ISSN 0378-6986

Official Journal

of the European Communities

C 221

Volume 45

17 September 2002

English edition

Information and Notices

Notice No | Contents | Page

Price: 22,00 EUR

EN

(Continued overleaf)

EN

(Continued on inside back cover)

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'Proposal for a decision of the European Parliament and of the Council on Computerising the movement and monitoring of excisable products'

(COM(2001) 466 final — 2001/0185 (COD))

(2002/C 221/01)

On 20 December 2001, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2002. The rapporteur was Mr Wilkinson.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 79 votes to one, with one abstention.

1. **Introduction**

1.1. With the introduction of the Internal Market, fundamental changes were made to the arrangements for the movements of goods subject to excise duties [1]. Physical controls at national frontiers were replaced by administrative controls, based on documents to accompany goods sent from one Member State (MS) to another or imported to, or exported from, the EU.

1.2. Tax rates (excise and VAT) applied to such goods were not harmonised, and still remain very widely different [2]. This gives the prospect of significant profits, in some cases, from fraud. The weaknesses in the system are now being exploited on a major scale, increasingly by organised crime.

1.3. In 1996 the High Level Group (HLG) — study involving the authorities in all MS estimated that revenue losses from tobacco and alcohol products totalled about EUR 4,8 billion for that year [3]. In the same year the total of revenues received by MS from excise goods was about EUR 234 billion, equating to about 8,1 % of their total tax revenues [4]. For different MS the sums received and the percentage of revenues that these represented varied quite widely.

1.4. In 1998 the ECOFIN Council accepted the recommendation of the Commission to introduce a computerised control system for excisable goods [5] (to reduce fraud), as a long-term goal subject to the outcome of a Feasibility Study. The Feasibility Study [6] was completed in 2000. COM(2001) 466 final makes a proposal for the introduction of such a computer-based system. It is normally referred to as EMCS (Excise Movement and Control System). The proposal has the dual aim of reducing fraud and simplifying the system.

---

(1) Council Directive 92/12/EEC.

(2) — For example, the differences between highest and lowest MS taxes are:
— mineral oils: unleaded petrol 2.1:1; diesel 2.6:1
— alcohol: spirits 9.1:1; beer 17:1. For still wine the rates range from zero to 2 900 EUR per hectolite pure alcohol
— tobacco (overall excise rate): 4.6:1.

(3) Of this total 69 % was from fraud on tobacco products and 31 % from alcohol products.

(4) This total includes the excise duties on fuel oils, which were not considered in the study.

(5) Excise goods are mineral oils, alcoholic products and tobacco products.

(6) Carried out by Alcatel TITN Answare.

2. General comments

2.1. The current system is not good, relying as it does on passing paper documents to discharge movements under duty suspension. Where the correct documents are not returned, or are returned with faults, the sender (who has no control over such failings) can face very significant financial penalties. The operators therefore strongly support the proposed move to a computer-based system of recording transactions. They hope that such a move will help legitimate trade while allowing MS to exercise effective control. They stress that EMCS would have to be applied uniformly by all MS and all operators ([1]).

2.2. However, since EMCS cannot be operational before 2007 at the earliest, the Committee stresses the need for the Commission (in consultation with MS and economic operators) to continue to strive for improvements to the current system ([2]); these will also help the introduction of EMCS. Such interim improvements should not be allowed to increase the current levels of bureaucracy or complexity ([3]).

2.3. All MS also support the system, although it is clear that some have more to gain than others since the scale of fraud varies considerably as does the trade in alcohol and tobacco products.

2.4. As the Commission proposal acknowledges, EMCS would be a 'huge, highly complex and costly project'. It would have to include various elements of all the MS Administrations, the Commission, OLAF and economic operators (producers, bottlers, warehouses, traders, etc.) in all 15 MS. Security would also be a vital element.

2.5. The system would have to be very robust to ensure that it is available 24 hours a day, 365 days a year and with a very short recovery time for any stoppages (emergencies or maintenance). The number of transactions is estimated in the Feasibility Study as 16 million per year (EU 15 for tobacco and alcohol). When mineral oils are added, and allowing for the addition of new MS, this figure will be very much larger.

2.6. There are estimated to be 80 000 economic operators at present, to which number we would have to add the economic operators from however many Candidate Countries will have acceded to the EU before 2007, since this is the earliest date when the system could be operational ([4]). The Commission estimates that the total number of economic operators — after enlargement — will be close to 200 000.

2.7. The Committee fully supports the proposal to move to EMCS as soon as possible, both because of the need to fight fraud and because of the need for improvement to the operation of movements under duty suspension that is necessary towards completing the internal market. Further, it will be welcomed by EU citizens who will value improvements that can help in the fight against fraud.

3. Costs

3.1. The costs estimated for the project are high. For the Commission, they are EUR 35 million for development and deployment and thereafter EUR 4 million per year for operating costs. For each Member State, and according to the Feasibility Study, the development and deployment phases should cost each between Euro 5 and 12 million and thereafter EUR 1,7 to 10 per year. Each Member State is currently estimating its own costs.

3.2. For economic operators, all of whom would have to be part of the system, the costs involved should be comparatively small, except where a major operator decides to develop its own individual application to interface with the Community system. Estimates in this case are EUR 140 000 for development and EUR 15 000 per year for operating costs.

3.3. The estimates presume that economic operators will receive the necessary training from their own MS at the MS's expense, as well as the necessary software.

3.4. There should be savings for economic operators compared with the current paper-based system which would reduce compliance costs; these savings are not estimated in the proposal. MS would expect to recover their costs through reducing fraud. Therefore, assuming that the estimates are fair, the system would be cost effective.

([1]) The application of the current system is not uniform, for example in the approaches of MS to alternative evidence of discharge.

([2]) Most important among these are improvements to the System for Exchange of Excise Data (SEED) and flexibility for traders concerning alternative evidence for the discharge of AAD movements.

([3]) In particular, the so-called Early Warning System should be reconsidered.

([4]) The proposal says that work on development and implementation must start within nine months of the decision entering into force (see Article 2 of the proposal) and will take five years to complete.

3.5. The Committee notes that the proposal (financial statement) only includes the detailed expected costs up to the end of 2006. This should be extended to at least 2007 (see paragraph 2.2 above) and should also indicate the later expected costs for including future accession countries into the system.

3.6. Because of the key role to be played by the Commission in the proposed system, there must be no reduction in the staffing projected as necessary. Indeed, to allow the Commission to continue to make very necessary improvements to the current paper-based system (see point 2.2 above) while working on EMCS, there is a good case for them to be allocated more staff than foreseen in the proposal.

4. **Participation**

4.1. As the proposal makes clear, EMCS will only be effective if all MS and the Commission give binding commitments to their legal and financial obligations under the proposal. Given the scope and complexity of EMCS it must be accepted that the resource estimates in the Feasibility Study may be quite inaccurate.

4.2. Because of the timescale it seems certain that several Candidate Countries will accede to the EU before the system comes into operation. Article 9 should reflect this by making clear that Candidate Countries will (not 'may') be kept fully informed and that not only may they take part in the tests to be carried out, but that they will be eligible for assistance in the preparation and deployment of the system. Such an undertaking will have financial consequences; these should be recognised.

4.3. A further concern is that some Candidate Countries still do not have systems for the control of excisable goods that meet the requirements of Directive 92/12/EEC. No doubt this is being covered in the accession negotiations, but the countries concerned will need to have experience of the EU system before they can expect to take part in EMCS.

4.4. The addition of the new MS to EMCS could well lengthen the time before the system is operational.

5. **Security**

5.1. Responsibility for the security aspects will be of particular importance. These must cover the legal operation of the system and the ownership and handling of the commercially confidential information that will be held on the system. Because of the wish to use the very latest security arrangements that are available when the system is launched, it is noted that details cannot be included in the proposal at this stage.

5.2. The system must make it possible to identify clearly who is legally responsible for any goods that are under duty suspension anywhere in the internal market area.

6. **Technical**

6.1. There is a very high assurance that EMCS is technically feasible. To some extent this judgement is based on the successful introduction of the New Computerised Transit System (NCTS).

6.2. The relationship between EMCS and the New Computerised Transit System (NCTS) should be made clearer in the proposal (and not just in the explanatory memorandum) since, for example, it is planned that both systems will share some reference lists, yet participation in the two systems will be different. Compatibility with other systems, such as the G7 project on Customs simplification, will also need attention.

6.3. The present proposal only covers excise goods moved under duty suspension within the single market. The proposal needs to make clear the need for adequate links between the EU system (linked warehouses), and EU production facilities and entry and exit points for imports and exports (respectively) from third countries.

6.4. It notes that some MS intend to offer all services electronically by 2005. It will be important to ensure that such services are fully compatible with the proposed EMCS.

7. **Summary**

7.1. The Committee fully supports the proposal, both because of the need to fight fraud more effectively and because of the improvement expected for economic operators within the single market.

7.2. However, it makes the following comments:

— It is vital that each MS, and each Candidate Country before their accession, give a binding commitment to their legal and financial obligations under the proposal. Without this the proposal cannot work.

— Because of the inadequacies of the existing paper-based system, and the long period before EMCS can be in operation, the Committee urges the Commission to continue their efforts to improve the current system as early as possible.

— Detailed costs expected should be extended to include at least 2007.

— Full account must be taken of the expected accession of several Candidate Countries in the timescale foreseen; they will need to be kept fully informed and should be offered help in the preparation and deployment of EMCS.

— All aspects of security of EMCS must be fully covered.

— The relationship of EMCS with NCTS and other systems should be clarified.

— Any special provisions for movement from production facilities, and for exports and imports to/from third countries must be clarified.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on EC type-approval of agricultural and forestry tractors, their trailers and interchangeable towed equipment, together with their systems, components and separate technical units'

(COM(2002) 6 final — 2002/0017 (COD))

(2002/C 221/02)

On 12 February 2002 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2002. The rapporteur was Mr Levaux.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion unanimously.

1. Objectives of the proposal

1.1. In connection with the harmonisation of approval procedures, it has become essential to bring the provisions of Council Directive 74/150/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to the type-approval of wheeled agricultural or forestry tractors into line with those of Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, and with those of Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two- or three-wheel motor vehicles.

1.2. The proposal makes up the second stage of rewriting Directive 74/150/EEC, and mainly involves extending its scope to cover more specific types of tractors, their trailers and interchangeable towed equipment.

1.3. The Commission stresses that, in the interests of effectiveness and greater transparency, it has prepared this proposal with a view to eliminating excess regulation and simplifying the implementation of legislation.

1.4. In proposing to replace national type-approval with EC type-approval, the Commission is advocating total, Community-wide harmonisation.

1.5. The proposal also takes account of certain international regulations, for example, those of the United Nations Economic Commission for Europe and of the Organisation for Economic Co-operation and Development.

1.6. Finally, the Commission feels that the proposed directive will help to expedite the administrative tasks which manufacturers must complete in order to be able to market their products.

1.7. The Directive will also allow manufacturers to eliminate the technical variants that are currently necessary to meet diverging national requirements, and to submit new types of vehicles to a single Community type-approval procedure in a single Member State.

2. General comments

2.1. The proposal for a Directive concerns an important sector of activity, the estimated turnover of which is Euro 16 billion.

2.2. This sector directly employs 140 000 people in 5 000 companies and, indirectly, a further 150 000 in distribution and sales.

2.3. The trend seems to be towards gradual growth in production over the long term, with increased trade both within the Community and with external partners (mainly towards the USA and Central Europe).

2.4. The Committee welcomes the fact that the Commission has provided for sufficiently long deadlines for the implementation of the proposed Directive to allow manufacturers to adjust to the new harmonised procedures.

3. Specific comments

3.1. The Committee notes that the scope of Directive 74/150/EEC was limited to wheeled agricultural and forestry tractors. The scope of the proposed Directive is wider as it will cover both wheeled and track-laying tractors, their trailers and interchangeable towed equipment.

3.2. The Committee notes that interchangeable vehicle-mounted equipment is not mentioned in the proposed Directive. In the interests of clarity, the Committee believes it would be very useful to point out in the 'whereas clauses' of this Directive that such equipment is regulated by another directive.

3.3. The Committee therefore proposes adding the following new point 2(a) to the whereas clauses of the proposal: 'Interchangeable vehicle-mounted equipment for agricultural and forestry use is regulated by Directive 98/37/EC on "machinery" [1], in view of the occupational safety aspects.'

3.4. The Committee has taken note of the impact assessment drawn up by the Commission and reiterates that the proposal for a Directive affects both large companies, which manufacture tractors, and small and medium-sized enterprises on the equipment side, which are distributed equally throughout the EU. Single type-approval will make it easier for these companies to export their products.

3.5. While the harmonisation of procedures and EC type-approval is clearly important for making the internal market more dynamic, it must also be an opportunity to boost exports outside the Community, in particular beyond the countries of central Europe, many of which are already applicant states.

3.6. The Committee welcomes the Commission's efforts to harmonise procedures and establish a single EC type-approval that, in time, will allow manufacturers to operate under transparent and balanced conditions of competition by providing them with common rules, in particular concerning occupational safety, for the use of agricultural and forestry tractors and their equipment.

3.7. The Committee agrees with the objectives of the Commission, which states the following in the conclusion to its explanatory memorandum: '... the proposed directive will help to simplify and expedite the administrative tasks which manufacturers must complete in order to be able to market their products.'

3.8. However, having examined the procedures, exemptions, special provisions for particular types of vehicle and annexes to the proposed Directive, the Committee believes that the mechanism is rather complex, given that it refers to over 43 separate directives to date, as listed in Annex II, Chapter B, Part 1 (List of separate directives).

3.9. As a result, the Committee believes that, despite efforts to clarify the mechanism, it is still rather complex and the proposal is unlikely significantly to expedite the administrative tasks facing manufacturers.

3.10. Article 21 states that the Commission will be assisted by a specialised committee on adaptation to technical progress, composed of representatives of the Member States. This committee could look into classification problems in each category of new vehicle, in particular the 'Quads' that have recently emerged on the market.

