission issued a declaration on this interinstitutional agreement, addressed to the Council and the European Parliament.

2.4 This intention of the legislator was not properly reflected in Decision 1720/2006/EC. All decisions on selection and on the allocation of grants involving small sums became subject to the *consultation* procedure stipulated under committee procedure arrangements.

2.5 Consultation of the Programme Committee and the European Parliament entails submitting the selection decision to the Programme Committee for examination, taking account of its opinion and informing the Parliament, which has to notify the Commission of its agreement. This procedure, involving consultation and the exchange of written responses, generates major delays in grant allocation and risks jeopardising numerous projects and considerably reducing the effectiveness of the annual programmes.

2.6 'Ad hoc arrangements' have been worked out to date between the Commission, Programme Committee and the European Parliament, with a view to cutting back the time involved in Commission selection decisions on grant allocation.

2.7 The Commission nevertheless feels that these temporary solutions cannot continue to be used and is proposing amending the rules laid down when these programmes were set up. This would entail i) doing away with the obligation to submit decisions on the allocation of grants involving small sums to the consultation procedure and ii) permitting the Commission to adopt decisions on grant allocation without the assistance of a Committee, replacing it with a simple information procedure.

3. **General comments**

3.1 These proposals should allow the four multi-annual programmes on education, youth and culture to function more smoothly.

3.2 In previous opinions, the EESC has encouraged the Commission: to simplify access to programmes and grants for any bodies submitting projects; to operate more closely alongside Member States so as to encourage them to consult other organisations when laying down annual guidelines; to shorten the time involved in allocating grants and; not to jeopardise the implementation of projects, inter alia by allowing the selection decisions to take too long; these sometimes take so long that feasibility studies are out of date because they are carried out too far in advance of projects being implemented.

4. **Specific comments**

Given the comments made in points (9), (11), (15) and (17) of the explanatory memorandum of the decision in hand, the EESC recommends that, for the purposes of transparency, good governance and public information, the Commission reiterate its declared undertaking to inform the Programme Committee and the European Parliament immediately of any decisions it might take under amended Article 9.1 of Decision 1720/2006/EC.

The EESC recommends that the new Article 9.1(a) (see Article 1 of the proposed Decision) be amended as follows: '…it shall adopt these decisions without the assistance of a committee *and shall immediately inform the Programme Committee and European Parliament thereof.*'

The EESC notes that the Commission is not proposing this addition, because it feels that i) this would amend the proposal in such a way that it would no longer be in keeping with the committee procedure rules governed by Article 202 of the TEC and ii) the explanatory memorandum of the present decision is binding enough here.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on The advantages and benefits of the euro: Time for assessment

(2008/C 224/27)

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 opinion on

The advantages and benefits of the euro: Time for assessment.

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 30 April 2008. The rapporteur was Mr Burani.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 130 votes to none with three abstentions.

1. **Conclusions and recommendations**

1.1 Ten years on from the introduction of the single currency, the EESC has decided to take stock of the benefits brought by the euro for individuals and businesses: not so much the economic and monetary benefits — for there are economists, politicians and media commentators to do that — but rather **from the point of view of users**. In other words, a decade of experience has shown that the euro has proved its worth and that the introduction of this prestigious, stable currency has enabled Europe to hold its own internationally, but **how do users see the single currency**?

1.2 This opinion takes as its starting point an overview of the benefits brought by the introduction of the euro: a mixture of light and the shade cast by the international economic situation. It focuses on the results of the periodic Eurobarometer surveys ascertaining whether and to what extent the European public appreciates these benefits.

1.3 The results are encouraging in many countries, but in some others a large proportion of those interviewed still say that they find the 'new' currency hard to use, that they calculate prices in the old national currency and that they blame the euro for higher prices, and only half feel that, ultimately, the introduction of the single currency has boosted economic growth. Basically, the survey reveals that not always, in all countries, has the euro been enough of a success with the people.

1.4 An initial reaction to these results could be to question whether the responses were truly objective and informed: the EESC rejects this approach. Rather than rejoicing at the success, we need to **understand the causes underlying the negative perceptions** and ask ourselves what can be done to eliminate the effective or subjective reasons for dissatisfaction.

1.5 The perceptions which are genuinely well founded can be eliminated or tempered by **targeted policies or measures**, as in the case of improved **payment systems** (SEPA), or by suitable **measures to curb price increases**. The latter must be compatible with the principles of the free market and competition.

1.6 **Subjective perceptions** are more difficult to deal with: opinions must be treated with the greatest respect and **the deep-rooted causes underlying negative perceptions** must be sought. A communication strategy is, of course, necessary, but it should be implemented in such a way as to **take into account the differing national and social priorities** of the target publics.

1.7 The Eurobarometer survey showed deep-rooted differences in views in the various Member States: this means that **solutions based on standardised schemes must be rejected**. More specifically, perceptions **differ widely between the social strata and between people with different levels of education**. Communication strategies should therefore be **targeted** to achieve the maximum effect with the resources used.

1.8 It should therefore be stressed that a euro communication strategy is not enough to achieve optimum results: the survey strongly suggests that the euro is very often seen as the symbol of Europe: opposition is not, therefore, aimed the euro itself but rather — in the view of some people — at the very concept of 'Europe'. Consequently, the euro communication strategy needs to be seen as part of a long-term, broad-based policy whose goal will have been achieved when the public identifies so fully with the concept of 'Europe' that euroscepticism loses its hold.

1.9 The concept of Europe as a political and social entity as well as an economic entity is, moreover, dependent on gradual achievement of social conditions based on fairness, cooperation and absence of social conflict: this will only be possible if the public can see evidence of **practical action**. No information drive will be successful if these conditions are not put in place.

1.10 The main priority for ensuring greater acceptance of the euro would therefore be economic and social policies in the EU to support employment and incomes while providing appropriate social protection systems. This would enable citizens to gain a more tangible appreciation of the European project and consequently to accept the euro.

1.11 The EESC is aware of its responsibilities and its role: as the representative of the social partners it is an institution which is close to the public, workers and the business community. It must **cooperate practically in future initiatives, if necessary with actions on the ground**. Links with similar, national bodies and the work of individual EESC members in respect of their — European and national — trade associations will be particularly useful.

2. **Background**

2.1 Six years on from the introduction of the euro, the EESC feels it is time to take stock of the impact of the new currency on the public in the countries which adopted it. At first glance, this seems an easy task, given the wealth of literature from innumerable sources: the Commission, the ECB, the EP, universities, research institutes, specialised and non-specialised press, academics and the social partners.

2.2 The impression, however, is that most publications on the subject are the result of **unilateral experiences and points of view**, or derive from **conclusions brokered** between different and sometimes conflicting opinions. While this kind of approach observes the rules of democracy, the essence of issues can at times be toned down to suit individual interests and, all too often, clouded by certain attitudes within the individual Member States.

2.3 The EESC believes that real progress can only be made if **the situation is approached without preconceptions**: given that the euro is generally deemed to have been an unqualified success, we need to understand **why** it is still **criticised** by greater or lesser sections of the public, **search for the reasons** and, where possible, **propose solutions**. In so doing, the EESC does not claim to be revealing any startling discoveries; much less to want to launch a new public opinion campaign: the aim of this opinion is more modest — to spark **fresh debate** on longstanding, well-known issues.

3. **Working methods**

3.1 The EESC has taken as a starting point the benefits of the euro, on the basis of results already obtained or the most commonly accepted 'official' views; it then discusses these results and views drawn from research on the ground, concluding with its own analysis of the reasons why the new currency has been the subject of criticism or less-than-positive evaluations. Any proposals are, as has been said, intended as a **basis for further discussion**.

3.2 The principal document consulted was Flash Barometer No 193, *The eurozone, 5 years after the introduction of euro coins and banknotes — Analytical report*, November 2006. The survey was carried out by the Gallup Organisation, directed by the Commission DG ECFIN's Eurobarometer Team. Suitably qualified people were interviewed from the last country to join the euro zone in 2007 (Slovenia) and from the countries that have joined in 2008 (Malta and Cyprus). Sources from countries which are not members of the euro zone were deliberately not consulted as it was deemed that only the experiences of those directly concerned were relevant for the purposes of the research being carried out.

3.3 Additional information is provided by the September 2007 Eurobarometer survey ([1]), carried out in the new Member States: several useful points emerge from a comparison of *experiences* and *expectations*.

4. **The benefits of the euro, according to results and official views**

4.1 According to Community literature and supporters of the single currency, **the euro has brought a number of benefits,** some of which are listed below. The reasons for this, which by now are well known, are not reproduced, nor are the comments, which are referred to where necessary in the section on public perception.

4.2 The list of benefits (without comments) includes:

— a European identity: the euro is its the main, most tangible driver;

— the euro is an international price comparison tool and boosts competition;

— it eliminates exchange risks and currency transaction costs;

— it is no longer possible to use currency devaluation as a lever for competition measures or to adapt commercial strategies when devaluation seems likely;

— euro zone countries are better protected against external shocks;

— the euro has helped to moderate inflation and interest rates (inflation risk premiums have also played some part in lowering interest rates);

— the euro is a driving force for growth and jobs under the Lisbon Strategy;

— Europe now plays a leading role in monetary policy and the euro has become an established reserve currency;

— the euro is a driving force for stability in the international economy;

— the euro has greatly facilitated and cut the cost of tourism and travelling for work purposes, especially within the euro zone.

4.3 Alongside these benefits, which are rarely discussed apart from some efforts to tone down claims that they apply across the board, are **the benefits of a 'strong' currency, which are sometimes disputed**.

4.4 There must be no ambiguity here: a strong currency has **benefits for some and disadvantages for others,** but the important thing is the assessment of its net benefit to the economy: an undoubted advantage of the euro. There is also a desire for a **stable currency**, which the euro is, insofar as it represents a stable, growing economy, despite economic shocks. Its external value depends on events, whose effects can be countered — but certainly not eliminated — by appropriate economic and monetary policy.