3.11. The Committee regrets that this committee will only be concerned with the issue of adapting to technical progress and cannot take on the task of assessing the real impact of the new procedures in terms of simplifying and expediting administrative tasks. Given that this is a main objective stated by the Commission to stress the importance of the proposed Directive, the Committee believes that efforts must be made to avoid a proliferation of committees or observatories and that, after three years of implementation, this 'adaptation committee' should assess improvements intended to simplify and expedite administrative tasks, which are sometimes linked to technical progress.

3.12. Article 23 of the proposed Directive states that the Member States must bring their provisions into line with this Directive by 31 December 2004 and that these new provisions will apply from 1 January 2005.

3.13. Article 24 states that national type-approval is to be replaced by EC type-approval, the aim of the proposed Directive, by category of vehicle once all the corresponding separate directives are adapted. The table found in Annex II, Chapter B, Part 1 (List of separate directives) of the proposed Directive demonstrates that, for many types of vehicle, the corresponding separate directives apply as they stand.

For these types of vehicle, EC type-approval will therefore apply as soon as the new provisions are implemented on 1 January 2005, as laid down in Article 23.

3.14. For categories of vehicle covered by existing separate directives that must be amended or separate directives that are yet to be published, the Commission envisages postponing the implementation of EC type-approval until:

— three years after the date of entry into force of the last separate directive which must still be adopted for new types of vehicles;

— six years after the date of entry into force of the last separate directive which must still be adopted for all vehicles.

[1] OJ L 207, 23.7.1998.

3.15. As no indication is given of the deadline for publishing the last separate directives to be adopted, the Committee wonders when the proposed Directive will actually be fully implemented and when it will finally be able to have the positive impact expected.

3.16. The Committee believes it is necessary that enough time is allowed for manufacturers to adjust and Member States to make their arrangements. However, given how urgent and important it is for manufacturers to have a single type-approval procedure to facilitate exports, the Committee hopes that the aforementioned deadlines of three and six years will be reduced to two and four years respectively.

4. **Conclusions**

4.1. The Committee supports the Commission in its efforts to harmonise EC type-approval of agricultural and forestry tractors, and approves the proposed Directive.

4.2. The Committee hopes that the adoption of the Directive will provide an opportunity to give new impetus to exports in this innovative and competitive sector. It therefore suggests that the Commission conduct a forward economic study into the new possibilities that will be open to European manufacturers once this EC type-approval has been implemented by the Member States.

4.3. The Committee hopes that the Commission will set a specific deadline for publishing the remaining separate directives and shorten the deadline for implementing EC type-approval once they have been adopted, in order to give manufacturers a clear picture so they can develop their market more effectively.

4.4. The Committee regrets that the proposed Directive, which aims to simplify and expedite administrative tasks, does not provide for an assessment of the impact of new provisions in this area. To lighten the Commission's workload without setting up a new body, this task of assessing the impact of the new procedures should be assigned to the committee on adaptation to technical progress provided for in Article 21, for which Member States are free to appoint appropriate representatives.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending, for the twenty-fifth time, Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (substances classified as carcinogens, mutagens or substances toxic to reproduction — c/m/r)'

(COM(2002) 70 final — 2002/0040 (COD))

(2002/C 221/03)

On 28 February 2002 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2002. The rapporteur was Mr Colombo.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion unanimously.

1. Introduction

1.1. The draft directive under consideration constitutes the latest periodic updating of points 29, 30 and 31 of Annex I to Directive 76/769/EEC which prohibit the marketing of specifically listed substances, since they are classified as carcinogenic, mutagenic or toxic to reproduction (c/m/r).

1.2. Under Directive 94/60/EEC, the Commission is obliged to present to the European Parliament and the Council, every six months, a list of new substances which the latest scientific knowledge has shown to have the negative characteristics listed above. The aim is to achieve progressively better protection of the health of European citizens, and to safeguard the internal market.

1.3. The Committee has given its opinion on the earlier amendments; the most recent such opinion was on 'Dangerous substances — c/m/r' [1], which should be referred to for comments on procedure and on the application of the final decisions on these regular updatings.

1.4. It should be stressed that, in the Commission's view, the amendment procedure involving progressive, regular updating is the only method available under the legislation currently in force.

2. The Commission proposal

2.1. The Commission proposal would extend the appendix relating to points 29, 30 and 31 of Annex I to Directive 76/769/EEC by including, on the basis of current knowledge, the following numbers of substances:

— 2 classified as carcinogenic category 1;

— 19 classified as carcinogenic category 2;

— 5 classified as mutagenic category 2;

— 1 classified as toxic to reproduction category 1;

— 16 classified as toxic to reproduction category 2.

3. General comments

3.1. The Committee welcomes the Commission's presentation on the basis of Directive 94/60/EEC (restrictions on the marketing and use of certain dangerous substances and preparations) and Directive 67/548/EEC (approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances), of further proposals to the European Parliament and the Council to add newly classified c/m/r substances (categories 1 and 2) within the six months laid down.

3.2. The Committee regards the proposal to include the substances listed in 2.1 above in the appendix relating to points 29, 30 and 31 of Annex I to Directive 76/769/EEC as positive and necessary to assist the fight against cancer and useful for safeguarding the internal market.

3.3. This assessment is based on the current state of knowledge on these substances, and takes account of their low economic and employment impact, and of the fact that their use is now limited, partly as a result of information on substitutes for them being supplied to firms in good time.

[1] OJ C 311, 7.11.2001.

3.4. The Committee emphasises that the proposal is important because, in addition to introducing uniform standards for the circulation of substances and preparations classified as carcinogens, mutagens or toxic to reproduction, it confirms the European Union's strategy of developing a coordinated range of policies designed to defend rigorously and to improve the living conditions of European citizens.

3.5. As regards the fight against cancer the Committee stresses, as it did forcefully in its opinion on the Action plan to combat cancer within the framework for action in the field of public health [1], that in the last few decades the death rate from cancer has increased in a context of progressive ageing of the population.

3.6. Indeed, the most recent data reveal the emergence in the EU of 1,5 million new cancer cases per year with almost 1 million deaths from cancer per year. The fatalities display an increasingly clear connection with lifestyle and living conditions. The Committee stresses the need to take positive measures likely to help change these behaviour patterns, partly through suitable educational initiatives, starting with schoolchildren.

4. **Conclusion**

4.1. Faced with this scourge of modern society, the Committee gives its support to the current proposal but stresses the need to move on from this stage — often marked by belated responses to problems — to the implementing phase of the programmes for overall review envisaged by the White Paper — Strategy for a future Chemicals Policy [2]. This document, which envisages the examination of 30 000 chemicals in an initial stage, constitutes the real quality leap for the production, marketing and use of chemicals in the EU.

4.2. The Committee therefore advocates rapid progress with the new programme to facilitate the transition from the current, essentially defensive, strategy to one based on the fundamental principle of prevention, as envisaged by the implementing programmes of the White Paper itself.

---

[1] OJ C 393, 31.12.1994.

[2] COM(2001) 88 final.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Draft Commission Regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry'

(2002/C 221/04)

On 11 February 2002, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned Draft Commission Regulation ([1]).

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 8 May 2002. The rapporteur was Mr Regaldo.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 90 votes to one with three abstentions.

1. Introduction

1.1. Article 81(1) of the Treaty prohibits companies from making agreements that restrict competition and distort trade between the Member States. However, under Council Regulation 19/65/EEC, the Commission may rule, on an individual basis or by means of a regulation, that the prohibition made in paragraph 1 is not applicable to a given agreement or category of agreement between companies, by virtue of paragraph 3, providing the four conditions specified are met.

1.2. As far as Article 81 of the Treaty is concerned, vertical distribution and after-sales servicing agreements in the automobile industry are currently governed by Regulation (EC) No 1475/95, which expires on 30 September 2002.

1.3. Experience acquired with this type of agreement, starting back in 1974 with the BMW decision, continuing in 1985 with the adoption of Regulation (EEC) No 123/85, and confirmed in 1995 by the current Regulation (EC) No 1475/95, has enabled the Commission to define categories of vertical agreement that have over time met the conditions laid down in Article 81 (3).

1.4. The Commission has raised questions about whether the system, which combines selective and exclusive distribution and provides a single model for motor vehicle distribution, fulfils the requirements of Treaty Article 81 (3), which authorises agreements between companies providing they contribute 'to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit'.

1.5. Developments in the process of evaluating the implementation of Regulation (EC) No 1475/95 described in the Commission report ([2]), studies on the development of techniques for managing the distribution structure ([3]) and on consumer preferences in automobile distribution ([4]) and, last but not least, the importance of the new approach to competition policy in the area of vertical restraints with the adoption of Regulation (EC) No 2790/99, have led the Commission to the conclusion that the current rules laid down in Regulation (EC) No 1475/95 are out of date. In the Commission's view, the current regulation can no longer respond properly to the structural changes in the market. Neither can it meet the needs of consumers, who will not benefit fully from the advantages of the system until the conditions are right for greater competition, allowing them to exploit the single market by buying their cars in the Member State where prices are lowest. Hence the need to draft a new block exemption regulation on vertical agreements and concerted practices in the motor vehicle industry for distribution and customer services.

1.6. Following the consultation procedure, and once it has been adopted formally by the Commission, the new regulation should come into force on 1 October 2002. A one-year transition period ending in October 2003 is planned to allow time for current contracts to be adapted. The regulation will expire on 31 May 2010 in order to coincide with the expiry of Regulation (EC) No 2790/99 governing the general block exemption applicable to vertical agreements.

([1]) OJ C 67, 16.3.2002.

([2]) COM(2000) 743 final of 15 November 2000.

([3]) 'Study of the impact of legislative scenarios about motor vehicle distribution', Andersen Consulting.

([4]) 'Customer preferences for existing and potential sales and servicing alternatives in automobile distribution', Dr. Lademann.

2. The new legal framework for the distribution of motor vehicles and related services

2.1. The new draft regulation based on the new competition policy regarding vertical restraints defined in the general regulation (EC) No 2790/99 is radically innovative. While being stricter, it is in fact less prescriptive and more flexible than the previous regulation (EC) No 1475/99.

2.2. The main innovations are the following:

— There will be differentiated market thresholds: 30 % for exclusive distribution, 40 % for selective distribution, and 30 % for the distribution of spare parts and services. There will be no single set model for distribution and it will no longer be possible to combine exclusivity and selectivity as under the current system.

— There will be a series of options for manufacturers, distributors and resellers to choose from.

— Producers will be able to opt for agreements on:

  — exclusive distribution;

  — selective qualitative distribution;

  — selective qualitative and quantitative distribution.

— A black list will be drawn up of hardcore clauses that cannot be exempt, applying the principle that all is permitted except that which is specifically prohibited.

2.3. Other significant elements designed to further enhance competition and expand consumer choice are:

— Heightened (intra-brand) competition between distributors in the Member States and market integration in selective distribution systems, through:

  — freedom to carry out active sales (personalised e-mails/Internet),

  — the elimination of the location clause;

— the development of widespread multi-branding;

— expansion of the role of intermediaries and those acting on behalf of consumers;

— an obligation on exclusive distributors to sell to independent resellers that are not members of the network;

— no limits on passive sales and an availability clause for all motor vehicles, setting of sales targets, product delivery systems and bonuses based on EU rather than national level.

2.4. In the area of after-sales services:

— The sales/after-sales link has been restructured in order to allow distributors to choose whether to provide the service or subcontract it to official repairers.

— Independent repairers may become official repairers, providing they meet the manufacturer's quality criteria.

— Official distributors (dealers and authorised garages) will be obliged to provide warranties and services for new vehicles throughout the EU.

— The location and non-compete clauses will not apply to official repairers.

— Repairers that are part of the motor vehicle distribution network, spare parts distributors, final users and independent repairers will be free to acquire original parts from the producer of those parts or from another third party of their choice.

— The producers of original spare parts will be free to apply their brand-name or logo to their products whether they are supplied to the motor vehicle manufacturer or to the repairers for replacements. The authorised repairers will be able to use spare parts of equivalent quality for vehicle repair and maintenance, although they will be obliged to use original spare parts supplied by the manufacturer during the warranty period.

— Manufacturers must give independent repairers access to all technical information, diagnostic and other equipment and tools, including all relevant software, and the training necessary to repair the vehicles.

2.5. A manufacturer terminating a contract with a dealer must give reasons. Disputes between suppliers and distributors must be referred to an independent arbitrator or expert third party.

3. General comments

3.1. The Committee would note that the new proposal, which is highly innovative, can be welcomed in principle as it ties in with the scenario suggested by the Committee in its previous opinions on Regulations (EEC) No 123/85 and (EC) No 1475/95 (on automobile distribution), Regulation (EC) No 2790/99 (on the general rules governing vertical agreements) and lastly its opinion on the Evaluation Report on Regulation (EC) No 1475/95, which it adopted on 30 May 2001.

3.2. In the conclusions of this last opinion, the Committee declared itself to be in favour of the establishment of a block exemption for motor vehicle distribution and recommended that the Commission explore ways of modifying and extending the current regulation. In addition, in the same opinion, the Committee stressed that 'The primary aim of the new Regulation should be to raise the overall level of competition in order to improve consumer well-being and safety, and the operation of the single market. In order to achieve these objectives, the new Regulation should have a practical impact in providing greater protection for dealers and promoting the SMEs operating in the European car sector' ([1]).

3.3. The Committee is pleased to note that the new Regulation responds in large part to these concerns:

— the interests of consumers are put first, giving them more opportunities to choose from the entire common market;

— there are measures designed to heighten competition between distributors in sales and after-sales services;

— there will be sharper competition in the production and distribution of spare parts;

— and lastly, resellers are given more commercial independence, essential to enable them to provide buyers with a better service, through greater contractual protection in the contract termination phase and greater recourse to arbitrators to resolve disputes.

3.4. The Committee also notes with satisfaction that the Commission has taken up its recommendations on the need to maintain a specific block exemption regulation for the car sector and that it has recognised that the general competition rules relating to vertical distribution agreements (Regulation (EC) No 2790/99) were not in reality applicable to motor vehicle distribution.