5. **Public perception of the benefits and disadvantages of the euro**

5.1 **The euro for cash payments: Seven years on from its introduction**, it is surprising that **41 % of those surveyed reported having *some difficulty* or *a lot of difficulty* in using the euro**; this percentage is decreasing but remains significant. The survey does not specify the nature of these problems, but it is fair to assume that this **negative attitude is more emotional** than rational, given that a large majority (ranging from 93 % to 63 % depending on the country) reports having no problems in recognising euro coins and banknotes. It is likely that those saying they encounter difficulties are largely the same - sometimes socially disadvantaged - people that did not welcome the advent of the single currency. In any case, it is hard to reconcile, statistically, the responses on difficulties encountered with those on usage.

5.1.1 These doubts are reinforced when a comparison is made with the September 2007 survey of the new Member States (NMS): approximately three quarters of those respondents had seen euro banknotes and coins and 44 % *had used them*. It is hard to fathom how it could be that in the euro area 41 % of those with 10 years' experience of the currency claim to have difficulties, when this is not the case in the NMS, where 44 % are using it (or have used it), without raising any problems.

5.1.2 Communication campaigns alone would not bring about a change in attitudes of this kind: if, as it seems, any difficulties are relatively minor, or minimal, the required course of action should be **targeted national measures.** Education, rather than communication would thus be the key here. But if it is ultimately found that the difficulties that are claimed are merely the camouflaged expression of an aversion to all things *European*, specific measures will have no effect. A change in attitudes towards the euro will go hand in hand with a gradual acceptance of the European idea.

5.2 **The euro as a benchmark for price calculations and a factor in spending habits:** One element anticipated from day one was that for a long time to come some people (the proportion varying from country to country) would **continue to *think* in their old national currency**. The survey has confirmed this prediction: when calculating prices, around 40 % of consumers still use their previous national currency as a benchmark — always or sometimes — for both everyday and exceptional purchases.

([1]) *Introduction of the euro in the new member States*, Flash Eurobarometer 207, the Gallup Organisation, October 2007.

5.2.1 In terms of spending habits, the percentage of respondents reporting that the euro had a deterrent or incentive effect on their spending remains high (59 %); but the proportion viewing the **single currency as a *neutral* factor** is gradually increasing (from 31 % in 2003 to 41 % in 2007). At the same time, there has been a decrease in the percentage of those stating that they buy less out of fear of spending too much (from 39 % to 33 %) while, conversely, the proportion of those who spend more because they do not realise how much they have spent has remained consistent (26 % to 25 %).

5.2.2 The two aspects considered — reference to previous national currencies and the euro as a *neutral* factor — are not necessarily related, nor is there any reason to believe that the **two matching percentages (around 40 %)** refer to the same group.

5.3 The usefulness of dual price displays and consumer preferences: Two halves of the national samples were asked two different questions: whether it is useful to have dual price displays and whether people would like this to be continued. This produced corresponding answers: a **significant majority** (around 60 %) **did not consider this either useful or necessary after completion of an appropriate transition period**. It should be noted that the percentage against dual price displays has risen steadily over time: a clear sign that the single currency is becoming (or has become, if we interpret it more positively) ingrained in people's daily lives.

5.3.1 The responses given on dual price displays are not surprising, considering how much time has passed since the introduction of the euro. However, this aspect is of key importance to the **countries that have recently joined the euro area** (Slovenia, Cyprus and Malta) and **those next in line to join** (Baltic States and Slovakia). The Eurobarometer survey of November 2007 shows that fears of price hikes following adoption of the euro are high; experience has shown that **dual price displays can be a useful deterrent** *provided they are accompanied by checks and deterrent measures*. This has not always been the case in the first wave of euro countries. The Commission has recently decreed that dual pricing should be **mandatory for six months but not continue beyond a year**.

5.4 **Banknotes and coins:** As regards satisfaction with the current denominations of banknotes and coins, it emerges from the survey that, while no changes seem necessary regarding banknotes, a **significant percentage** of respondents (varying from 80 % in Finland and Germany to 33-35 % in Ireland and Italy) are in favour of **reducing the range of euro coins**, and specifically **eliminating** the 1- and 2-cent coins, for greater convenience and to simplify payments. On the other hand, the majority fears that the removal of small euro denominations may **lead to a rise in prices:** a widely held fear even in countries where the majority would like the smaller coins removed.

5.4.1 Experience has shown that **many cases of retail price increases,** in conjunction with or subsequent to the adoption of the euro, are largely due to the **rounding up** of prices that converted into decimal figures lower than 5. This ploy has been facilitated by a lack of vigilance on the part of the authorities and by those consumers who consider the value of the small coins to be negligible; it has been particularly pronounced in countries whose previous national currency had a low unit value (Italy, for example). The EESC maintains that eliminating the 1- and 2-cent coins is **totally inadvisable:** the *convenience* cited by certain sections of the market must be weighed against the issue of general interest.

5.5 Particular attention should be given to the issue of **using the euro when travelling outside the euro area.** An average of over 50 % of those who travelled outside the euro area stated that they used the euro, to a greater or lesser extent; however, the percentages vary considerably from country to country, from 72 % of Greeks to 38 % of Finns. We can be glad that the euro is welcome in many tourism-oriented countries, thanks to its prestige and number of users.

5.5.1 However, on a cautionary note, it would be advisable to **weigh up the convenience** of not having to obtain foreign currency when travelling abroad and the **cost** of using euros**:** closer inspection shows that in most cases **the euro exchange rate charged by businesses in non-euro countries with 'strong' currencies is often much higher than the official rate.** This aspect was not highlighted in the survey, nor raised by the respondents: a clear sign that the cost of changing money is considered secondary or not considered at all.

5.6 The chapter on current use of the single currency concludes with the key question: **overall, what is the public perception of the euro? Is it more advantageous or disadvantageous?** Analysing the responses to this question is not only of key importance to **future communication strategies** but requires reflection on EU euro policy and on **relations between national governments and their citizens.**

5.6.1 The percentage of citizens viewing **the adoption of the euro as advantageous** was, according to the latest survey, **48 %**: a **considerable drop** since the September 2002 survey (59 %), but even more significant — and worrying — is the steady downward trend over time. While a small stable percentage perceives no change since the introduction of the euro (7-8 %) there is a steady **increase in those with the opposite opinion** (from 29 to **38 %**).

5.6.2 In the breakdown per country of **positive perceptions**, the highest percentages are found in Ireland (75 %), Finland (65 %) and Luxembourg (64 %), i.e. countries enjoying considerable economic growth; **negative perceptions** prevail, however, in Italy (48 %), Greece (46 %) and Germany (44 %);

with France just above average (51 %). We should be **cautious** about establishing a direct **correlation** between a **positive perception of the euro and economic growth**. While indeed it is true that the more positive countries include those with good growth and vice versa (Italy and Greece), it is also the case that the two largest euro area countries, Germany and France, have positive growth and relatively negative perceptions.

5.6.2.1 The EESC believes that this question is the **crux of the entire survey**: as already touched on at paragraph 5.1.1, there is a need to explore whether, or to what extent, there is **a correlation between satisfaction with the euro as a currency and acceptance of the EU; there could also be a correlation with economic conditions**, which may, simplistically, be identified with the euro**.** In other words, it is possible there is an **emotional or ideological element** involved in people's perceptions of the euro as a currency, which has nothing to do with the currency per se.

5.6.3 Modest economic growth has many causes, often overlapping and interrelated, including, inter alia, and apart from those currency-related (inflation, exchange and interest rates), productivity, competitiveness, wage levels, spending, the balance of payments, industrial relations and public deficit. This is a complex issue, the subject of debate among politicians, economists and the social partners; the average person, however, **tends to simplify matters**, focusing on a tangible element of key relevance to their daily life, i.e. their money.

5.6.4 There is a tendency among specialists to blame weak economic growth on **monetary policy**, which some researchers and political parties see as guilty of failing to resist rising exchange rates and to lend adequate support to growth and employment by a careful adjustment of interest rates. This is not the right place for opening a debate on the matter, but here once again public opinion perceives the euro as being at the root of the problem.

5.6.5 Criticism of the euro, particularly evident in low-growth countries, also pertains, to a certain extent in **countries with higher growth rates**; there, however, opposition is accentuated by the fact that before its introduction, certain sections of the public were **reluctant to abandon their own strong and prestigious currency** — for them, a symbol of prestige and of their national identity. Moreover, these reasons are still cited in countries that have opted out of the euro.

5.7 The **analysis of the positive perceptions** of the euro clearly proves the validity of the argument outlined in paragraphs 5.6.3 and 5.6.4 ([2]). The most positive categories are those that all socio-demographic analysis deems most informed: men more so than women, the self-employed and clerical workers more than manual workers and the unemployed, young people more than older people, urban dwellers more than rural dwellers, those with educational qualifications more than those with low levels of education. **More information increases one's critical faculties and maturity**.

5.7.1 It would be too easy to think that communication alone can overcome the dislike of the euro, but every decision must, however, be assessed in the light of each country's individual situation. There are countries where information is all too effective, but often with a critical slant: political parties and sometimes governments have a preponderant influence on public opinion. The result is not disinformation, but communication based on convictions that must, for democratic reasons, be respected. On the other hand, however, a clear impression exists that **the 'pro' majority should put up a determined, robust and more explicit defence of the euro.**

5.7.2 However, a campaign in support of the euro based primarily on political, economic or monetary factors would probably have little impact on public opinion: greater consensus could be reached by bearing in mind and highlighting the **practical aspects closer to people's needs.** This kind of communication is certainly **the most suited to being absorbed** by the public: it regards everyday life, without the need to refer to abstract principles. In other words, **a simple** — but not simplistic — **approach is needed**. Official bodies are the least suited to this kind of communication campaign. It would be far better to entrust this — after briefing them on the issue — to the **business community and the social partners**, which are nearer the public and would certainly be more persuasive.

5.7.3 If we look at the practical advantages cited, the principal one is easier and less costly **travel abroad** (particularly in the euro area, but also in non-euro countries); then there is the fact that it is easier to **compare prices** ([3]). It is this *plus point*, and particularly the lack of foreign exchange fees and price certainty, that can be flagged by tourism bodies, estate agencies, the tourism industry in general and issuers of payment cards. The financial sector has a key role here: the most recent developments in the area of fund transfers (SEPA) have made payments in the euro area just as secure, fast and free of charge as domestic transfers. However, supervisory authorities will need to be **extremely vigilant** to ensure rigorous compliance with the rules on the part of the financial sector.

([2]) In the absence of a specific socio-demographic analysis per country, it is not possible to expand on the argument in paragraph 5.6.4.

([3]) This reason, cited by 30 % of respondents probably relates to national markets, but can be extended by analogy to the euro area.

5.7.4 Less clear, a priori, is the emphasis on the third reason (in order of importance) cited by the euro supporters, i.e. **Europe's reinforced status;** this more general and theoretical argument is part of a broad drive of a general nature.

5.8 Looking at the **criticisms of the euro** is even more interesting**.** The vast majority of people (81 % in 2006 and steadily rising) consider it **responsible for price increases.** This attitude dates back to even before the euro came into circulation, when there were already fears that suppliers of goods and services — and particularly shops — would profit from the conversion of their national currency by rounding prices up or increasing them illegally. The Commission reassured people that this would not happen; governments did their bit by promoting agreements with business; consumer associations advised vigilance.

5.8.1 What then happened in practice is part of recent history: in some countries the agreements were respected (and the EESC feels that Austria deserves a mention as a fine example), in others less so and in others still, hardly at all. This is not the time or place to start a blame game, suffice to say that **in many countries price increases coincided exactly with the introduction of the euro.** Hence the public feeling that the price increases were *generated* by the euro, a feeling which still remains and is becoming more ingrained in the absence of any **communication efforts to present the issue fairly**: i.e. that while certain people have taken the opportunity to profit from the euro, it remains an inherently *neutral* instrument. There has been no attempt at a communication effort of this kind, or where there has, it has been rather half-hearted.

5.8.2 The increases that have occurred since then have nothing to do with the euro: once it was introduced and bedded down, **the currency reflected rather than caused market trends**. Any talk of **inflation, exchange rates, or speculation is irrelevant here:** these **would have affected all of the individual national currencies anyway,** perhaps to an even greater extent than has happened with the euro. This point — and the one made in the previous paragraph — must be **clarified once and for all**. This argument, which is the key to combating the scepticism and negativity which still surround the euro, needs to be debated and become the spearhead of a **communication drive** involving the social partners, governments and the Commission.

5.8.3 Another argument, which has some connection with the previous one, is that of **price convergence**, i.e. the assertion that **the euro has contributed to tangible price convergence across the euro area** as a result of the competition that would be established between the euro countries as well as pressure from consumers, who would finally be able to compare prices. This issue was an element of the campaign preceding the launch of the euro, and was one of its selling points. The campaign was in any case likely to arouse unrealistic expectations: it did not in fact indicate the **limits of convergence.** It was not pointed out that **convergence would not affect locally-produced and consumed goods and services:** in other words, the part of spending that is by far the greatest and most directly perceptible to consumers.

5.8.4 The survey appears to bear this out: 68 % of the sample feels that the euro has not contributed to price convergence (45 % plus 23 % 'don't knows'). 32 % state the opposite. Crucial information is however lacking from this part of the survey: there is no indication of whether the replies are of an intuitive, emotive type, or based on direct experience (travel abroad, cross-border purchases). In the communication drive there will be a need to **scale down the expectations attached to price convergence, explaining why its scope is limited.** It would also be helpful to emphasise that non-existent or weak convergence in sectors other than 'local' goods and services is the result of factors entirely unconnected with the single currency, such as the law of supply and demand, transport costs, or taxation. In brief, the euro has contributed to price convergence wherever possible, but price differentials continue to exist, as is the case in the United States, a country which has always had a single currency.

6. **Political aspects**

6.1 The vast majority (75 %) of respondents believe the euro plays an important role as an **international currency**, but a much lower percentage is interested in the exchange rate, although they generally have some idea about the growing strength of the euro against the dollar. On the other hand an almost identical, or slightly higher, percentage (78 %) maintain that the euro has **had no effect (either positive or negative) on their sense of being European**. The breakdown of answers per country provides food for thought, and a little puzzlement: the countries where the euro is perceived to be important to a European identity are Ireland (56 %), followed at some distance by Italy (28 %) and Luxembourg (19 %); the lowest percentages are to be found in the Netherlands, Greece, Germany and Austria (10-14 %).

6.1.1 One possible explanation, though valid for only some countries, lies in the fact that among those in which the euro is seen as having a more positive impact on European identity is Italy, whose previous national currency had experienced serious fluctuations, while among those having a less favourable opinion is Germany, a country with pride in its old strong and stable currency. As regards other countries, various reasons and perceptions may come into play: disinformation, indifference and less support for the idea of **Europe as the issuer of a major currency**. This last point seems to be borne out by a rather surprising fact: in all countries, including those with a favourable opinion of the euro, a large majority of the sample report that the euro has had **no impact on the perception of a European identity.**

6.1.2 We need to recognise that, some years after its introduction and despite having proven its worth internationally, the euro does not seem to have made any significant progress in carving out a role as an **element and symbol of European identity**. As this involves feelings based on a wide range of individual perceptions, one cannot envisage specific campaigns on this aimed at changing public opinion: the turnaround will have to be effected gradually by **removing the underlying causes** of those feelings. In other words, the euro will become a symbol of European identity only when people feel convinced that they are *European*.

6.2 There are grounds for optimism with regard to the question of whether people expected to see the **enlargement of the euro area to include the new Member States**: around 80 % considered it certain or probable, with a majority across all countries. The EESC sees this reply as a **sign of confidence in the euro's power of attraction**. Such attraction would not exist if the euro was *really* considered to be politically weak and bringing negative consequences in its wake.

7. **Coordination of economic policies and the Stability Pact**

7.1 These issues, which are at the core of the debate and are more abstract in nature, should be dealt with separately. The EESC has for its part dedicated many opinions to this subject, and may return to it in the near future. For now, it suffices to point out that about half of the respondents were aware that **economic policies are coordinated across the Member States**, but the majority of them feel that the coordination **does not receive enough attention**. The per-country analysis shows, however, that there are significant variations between the countries in terms of both levels of knowledge and resulting opinions. The respondents showed striking objectivity in their assessments of **their own country's economy**: people whose country's economy is performing well are aware of this, and conversely, people from countries with more economic difficulties are not slow to admit this.

7.2 With regard to the **Stability Pact,** levels of knowledge and national differences seem more or less to mirror those regarding economic policies; three quarters of respondents, however, agree that the **Stability Pact guarantees a strong and stable euro.** It is symptomatic that the highest percentages of those who disagree come from the countries that are most conscious of price increases, implicitly attributing them to the euro.

7.3 According to the survey, then, there seems to be a widespread feeling that **a country's economic conditions and price trends (sometimes positive) can be attributed to the euro**, and this is done from each particular (national) perspective. It is worth pointing out that the overall euro area economy protects the currency from shocks which would affect individual countries to a greater extent; each person should ask themselves where their country would be if the single currency had never existed. What national economy could, by itself, have stood up to the external events that have unfolded in the last few years and which may well hit the world economy once again?

8. **New Member States (NMS)**

8.1 It is impossible to cover all the points of analysis concerning the euro countries and the 11 NMS in a single document. The NMS include those who have very recently joined, and others who are likely to join at some point in the future. However, an examination of the replies to some 'key' questions of the September 2007 survey may provide some useful food for thought on future policies to accept the single currency.

8.2 The question on the **consequences at national level of adopting the euro** revealed that 53 % of citizens considered them to be positive, compared with 33 % negative and 15 % 'don't knows' ([4]). The question on **the adoption of the euro in general** threw up a broadly similar average result. In both cases, the percentage of 'fors' and 'againsts' varied widely from country to country, with the 'againsts' ranging from 55 % in Latvia to 18 % in Romania; the negative attitude is generally more marked in countries with smaller populations.

8.2.1 Comparing these data with those concerning the euro countries (see point 5.6) shows that the latter have a lower rate of 'positives'. The EESC is unsure what to make of this fact which, if accurate, should probably be ascribed more to overall dissatisfaction with the EU than to specific dislike of the single currency (see point 5.6.2).

8.3 The unknown of the greatest importance in the eyes of consumers is the **impact of introducing the euro on prices**: three quarters of those interviewed feared price rises, while 11 % thought the effect of the euro would be neutral and 6 % expected prices to fall. This should be compared with the figures for the eurozone countries (see point 5.1), where more than 80 % blame price rises on the single currency; the conclusion might well be that experience bears out the fears of those who have not yet adopted it. But this would be a simplistic and misleading argument: **price increases have occurred — and are continuing to occur — in all European countries and around the world**. It would be interesting to carry out a survey in other countries to see what reasons are given for prices rises where there is no euro.

8.4 The replies to the question on **the positive effects of adopting the euro** show that the vast majority of the interview sample expect the single currency to be a convenient way of paying for travel abroad, to make it easier to shop in other

([4]) The total of more than 100 is due to rounding up.

countries, to facilitate price comparisons and to eliminate currency exchange costs; a smaller percentage considers that the euro will shield their country from international crises. All these **expectations match the advantages perceived** by those who have already adopted the euro, evidence — even to the fiercest critics — that expectations have not been disappointed.

8.5 For issues of less immediate impact, replies are less clearly positive, with a high rate of 'don't knows': this is a clear sign that **citizens are more cautious, or do not reply at all, regarding issues of less immediate impact**. Seen in this light, the results are highly positive: 66 % consider that the euro will strengthen Europe's position in the world, and roughly half that it will bring price stability, boost growth and employment and will ensure sound public finances. Replies to the question on lower interest rates were, in contrast, less clear-cut: only a third gave a positive reply, with the remaining two thirds being shared equally between the negatives and the undecided.

8.6 **The key question of 'political' import concerns perception of the euro as a factor in making people feel more European**. 53 % of the sample replied in the affirmative and 35 % in the negative: this is in itself reassuring, and is all the more so considering that in 2004, only 47 % of replies were positive and 45 % negative. Comparing these figures with the result of the **survey in the eurozone countries** (see point 6.1) raises questions: more than three quarters of the latter stated that **the euro has had no effect on how European they feel**.