3.5. The Committee would however note that the complex system of measures foreseen in the new regulation, whether interpreted narrowly or broadly, may reduce legal certainty and lead to forms of concentration in the location of distributors, in after-sales services and in the production of spare parts, with the resulting disappearance from the market of a significant number of SMEs and with negative effects on employment and the expected benefits to the consumer.

3.6. The Committee notes that the new regulation provides for the introduction of market shares and provides business operators in the motor vehicle sector with a wider choice of distribution system.

3.7. More specifically, the introduction of market quota thresholds, with percentages differentiated by the type of distribution chosen in advance, will mean that vertical agreements under the thresholds set can be presumed to be compatible with the block exemption, whereas those above the threshold, though not necessarily illegal, will be eligible for an individual assessment based on the guidelines on vertical restraints. However, regardless of thresholds, the block exemption will not be allowed if the black list of hardcore restrictions that cannot be exempt (owing to serious adverse effects on competition) is disregarded.

3.8. The new regulation also provides (Article 7) for decentralisation to national level of the application of the rules set out in Article 81, providing the scope of the agreements is limited to the national territory. The Committee would stress, as it did in the above-mentioned opinions, the principle of the European one-stop shop, which should always have priority in cases of the decentralised application of antitrust rules, so as to prevent non-uniform application of the rules, market fragmentation or possibly a differing application of competition policy.

3.9. The Committee would also stress that the complexity of the set-up under the new regulation necessitates the drafting of specific guidelines to counterbalance the flexible and pragmatic approach that the Commission wishes to pursue, with the requirement of legal certainty for the economic operators, most of which are small and medium-sized companies (over 280 000).

4. **Specific comments**

4.1. *The separation between exclusive and selective distribution*

4.1.1. The Commission has decided that a single model for the distribution of motor vehicles consisting of a combination of selective and exclusive distribution is no longer appropriate for the industry. Instead it proposes to require undertakings to choose between exclusive distribution or quantitative selective distribution. This has been described as increasing flexibility of choice for manufacturers.

4.1.2. The Committee is doubtful that the proposals will have that result. On the contrary, the Committee considers that the terms proposed for exclusive and quantitative selective distribution will lead to the great majority of manufacturers opting for the quantitative selection distribution system. In other words, it is quite possible that under the new BER, one model for the distribution of motor vehicles will predominate.

([1]) OJ C 221, 7.8.2001.

4.2. *Non-compete obligation [Article 1(b)]*

4.2.1. The Committee notes that the new regulation reduces to 50 % the annual total purchase obligation for contractual goods and services, from the 80 % set by Article 1(b) of Regulation (EC) No 2790/99 on which the regulation is based. In order to allow access for new operators, multi-branding and increased competition, the Committee believes that it makes sense for that percentage to be set at at least 65 %.

4.2.2. The Committee welcomes the clearer definitions of 'original spare parts' [Article 1(p)] and 'spare parts of matching quality' [Article 1(r)]. This will make for greater transparency and greater competition on the repairs market, which will translate as benefits for the consumer/client in terms of both price and safety.

4.3. *Scope of application (Article 2)*

4.3.1. The Committee notes [Article 2(1)] that the scope of application of the new regulation is taken directly from the regime provided for by the general regulation on vertical agreements, Regulation (EC) No 2790/99. The scope of the agreements is extended to include two or more companies operating at different levels in the production or distribution chain, increasing the opportunities for market operators to buy, sell, or resell motor vehicles, spare parts or repair or maintenance services.

4.3.2. The Committee therefore welcomes the fact that the new regulation includes vertical agreements made between groups of retail dealerships and their members or between such groups and their suppliers, bearing in mind the fact that the Committee specifically requested this in its opinion on the vertical restraints regulation.

4.4. *Market share thresholds [Article 3 (1), (2) and (3)]*

4.4.1. The Commission has chosen to introduce market share thresholds to reflect the fact that the efficiency-enhancing effects of motor distribution agreements will outweigh the anti-competitive effects only to the extent that the market power of the undertakings is curbed by inter-brand competition in the industry. The Committee accepts the need for market thresholds and quotas.

4.4.2. It welcomes the 40 % threshold for quantitative selective systems as well as the sensible decision not to introduce a threshold for qualitative selective distribution agreements. It also accepts the logic of the 30 % market share thresholds for exclusive distribution and exclusive supply agreements.

4.4.3. The Committee would however make the following observation. The Commission uses market share thresholds as an approximation of market power and not as a completely reliable measure. It is a convenient approximation for the Commission and an inconvenient one for the parties concerned. They should be allowed some degree of flexibility at the margins of the market share thresholds in recognition of this fact.

4.5. As already stressed in the previous opinions, on the subject of market shares, the Committee believes it is essential that companies have access to the necessary interpretative instruments, such as special guidelines for the accurate identification of the relevant product and geographical market, in order to enable companies to conduct independent assessments of the market effects of agreements with the highest possible degree of legal certainty.

4.5.1. The guidelines should provide precise explanatory notes, including specific examples of market share calculations for agreements at European, national and regional level, thus increasing companies' legal certainty.

4.6. With reference to the Communication on 'agreements of minor importance' [1], the Committee invites the Commission to clarify in the guidelines whether market share thresholds should apply to motor vehicle distribution agreements.

4.7. *Termination of distributorships [Article 3 (5) and (6)]*

4.7.1. The Commission has proposed three safeguards for distributors in the event of termination by the supplier.

4.7.2. The first, described in Article 3(5), obliges the supplier to agree in the contract to give detailed reasons for termination. Those reasons cannot include reasons prohibited by Articles 4 or 5.

4.7.2.1. The Committee agrees with this condition because it acknowledges the need for dealers to have the minimum protection of being given detailed reasons for termination, and above all because it prevents the supplier from terminating the agreement because of practices that cannot be restricted within the meaning of the regulation.

4.7.2.2. The Committee recommends that, to avoid the supplier using spurious reasons where adequate compensation is not provided for, the supplier's reasons must be objective, non-discriminatory and transparent.

---

[1] OJ C 368, 22.12.2001.

4.7.3. The second safeguard [Article 3(6)] is that suppliers must give two years notice of termination but may reduce that period of notice to one year where they are required by law or agreement to pay appropriate compensation on termination or if they claim it is necessary to reorganise the whole or a substantial part of the network.

4.7.3.1. The Committee has grave reservations about Article 3(6)(b). It would appear that the need to reorganise the whole or a substantial part of the network is justification for allowing one year's notice without compensation and with insufficient guarantees. This should possibly be limited to substantial reorganisation. If not, why should the supplier be freed from the obligation to give two year's notice? The distributor's hold on a distributorship is precarious enough and the investment in premises is usually sufficiently great that the two years' notice should be seen as the minimum entitlement except in extreme circumstances or where provision is made by law or agreement for adequate compensation.

4.7.4. The third condition is the requirement for arbitration of disputes between supplier and distributor. The Committee strongly supports the Commission's proposal to increase the scope of arbitration to include the issue of the termination of distributorships. The Committee is particularly pleased that the Commission responded to the Committee's suggestion for such a step in its last opinion [1].

4.7.4.1. The Committee notes that the arbitration requirement must be written into the distributorship agreement and it strongly supports that requirement since that gives some legal weight to the arbitration entitlement.

5. **Hardcore restrictions (Article 4)**

5.1. *Location clauses [Articles 4 (d) and 5 (f)]*

5.1.1. For motor vehicles other than cars, the Committee welcomes the Commission's move. However it questions the advisability of eliminating the location clause for the selective distribution of cars, as this raises significant problems of interpretation. It is difficult to see how the manufacturer can monitor adherence to the qualitative criteria regarding the establishment by the distributor of sales or delivery outlets or warehouses in other EU locations, or how this interpretation could be combined with quantitative selective distribution, which would be seriously prejudiced, if not totally undermined.

5.1.2. In addition, it cannot be ruled out that removing the clause would distort competition to the detriment of small and medium-sized companies, which would find it difficult to make use of the opportunity to locate additional sales outlets in the common market, while also encouraging the concentration of major companies, which would locate mainly in major urban areas. All this could lead manufacturers to base their distribution networks on branch offices in order not to lose control of them (Lademann study).

5.1.3. All these elements could reduce the geographical density and necessary spread of companies and lead to the creation of a genuine oligopoly in distribution with potentially distorting effects on competition and on the high quality of client/consumer relations that is characteristic of SMEs.

5.1.4. The Committee wonders whether the Commission has applied the indispensability criterion appropriately to the location clause [Treaty Article 81(3)(a)].

5.1.5. In fact, the Committee believes that the Commission's objectives of increased cross-border sales, price convergence between Member States and greater competition between distributors could be largely secured — without the addition of the location clause restriction — by the major innovations already introduced by the new regulation, namely: the liberalisation of active sales by the dealer (including Internet sales), the complete liberalisation of sales between intermediaries, the detachment of sales objectives from the individual country and dealers' freedom to treat 'corresponding goods' in the same way as goods designed for their own market [Article 4(f)].

5.1.6. Only if the major innovations mentioned above do not produce the desired effects of price convergence, market integration and intra-brand competition should the Commission reserve the right to conduct a further examination as part of the periodic evaluation of the working of the new regulation, and then at that stage if necessary introduce a ban on location clauses and thus the possibility for distributors to locate their sales outlets away from their place of establishment.

5.2. *Intermediaries*

5.2.1. Taking on board the request made by the Committee in last year's opinion, the Commission plans to bolster the role of intermediaries (Recital 14) by opening up to new instruments (Internet) to allow consumers to benefit from price differences in the common market.

[1] Point 5.11 of the ESC opinion, OJ C 221, 7.8.2001.

5.2.2. The Committee is clearly pleased with this approach. It would note however that the abolition of the current 'notices' on the role of intermediaries [1] creates a legal void that the Commission will have to fill by adopting guidelines to define procedures for Internet use, where e-commerce is concerned, and the mandate and role of intermediaries, so as not to adversely affect the Commission's aim of stimulating active sales and the integration of markets by means of parallel trade, and also to prevent the illegal use of producer and distributor brands by intermediaries.

6. **After-sales services [Article 4 (1)(g)]**

6.1. The Committee notes that the new regulation allows the dealer to choose whether to provide after-sales services or to subcontract them, informing the consumer of the address of the authorised garage.

6.2. On this note, the Committee would point out that it addressed this issue in its opinion of last year (points 6.4.6 and 6.4.7) and came to the conclusion that the best way of protecting consumer interests was the necessary sales/after-sales service link for new vehicles, owing to the necessarily high levels of service in terms of quality and safety provided free of charge during the warranty period throughout the EU.

6.3. The Committee notes that Recital 18 of the new regulation repeats the obligation for dealers and repairers to provide services free of charge during the warranty period. It would also point out that the Lademann and Andersen studies confirmed that the natural place for after-sales services is with the seller.

6.4. The Committee is however concerned by the negative consequences that could arise from the Commission proposal as a result of:

— the abolition of the location clause and the resulting risk of a concentration of servicing centres in large urban areas;

— the failure to provide services in proximity to consumers;

— the loss of the broad geographical spread of companies nationally and on the road network;

— the loss of dealers' control over the fragile after-sales services sector and of their direct responsibilities regarding the consumer and the manufacturer;

— the demand for constant improvement of the quality of the service product;

— the implementation difficulty arising from the seller's responsibility within the meaning of Directive 99/44/EC, should the dealer lose control over servicing;

— the risk of free-riding;

— and above all, to conclude, the loss of the benefits of consumer protection, and technical/safety and commercial efficiency provided by a network that makes the most of the sales/after-sales link for new vehicles.

6.5. In view of these dangers and in line with its previous opinions, the Committee is convinced that it would be preferable for dealers to maintain responsibility for the sales/after-sales services link at least for the warranty period for new vehicles. Those services should be supplied to all European consumers throughout the EU in line with common quality standards for each brand, by evenly spread networks of distributors and authorised repair garages. The best way would be to allow manufacturers to choose where to locate service plants for dealers and repairers, in accordance with the selective, qualitative and quantitative distribution system.

6.6. However, the Committee feels that independent repairers (Article 4(2)) should have access to all the technical information necessary, diagnostic and other equipment, tools, including all relevant software, and the training necessary to provide high-quality services in order to raise competition levels on the service market for cars in use, as an alternative to the post-warranty services offered by the official network.

6.7. On the subject of spare parts [Article 4(1) (i)(j) and (k)], the Committee welcomes the provisions made in the new regulation as they strengthen the conditions for improving transparency and access to the market for original spare parts and equivalent products. This should entail greater competition on the market between producers, and official and independent repairers, which will inevitably be reflected in the final prices, to the benefit of the consumer.

6.7.1. The Committee would recommend using the guidelines to clarify the concept of equivalence, who is responsible for certifying it and how to proceed.

[1] OJ C 17, 18.1.1985 and OJ C 329, 18.12.1991.

7. **Multi-branding (Article 5 (a), Recital 26)**

7.1. The new regulation promotes the right conditions for nurturing the establishment of multi-brand sales outlets. The Committee supports this initiative, which should be designed to strengthen the position of the distributor and benefit consumer choice. It is nevertheless necessary to provide for measures to properly safeguard brand identity, a vital asset for the European industry in competition on the global market.

8. **Non-application (Article 8)**

8.1. In view of the nature of the motor vehicle distribution system, cumulative effects will be a distinguishing feature of the sector. The Committee would recommend using appropriate guidelines to clarify the anti-competitive elements that would justify non-application of the regulation.

9. **Transitional period (Article 12)**

9.1. The Committee believes that, in view of the new legislative set-up and the changes required of manufacturers and distributors, the planned one-year transition period should be extended to 18 months and the new rules on the termination of contracts should apply, not least to avoid large-scale network restructuring on the part of manufacturers and a consequent increase in disputes.

10. **Conclusions**

10.1. The Committee recognises that the Commission intended the new block exemption regulation to give the motor vehicle system a new innovative tool, to improve its interpretation and anticipation of changes in the market and consumer requirements.