9. **Conclusions**

9.1 The Eurobarometer surveys are valuable in that they gauge citizens' attitudes toward the euro and see how they evolve over time: assessments may vary from time to time on individual aspects, but **one-off measures** to correct certain trends could prove inadequate — if not counter-productive — if **the overall political value** of an operation which an authoritative politician has presciently called '**euro diplomacy**' is overlooked.

9.2 A substantial section of public opinion — in both the euro countries and the NMS — unarguably harbours **strong reservations about the single currency**, but the impression arising from the general tone of replies to the individual questions is that negative responses very often mask **resistance to the European venture**. In other words, **the euro as such is not being challenged, but rather what it represents in the eyes of the public**: a political creation that, if not actively opposed, has not been taken on board, and has taken the form of a currency imposed 'from above'.

9.3 The sources of anti-European feeling — and towards the euro, as the practical expression of the European ideal — are complex. One such source is the presence in every country of **political movements and mass media which oppose the European project**, in spite of official government positions. Not infrequently, **governments** themselves defend inevitably unpopular measures by placing the blame on the single currency or its basic rules. It is difficult to gauge how far such attitudes are genuinely due to negative feelings or to mere opportunism, but the outcome is that **no 'European' policy can be implemented unless it is assimilated by those exercising power**: governments, political parties and the media.

9.4 **Organised civil society has a crucial role to play in this strategy**: it is a **cross-cutting element** that has the advantage of being in direct contact with citizens. It can exercise **bottom-up pressure on centres of power** simultaneously with **top-down pressure on citizens**: an ideal yet highly responsible position, which can be fruitful only if **unity of intent** is achieved, above and beyond political positions or national loyalties. **The EESC is the only European institution that meets these requirements** and is thoroughly committed to playing its role of cooperation with the Commission and the Member States' social partners to the full.

9.5 There is no shortage of arguments that can be deployed in a campaign to bring the euro, and with it the European idea, closer to citizens: the economic weight of the eurozone, investments from around the world in the single currency, and its progressive adoption as a reserve currency, a buffer against financial turbulence, price stability and its contribution to maintaining purchasing power. Objections can be countered with a question: **everyone should ask themselves what would have happened in their own country if their national currency had been left alone face-to-face with past, present and likely future crises.**

9.6 The main priority for ensuring greater acceptance of the euro would in any case be economic and social policies in the EU to support employment and incomes while providing appropriate social protection systems. This would enable citizens to gain a more tangible appreciation of the European project and consequently to accept the euro.

Brussels, 29 May 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 directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services

COM(2007) 747 final — 2007/0267 CNS

(2008/C 224/28)

On 18 December 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 Council directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services

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 30 April 2008. The rapporteur was Mr Robyns de Schneidauer.

At its 445th plenary session, held on 28 and 29 May (meeting of 29 May 2008), the European Economic and Social Committee adopted the following opinion by 98 votes to none with three abstentions.

Conclusions and recommendations

1. The EESC welcomes the efforts made by the European Commission to adapt the VAT rules on financial and insurance services to the requirements of the Single Market. The EESC especially appreciates the cooperation with directly involved stakeholders ([1]) in this respect as well as the public consultation that has been held on the Internet. Nevertheless, for future VAT reviews, the EESC recommends the direct involvement of all interested parties in the legislative process.

2. The EESC agrees that the proposals are a significant step towards a modern and more competitive VAT framework for financial and insurance services. However, the EESC would welcome a more thorough legislative approach to eliminate the remaining interpretation difficulties and unsolved problems. It cannot be stressed enough that the European Commission has to act very carefully when drafting VAT legislation on insurance and financial services. The interests of both sectors and their customers, in particular the private consumers, should not be put at stake. Besides the fact that it involves two sectors which are key to a well functioning economy and generate jobs for many European citizens, it is also a very technical matter that should leave no room for guesswork. Since one of the main concerns is increased legal certainty and the reduction of administrative burden for economic operators and national tax authorities, the meaning of the wording should be self-evident.

3. As regards the issue of VAT neutrality, the EESC is pleased about the introduction of cost sharing arrangements and the broadening of the option to tax. Given the right wording and implementation, the EESC is convinced that those instruments will reduce the impact of hidden VAT in costs of insurance and financial services providers. This will not only improve the efficiency and competitiveness of the sector, but will also be beneficial in terms of availability of services through dedicated providers and keeping jobs onshore. Nevertheless, as the aim is to create more VAT neutrality and a level playing field for the insurance and financial sector, there are still a number of challenges. Notably a further clarification and more robust definitions are needed for a number of exemptions and concepts such as the 'specific and essential character' of exempt services as well as the scope of exempt intermediation. An acceptable solution should be found to extend the scope of the cost sharing provisions to as many operators as possible and to avoid inappropriate differences between Member States in the implementation for the option to tax. And finally, ways to avoid that VAT would come on top of other similar taxes must be explored for those services that are subject to specific domestic taxes such as notably insurance premium taxes, and that would become subject to VAT when the option to tax is used by the supplier of these services. Otherwise, the interests of consumers will be jeopardised.

Reasons

1. *Towards a more competitive Single Market for insurance and financial services* ([2])

1.1 According to the current VAT legislation no VAT is charged to the customers of most financial and insurance services. Yet, this generates undue obstacles to the achievement of an integrated, open, efficient and competitive Single Market for insurance and financial services companies. There are two main problems ([3]).

([1]) These stakeholders are the financial operators, the insurance operators and the National Tax Authorities.

([2]) MEMO/07/519, 'Modernising VAT rules applied on financial and insurance services — Frequently Asked Questions', Brussels, 28.11.2007, pp.1-4.

([3]) COM(2007) 747 final, 'Proposal for a Council Directive, Explanatory Memorandum', Brussels, 28.11.2007, pp. 2-4.

1.2 The first problem is that the definitions for VAT purposes of exempt insurance and financial services are out of date. Moreover, there is a lack of a clear delineation between exempt and taxable supplies and no Community-wide accepted method to determine recoverable input VAT. Hence, the exemption is not applied uniformly by the Member States. As a result, the last years the number of court cases submitted to the European Court of Justice (ECJ) has increased substantially. Therefore, it is necessary to fill the legislative gap and clarify the rules governing the exemption from VAT for insurance and financial services. As the Commission intends, it is wise also to allow for future developments in the financial services industry.

1.3 The second problem is that there is a lack of VAT neutrality. The suppliers of financial and insurance services are generally unable to recover the VAT they pay on the goods and services they purchase to run their businesses ('input-VAT'). This is different from non-financial businesses for whom input-VAT is not a cost: it is a tax that they collect from consumers (hence 'consumption tax') to subsequently pass it on to the State without affecting their own income. While VAT represents an important source of revenue for Member States Tax Authorities, businesses suffer the cascading effect. 'Hidden' irrecoverable VAT becomes a cost component of financial and insurances supplies. In the end this increases the cost of goods and services for consumers in general ([4]).

1.4 As part of the general trend towards integration of European financial markets and the global race towards increased efficiency and competitiveness, financial and insurance companies are adopting new business models. This allows them to centralise or outsource crucial back-office and support functions to so-called 'centres of excellence' that perform these functions horizontally for groups of operators. Such business models notably allow more effective use of know-how and investments, resulting in higher-quality products at lower cost. However, this generates the problem that additional costs are created when such services are invoiced with VAT to financial and insurance operators. Hence the cascading effect as described above.

1.5 The objective of the VAT legislation review is to provide on the one hand an updated and more uniform application of the VAT rules, creating more legal certainty and reducing the administrative burden for economic operators and administrations. To address the issue of VAT neutrality, the proposal (VAT Directive) on the other hand invites financial and insurance institutions to reduce the costs of non-deductible VAT by allowing them to opt to provide services under VAT and by allowing them to avoid the creation of irrecoverable VAT by clarifying and extending the tax exemption for cost sharing arrangements, including those which are cross-border.

([4]) Battiau P., (2005), 'Letter from Brussels. VAT in the Finance Sector', in: The Tax Journal, 28.11.2005, pp. 11-14.

2. *The common system of value added tax: legislative approach* ([5])

2.1 For over thirty years the Sixth VAT Directive (77/388/EC) has represented the foundation of the common European framework for VAT. However, numerous amendments made it complicated to read and hard to access for practitioners. As from 1 January 2007, the new European Community VAT Directive entered into force (2006/112/EEC), enhancing clarity, rationality and simplification without, however, entailing content changes.

2.2 As part of its drive to modernise and simplify taxation rules for financial and insurance services, the European Commission proposed another amendment to the EU's VAT legislation in November 2007 ([6]). The proposals are part of the Commission's Strategy for the Simplification of the Regulatory Environment (Section 66 of COM(2006) 690). The new definitions also aim to create more consistency with internal market rules (e.g. investment funds, credit rating, derivatives).

2.3 The current proposal for a Council Directive on the common system of value added tax, as regards the treatment of insurance and financial services, provides amendments on Articles 135(1)(a) to (g) and 137(1)(a) and (2) of the VAT Directive (2006/112/EC). This proposal is accompanied by a proposal for a Regulation ([7]) (VAT Regulation) that consists of provisions implementing the relevant articles of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax for insurance and financial services. It lists the financial, insurance, management and intermediation services that qualify and that do not qualify for VAT exemption as well as the services which have the specific and essential character of an exempt service and that therefore qualify for exemption in their own right. In light of the complexity of the financial services and insurance markets and the continued development of new products, these lists are not exhaustive.

3. *Consultation of interested parties and impact assessment* ([8])

3.1 Stakeholders were consulted from 2004 till 2007 and an independent study was commissioned by the European Commission, all confirming the need for a VAT legislation

([5]) COM(2007) 747, 'Proposal for a Council Directive, Explanatory Memorandum', Brussels, 28.11.2007, pp. 2-4.

([6]) COM(2007) 747: Proposal for Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services.

([7]) COM(2007) 746: Proposal for a Council Regulation laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services.