10.2. The Committee is glad to see that many of the suggestions it made in its previous opinion on the subject have been taken up in the new proposal, which recognises, beyond the goal of promoting efficient competition on the markets, the need to provide consumers with proper safeguards in relation to the special nature of motor vehicles as goods, which as an instrument of mobility, must provide quality, reliability and safety over time.

10.3. The comments made in this opinion are designed to adjust, better define and flesh out the legislative framework for this complex regulation, which governs a sensitive area of Europe's social and economic life.

10.4. The goal is a tool that should benefit consumers in a practical way, offering them greater freedom to choose products and services from throughout the common market; to this end, it should enable companies, and SMEs in particular, to operate with a high level of legal certainty on a market where sustainable competition conditions encourage growth and employment.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the establishment of a Community framework for noise classification of civil subsonic aircraft for the purposes of calculating noise charges'

(COM(2001) 74 final — 2001/0308 (COD))

(2002/C 221/05)

On 29 January 2002 the Council of the European Union decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Union, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 April 2002. The rapporteur was Mr Green.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 96 votes to zero, with two abstentions.

1. Background

1.1. In its Communication on Air Transport and Environment [1] the Commission proposed the introduction of economic incentives designed to reward the best technology and to punish the worst.

1.2. The present initiative is based on the recommendation on noise charges adopted in June 2000 by the Directors General for Civil Aviation of the European Civil Aviation Conference (ECAC).

1.3. As Community airport charging systems differ from one Member State to another, the introduction of a common framework for aircraft noise classification should enhance transparency, fairness of treatment and predictability of the noise component of the airport charges.

2. The Commission proposal

2.1. The Commission proposal incorporates the general principles of ICAO (International Civil Aviation Organisation) charging policy, namely transparency, cost-relatedness and proportionality between noise charges and noise impact.

2.2. The proposal also recommends the application of the principle of revenue neutrality, which implies that the sum of noise surcharges and rebates should not exceed the cost of provision of the service.

2.3. The common framework is established for charging purposes only, and could not be used for operating restrictions.

2.4. The proposal is based on the absolute noise performance of individual aircraft as measured by ICAO for aircraft noise certification. It makes the distinction between aircraft noise at departure and at arrival.

2.5. The variation between the minimum and maximum noise charges should be no more than 1:20.

2.6. The proposal also contains a discretionary provision on information to the public, concerning the noise productivity of aircraft (i.e. the noise emitted per passenger or tonne of cargo).

2.7. Moreover, a regulatory committee is to be set up to assist the Commission in ensuring that the directive refers to the most recent edition of Annex 16 — Vol. 1 to the international civil aviation convention.

3. General comments

3.1. The EESC welcomes and supports the Commission's proposal for a common classification of aircraft noise, as this contributes to harmonising the existing systems.

3.2. The EESC however underlines that the responsibility for decision to introduce noise charges in order to address noise problems at airports remains with the Member States.

3.3. The EESC therefore insists that the common framework should not be interpreted as an invitation to introduce aircraft noise charges at airports where there is no noise problem.

3.4. The proposed Community framework for noise classification seems complicated, as at each airport extremely detailed information is needed on each aircraft's registered noise data.

---

[1] COM(1999) 640 final.

3.5. The noise charge could be adjusted to take account of the fact that large aircraft make less noise per unit of load (whether passengers or freight). This is not clear from the form contained in the annex. The adjustment could be made in the form of a discount for the aircraft in question, after prior consideration of each airport's specific circumstances.

3.6. The introduction of charges in some airports can lead to airlines using their noisier aircraft on routes between airports with no noise charges; thus all airports should consider against this background to what extent noise charges are to be introduced.

Brussels, 29 May 2002.

4. **Specific comments**

4.1. The only remark concerns the ratio of 1:20 between the maximum and minimum charges (Article 3.3 of the proposal). Such a variation should not be limited to 'a given time period', but should apply on a 24-hour basis. This means for example that the maximum charge for a night flight could not be more than 20 times the minimum charge for a day-time flight.

4.2. The EESC therefore proposes the deletion of the words 'within a given time period' in Article 3.3.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport'

(COM(2001) 573 final — 2001/0241 (COD))

(2002/C 221/06)

On 24 October 2001 the Council decided to consult the Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 April 2002. The rapporteur was Mr García Alonso.

At its 391st plenary session on 29 and 30 May 2002 (meeting of 29 May) the Economic and Social Committee adopted the following opinion by 94 votes to 1, with 3 abstentions.

1. Introduction

1.1. The need to update Regulation (EEC) No 3820/85 follows the amendment of Directive 93/104/EC (the Working Time Directive) by Directive 2000/34/EC, which lays down the minimum requirements applicable to mobile workers in the road transport sector. One reason is that the rules on working time set out in the aforementioned directive and the rules on driving time set out in the regulation are directly connected, and the provisions of both on common matters must therefore correspond.

1.2. It is thus important to acknowledge and thank the Commission for its efforts in adopting this proposal for amendment, the main objectives of which — harmonisation of the conditions for competition, improvement in working conditions and in road safety — the Committee fully supports.

1.3. The Committee considers, nonetheless, that the proposal could be improved in certain respects: in terms of wording, to clarify certain concepts, and to a lesser extent in terms of content, to facilitate implementation and compliance and improve road safety in a sector which, it must be remembered, provides a service of general interest. This factor often has a decisive influence on the decisions of businesspeople, and thus on the interests of workers, vis-à-vis the quality services requested by customers.

1.4. The European Economic and Social Committee's final proposal seeks to strike an appropriate and reasonable balance in a sector where the rules must allow for a certain degree of flexibility and acceptable social conditions are required. This will facilitate effective and uniform implementation of the regulation, which must also be tailored to the continuing changes in the sector and encourage good practice.

2. Introductory comments

2.1. The Committee welcomes the proposed amendment of Regulation (EEC) No 3820/85, designed to facilitate harmonisation of various aspects of social legislation on driving time, breaks and rest periods upon introduction of the digital tachograph. However, it would draw attention to the continuing difficulties with regard to adoption at Community level of the digital tachograph technical annex, and the corresponding lack of knowledge regarding the technical requirements of the new equipment, which have to some degree influenced amendment of the current Regulation (EEC) No 3820/85.

2.2. While the road transport sector has certainly undergone significant changes in the seventeen years since Regulation (EEC) No 3820/85 was adopted, it is important to stress that many of the changes in the sector have benefited the driving profession. Vehicles are more technically advanced and road infrastructure is better, which has improved drivers' working lives. But there are also problems, such as those connected with traffic, congestion, stress and unfair competition, which must be overcome.

2.3. The EESC welcomes the new paragraphs in Article 10 on the responsibility of the employer of giving the driver the possibility to be able to follow the driving time rules. Article 10 now regulates the division of responsibilities between driver and employer in a clear way which is a noticeable improvement compared with the previous wording of this article.

2.4. The EESC also welcomes the new paragraph on responsibility for the total distance driven in a day even if this covers several Member States.

2.5. The EESC supports the creation of a special advisory committee on the implementation and control of this new amended regulation. If its work is connected to the meetings between the social partners in the road transport sector this will create possibilities for a good implementation and interpretation of the regulation.

2.6. Some difficulties in interpretation have highlighted the question of driving time for drivers excluded from the scope of the proposal, e.g. those providing passenger services whose route does not exceed 50 km, but who also provide services falling within the scope of the proposed regulation. At this juncture, it is necessary to consider what other measures, aside from the tachograph, the Community institutions should adopt to address the issue of the total daily driving time of drivers providing both a service that is excluded from the rules and one that is included in the scope of the proposal.

2.7. It is possible to reduce further still the number of exceptions provided for by the regulation. For example, there are no grounds for excluding the transportation of circus equipment listed under Article 3. This article suggests that the rules apply to vehicles rather than to driving time.

3. **Comments on the text of the proposal**

Chapter I. *Introductory provisions*

3.1. The proposal for a regulation details the different concepts to which it applies. In this regard the following improvements are proposed: In Article 1, 'methods of (...) transport' should be replaced by 'modes of (...) transport'.

3.2. In Article 2(1)(a), '3,5 tonnes' should be replaced by '2 tonnes', as statistics show that there is a high accident rate in the 2 — 3,5 tonne goods transport vehicle sector.

3.3. In Article 4(4) concerning breaks: a 'break' should be defined as follows: any period of time during which a driver does not carry out any other work.

3.4. The following changes are proposed with regard to the daily rest period referred to in Article 4(7): 'daily rest period' means the period of time of which the driver may freely dispose, be it a 'regular daily rest period' or a 'reduced daily rest period.'

3.5. Similarly, with regard to the weekly rest period referred to in Article 4(8), the following small changes are proposed: 'weekly rest period' means the period of time of which the driver may freely dispose, be it a 'regular weekly rest period' or a 'reduced weekly rest period'.

3.6. The notion of 'regular' services should also include 'special-use regular services', such as services for workers or schoolchildren, which also have a regular timetable, schedule, route, etc., as referred to in Article 2(1), subparagraph 2, indents a, b and c of Council Regulation (EEC) No 684/92 of 16 March 1992.

3.7. Article 4(14) should close with the phrase 'who also drives the vehicle'. The wording of Article 4(15) should be more specific, particularly from a professional perspective.

3.8. With regard to the scope, the following wording is proposed: vehicles used for the carriage of passengers on services within a 50 km radius.

3.9. Under Article 3(5) the phrase 'owned or hired in without a driver by the State' should be deleted, since whether the vehicle is owned or rented is immaterial to the aims of the proposal. The text would thus read as follows: 'Specialised vehicles used for medical purposes'.

3.10. Concerning Article 3(7), the phrase 'operating within a 50 km radius of their base' should be replaced by 'operating within a radius of not more than 50 km from their base'.

Chapter II. *Crew, driving times, breaks and rest periods*

3.11. Article 5 makes no reference to a minimum age for drivers, from which the Committee concludes, in the context of the current debate within the Community institutions on the directive on vocational training for drivers, that drivers could be as young as 18. This measure could be extremely positive for the sector and for job creation in general, given the current shortage of drivers.

3.12. For this reason, it is proposed to delete paragraphs 1 and 2 of Article 5 of the proposal in relation to conductors and driver's mates, since if the age threshold for the largest category (drivers) is removed, it seems logical also to remove that for those less involved in the actual transportation, i.e. conductors and driver's mates, who would be subject to general national employment law.

3.13. The Committee has no objection to the new wording of Article 7(1) and (2), but considers it essential to retain the possibility of splitting breaks, which also facilitate improved service (particularly in passenger transport) and help to improve levels of road safety. It is thus proposed to include under Article 7 a third paragraph, to read as follows:

'In the case of regular passenger services, the breaks referred to in previous points may be broken down into periods of at least 15 minutes each, interspersed throughout the driving time.'

3.14. In the closing sentence of Article 8(6), 'is stationary' should be replaced by 'is stationary in the case of the daily rest period, or parked in the case of the weekly rest period'. It is preferable for the weekly rest period to be taken outside the vehicle.

Chapter III. *Liability of the undertaking*

3.15. Article 10(4) establishes that transport undertakings are liable for infringements committed by drivers for the benefit of those undertakings, even if the driver was not present on the territory of the Member State at the time of the infringement. The limits to the application of this rule should be considered and defined more specifically, for example in the case of subcontracted services.

3.16. Amendments are proposed to make Article 11 clearer. There should be a reference to the regulation, thus: 'than those laid down in Articles 6 to 9 inclusive of this Regulation to carriage by road.'

Chapter V. *Control procedures and penalties*

3.17. Article 19(2). Replace by the following: 'the penalties shall include the possibility of immobilisation and removal of the vehicle for serious infringements'. The EESC supports harmonisation of infringements and penalties by means of a new directive on driving and traffic.

3.18. The EESC calls on the Commission to consider involving the social partners in implementing the regulation, in particular Articles 22 and 23.

3.19. In Article 23(1), 'may bring (...) to the attention of the Commission' should be replaced by 'may refer (...) to the Commission'.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council revising Annex I of Decision 1336/97/EC on a series of guidelines for trans-European telecommunications networks'

(COM(2001) 742 final — 2001/0296 (COD))

(2002/C 221/07)

On 18 January 2002 the Council decided to consult the Economic and Social Committee, under Article 156 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 April 2002. The rapporteur was Mr Retureau.

At its 391st plenary session held on 29 and 30 May 2002 (meeting of 29 May) the Economic and Social Committee adopted the following opinion unanimously.

1. Presentation of the TEN-Telecom programme

1.1. The TEN-Telecom programme concerns public services, especially in spheres where Europe has a competitive advantage. The aim is to accelerate the implementation of services in order to promote the European social model, i.e. a society characterised by cohesion and social inclusion.

1.2. This programme is part of the e-Europe initiative to realise an 'information society for all'. To this end it is designed to promote services of public interest which will help prevent the opening of a 'digital divide' and promote participation of all citizens in the information society.

1.3. The programme provides for assistance before the critical phase of launching a new service, so that the private or public investors concerned can take informed decisions in advance, e.g. on the basis of a financial assessment. During the initial phase, i.e. the commercial and budgetary assessment, up to 50 % of the anticipated costs of the projects selected can be funded through the programme. During the actual launch phase of the project, up to 10 % of the investment needed to get the service up and running can be provided.

1.4. TEN-Telecom can also play a role in cohesion policy, helping ensure that public authorities and other players concerned make services accessible to users at risk of marginalisation (people with physical disabilities, people who are socially marginalized, belong to disadvantaged groups or live in remote or sparsely populated areas, etc.).

1.5. The purpose of TEN-Telecom is thus to help move services of public interest from the planning stage to the operational stage.

1.6. The Committee has been asked to give an opinion on the Commission's three-yearly report on the progress and effectiveness of the programme [1], as well as the proposed changes to Annex I of Decision 1336/97/EC [2].

1.7. The Committee has already issued a number of opinions on policies and programmes relating to the information society and telecommunications, and on funding likely to be made available to develop these, including the decision on TEN-Telecom mentioned above. Two new opinions are also currently being prepared by the TEN section on issues relating to the area likely to be covered by TEN-Telecom measures [3]. There is therefore no point in discussing once again the policies and guidelines relating to issues addressed in these

---

(1) Report on the implementation of Decision 1336/97/EC on a series of guidelines for trans-European telecommunications networks, Brussels 10.12.2001, COM(2001) 742 final (2001/0296 (COD)) presented by the Commission.

(2) Decision of the European Parliament and of the Council revising Annex I of Decision 1336/97/EC on a series of guidelines for trans-European telecommunications networks (same reference as the above-mentioned report).

(3) ESC opinion on the Proposal for a Council Regulation (EC) laying down general rules for the granting of Community financial aid in the field of trans-European networks (COM(94) 62 final — 94/0065 SYN). OJ C 195, 18.7.1994.
ESC opinion on Towards the Information Society — Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on a methodology for the implementation of information society applications; Proposal for a European Parliament and Council Decision on a series of guidelines for trans-European telecommunications networks (COM(95) 224 final). OJ C 39, 12.2.1996.
ESC opinion CES 524/2002 of 25 April 2002 on Extension of the trans-European networks to the island regions of Europe (own-initiative opinion).
ESC opinion 347/2002 on the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2236/95 laying down general rules for granting of Community financial aid in the field of trans-European networks (COM(2001) 545 final — 2001/0226 (COD)).

previous opinions, or in pre-empting the final content of the opinions in preparation. The institutions concerned are asked to take these into consideration as background to the analysis and recommendations that follow on the two subjects of this opinion: the Commission report and the revisions to Annex I of the above-mentioned decision.

2. **The Commission's proposals**

2.1. *Three-yearly report on the TEN-Telecom programme — description and assessment of the programme*

2.1.1. The Commission's report looks at how the programme has worked over the past three years, and considers an interim assessment of the programme by an independent external consultant and the Court of Auditors' Special Report No 9/2000 on TEN-Telecoms ([1]).

2.1.2. The aim of the programme is to promote an information society open to everybody. It provides funding for a certain number of strategic areas, organised on three levels (applications, generic services and basic networks), as defined in Annex I, and supports services of public interest that are not in competition with commercial services.

2.1.3. For the period 1998-2000 (three years) the budget was EUR 92,8 million, almost half of which was for the third year. There was a substantial time lag between commitments and payments, and active steps must be taken to rectify this.

2.1.4. Eligible projects are selected on the basis of calls for proposals for specific areas. The first call was at the level of 'basic networks'; the next calls were at the level of generic services and applications, and in 1998 a supplementary rolling call was issued for coordination and support actions.

2.1.5. External evaluators help the programme staff to evaluate projects put forward. The procedure for evaluating and assessing projects is undergoing revision owing to criticism voiced about the short deadlines for studying proposals, the general nature of certain evaluation criteria and the risk of projects falling between areas being at a disadvantage.

2.1.6. Half of the programme participants are from private companies, some representing large high-technology companies in the telecoms and IT sectors. 57 % are SMEs. Almost half of the projects also benefit from other sources of Community funding. The majority of participants consider financial aid received to have been a decisive factor in launching the project.

2.1.7. Most of the proposals concern the technical and commercial feasibility and validation of projects, which are eligible for 50 % funding, as opposed to 10 % for deployment, while support actions submitted in 1998 receive 100 % funding.

2.1.8. Although the technical quality of projects selected has generally been satisfactory, the business plans have been rather weak in a number of areas. However, the technical assessment of the projects shows that they are having a significant impact on the launch of the e-Europe initiative ([2]). They really are facilitating the transition to an information society for all, which is the objective of the programme. However, the assessments show that efforts should be better targeted and tightened up.

2.1.9. The Court of Auditors emphasises especially the need to avoid overlaps with the Research Framework Programme and other sources of Community funding, and to adopt more rigorous procedures for monitoring the projects.

2.1.10. The external evaluation recommended that marketing of the programme be stepped up and noted the low number of deployment projects funded under the programme.

2.2. *Future measures proposed by the Commission*

2.2.1. The Commission proposes the following measures:

a) increasing the number of deployment projects on the basis of a number of initiatives;

b) reducing the cost of entering the evaluation phase by applying a two-stage procedure, with preliminary selection of projects based on a brief presentation followed by a complete presentation of the projects selected;

c) fixing in advance the timetable for calls for proposals and increasing the frequency of calls;

d) reducing to nine months the time between publishing a call and signing a contract;

([1]) Court of Auditors Special Report No 9/2000 concerning trans-European networks (TEN) — telecommunications, accompanied by the Commission's replies, OJ C 166, 15.6.2000.

([2]) See ESC opinion on eEurope 2002 — An information society for all — Draft Action Plan (COM(2000) 330 final), OJ C 123, 25.4.2001.

e) raising the maximum level of support from 10 % to 20 % in cases where projects are intended to establish trans-European services;

f) testing a contract that combines the two types of activities receiving support — technical and commercial feasibility and validation on the one hand and deployment on the other — to avoid delays in implementing projects;

g) increasing the number of projects involving public administrations

In the context of the information society for all, the aim will be to promote projects relating to innovative systems and services in order to enhance the accessibility and efficiency of public administration at every level;

h) interconnection and interoperability of networks

This support would replace more general assistance provided for basic networks by promoting the interconnection and interoperability which are essential for the functioning of services of public interest;

i) coordination with other actors

Complementarity with other programmes (IST pilot actions and take-up measures) to ensure an optimum synergistic effect.

An effort will be made to coordinate with other relevant players in the Commission through inter-programme groups, e.g. the other TEN programmes, the Structural Funds, the Competitive and Sustainable Growth programme, the IDA programme and the Socrates programme, in order to avoid overlaps and develop synergies.

More active coordination with the EIB in particular should allow co-financing of projects. A working group will be proposed under the Innovation 2000 initiative based on common ground in areas such as 'New information and communications technology networks' and 'Diffusion of Innovation';

j) Programme administration and project monitoring.

2.2.2. Project monitoring procedures will be tightened and clearer guidelines on allowable costs will be provided. Project selection procedures will be simplified.

a) There will be more on-site technical and financial audits in order to avoid irregularities such as those noted by the Court of Auditors, and deployment projects will be considered at an early stage, before substantial resources have been committed.

b) Precise definitions will be given and distinctions drawn between different types of costs.

c) Evaluations will be carried out by user groups in deployment projects.

d) There will be an obligation to provide feedback on results achieved after the period of Community support has ended.

e) Applicant countries will take part.

The provision covering participation of these countries under the planned package will be revised in order to increase their involvement in the programme.

f) Establishment of a clear profile

The initiative will be more clearly defined and presented, and its title will be more precise (e-TEN) in order to bring it within the scope of the e-Europe initiative. The number of areas concerned will be reduced from 18 to seven (revision of Annex I).

g) Communication

Communication relating to the programme will be stepped up, and the public authorities, NGOs and associated commercial parties providing services of public interest will be consulted in the framework of a more forward-looking strategy. A clear and simplified guide will be published for proposers.

2.3. *Proposed revision of Annex I*

2.3.1. The explanatory memorandum essentially summarises the report (focus, elimination of duplication and funding overlaps, reducing the number of areas, increasing funding for trans-European deployments, emphasis on the trans-European dimension, distinction between e-TEN and IST (information society technologies) to promote innovative services of general interest — both those provided by the public sector and those provided by public-private partnerships — and targeted support for interconnection and interoperability of networks).

2.3.2. The explanatory memorandum also discusses two issues that are important for the future direction of the programme:

— taking into account the new area of mobile services and the multimedia dimension;

— the emphasis on network security policy, in line with the policy being developed by the Commission in this sphere [1] in order to promote confidence and intra-European cooperation, including specific proposals for setting up networks.

2.3.3. The comitology procedure will be adapted in accordance with Declaration No 2 of the Council and Commission concerning Council Decision 1999/468/EC, and Article 8(2) will thus be amended to introduce the regulatory procedure.

[1] See ESC opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on network and information security: proposal for a European policy approach (COM(2001) 298 final), OJ C 48, 21.2.2002.

2.3.4. Annex I then identifies the projects of common interest covered by the programme. The general section recapitulates the ideas set out in the report on the structure of the programme, and recalls the coherent structure based on three levels of e-TEN: applications, generic services, interconnection and interoperability of networks.

2.3.4.1. Priorities for applications

— online government and administration;

— health;

— disabled and elderly;

— learning and culture.

2.3.4.2. Priorities for generic services

— advanced mobile services (location-based, personalised and context-sensitive services), navigation and guidance, traffic and travel information, network security and billing, m-commerce, m-business, mobile work, learning and culture, health and emergency services;

— trust and confidence services: security is a major challenge for the future of networks, and support for services of general interest concerns all aspects of security, including cooperation for effective networking within the EU on national CERT systems.

2.3.4.3. Priorities for interconnection and interoperability of networks

— interconnection and interoperability are a prerequisite for effective trans-European services;

— projects concerning the development and enhancement of telecommunications networks will receive particular scrutiny to ensure that there is no interference with free market conditions.

2.3.4.4. Supplementary support and co-ordination actions

These concern the provision of an appropriate environment for realising the projects, enhancing programme awareness, achieving consensus on stimulating and promoting new applications and services, in conjunction with programmes from other areas, and developing broad-band networks, including:

— strategic studies on new specifications in order to promote good investment decisions;

— establishment of common specifications based on European and world standards;

— stepped up cooperation with players in the sector, e.g. public-private partnerships;

— coordination of activities promoted by the decision and related Community and national programmes.

3. **General comments**

3.1. *The Committee's comments on the report*

3.1.1. The Committee welcomes the greater emphasis of the programme on access for all to the information society, especially to better meet the needs of citizens and SMEs.

3.1.2. It believes that developing synergies with other programmes relating to the TENs will increase the effectiveness of measures while avoiding waste of money and effort.

3.1.3. The Committee encourages the effort to make communication more targeted and efficient in order to generate applications that meet the social objectives of the programme, and agrees with changing the acronym to e-TEN, thus linking the programme simultaneously to the TENs as a whole and to the e-Europe initiative.

3.1.4. Finally, the Committee welcomes the programme's emphasis on public services and developing cooperation with players involved in providing services of general interest (SGIs), on the understanding that the programme will endeavour to prioritise the services that are of greatest social interest.

3.2. *Comments on the proposed changes to Annex I*

3.2.1. The Committee fully supports the emphasis on security, interoperability and interconnection of networks in conjunction with the effort to develop European and global specifications; also the link between generic services that are to be developed and realisation of an information and knowledge-based society which everybody has equal opportunities to access and use, regardless of any physical disability or difficulty, with a sustainable development dimension in respect of navigation and guidance systems that can substantially improve TEN transport logistics and encourage multimodality; and all the other priorities and objectives of the programme.

3.2.2. The Committee also fully supports the procedure for regulating and extending financing in two directions (deployment and applicant countries).

4. **Specific comments**

4.1. The programme was launched before the internet explosion, and the development and potential of the internet as a tool must be borne in mind, as well as developments in mobile telephony, which is entering a new generation. The multimedia character of content must also be taken into account. To allow access to richer and more varied content, high-speed internet access must be considered an imperative and form part of the service of general interest in the field of communications.

4.2. It is also important to promote access to NICT [1] for people who are still excluded owing to disability, age, unfavourable socio-economic situation or geographical isolation or distance (islands, peripheral regions). Projects should promote use of the WAI code [2]. Priority should be given to projects that answer these needs.

4.3. Local and regional, professional, health, education and training organisations should be enabled to participate in projects and to make proposals with a view to meeting the requirements of their members or users. The information and knowledge-based society must not leave anybody behind, and efforts should focus on access for all to knowledge, initial and continuing training programmes for employees, entrepreneurs and civil servants. Particular attention should be paid to integrating people who have difficulty accessing new technologies.

4.4. At the same time, links between NICT and territorial and local development policy should be strengthened, with the aim of achieving cohesion and sustainable development, and to combat depopulation in certain regions, such as upland areas, ultra-peripheral or isolated regions. Thus cohesion and the needs of disabled or elderly people should be among the main criteria used to evaluate projects.

4.5. Questions of network security and protection of personal or sensitive data in the spheres of e-administration, particularly in the framework of the IDA II programme [3] for the exchange of documents between the administrations of the Member States, health and social protection must also play an important role in relevant programmes, especially after the events of 11 September and with the threat of cyber-terrorism from various sources.

(1) New information and communication technologies.

(2) See ESC opinion on Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on eEurope 2002: Accessibility of Public Web Sites and their Content (COM(2001) 529 final, OJ C 94, 18.4.2002).

(3) Proposal for a Decision of the European Parliament and of the Council amending Decision 1719/1999/EC on a series of guidelines, including the identification of projects of common interest, for trans-European networks for the electronic interchange of data between administrations (IDA) and the Proposal for a Decision of the European Parliament and of the Council amending Decision No 1720/1999/EC adopting a series of actions and measures in order to ensure interoperability of and access to trans-European networks for the electronic interchange of data between administrations (IDA) — (COM(2001) 507 final — 2001/0210 (COD) — 2001/0211 (COD)).

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC'

(COM(2001) 581 final — 2001/0245 (COD))

(2002/C 221/08)

On 11 December 2001 the Council decided to consult the Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 May 2002. The rapporteur was Mr Gafo Fernández.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 93 votes to one, with four abstentions.

1. Introduction

1.1. In March 2000 the European Commission published a Green Paper on greenhouse gas emissions trading within the European Union. This Green Paper launched a far-reaching and open debate with the various stakeholders in European civil society, many of whose suggestions are included in this draft directive. The Committee also had the opportunity to issue an opinion on the Green Paper [1].

1.2. The scheme for greenhouse-gas emission allowance trading, together with the Joint Implementation Mechanism and Clean Development Mechanism of the Kyoto Protocol, are designed to reduce the cost and macroeconomic impact of implementing the Agreement and thereby facilitate compliance by the signatory states.