([8]) COM(2007) 747 final, 'Proposal for a Council Directive, Explanatory Memorandum', Brussels, 28.11.2007, pp. 2-6.

review for the insurance and financial sector. The options considered are described extensively in the impact assessment ([9]) of DG TAXUD.

3.2 In 2004 a Fiscalis seminar for national tax administrations of Member States took place in Dublin. The seminar discussed the various problem areas for economic operators, in particular the global and Internal Market evolutions explaining especially the outsourcing phenomenon. During 2005 the dialogue with the main stakeholders was intensified. Regular contacts were established with representative groups such as the European Banking Federation (FBE), the Comité Européen des Assurances (CEA), the European Federation of Insurance Intermediaries (BIPAR) and the European Fund and Asset Management Association (EFAMA) as well as professional advisors and other interested parties.

3.3 In the follow-up to the first Fiscalis Seminar, DG TAXUD commissioned a study with an independent expert to increase the understanding of the economic effects of the VAT exemption for financial and insurance services ([10]). The final report was presented to the Commission in November 2006 and concluded, amongst other things, that ([11]):

a) EU financial institutions are less profitable than their equivalents in other highly developed economic regions such as the US. The EU financial institutions suffer more embedded — non-recoverable and cascading — VAT. This increases their costs;

b) there is evidence that due to divergences between Member States in interpreting the VAT Directive on what constitutes exempt or non-exempt financial services, economic operators face considerable legal uncertainty in making commercial decisions. This appears to be a significant issue in deciding what is outsourced and what is not;

c) differences in the interpretation of the decisions of the ECJ and in the calculation of recovery rates were seen as sources of distortion which contribute to a lack of VAT neutrality. The study concluded that the current VAT treatment of financial services will in the medium term become 'a source of unfair competitive advantage' and 'frustrate the realisation of a Single Market for financial services'.

3.4 A subsequent series of consultations with Member States and DG MARKT resulted in the elaboration of a basic document, Working Document TAXUD 1802/06 that was discussed with stakeholders and Member States in the Tax Conference in Brussels in May 2006. The Working Document outlines the basic problems as well as possible technical measures to address them.

3.5 From 9 May 2006 to 9 June 2006, an open consultation was held over the Internet. The European Commission received 82 responses ([12]). The contributions made by stakeholders in the public consultation on financial and insurance services have led to three main conclusions. Firstly, whatever options are chosen for modernising the VAT treatment of financial and insurance services, they should lead to more legal certainty and clarity and reduce the administrative charges for providers, subcontractors, intermediaries and customers. Secondly, economic operators from the insurance sector and those from the financial services sector essentially share the same concerns but might prioritise the measures to address these issues differently. Thirdly, the interests of economic operators for 'business-to-business' (B2B) supplies differ considerably from their interest regarding 'business-to-consumer' (B2C) supplies.

3.6 In June 2007, the working documents containing first legal drafts were published on the Directorate General's website. Draft legislation was extensively discussed with all stakeholders during several meetings. A VAT Stakeholders Roundtable was organised on 31 July 2007. On 28 November 2007, The European Commission adopted and communicated the above-mentioned proposals as well as the impact assessment.

3.7 In the impact assessment, DG TAXUD enumerates the expected impact of the proposal for private consumers, business consumers, the European financial and insurance companies, and the national tax administrations. This assessment ([13]) was notably based on the results of the study on the understanding of the economic effects of the VAT exemption for financial and insurance services. Depending on various factors — such as the standard VAT rate, the existing VAT treatment of financial and insurance services, interdependency with other taxes such as payroll taxes, the impact on social security and unemployment costs, etc. — the budgetary impact is expected to vary from one EU Member State to another. Nonetheless, based on the PwC-study ([14]) the following expectations can be listed up ([15]):

([9]) SEC(2007) 1554, Commission Staff Working Document, 'Accompanying document to the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services: Impact Assessment', Brussels, 28.11.2007, pp. 1-61.

([10]) Price Waterhouse Coopers, Tender no Taxud/2005/AO-006, 'Study to increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services', Brussels, 2006, pp. 1-369.

([11]) SEC(2007) 1554, Commission Staff Working Document, 'Accompanying document to the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services: Impact Assessment', Brussels, 28.11.2007, pp. 12-13.

([12]) The public consultation document (Consultation Paper on modernising Value Added Tax obligations for financial services and insurances) and a detailed summary of the views expressed by respondent's (Summary of results — Public consultation on financial and insurance services) can be found at: http://ec.europa.eu/taxation_customs/common/consultations/tax/article_2447_en.htm.

([13]) Price Waterhouse Coopers, Tender no Taxud/2005/AO-006, 'Study to increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services', Brussels, 2006, pp. 162-174.

([14]) See footnote 10.

([15]) MEMO/07/519, 'Modernising VAT rules applied on Financial and Insurance services — Frequently Asked Questions', Brussels, 28.11.2007, pp. 2-4.

3.7.1 ***Budgetary impact for private and business consumers:*** at present insurance and financial services are generally VAT exempt. A wider access to the option to tax should in no way increase the final cost of financial services for consumers. For financial services transactions, the non-recoverable VAT part of the price of products is a so-called 'hidden tax'. The option to tax would remove this hidden tax and should allow businesses to become more efficient and therefore allow products to be offered at lower cost. The same logic applies for the cost sharing arrangements. This is however only an assumption based on experience with the option to tax in countries such as Belgium. Additional work will be done to further assess what the actual impact of the option to tax on the business models and cost of financial products will be in various market segments. Private retail consumers should benefit from the most favourable option and suffer no disadvantage from the application of VAT to the other market segments.

3.7.1.1 For business customers, it would be highly unlikely that an option to tax would have adverse consequences, as they can in principle recover input-VAT. The possible budgetary consequences for private consumers in the unlikely event that the option to tax would be applied to B2C operations are less clear. Since private consumers can not deduct VAT, a problem of VAT coming on top of other similar taxes might specifically arise as regards to the payment of insurance premiums. Today, those premiums are invoiced with national based taxes and parafiscal charges for the specific reason that the National Tax Authorities can not levy VAT on insurance services. However, the eventual outcome depends on the extent to which financial and insurance companies will effectively use the option to tax in a B2C environment.

3.7.2 ***Employment impact:*** it is important to note that budgetary impact does not only refer to the amount of the VAT revenue. The EESC is keen to ensure that VAT solutions like option to tax and cost sharing arrangements will contribute to attracting and keeping key industry sectors in the Member States. On the one hand, this guarantees direct employment in the financial services and insurance industry. On the other hand, this generates indirect employment in the Member States. Indirect employment can be created in other sectors such as ICT and other providers of outsourcing services. This also includes the suppliers of goods and services to the financial and insurance institutions (e.g. providers of hardware, security services, catering, suppliers of construction and real estate services …). The proposals should prevent European operators from offshoring their operations (i.e. move functions to countries outside Europe) as, if designed and implemented effectively, the new rules would create an attractive proposition for businesses to centralise or outsource activities within the EU. This is based on analysis of normal business practice taking into account the importance of local knowledge and control chains. Still, it does obviously not guarantee that European operators will in the future not decide to move any activities off shore. Therefore, the EESC is particularly sensitive to the right balance between competitiveness and job quality.

3.7.3 ***Expected impact for the European financial and insurance companies:*** the European Commission expects that the clarification of the definitions of exempt financial and insurance services will reduce compliance costs. Nowadays businesses have to ascertain the interpretation of the exemption with each individual Member State and are often forced to rely on the European Court of Justice. This is not only a major cost; it is also a barrier to European integration and international competitiveness. Consistent interpretation will mean that an interpretation applied in one Member State will be valid elsewhere. In addition, the wider access to cost sharing arrangements and the option to tax will help financial and insurance companies to better manage the impact of non-recoverable VAT on their internal cost structure. This will increase the profitability of financial and insurance operators, allowing them to better compete in the global marketplace and to lower the cost of capital and insurance for the European economy and for consumers in general.

3.7.4 ***Budgetary impact for national tax administrations:*** the Commission is convinced that an increase of legal certainty will secure the taxing rights of Member States and reduce opportunities for aggressive tax planning. In addition, the administrative burden for national tax administrations should decrease because of more obvious exemption rules. However, a more consistent application of the exemption cannot exclude that some Member States will have to exempt certain services which they now consider as taxable and vice versa. Yet, based on a high level assessment, the Commission assumes that the overall effect of the revenue implications will be small or even neutral. More profitable insurance and financial companies will have to pay more direct taxes and accordingly will contribute to the national budgets. Furthermore, much of the VAT that would theoretically be lost in such cases of implementation of cost sharing arrangements is not actually levied today as operators minimise this cost of centralising functions by appropriate but complicated and administrative burdensome organisational measures.

3.7.4.1 Still, the European Commission indicates that it is difficult to estimate the effect of these VAT solutions. Much will depend on how the financial and insurance institutions will react to the changes. For cost sharing, the reduction in the tax collection depends on whether the arrangements are already in place and subject to VAT or not. If the new rules encourage financial and insurance companies to enter into efficiency-driven arrangements which they would otherwise not have contemplated, there would not be any loss of VAT. If the arrangements are already in place and subject to VAT, which is highly unlikely, then there may be a revenue loss because of more extensive relief. As regards the changes in the rules on

option to tax, a net tax outflow in business-to-business (B2B) operations may be expected because business customers are generally able to recover the VAT they pay. On the other hand, taxing business-to-customer (B2C) operations would theoretically produce tax revenue gains. It is however uncertain at this stage to what extent operators would opt for taxation on financial and insurance products in a B2C environment. Financial institutions and insurance companies would have to make sure first that they will be able to increase their efficiency to a level allowing them to charge VAT to private customers without increasing the cost for these customers.

4. *Observations regarding insurance and financial services*

4.1 The EESC fully supports the European Commission in its ambitious project to adapt the VAT rules on insurance and financial services to the requirements of the modern marketplace. The proposals are clearly aimed at addressing the main areas of concern for the finance and insurance industry and their consumers whereas the approach that has been chosen, i.e. a draft Directive with implementing measures in a draft Regulation, seems sound and logical.