1.3. The Kyoto Protocol will not be legally binding until 2008. However, the European Commission has decided to bring forward the implementation of this mechanism at Community level to 2005, so as to have sufficient time to run it in and, if necessary, fine-tune it before it officially enters into force.

1.4. There are two reasons why a legislative system needs to be set up at Community level. Firstly, it will harness synergies to reduce costs overall; this would be much more difficult to achieve if the Member States were acting individually. Secondly, it will prevent the economic fragmentation of the emissions market and the Member States possibly drawing up national criteria that distort competition.

1.5. Central to the scheme are the concept of emission allowances, the greenhouse gases concerned, and the sectors and/or installations covered by the Directive.

1.6. The emission allowance is the amount of greenhouse gases that an installation is authorised to emit into the atmosphere over a given period of time, as granted by the competent authority in the Member State.

1.7. With regard to the six greenhouse gases covered by the Kyoto Protocol, the Commission has decided that the scheme will initially cover CO_2 alone in order to simplify the initial implementation of this mechanism and owing to the difficulty of monitoring, at the moment, emissions of the remaining gases.

1.8. With regard to the sectors and installations covered by the Directive, Annex 1 lists them as energy activities (with a rated thermal input exceeding 20 MW), the production and processing of ferrous metals, the mineral industry, and the production of pulp and paper. CO_2 emissions from thermal installations exceeding 20 MW in sectors not mentioned in this Directive are, however, also covered by it.

1.9. The scheme is based on four key areas: (i) a national emissions allocation plan, (ii) a system of individual permits, (iii) a system for monitoring compliance, including the use of penalties, and (iv) a mechanism for emissions trading between the participating entities.

1.10. The national allocation plan will be drawn up for the initial period 2005-2008, and for each subsequent five-year period. For each period, each Member State will determine the total quantity of emission allowances to be allocated and the national allocation criteria. After 2008, the Commission will specify a harmonised method of allocation.

[1] OJ C 367, 20.12.2000, p. 22.

1.11. The granting of emission allowances begins with an application by the installation operator to the competent authority to be issued with an emissions permit based on the productive and technical parameters of the installation. The competent authority will issue an individual emissions permit, allocating emission allowances free of charge during the 2005-2008 period, and will stipulate emissions monitoring requirements and the operator's annual obligation to surrender a number of allowances, either their own or of a third party, equal to their total emissions during the preceding year.

1.12. In accordance with the guidelines for monitoring and reporting emissions adopted by the European Commission, the Member States, in cooperation with the competent authorities responsible for issuing permits, will ensure that operators comply with their emissions permits. Member States will be able to impose a penalty on operators who fail to submit for cancellation each year enough allowances to cover their actual emissions. These penalties will be lower in the 2005-2008 period.

1.13. The emissions trading scheme begins with a registry system established in each Member State, which will be standardised at Community level in the form of electronic databases. The European Commission will designate a Central Administrator to maintain an independent transaction log. Transactions will be carried out on a commercial basis by the entities or persons specifically authorised in the Directive. The details of these transactions will be private.

1.14. At international level, the Community may also conclude agreements with third countries to provide for mutual recognition between the Community scheme and schemes in third countries.

1.15. Finally, the Commission may make a proposal by 2004 to extend the scope of this Directive to include other gases and activities and may submit a report by 2006 on the application of this Directive, accompanied by proposals as appropriate.

2. **General comments**

2.1. The Committee welcomes this Directive, as it is innovative (and may, therefore, be subject to fine-tuning, on the basis of experience gained in some European Union countries) and will help to achieve — at the lowest possible cost and with the lowest impact on the economy and employment in the European Union — the national commitments to reduce greenhouse gases provided for in the Kyoto Protocol, which also provides for direct emissions trading between Member States. The Committee has always given its unreserved support to the approval and ratification of this Protocol.

2.2. However, while the Committee shares the ultimate objective of this Directive, it does have a number of reservations concerning the proposal itself.

2.3. The first discrepancy is found in the subject matter of the Directive, as laid down in Article 1. The Committee does not agree with this. As stated in the Committee's opinion on the Green Paper on this subject, the purpose of this Directive should not be to 'promote reductions of greenhouse gas emissions in a cost-effective manner' but 'to ensure that greenhouse gas emissions are reduced in a manner that is cost-effective and minimises the impact on competitiveness and overall employment in the European Union'.

2.4. Secondly, the Committee has a number of doubts concerning the coercive implementation of this Directive during the transitional period 2005-2008 (i.e. before the official entry into force of the Kyoto Protocol).

2.5. Thirdly, the Committee sees no justification for the exclusion of other greenhouse gases in the initial proposal or for the failure, as of 2008, to consider the other two flexibility mechanisms provided for in the Protocol.

2.6. The Committee also has reservations concerning the compatibility of this Directive with the functioning of the internal market and, in particular, the requirement that this system does not distort competition as a result of differing interpretations of the conditions governing emissions in each installation by the competent authorities in each country. Likewise, the Committee does not agree with the way its relation to the Directive on integrated pollution prevention and control (IPPC Directive) is defined and, in general, the fact that emissions allowances are seen as a 'burden' rather than as a 'potential benefit' for companies making an additional effort to reduce emissions. Each of these aspects will be discussed with reference to the relevant article.

2.7. The Committee therefore proposes deleting the paragraph in Article 2(2) referring to Directive 96/61/EC.

2.8. In Article 3 (Definitions), the Committee proposes the following changes:

2.8.1. 'Installation': A technical unit in a single location where one or more activities listed in Annex I are carried out.

2.8.2. Replace 'Person' by 'Operator' and define as follows: 'Any natural or legal person who can demonstrate sufficient interest in participating in this system.'

2.9. Article 6. Add the following: 'An obligation to surrender allowances or credits generated by Clean Development projects or Joint Implementation projects equal to the total emissions...'

2.10. With regard to Article 9 (National allocation plan), a number of Member States have developed their own methods for achieving national emissions objectives and thereby meet their obligations under the Kyoto Protocol. These alternative methods must be included in this Directive as flexibility mechanisms that help maintain the acquis achieved, providing that Member States can demonstrate that they are making the same effort as this Directive.

2.10.1. Installations in these countries compete mainly with enterprises outside the EU, which do not have to bear the burden of emission quota costs or taxes on emissions; thus the implementation of the directive would reduce the competitiveness of such firms.

2.11. The Committee therefore proposes completing Article 9 as follows:

2.11.1. Add two new sub-paragraphs to paragraph 1:

— Six months before 1 January 2005 and 2008, and six months before each subsequent five-year period, the Member States shall notify the European Commission of installations that they intend to include in or exclude from the scope of this Directive. These installations must be clearly identified and precise reasons given.

— The Commission, in accordance with the general procedure applicable to the National Allocation Plans, may exclude such installations from the scope of this Directive, after verifying that:

1) as a result of national policies, including sector-specific or other voluntary agreements under public supervision, these installations make an effort to reduce their emissions in such a way as to achieve the same results as this Directive;

2) these installations are subject to the same monitoring and verification procedures provided for in Articles 14 and 15 for other installations covered by this Directive.

2.12. *Article 10: Method of allocation*

2.12.1. The Commission proposes allocating emission allowances in tonnes of CO_2, and thereby limits the use of other indicators. However, other measurement systems may be appropriate for some installations.

2.12.2. Two important examples are energy efficiency objectives and those based on 'standard references' that are widely recognised and accepted as such. The proposal should therefore consider these alternatives and include them in Annex 3 as valid options for Member States within their overall strategy.

2.12.3. The proposal should also stipulate that a transitional period is needed following the entry into force of the Kyoto Protocol to assess the suitability of the method of allocation in each Member State and its compatibility with the internal market. This is necessary to verify the suitability of the mechanism and find a harmonised system at Community level that is compatible with the emission allowances mechanism provided for in the Protocol for all the signatory states.

2.13. The Committee therefore proposes the following:

2.13.1. Article 10(1): Replace with: 'Until the period beginning 1 January 2013...'.

2.13.2. Article 10(2): Replace with: 'In accordance with Article 26(2), the European Commission shall propose a harmonised method of allocation that shall be applied as of 1 January 2013 and which, in the event that a fee is charged for these allowances, must take account of energy taxes paid by companies to avoid double taxation'.

2.13.3. The Commission should also ensure that no damage is done to the internal market in the period up to 2013 and broadly speaking should, by means of the harmonised method of allocation, ensure a level playing field among Member States.

2.14. Article 12(1): Replace 'persons' with 'operators'.

2.15. Article 13. Validity of allowances. Paragraphs 2 and 3. Replace 'persons' with 'operators'.

2.16. Article 16. Penalties: The penalties provided for in this article must not under any circumstances be applied before the entry into force of the Kyoto Protocol's first commitment period in 2008. At the same time, penalties must not exclude the subsequent surrender of credits. Until 2013, therefore, penalties can only have the symbolic value of forcing operators to develop the market in allowances, without the aforementioned penalties being seen as disproportionate. Furthermore, the reference to a 'market price' is very vague owing to the fact that transactions between operators are confidential. The Committee therefore suggests the following:

2.16.1. Amend Article 16(1) as follows: '...The penalties provided for must be effective and proportionate, in accordance with the provisions of paragraph 3, and may be applied following the entry into force of the Kyoto Protocol.'

2.16.2. Amend the second part of paragraph 3 as follows: ' The excess emissions penalty shall be EUR 50. Payment....'

2.17. Annex I: In the paragraph referring to energy installations, replace 'exceeding 20 MW' with 'exceeding 50 MW'. This will focus the Directive in the initial phase on those sectors or individual installations with the highest greenhouse gas emissions without affecting small plants such as large hospitals or other installations of a similar size. The exclusive reference to CO_2 also needs to be removed so that all greenhouse gases are covered. However, the Committee also believes that the aforementioned threshold of 50 MW could be revised in 2006 in the light of new electricity production or combined cycle technologies, as part of the review provided for in Article 26.

2.18. Annex III: The following changes are proposed:

2.18.1. In paragraph 4, remove the reference excluding electricity produced from renewable energy. This will allow renewable energy sources to be included with biomass, thereby improving their market penetration and increasing security of energy supply within the European Union.

2.18.2. Add the following to the end of point (3): 'In particular, consideration may be given to other methods of allocation used by the Member States, providing these are based on widely recognised "standard references" and achieve the same results as the methods proposed in this Directive.'

2.18.3. In point (6), replace 'new entrants' with 'new companies or new installations' and complete the end of the paragraph as follows: '... Member State, or the manner in which the increased capacity of existing installations shall be considered in such a way as not to discriminate against these new activities.'

2.18.4. Include a new point (6a) as follows: 'The plan shall take account of the appropriate formulae to prevent the competitiveness of a given sector or installation being compromised disproportionately, as well as the methods used to ensure compatibility with the internal market.'

2.19. Add the following to the end of the point (7): 'Likewise, when allocating individual allowances, consideration shall be given to efforts made by the installation concerned to reduce emissions since 1990, and to the real possibilities for the sector and individual installation concerned to make additional efforts to reduce emissions.'

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and the Council amending Directive 94/62/EC on packaging and packaging waste'

(COM(2001) 729 final — 2001/0291 (COD))

(2002/C 221/09)

On 31 January 2002 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 May 2002. The rapporteur was Mr Adams.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 29 May), the Economic and Social Committee adopted the following opinion by 100 votes in favour and 3 abstentions.

1. **Introduction**

1.1. The Commission proposal is concerned with targets for the recovery and recycling of packaging waste. The objective is to continue the harmonisation of national measures with a view to reducing impact on the environment and ensuring the functioning of the Internal Market. Some measures on this issue were first introduced in 1985. Subsequently the need for comprehensive legislation on packaging and packing waste was recognised by economic operators and Member States. After extensive consultation (the Committee's Opinion of 24 March 1993 [1]) gave a positive and broad endorsement), Directive 94/62/EC was adopted. It proved to be the right policy choice. In most of the Member States the directive has been implemented successfully although this has involved recognising and transferring a large part of the costs involved in non-sustainable disposable methods to producers and consumers. Even in the less well-performing countries a positive trend has been launched. The present proposal seeks to fulfil the requirement to further increase those targets set in the first phase (to be achieved by 30 June 2001) — the new targets are to be achieved by 30 June 2006. New targets are also proposed and set for specific waste materials based in part on life-cycle assessments and cost-benefit analysis. The directive also establishes that this review and revision process shall continue to take place every five years.

1.2. The proposal does not review the basis or necessity for the need to minimise, recycle and recover packaging waste, this having been comprehensively explored in the original Directive and, by general consent, remaining an urgent environmental imperative enjoying widespread public support throughout the EU. The proposal also notes that several other current initiatives are dealing with related issues — for example the Communication/White Paper on Integrated Product Policy, the Thematic Strategy on Recycling, the Thematic Strategy on the Sustainable Use of Resources and the Directive on Electrical and Electronic Equipment. However, the current proposal does explore the effectiveness and achievability of existing and proposed targets.

1.3. This opinion adopts a similar approach whilst recognising, as does the Commission, that other aspects of the 1994 Directive, such as prevention, re-use and further work on transferring the environmental impact costs of packaging into the product cost will need to be considered urgently in the near future. Indeed, the Committee has already contributed significantly to this forthcoming debate in its Own-initiative Opinion on the Development of outlets for food and non-food packaging waste produced by Mr Verhaeghe and adopted in December 1999 [2]). That opinion remains highly relevant, covering many related issues, and is commended as a complementary view on the technical, environmental and economic issues surrounding packaging waste management and conversion of waste into secondary materials. This opinion, in its own conclusions, will therefore re-state the main points endorsed by the EESC in December 1999.

1.4. All sectors of society have been affected by this directive. It is a success story for the Commission and all those involved in its development and implementation. It has been instrumental in raising environmental awareness generally in Europe but particularly in stimulating a response in those Member States with low levels of recycling. As a result, consumers and producers, whilst recognising the benefits of packaging, increasingly understand their responsibility to

[1] EESC's opinion CES 345/93, OJ C 129, 10.5.1993.

[2] EESC's opinion CES 1119/99, OJ C 51, 23.2.2000, pp. 17-23.

sustainably dispose of the by-products of their consumption or production. Where business, the consumer and local and national government have worked to a common plan significant, even spectacular, gains in recycling have been made.

1.5. The Committee recognises that appropriate packaging provides numerous benefits in terms of protection, health, safety, information, security and shelf-life and that therefore dealing with packaging waste, once regarded as an externality in the production process, should become internalised as part of the cost calculation. The EESC's opinion therefore focuses on whether the existing targets in the directive have been effective in promoting sustainable recycling and recovery and whether the new targets proposed can be implemented by 2006.

2. **Definitions** (A short guide to the terminology and definitions used in the proposal and opinion)

2.1. Overall recovery target: Recovery of packaging waste comprises the recycling of materials and the recovery of energy or fuels from materials through incineration or other processes.

2.2. Material specific targets: Separate minimum recycling targets are defined for glass, paper/board, metals and plastics. The proposed 20 % recycling target for plastic packaging waste is to be achieved by mechanical or chemical recycling only. Targets for a fifth stream of recyclable materials such as wood, textiles and composites have not been set, though it is recognised that recycling these materials may form a part (7 %) of the overall recycling target.

2.3. Composite materials: Packaging containing a mix of materials. These can give rise to recycling difficulties due to problems in separating into constituent elements. The major share of composites will be classified by the dominant material used in their manufacture.

2.4. Maximum target: The intention of setting a maximum recycling and recovery target was to ensure that distortions in the internal market did not occur through high volume collection of recyclables without Member States providing appropriate processing facilities. The maxima can be exceeded by agreement provided such facilities are in place or planned. A number of Member States are already exceeding current targets and projections of continued take-up of recycling in these states indicate that the proposed maximum targets will, in practice, continue to be exceeded. The provision of a maximum target either recognised finite technical limits to recycling or was designed to protect developing materials collection and sorting programmes in other Member States from being affected by over-supply of material from other countries.

3. **Main content of the proposal**

3.1. The following table sets out the targets that were agreed for the first phase of the directive and the proposed targets for the second phase.

First and second phase (proposed) targets (by weight)

	1996-2001		2001-2006	
	Min.	Max.	Min.	Max.
Overall recovery	50 %	65 %	60 %	75 %
Recycling	25 %	45 %	55 %	70 %
Specific materials				
Glass	15 %		60 %	
Paper/Board	15 %		55 %	
Metals	15 %		50 %	
Plastics	15 %		20 %	

3.2. The narrowing of the difference between the minimum recovery and minimum recycling targets acknowledges the fact that for the majority of selectively collected packaging waste, recycling is environmentally superior and justified on a cost/benefit basis. However the proposal also places a requirement on Member States to encourage energy recovery in certain circumstances. This is because the energy recovery of certain fractions of packaging waste can improve the environmental balance of packaging-waste management and makes for the overall ecological and economic optimisation of all waste streams, if these operations are conducted in installations with adequate air pollution control equipment and a high degree of energy recovery efficiency. Nevertheless, there needs to be continuing awareness of the concerns of the

general public and environmental organisations in particular of the potential health and environmental impacts from incineration of waste, particularly where this takes place in installations that have not yet been adapted to the IPPC standard or in installations with poorer emission levels than waste-incineration plants. In addition the provision of incineration plant is a major capital cost which tends to lock waste management into a fixed pattern, thus reducing flexibility. For these reasons it is not proposed to increase recovery targets beyond 75 %.

3.3. Member States are again encouraged to re-use the materials obtained from recycling in packing and other products.

3.4. Greece, Ireland and Portugal may postpone the attainment of the revised targets until 30 June 2009, an extension of three years.

3.5. Definitions of 'mechanical', 'chemical' and 'feedstock' recycling are given.

3.6. An annexe further defines packaging materials, responding to queries which have arisen during implementation of the original directive.

4. **General comments**

4.1. The targets proposed have been set following wide consultation with representatives of European packaging and recycling, recovery and waste-disposal industries, environmental and consumer NGOs and other interested parties. The present targets are lower than those originally proposed in the first consultation round and have thus moved towards levels dictated by consumer behaviour, industrial capabilities, and participation of local authorities in those countries where recycling is less developed. The position of a number of consumer, environmental and non-governmental organisations participating in the consultation was to argue for higher recycling targets, a re-use quota, deposit schemes and packaging taxes. These views have not been reflected in the proposed directive. The Committee is of the view that if the full production, marketing, social and environmental costs of product packaging was reflected in the price then the pressure for supplementary packaging taxes would be reduced or eliminated. However, there is not yet agreement at all such social and environmental costs can be identified and quantified.

4.2. The Committee wishes to emphasise that the main objective of a more sustainable approach to packaging will only be achieved if built on an integrated foundation of political will, public education, business engagement and the active support of municipal authorities. This common pattern has been evident in those countries achieving higher recycling and recovery targets.

4.3. The Commission's proposal is informed by a number of independent studies of the issues and in particular by one commissioned from RDC/Pira on costs and benefits of various targets. Whilst this study is still in draft form it has been published and broadly supports the proposals in the directive. The complexity of the issues involved in cost/benefit analysis has led to a considerable delay in the original timetable, but the Commission considers that there is still sufficient time for national legislation to incorporate new targets where necessary.

4.4. The Commission also believes that there is adequate time for the sectors to set up or extend the necessary infrastructure to meet the new targets. Industry representatives from some Member States which would have high achievement targets dispute this. The Committee's view is that the packaging industry in the great majority of Member States has shown itself to be flexible and adaptable in achieving the first round of targets — and indeed higher national targets than are being proposed in the directive — and this encouraging performance will enable it to respond adequately to the new targets. The Committee believes this will only be the case if all sectors — national and municipal authorities, business and consumers — actively cooperate and support recycling and recovery programmes.

4.5. In this context the experience of Member States is relevant, six of which had already, in 1998, achieved overall recycling levels equivalent to those now proposed by the Commission for 2006 — eight years ahead of the proposed schedule. Also in 1998 eight Member States had achieved recycling levels equivalent to those now proposed by the Commission for 2006 for glass and paper, four had achieved them for plastics and three for metals.

Recycling performance

	Overall	Glass	Paper	Metals	Plastics
Member States meeting 2006 proposed levels in 1998	6	8	8	3	4
Member States not meeting 2006 proposed levels in 1998	9	7	7	12	11

4.6. The EESC recognises that when the original Directive was adopted there were three groupings of Member States:

— those with a significantly less developed recycling capacity — in terms of consumer awareness, collection and reprocessing;

— those with the internal resources and potential to rapidly develop collection and processing capacity but where, traditionally, non-sustainable methods were extensively used for waste processing and consumer awareness of recycling had not been actively encouraged;

— those with an established collection and reprocessing capacity supported by relatively high consumer awareness.

4.7. The original targets, and those now proposed in the amendments to the directive, seek to accommodate all three groupings by encouraging progressive convergence towards eco-efficient recycling targets, allowing the build-up of capacity, collection schemes and consumer education. The directive, by setting specific targets, has undoubtedly stimulated recycling and recovery initiatives at all levels in Member States. Those with low awareness have made significant efforts, those with established programmes have further extended and improved them.

4.8. The Commission accepts that the proposed new targets will have a minimal direct effect on several Member States, who are already achieving the proposed targets. However, it argues that the new targets will result in an additional 4,7 million tonnes of packaging materials being recycled by 2006 as countries with less developed recycling programmes meet the requirement.

4.9. Reducing the environmental impact of packaging is to be seen as an irrevocable priority. However, it should always be positioned in a 'fair' balance with the other vital needs consumers expect to be met by packaging: food safety, preservation, product protection, information and convenience. Given the operation of the single market the EU must act as arbiter in determining this balance.

5. **Specific comments**

5.1. The Committee recognises that technical issues play an important and increasing part in recycling and recovery programmes and would urge further support for research, particularly into the recycling and re-use of plastics and polymers and the development of industry capacity.

5.2. The high marginal costs of collection, sorting and processing to achieve the higher percentages of recycling for packaging will present financial and capacity challenges though these may be partly offset by increased consumer awareness. Nevertheless increasingly higher targets for recycling will incur costs and every effort must be made to retain the active support and involvement of the consumer, who will be asked to bear these costs.

5.3. In many Member States a significant sector of the social economy has developed around the various aspects of recycling and re-use. The Committee asks the Commission to bear in mind that the increasing professionalisation and industrialisation of recovery, recycling and re-use processes may threaten jobs already created which provide accessible employment for disadvantaged groups. In particular the development of chemical processes for some plastics (to stand alongside or replace mechanical processes) favours technologically advanced industry to the possible detriment of labour-intensive processes.

5.4. Wood is not identified as a separate materials stream with its own target in the original directive or the proposed revision although the volume and weight of wood in the waste stream is significant. The Committee suggests that the revised directive comments on the particular role that wood has to play in packaging and the consequent waste-management issues.

5.5. The revision is part of a continual process which is stimulating industry, commerce and consumers to be aware of the impact of packaging waste on the environment. Industrial and commercial packaging waste sources have already responded well to minimisation, recycling and re-use programmes, often encouraged by additional national target-setting and legislation. Often, the packaging lifecycle stays within clearly identifiable and restricted users and there are opportunities for directly controlled cost efficiencies.

5.6. There is substantial variation between optimal recycling rates identified in the RDC/Pira report of as much as 31 %. This is to certain extent (around 10 %) due to varying geographical conditions. Other important factors include participation, alternative waste-management methods, transport distances etc. Significant challenges in achieving some of the proposed targets will face some of the Members States, especially those which in the past placed less emphasis on consumer awareness about re-use and recycling and consequently developed a lower recycling capacity. These challenges may be severe in some materials areas (for example the recycling of green glass in the UK due to the massive net import of wine). However, the Committee is of the opinion that significant social and environmental gains have already been made in encouraging sustainability in packaging and that further progress should not be jeopardised by setting targets which would be comfortably achieved by those Member States slowest to implement effective, coordinated programmes. The implication of this is that some Member States may have to review their internal implementation schemes to meet the directive targets and provide additional incentives or support on specific materials.

5.7. Household waste generates most of the glass-packaging waste, about half of the metals and plastics waste and one third of paper and cardboard waste produced. There is an increasing focus on the need to minimise packaging in consumer goods and improve recovery from the municipal waste stream, which is less easy to control than industrial and commercial streams and more mixed in content. This opinion therefore takes the opportunity to stress the need for increased support for national, regional and municipal initiatives on the recovery of packaging waste from household sources. This supports the Committee's previously expressed desire to see environmental policy on packaging and packaging waste progress towards an ambitious and pro-active approach focusing on prevention and recovery of packaging waste.

6. **Conclusions**

6.1. The Committee recognises and fully supports Directive 94/62/EC as an important driving force in encouraging national legislation to introduce systems for selective collection, sorting and recovery of packaging waste and in raising awareness of the role of packaging as both an important and necessary element in the product lifecycle and also as a significant contributor to the waste stream. It further endorses the commitment to progressively raise recycling and recovery targets and to introduce a substantial increase in those targets in the current proposed amendment.

6.2. The current proposed revised targets have been set with particular reference to those Member States with low recycling rates. For them the targets are demanding but, in the view of the Committee, achievable through pro-active, concerted effort. In taking this view the EESC notes significant progress in the last five years, both in the introduction of specific and progressive national legislation and in the response of the packaging and recycling, recovery and waste-disposal industries. The Committee notes, however, that in several Member States consumer awareness of their own role in increased recycling remains low and urges specific consumer education and awareness-raising initiatives by the EU and Member States on recycling, re-use and acceptance of a move towards minimal packaging consistent with health and safety requirements. As the consumer society developed in the second half of last century traditions of re-use and recycling were adopted by some countries but not others. This continues to have a strong effect. Member States will also need to ensure that municipal authorities demonstrate through concrete action their support for packaging waste recycling.

6.3. There remain a number of difficulties in the recycling of packaging waste and the Committee continues to urge a pro-active policy based on participation, incorporating all those involved in the chain of production, use and disposal of packaging, particularly taking account of the economic constraints faced by these players. The Committee restates its view that a blueprint for the development of outlets for recycled products should comprise:

— greater backing for innovation and for development of new recovery techniques for packaging waste;

— identification and development of new markets for recyclates;

— introduction of CEN standards for recyclates;

— more responsibility for the various packaging-waste sectors;

— constructive dialogue with consumers/citizens;

— continual improvement of the EU statistical monitoring system.

6.4. The Committee notes with some concern that the present revision proposal does not contribute to the discussion on packaging minimisation, re-use and the responsibilities of packaging producers. Delay in the collection of comparative data and scheme evaluation should not prevent the development of new proposals and the Committee will consider initiating an own-initiative opinion on these matters. In particular we call for action on obtaining information about preventative measures being undertaken by Member States as required in Directive 94/62/EC, action on complex packaging materials that are difficult to recycle, review of the case for the introduction of economic incentives for re-use and recycling and greater support for voluntary measures.

6.5. The Committee urges that the extensive work currently being undertaken on determining the economic/environmental optimum in recycling and recovery of packaging materials is continued and extended. In particular it asks that such work exploring cost-effectiveness takes account of:

— escalating marginal costs for collecting and recycling increasingly higher percentages of the specified materials;

— environmental factors which prove difficult to financially quantify such as the cost of dealing with the negative aesthetic impact of litter;

— problems which may arise due to the use of composite materials or labelling containing heavy metals or other substances inimical to recycling processes.

6.6. There remains some uncertainty about the collection and interpretation of data on packaging production and waste in Member States, with variation being apparent. Clearer common guidelines should be established by the Commission and steps taken to ensure consistent implementation in the EU. Trade between and beyond Member States in recyclable materials is also one of the pertinent issues here.