4.2 However, the EESC encourages the European Commission together with Member States to continue work on further clarification of a number of definitions so as to address the crucial concern of more legal certainty completely. Regarding the definitions of financial services, the EESC expresses its concerns about some of the wording in the proposals, like the granting of credit as defined in point (2) of Article 135 of the VAT Directive and in Article 15 of the VAT Regulation. These definitions are not entirely clear and seem too limiting. For instance, only the 'lending of money' is covered in general terms seemingly without dealing in a specific way with various kinds of existing or emerging solutions for providing finance, including transactions involving securities. Therefore, the EESC recommends that consideration would be given to further clarification, while allowing for further developments in the financial services industry, as the Commission is willing to.

4.3 The same recommendation applies for the proposal of Regulation. The EESC would recommend further work to be done to ensure that the list of examples used in the Regulation is entirely clear and consistent. The EESC understands that, in theory, the Regulation does not include exhaustive lists of definitions, but the EESC is concerned about the risk of confusion and about the unknown implications in practice of the financial and insurance services that are not specifically mentioned in the list.

4.4 Consideration should be given to generate more certainty in respect of the categories of payments services, derivatives, securities and custodial services and the scope of the exemption for specific services regarding management of investment funds. As regards the services which are deemed to have the specific and essential character of an exempt service, the EESC believes that additional clarification might be required on the concept of 'essential' and 'specific' ([16]). The proposals do not always appear to be giving a sufficiently clear view of which administrative actions are actually considered to qualify as specific and essential whereas the lists do not always appear to be fully consistent as services belonging to the same value chain would sometimes appear to be treated differently.

4.5 As regards intermediation, more clarity is needed as to the definition of 'contractual party' and of 'standardised services' ([17]). Intermediation should also be included in the definition of services that are 'essential' and 'specific' to an exempt service ([18]). Otherwise, intermediaries would no longer be operating in a level-playing field. It would also be contrary to the intended new philosophy of the proposed exemptions, which look at the provision of the service and not to the person who is providing it or to the means that are used to provide it.

4.6 Special attention should be paid to services such as pensions and annuities which will benefit from exemption under different exemption categories. According to the presence or absence of risk, it will be insurance ([19]) or financial deposit ([20]). The problem is that the concept of related services (the back office) will be developed separately and differently ([21]). As a result, the unitary products at stake will have to be supported by two different VAT categories of essential and specific services according to their qualification under the main exempt supply.

4.7 The EESC welcomes the extension of the right for operators to opt for taxation of banking and insurance services and the introduction of cost sharing arrangements as a mean to reduce the impact of hidden VAT. However, the EESC fears that the strict conditions for eligibility for cost sharing as well as the strict scope of the services that could be supplied within a VAT-neutral cost sharing arrangement will in practice reduce the potential benefit of cost sharing provisions to a very limited number of situations.

([16]) See Article 135, 1, (a) of the proposed VAT Directive and Article 14, 1 of the proposed VAT Regulation.
([17]) See Article 135 a, (9) of the proposed VAT Directive and Article 10, 1-2 of the proposed VAT Regulation.
([18]) See Article 135, 1, (a) of the proposed VAT Directive.
([19]) See Article 2, 1 of the proposed VAT Regulation.
([20]) See Article 5, 1, h of the proposed VAT Regulation.
([21]) See Article 14 and 17 of the proposed VAT Regulation.

4.8 A general introduction of VAT Grouping (treating groups of companies as one single tax payer for VAT purposes, as provided for in the current VAT-Directive but only on an optional basis) with appropriate anti-abuse provisions, could prove a more appropriate and flexible solution allowing operators to integrate their core functions without incurring additional VAT. However, the EESC admits that support for the implementation of VAT Grouping provisions is not unanimous among Member States at this time and that also the Commission has reservations. It would therefore not appear to be a solution in the short term.

4.9 The EESC welcomes the introduction of a generalised option to tax that is not currently available for insurance services. The merits of this option are clear in B2B transactions, where VAT is recoverable by the customer. Yet, the EESC fears that additional taxation might arise under the new legislation and have budgetary consequences for private consumers who can not recover VAT. Whatever law applies to contracts, insurance contracts are subject to indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is located. The rate of those taxes varies significantly among Member States and between classes of insurance (e.g. life insurance, motor liability, etc.). This gives rise to questions about the need of EU-wide coordination. The EESC doubts that insurance companies will apply the option to tax especially in B2C markets, as long as the national tax authorities levy other taxes on insurance premiums. On the other hand, the EESC considers it unlikely that national authorities will abolish, or to at least, reduce in due proportion the premium taxes since this will generate revenue losses for Member States. This is a matter clearly to be addressed.

4.10 As regards the option to tax for insurance and financial services, the EESC would also welcome a system allowing operators to opt on a transaction-by-transaction basis or on a per-client basis or for pre-defined categories of transactions or clients. At the same extent, allowing operators to be able to appropriately recover the input-VAT that relates to the VAT-able output would be welcome. This would create maximal VAT-neutrality in a B2B environment. However, it is crucial that a uniform implementation of the option is safeguarded as from 2012, and that therefore Member States will not be given the possibility to impose differing conditions for the use of the VAT option. If the option to tax is not implemented in a similar way, it is likely that distortions of competition between Member States and economic operators will be created.

Brussels, 29 May 2008.

The President
of the European Economic and Social Committee
Dimitris *Dimitriadis*

Opinion of the European Economic and Social Committee on EU-Serbia relations: the role of civil society

(2008/C 224/29)

In a letter dated 18 July 2007, Commissioner Margot Wallström and Commissioner Olli Rehn asked the European Economic and Social Committee, to draw up an exploratory opinion on

EU-Serbia relations: the role of civil society.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 May 2008. The rapporteur was Mr Seppo Kallio.

At its 445th plenary session, held on 28-29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 74 votes to 9 with 10 abstentions.

1. **The conclusions of the opinion**

1.1 The recommendations to European Union (EU) institutions and bodies:

— To support the Serbian government in the elaboration of a strategy for the development of civil society ([1]).

— To increase support, also in financial terms, to civil society organisations in Serbia in order to maintain their independence from government and ensure the sustainability of the projects they run.

— To create more appropriate and efficient financial support schemes in order to shorten long application and decision-making procedures. This applies also to the new facility established by the European Commission (EC) to promote civil society development and dialogue. Support should be available for a broad range of interested organisations and be flexible in terms of responding to their needs.

— To distinguish between NGOs and social partners in terms of the creation and adoption of support strategies.

— To support programmes focused on the capacity-building of social partners in order to strengthen their capability to an effective social dialogue.

— To support systematically those projects run by civil society organisations and focusing on the promotion of the idea of European integration within the whole society. A systematic debate on the issues concerning European integration should encompass all parts of society, including civil society. In this regard, support for a broader range of activities within the National Convention on the European Union in Serbia, which includes representatives of both governmental and civil society organisations, should be considered.

— To support projects aiming at transferring know-how and experience from the EU Member States to Serbia. The contribution of the 'new' Member States from Central and Eastern Europe might be of real added value. The importance of 'twinning projects' should be given greater recognition and support by the EU institutions. The newly established facility promoting civil society development and dialogue can provide support for such activities.

— To enable the representatives of civil society organisations from Serbia to visit the EU institutions and participate free of charge in conferences and events organised by the EU.

— To strengthen support to the regional networks of civil society organisations in the Western Balkans and to develop regional programmes. Specific attention should be paid to the intensification of the dialogue between the Serbian and Kosovar ([2]) civil society organisations in order to overcome the communication gap between the Serbian and Kosovar ([2]) governments.

— To maintain a systematic dialogue with other donors in order to provide civil society organisations in Serbia and the Western Balkans as a whole with a well targeted, efficient, effective and well-timed assistance.

— To make the Delegation of the EC in Serbia more visible in the eyes of the representatives of civil society organisations, as well as the citizens of Serbia.

— To establish a systematic and structured dialogue among the representatives of civil society organisations and the EC Delegation in Serbia in order to have direct information on the state of Serbian civil society.

— To organise regular meetings with the representatives of civil society organisations in order to react with greater flexibility to their expectations and needs.

([1]) According to the definition of the European Economic and Social Committee, the term 'civil society' encompasses the employers' organisations, employees' organisations, as well as other non-governmental organisations and interest groups.

([2]) Kosovo being under UNSCR 1244.

1.2 The recommendations to the European Economic and Social Committee (EESC):

— To create a Joint Consultative Committee (JCC) between the EESC and Serbian civil society organisations in order to promote and support civil dialogue in Serbia. In the absence of the appropriate legal basis — the Stabilisation and Association Agreement (SAA) — the EESC might establish an interim JCC with the same goals until the signing and ratification of the SAA.

— To participate actively in the new People to People Dialogue Programme managed by the EC's Directorate-General for Enlargement: the EESC could prepare and organise study visits within the EU (especially in Brussels) for representatives of Serbian civil society organisations.

— To enable representatives of Serbian civil society organisations to visit the EESC and to become acquainted with its activities.

1.3 The recommendations to the Serbian authorities:

— To pass the Law on Civil Society Associations and corresponding legislation, especially tax legislation, as soon as possible.

— To develop a strategy for the development of civil society: this would create the basis for a viable civil society as a necessary element of a mature democratic society. The strategy should be developed in close cooperation with civil society organisations.

— To maintain a systematic dialogue on the issues concerning civil society organisations with their representatives. The government's approach towards civil society should be more inclusive.

— To introduce various incentives to civil society organisations, including financial ones, in order to support their development and the sustainability of their activities. A transparent grant scheme that allows civil society organisations to apply for grants financed from the state budget should be developed.

— To support the maintenance of a regular tripartite social dialogue and ensure the proper functioning of the Serbian Economic and Social Council (SESC) according to the law. This should be based on the regular participation of all ministries concerned in the meetings of the SESC.

— To ensure correct and effective implementation of the visa facilitation and readmission agreements with the EU and implement necessary reforms in order to continue the process of visa liberalisation. Visa free travel is crucial for enhancing contacts between Serbian civil society organisations and their counterparts in the European Union.

1.4 The recommendations to civil society organisations in Serbia:

— To establish an institutionalised platform for regular meetings and exchange of ideas.

— To improve the managerial skills of the representatives of civil society organisations through their participation in various training programs.

— To increase the number of representatives of the national and ethnic minorities in projects developed by the Serbian civil society organisations.

— To increase the emphasis on regional cooperation, possibly by looking into learning from and collaborating with civil society organisations in EU Member States, especially with those from Central and South-Eastern Europe.

— To enhance cooperation with the media and to improve their public image by promoting the projects and achievements of civil society organisations.

1.5 The recommendations to Serbian and Kosovar ([3]) civil society organisations:

— To make every effort in order to maintain and/or to improve cooperation and people-to-people contacts between Kosovar ([3]) and Serbian civil society organisations.

2. **Background of the opinion**

2.1 *The EU goals in the Western Balkans and Serbia*

The Western Balkans is among the top regional priorities of the EU's foreign policy. The main goal of the EU in the Western Balkans is to increase regional stability and prosperity. The preparation of the Western Balkan countries for EU membership can be mentioned as an equally important goal. To achieve the latter, the EU is using specific instruments of pre-accession assistance.

The Stabilisation and Association Process (SAP) was created in order to assist the countries of the region on their way to the EU. The signing of the Stabilisation and Association Agreement (SAA) is considered to be a significant step towards full EU membership. As of May 2008, five out of six Western Balkan countries had signed an SAA. While Croatia is already negotiating its accession to the EU, the Former Yugoslav Republic of Macedonia, with its status of candidate country, has not yet started accession negotiations. Serbia signed its SAA in Luxembourg on 29 April 2008. Bosnia and Herzegovina has completed the negotiations and has initialled its SAA, but has not yet signed it.

([3]) Kosovo being under UNSCR 1244.

2.2 *The state and role of civil society organisations in Serbia*

2.2.1 The particular role of NGOs

Civil society organisations and NGOs in particular played an important role in the overthrow of the Milošević regime, since they managed to mobilise a significant part of the population in order to make democratic changes. Since 2000, NGOs have been undergoing a process of transformation, characterised by the redefinition of their programmes, goals and priorities. Since the Republic of Serbia is undergoing a difficult process of political, economic and social transformation, NGOs — and especially those dealing with democratisation and human rights — are playing a crucial role in the democratisation of Serbian society. The significant contribution of some NGOs was noteworthy especially during the last presidential elections held in January-February 2008. In addition, NGOs have played a significant role in the process of spreading European values and bringing Serbia closer to the EU.

2.2.2 The need for a dialogue with civil society

In this regard, the need for an intensive dialogue between civil society organisations on the one hand and the Serbian government on the other should be highlighted. Despite the introduction of various forms of consultation between the government and civil society organisations ([4]), a systematic civil dialogue still does not exist in Serbia. The establishment of such a dialogue is in the vital interest of Serbian society as a whole and of civil society organisations in particular. It is also in the interest of the EU, since a viable and strong civil society is one of the preconditions for successful EU integration.

3. **Political developments in Serbia**

3.1 *The current political situation*

Since the year 2000, when a democratic and pro-integration oriented government replaced the regime of former President Slobodan Milošević, Serbia has had to deal with the process of political, economic and social transformation. A problematic economic transition, the issue of the final status of Kosovo ([5]) as well as the populist usage of national prejudices and stereotypes by selected political leaders has contributed to the radicalisation of the Serbian political scene. This did not concern only the opposition, but to some extent also the outgoing government led by the Prime Minister, Vojislav Koštunica. The involvement of the media in these processes should not be forgotten, since the majority of journalists and broadcasters are far from being truly independent. The recent presidential elections saw the re-election of the incumbent President, Boris Tadić, who represents the moderate stream in Serbian politics. However, the continuing instability in the governmental coalition and tensions between the Democratic Party of Serbia of Vojislav Koštunica and the Democratic Party of Boris Tadić, which escalated after the declaration of independence of Kosovo ([5]) in February 2008, led to the resignation of the Prime Minister, Vojislav Koštunica. Early parliamentary elections were held on 11 May 2008.

3.2 *Political relations with the EU, Russia and the neighbouring countries*

EU integration presupposes the fulfilment of the Copenhagen criteria, Stabilisation and Association Process conditionality and the other conditions and requirements set by the EU. Serbia has not fulfilled all the conditions and requirements but showed good administrative capacity in the process of negotiations for the SAA with the EU and in the implementation of the necessary reforms. In November 2007 the EU initialled the SAA. The signing of the SAA was, however, undermined by the lack of cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). In order to examine ways of delivering rapid progress the EU agreed to set up a Task Force. On the other hand, the European Commission called on Serbia to reaffirm its commitment to closer ties with the European Union ([6]). Cooperation with the ICTY remains one of the most important preconditions for further development of EU-Serbia relations, also after the signing of the SAA. Another influential factor shaping EU-Serbia relations will be the ability of the Serbian government to separate the issue of the final status of Kosovo ([5]) from the process of European integration.

Relations between Serbia and Russia have become more and more intensive. This is partly due to the Kosovo ([5]) status issue, since the Russian Federation has consistently backed the Serbian positions. On the other hand, the level of economic cooperation is increasing as well — the most remarkable sign of such development is the increasing interest of Russian investors in the Serbian economy.

Though a certain improvement has been achieved in the last few years, not all relations between Serbia and its neighbouring countries are satisfactory. Relations with the EU neighbours of Serbia — Bulgaria, Hungary and Romania — can be characterised as very good. The same applies to relations with Montenegro and the Former Yugoslav Republic of Macedonia. Relations between Serbia and Croatia are good, though there are still some open issues, for instance concerning the return of refugees to Croatia. Relations with Bosnia and Herzegovina are shaped to a large extent by the specific relationship between Serbia and the *Republika Srpska*. The greatest tensions obviously lie in the relations between Serbia and Kosovo ([5]), especially since the province's declaration of independence.

([4]) Regular consultations of civil society organisations have been undertaken in several areas, e.g. European integration, poverty reduction or youth policies, and by several governmental or official bodies, e.g. the Presidency of Serbia, the Serbian European Integration Office, the Ministry of Social Policy and Labour, the Serbian Chamber of Commerce or the Standing Conference of Towns and Municipalities.

([5]) Kosovo being under UNSCR 1244.

([6]) Communication from the Commission to the European Parliament and the Council — Western Balkans: Enhancing the European Perspective, Brussels, 5.3.2008, COM(2008) 127.

3.3 *The role of Serbia in the stabilisation and development of the Balkans*

Serbia is an important country in the Western Balkans and an important partner for the EU in the region. Due to the involvement of the Serbian leaders and army in all the Balkan wars in the 1990s, the reputation of Serbia in the region is a relatively negative one. The only way to improve this image in the region is through the improvement of good relations with all its neighbours and active participation in various regional initiatives, with the help of the EU.

4. **Economic developments in Serbia**

4.1 *The current state of the economy in Serbia*

Due to its political and economic isolation, resulting from the character of the Milošević regime, the country's economic development slowed down during most of the 1990s. Since 2000, however, the Serbian economy can be characterised as a typical economy in transition, with sustainable growth (5,7 % in 2006 compared with 6,2 % in 2005). The growth in GDP has been accompanied by a decrease in inflation, which reached 10 % in 2007 ([7]). The indisputable economic advantages of Serbia encompass a quite big market potential, a favourable geographical location, duty free access to the markets of South-Eastern Europe, the EU, Russia and the USA, as well as an educated and skilled labour force.

4.2 *The privatisation process*

The share of the private sector remains relatively low when compared to the EU average. The private sector accounts for about 55 % of total output and 60 % of total employment ([8]). A comparatively low share of the private sector negatively affects the competitiveness of the Serbian economy, especially products and services. Further privatisation and restructuring of state and public-owned companies is therefore a must for further development of the Serbian economy.

4.3 *The main sectors of the Serbian economy*

The main sectors of the Serbian economy are, in descending order, services, industry, agriculture and construction. According to the Serbian Investment and Export Promotion Agency the most dynamic sectors of the economy are agriculture, IT, wood processing, furniture making, energy, automobiles, textiles, electronics and pharmaceuticals ([9]).

4.4 *Foreign Trade*

The European Union is the biggest trade partner for Serbia. Among the top ten biggest export partners of Serbia there are six EU member states. The most important export partner of Serbia, however, is the neighbouring Republic of Bosnia and Herzegovina. Serbian imports are headed by Russia ([10]).

The economic cooperation of Serbia with its neighbours, including trade relations, will be affected positively by the implementation of the new Central European Free Trade Agreement, which was signed by the Western Balkan countries and Moldova in 2006. The creation of the free trade area in the Western Balkans has been one of the priorities of the pre-accession process.

4.5 *Foreign direct investment and the largest investors in the Serbian economy*

Serbia's pro-investment oriented policy has attracted the attention of many foreign investors. In 2006 the total amount of FDI was the highest in the region (EUR 3,4 billion) ([11]). The biggest flows of investments were directed to financial services, trade, manufacturing, real estate, public administration and transport. The largest investors are predominantly the countries of the EU, with Greece occupying first place ([12]).

Despite the increasing number of investments, the Serbian market still has great potential for further development in this field.

5. **The current state and role of civil society organisations**

5.1 *Common problems and challenges*

Three main problems can be identified: fiscal status; the urban-rural gap; increasing competition instead of cooperation.

Quite problematic is the fact that the tax legislation in Serbia does not distinguish civil society organisations from other for-profit organisations. Accordingly, civil society organisations are treated in the same way as small enterprises — they have to pay taxes from the donations they receive, while only a few on them are exempted from VAT obligations. Moreover, the existing tax policies of the Serbian state do not stimulate any form of giving to civil society organisations.

Another problem is the enduring urban-rural divide. Most civil society organisations are concentrated either in Belgrade or in two or three other big cities, while the countryside lacks experience with them. This results in the general population's low awareness of civil society and the activities of civil society organisations.

([7]) National Bank of Serbia, www.nbs.yu.
([8]) Serbia 2007 Progress Report, European Commission, Brussels, 6.11.2007, SEC(2007) 1435.
([9]) Serbian Investment and Export Promotion Agency, www.siepa.sr.gov.yu.
([10]) Statistical Yearbook of Serbia 2006, www.webzrs.statserb.sr.gov.yu; European Commission data www.ec.europa.eu/trade/issues/bilateral/data.htm.
([11]) www.wiiw.at/e/serbia.html.
([12]) Southeast Europe Investment Guide 2007, www.seeurope.net/files2/pdf/ig2007/Serbia-pdf.

The third problem — increasing competition between civil society organisations instead of cooperation — leads to tensions and weakens their potential positions vis-à-vis the Serbian authorities.

5.2 *Cooperation with Serbian authorities: the lack of civil dialogue*

Most civil society organisations are still not perceived as partners by the Serbian authorities, especially those focusing on certain sensitive issues (e.g. war crimes, mass graves etc.). The cooperation of civil society organisations with the central government or local governments rests on an ad hoc basis, since the government seems not to be eager to establish a partnership with civil society organisations. On the one hand, this is due to the lack of legislation regulating the relationship between civil society organisations and the government, and on the other hand, the absence of a political will to involve civil society organisations more intensively in the consultations and preparation of selected strategic documents should also be taken into account. Another fact to be underlined is that the Serbian state adopts a rather selective approach to civil society organisations.

5.3 *Social partners*

5.3.1 Social dialogue

Though an effective social dialogue is one of the preconditions for successful economic transformation, the role of the social partners in Serbian society remains relatively weak. After the Labour Law came into force in 2005, the General Collective Agreement ceased to apply. The same is true for all special collective agreements concluded before 2001. Another change connected with the new legal regulation is that the Government does not participate in the conclusion of the new General Collective Agreement anymore, but continues to play an active role in the conclusion of several sectoral and special collective agreements. The representative trade unions and employers' associations, which are now in charge of negotiations on the new General Collective Agreement, have not succeeded in reaching agreement so far. The conclusion of a new General Collective Agreement therefore remains one of the most important preconditions for enhancing social dialogue in Serbian society.

The Social and Economic Council of the Republic of Serbia, established in 2005 by the Law on the Social and Economic Council, provides an institutional basis for tripartite negotiations. However, the Council is facing several problems that have had a negative impact on its activities. Firstly, the scarcity of financial resources should be mentioned. Despite the increasing funding from the state budget, the lack of financial resources negatively influences the work of the Secretariat and prevents the Council from setting up an adequate number of working groups and organising regular meetings. Another problem is the irregular attendance of the representatives of the social partners at the Council's meetings. As a result, some draft laws are passed in parliament without being discussed on the Council's floor.

5.3.2 The Serbian employers' organisations

The Union of Employers of Serbia (UPS) is the main national organisation of employers. Unlike the trade unions, UPS has enjoyed good cooperation with the Ministry of Labour and Social Policy. It participates regularly in the activities of the Social and Economic Council of the Republic of Serbia. Nevertheless, the fact that most of the biggest firms active in Serbia are not members of UPS weakens the legitimacy of the organisation within the context of social dialogue. UPS has been participating in the work of the South-Eastern Europe Employers' Forum and of the International Organisation of Employers. The international dimension of the UPS's activities is going to be strengthened after it has received observer status in BusinessEurope. UPS is also expected to join the Mediterranean Union of Employers in June 2008.

5.3.3 The current situation and role of the trade unions

The trade unions are more heterogeneous. Overall, there exist about 20 000 trade unions in Serbia at all levels, from company to national level. Most of them belong to the two main national confederations, Independence (Nezavisnost) and the Confederation of Autonomous Trade Unions of Serbia (SSSS). Joint action is often lacking. Another related problem is the lack of cooperation among trade unions. Though the role of trade unions is considered to be relatively weak in Serbia, their active participation in collective negotiations in the public sector and public enterprises shows that their role in strengthening the social dialogue is not to be underestimated. As for the international activities of the Serbian trade unions, both Nezavisnost and SSSS are members of the International Trade Union Confederation and take part in the European Trade Union Confederation Balkans Forum.

5.4 *The situation within the various interest groups*

5.4.1 An unsatisfactory legal environment

Despite various statements of the post-2000 Serbian governments and their commitments to adopt a new law on citizens associations, the work of the non-profit organisations, as well as their relations with the Serbian state remain unregulated. In fact, the legal status of the various interest groups, and particularly the NGOs, is regulated by the State Law on the Association of Citizens into Associations, Social Organisations and Political Organisations founded already in the Socialist Federal Republic of Yugoslavia and the Republic (Serbian) Law on Social Organisations and Citizens' Associations from 1982, amended in 1989 ([13]).

([13]) Zdenka Milivojević *Civil Society in Serbia. Suppressed during the 1990s — gaining legitimacy and recognition after 2000. Civicus Civil Society Index Report for Serbia.* (Belgrade, 2006).

In 2006, the Government of Serbia adopted the Draft Law on Civic Associations. This text, which was harmonised with the positions of the representatives of various interest groups, has not made it to Parliament to be adopted. The Draft Law simplifies the procedure for the registration of civic associations and foresees that an association may acquire property and assets through charges of membership fees, voluntary contributions, donations and gifts, etc. It also provides for the state or local self-government bodies to give grants and donations to various interest groups. However, the Law on Civic Society Associations would not solve all the problems concerning their legal and economic status. A whole set of additional laws will therefore be needed.

5.4.2 The role and coverage of small and medium-sized enterprises (SMEs), agricultural organisations and consumers' organisations

It can be argued that the representatives of SMEs and agricultural organisations suffer from the same problems as trade unions — counter-productive fragmentation and competition — which prevent them from establishing powerful pressure groups. The high level of corruption guarantees some organisations better access to state bureaucracy than others. Political closeness and the geographical locations of these organisations can be mentioned as another divisive factor. Although the number of consumers' organisations is smaller when compared to SMEs and agricultural organisations, their problems are more or less similar.

5.4.3 NGOs in Serbian society

The Serbian NGO sector was becoming stronger in the second half of the1990s, after the end of the Bosnian war. The NGOs played a crucial role in the overthrow of the Milošević regime in 2000 by mobilising the citizens and taking part in the negotiations with the anti-Milošević opposition. The pro-election campaign named 'Izlaz 2000' was a very successful project of different NGOs, showing the importance of the NGO sector in the process of democratic change.

Since 2000 the position of NGOs in Serbian society has changed. The NGO sector is overcoming a process of transformation. Moreover, some NGOs suffer from a lack of enthusiasm due to the slower pace of reform than was expected after the changes in 2000. Another problem is the split in the attitude of the NGOs towards cooperation with the government — while some of them remain consistently in opposition to the government, others try to find ways to cooperate with it. To some extent, the NGO sector became weakened also due to the fact that some NGOs leaders joined politics after 2000 and stopped their activities. In this regard, it can be concluded that while some NGOs intensified their activities, a significant part of them failed to meet the criteria regarding further professionalisation and specialisation in their work and faced some significant problems. As for examples of positive development, particular mention should be made of environmental organisations.

Economic problems are crucial since they concern the basic viability of most NGOs. They receive funding only for a limited number of projects and for a limited time period, mostly from foreign sources. As a result, many of them lack specialisation and have to focus on various projects with a very different focus. This affects not only their professional reputation, but makes them difficult to overcome vital problems threatening their existence.

6. **The role of civil society organisations in EU integration**

6.1 *Civil society organisations and the process of European integration*

A number of civil society organisations in Serbia already play a crucial role in the process of raising public awareness on the EU and European integration. By organising public lectures and seminars and distributing leaflets and other materials focusing on the EU and related issues, civil society organisations contribute to information campaigns on the EU especially in rural and less developed areas. Though civil society organisations have sometimes differed in their attitudes, e.g. in the case of stressing the full cooperation of Serbia with the ICTY as a precondition for the reopening of the SAA negotiations in Spring 2007 — the presidential elections held in January-February 2008 found them united in their opinion. An overwhelming majority of civil society organisations opted for a European perspective for Serbia and helped to increase the participation of the voters in the elections.

The closer cooperation of the government with the employers' organisations, trade unions and other interest groups would contribute even more to the better preparedness of the population in Serbia for EU accession. However, the further involvement of civil society organisations in a substantial dialogue with the government requires greater transparency and the regular provision of relevant documents and information.

6.2 *Civil society organisations and regional cooperation*

The improvement in regional cooperation and good relations with the neighbouring countries represent key preconditions for a successful integration into the EU. Civil society organisations already play an important role in stabilising relations and bridging the gaps among the countries in the region. In this regard, the improving cooperation between the Serbian and Croatian civil society organisations can be mentioned as a very positive example. By improving cooperation among themselves and pushing joint projects, civil society organisations will be better prepared to face regional problems and meet regional challenges. Moreover, successful results of cooperation among civil society organisations on a regional basis may serve as an

inspiration for regional political leaders. Though contacts among civil society organisations are developing year by year, the current status quo is far from being satisfactory, mainly because of still existing political obstacles and scarcity of financial funds, including EU funds. In this regard, support for grassroots regional initiatives may be one of the possibilities for enhancing cooperation among civil society organisations in the region.

6.3 *International activities of Serbian civil society organisations*

The inclusion of the Serbian civil society organisations in joint projects realised with partner organisations either from the region or from outside can improve people-to-people contacts and renew relationships broken during the war. In this regard, a certain positive development has been achieved in many fields. Cooperation and networking has been developed especially in the case of civil society organisations focusing on human rights, protection of the environment or in the case of women's groups. For the further development of civil society and civil society organisations, the positive results of cooperation among the Serbian associations and their counterparts from the new Member States of the EU should be highlighted as well.

The inclusion of civil society organisations in foreign policy activities should not be underestimated. The more intensive cooperation between official diplomacy on the one hand and public diplomacy on the other can contribute to the improvement of Serbian foreign policy and influence positively the process of European integration.

Brussels, 29 May 2008.

The President

of the European Economic and Social Committee

Dimitris DIMITRIADIS