6.7. Finally, the Committee notes that enlargement will see the Single Market extended to countries which will be aspiring to levels of economic performance which are linked, in existing Member States, with high levels of packaging waste. Accession States have considerable experience of approaching recycling and re-use issues in a creative way and it would be a highly positive outcome if these skills could be retained and used throughout the Union to follow a more sustainable path on packaging in general.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Future strategy for the outermost regions of the European Union'

(2002/C 221/10)

On 31 May 2001, acting under Rule 23(3) of its Rules of Procedure, the Economic and Social Committee decided to draw up an opinion on the 'Future strategy for the outermost regions of the European Union'.

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 7 May 2002. The rapporteur was Mrs López Almendáriz.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 29 May), the Economic and Social Committee adopted the following opinion with 103 votes in favour and 3 abstentions.

1. Introduction

1.1. The outermost regions — i.e. the French overseas departments, the Azores, Madeira and the Canary Islands — are full members of the European Union, but at the same time present their own unique characteristics.

1.2. Each of these regions is characterised by a series of geographical, physical and historical factors that handicap its economic and social development.

1.3. As recognised under Community Law in Article 299(2) [1]of the Treaty, these regions are characterised by the permanence and combination of a series of factors, such as remoteness, insularity and small size (except Guiana), their topography, population density and economic dependence on a small number of economic activities.

1.4. The outermost regions therefore bear additional costs compared to the rest of the EU and this, in turn, prevents them from participating fully in the internal market. It is to be hoped, though, that the success of the euro will contribute to the integration of these regions, both among themselves and with the rest of Europe.

1.5. The outermost regions suffer from major underdevelopment compared to other regions in the EU. Despite improvements in certain areas over the years, thanks largely to Community aid, the degree of underdevelopment is still significant due to the structural, permanent and severe handicaps imposed by their remoteness.

1.6. Owing to their strategic geographical location near other continents, the outermost regions are also the EU's outermost external border; this brings many opportunities, but many uncertainties.

2. Legal and administrative framework of Community action in the outermost regions

2.1. The particular situation of the outermost regions, which has always been recognised by the EU, is covered by Article 299(2) of the Treaty of Amsterdam.

2.2. In 1986 the European Commission set up an interdepartmental group for the outermost regions composed of representatives from several Directorates-General. This group, which is attached to the European Commission's Secretariat General and falls under the authority of the Commission President, is responsible for coordinating Community action to help these regions and for acting as an intermediary with the national and regional authorities concerned.

---

[1] Article 299(2):
The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.
However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the present Treaty to those regions, including common policies.
The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to Structural Funds and to horizontal Community programmes.
The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies.

2.3. In due course, the European Commission decided to adopt a joint approach to these regions through its programmes of options specific to the remote and insular nature of the outermost regions (Posei): Poseidom for the French overseas departments (Martinique, Guadeloupe, Guiana and Réunion); Poseican for the Canary Islands and Poseima for Madeira and the Azores.

2.3.1. The Posei programmes are based on the dual principle that the outermost regions are part of the European Community but have their own specific regional features. They have led to greater flexibility in certain common policies and the adoption of specific measures for these regions, without undermining the principle of the coherence and unity of Community law; their objective is economic and social cohesion.

2.4. However, in its March 2000 report [1], the European Commission itself recognised that this approach is insufficient and partial and needs to be reinforced.

2.5. The European Commission recognises that, in light of the major changes that enlargement and globalisation will bring, Community action to help the outermost regions needs to be better targeted, more flexible and more effective.

2.5.1. The accession of new Member States with a per capita GDP much lower than the Community average will effectively mean that the underdevelopment of the outermost regions within the EU will appear to fall in relative terms. This could result in Community aid being redirected towards the future new Member States of Eastern Europe.

2.6. In the aforementioned report, the European Commission points out that Article 299(2) marks the beginning of a new phase in the Community's approach to the outermost regions. It is a quantum leap forward compared with the previous approach and must be followed by a strategy of sustainable development for these regions.

The conclusions of the Lisbon, Feira, Nice, Göteburg and Laeken Councils urged the Council of Ministers to begin discussing concrete proposals for implementing specific policies concerning the outermost regions.

2.7. In addition to the European Commission, the European Parliament and the Committee of the Regions also wished to express their views on how to implement Article 299(2) in such a way that it meets its objective, helps reduce discrepancies between the outermost regions and the rest of the EU, and ensures that the outermost regions can benefit from the single market under the same conditions.

2.8. Similarly, the European Economic and Social Committee hopes to help define measures to implement Article 299(2), so that they are part of a genuine strategy of sustainable development for the outermost regions and help these regions become fully integrated into the European Union.

3. **Grounds for adopting specific measures**

3.1. The situation of the outermost regions is acknowledged in Article 299(2) of the Treaty. In its March 2000 report, the European Commission recognises that this article provides a single common legal basis for specific measures to help the outermost regions.

3.1.1. In the aforementioned report, the European Commission clarifies that the list of areas in which the Council may adopt specific measures for the outermost regions is not exhaustive. The various areas mentioned are therefore subject to future changes in Community policies.

3.2. Article 299(2) is a new phase in the Community approach towards the outermost regions. This new approach, which has nothing to do with the transitional period towards full European integration which some of these regions are undergoing, will lead to the adoption of specific measures in the future. This new phase is an authentic quantum leap in the Community approach to the outermost regions insofar as in the future this approach must be based on a global strategy for the outermost regions.

3.3. Common policies must be adapted to the structural and permanent nature of the factors characterising outermost regions, and Article 299(2) is the appropriate legal basis for achieving this objective. This must be the legal basis for drawing up a specific regime without jeopardising the coherence of Community law and the internal market.

3.3.1. It should be pointed out that under the Posei programmes common policies were made more flexible and specific measures for the outermost regions were adopted, without ever jeopardising the coherence of Community law and the internal market.

3.3.2. The outermost regions are fragile and suffer from specific difficulties of a permanent nature, in particular major underdevelopment, very high rates of unemployment and a high degree of insecurity according to type of work. Consequently, far from having a negative impact on the functioning of the internal market, the specific measures adopted for these regions aim to put them on an equal footing with the rest of the EU and to achieve cohesion.

---

[1] COM(2000) 147 final: Commission report on the measures to implement Article 299(2). The outermost regions of the European Union.

3.4. The European Commission itself recognised in its March 2000 report that rather than simply answering the specific requests submitted by these regions, it will assess which aspects of the outermost regions require attention before drawing up any Community legislation.

3.4.1. In the future — and in the context of enlargement in particular — Community action to help the outermost regions must therefore continue and increase, as the outermost regions will still be at a disadvantage owing to their remoteness.

4. **Specific comments**

4.1. The Committee regrets that the new regulations governing the Structural Funds for the period 2000-2006 do not take account of the remoteness criterion for the inclusion of these regions in Objective 1.

4.2. Regarding Structural Fund eligibility beyond 2006, the Committee believes that Article 299(2) is a sufficiently solid legal basis for using criteria that are a better reflection of the situation of the outermost regions than a merely statistical criterion such as per capita GDP.

4.3. The Committee is concerned that the European Commission, despite the intentions expressed in its March 2000 report, in practice is not developing all the operational possibilities implicit in Article 299(2), in particular in some areas of Community policy, as the scale of the development challenge facing the outermost regions demands.

4.4. The Committee is concerned because the European Commission seems reluctant to use this article when submitting specific proposals to the Council to help these regions. In doing so, it considerably limits the scope of this article, using it instead as a residual provision.

4.5. The Committee believes that, far from being a residual provision, Article 299(2) is a specific legal basis for the outermost regions, the main objective of which is to promote development in these regions.

5. **Proposals and recommendations**

5.1. The Committee believes that the European Commission must honour the commitments it made in its March 2000 report and give Article 299(2) the weight it merits as an appropriate legal basis for drawing up exemptions from general Community law so as to offset the disadvantages suffered by outermost regions on account of their remoteness and thereby promote their development.

5.2. The Committee believes that:

— there is an urgent need for the EU to develop a comprehensive strategy for the outermost regions, specifying the guiding principles, the objectives sought and the resources available, and laying down a timetable for the measures to be adopted;

— this need is even more pressing against the backdrop of globalisation and enlargement, which will move the EU's centre of attention eastwards;

— there must be a new phase in the Community approach to the outermost regions — a quantum leap from its traditional approach and an appropriate legal basis for allowing exemptions from and adjustments to general Community law to help the outermost regions, and for drawing up a genuine Community policy for these regions;

— the remoteness criterion must be included at all stages of implementation of Community policy.

5.3. The Committee thus considers it essential to draw up a non-exhaustive list of measures — set out below — to serve as guidelines for action. It thus urges the European Commission:

5.3.1. To propose specific measures to help the outermost regions based on Article 299(2). Given that the factors affecting outermost regions are permanent and structural, no time-limits should be put on these specific measures, though they may be subject to regular checks.

5.3.2. To take account of the specific characteristics and needs of the outermost regions when drawing up all Community legislation and to assess the impact of the legislation concerned on these regions; likewise, to take account of the criterion of remoteness at all stages of implementation of Community policies.

5.3.3. To consider remoteness as sufficient grounds for including the outermost regions in the sphere of application of Article 87(3)(a) of the EC Treaty, particularly with regard to the implementation arrangements for state aid for regional purposes.

5.3.4. To promote access for the outermost regions to Community programmes and to give preferential treatment to projects involving them.

5.3.5. To begin studying the role of the outermost regions in the new regional context in preparation for post-2006 regional policy reform, taking into account the provisions of Article 299(2). In its second report on Cohesion, the European Commission recognises that the outermost regions are particularly fragile and therefore a priority for Community action. The Committee calls on the Commission also to take account of criteria more suited to the situation of the outermost regions than per capita GDP, both in this study and when drawing up eligibility criteria for the Structural Funds under the new regional policy.

5.3.6. To implement specific measures for the outermost regions as part of the reform of the Common Fisheries Policy, e.g. indefinitely maintain regimes intended to offset the increased cost of marketing certain fishery products, with periodic updates with regard to species, imports and quotas; introduce specific arrangements for the fleet in these regions under the Financial Instrument for Fisheries Guidance (FIFG); implement a policy of conserving, managing and researching fisheries resources in these regions; broaden and extend the special arrangements for importing fishery products not found in these regions; and earmark funds for regular assessment of fisheries resources, recognition of new species of fish at Community level and specific aids, such as those relating to private storage, carry over and trade organisations.

5.3.7. With regard to agriculture, to adapt the common market organisations (CMO) to the specific characteristics of farm products in the outermost regions, in particular those CMOs which have the most direct impact on these products (e.g. bananas, fruit and vegetables, flowers and plants, dairy products, beef, goat/sheep meat, sugar, wine, rice, etc.), either in the framework of the Posei programmes or through specific recognition within the CMOs themselves. Also, so as not to jeopardise the survival of traditional agricultural products in the outermost regions, to ensure that the blueprint for future reform of the CAP takes due account of the special features of agriculture in these regions, the most salient of which are their dependence on a small number of products and the lack of real possibilities for diversification.

5.3.8. To ensure a level playing field for imported and local products and to consider, among other measures, consolidating and strengthening the agriculture chapter of the Posei to guarantee that sufficient funds are available, improving conditions for re-export and dispatch of processed products produced from raw materials, and ensuring the stability of aids by setting a minimum level of aid.

5.3.9. To reinforce and consolidate the CMO for bananas so as to ensure continued income guarantees for Community producers. Likewise, to maintain the quota system, abandon the introduction of the flat tariff system from 2006 and, prior to any significant change to the current system, to carry out an in-depth analysis of the likely impact on producers in the outermost regions.

5.3.10. In view of the highly specialised nature of agriculture in the outermost regions, to adopt new measures to promote the competitivity of agricultural products from these regions, such as tomatoes, flowers, plants and fruit, which have to compete with similar products from nearby areas which have association agreements with the EU, such as Morocco, or which have their own preferential systems, such as the ACP countries; also, in this connection, to establish the customs measures necessary to guarantee strict compliance with the quotas established under these bilateral agreements in order to safeguard the balance provided for with regard to the levels of third-country production that may enter the European Union without causing market dysfunction.

5.3.11. To promote the establishment of safeguard clauses providing for the possibility of measures to protect the markets of the outermost regions where the development of their economies is threatened by imports of certain products benefiting from tariff preferences or cooperation agreements with third countries.

5.3.12. With regard to taxation, to allow the outermost regions to continue to enjoy differentiated tax arrangements, which are necessary for the economic development of these regions.

5.3.13. With regard to customs, to maintain tariff exemptions on the import of certain products that are important for the economies of the outermost regions, and to introduce exemption and free circulation status for all products produced in the outermost regions through sufficient processing of raw materials originating from third countries as a means of compensating for the EU's policy of tariff preferences for third countries, the absence of economies of scale and the remoteness of the outermost regions from centres of industrial activity.

5.3.14. With regard to transport, to draw up appropriate mechanisms and procedures to ensure that the outermost regions are properly integrated into all aspects of the common transport policy which affect development in these regions; to start assessing the potential impact of the liberalisation of the transport markets on the outermost regions, and to continue its efforts to include projects in these regions in trans-European transport networks. Likewise, the Committee calls on the European Commission to discuss in depth the possibility of a specific framework for state aid and services of general economic interest with regard to transport to and within the outermost regions.

5.3.15. With particular regard to the transport sector, to speed up promulgation of the directive on the liberalisation of port services, which is necessary to reduce the cost of supplying these regions, considering, in turn, the need to integrate remoteness into all aspects of the common transport policy which affect their development, in accordance with the commitments entered into by the Commission in its March 2000 report.

5.3.16. To consider introducing mechanisms to guarantee public funding for transport infrastructure in the outermost regions, adopting specific public transport programmes and making the public service obligation more flexible in these regions to enable them to tackle problems connected with routes, frequency, quality of service, timetables and the costs of sea and air transport, in order to alleviate the problem of their dual insularity.

5.3.17. With regard to energy, to bear in mind that exploiting the potential of renewable energy and setting up energy transport networks in the outermost regions improves economic stability and energy efficiency and helps achieve the objectives of sustainable development; but that, owing to the volume of financial resources needed by projects in such areas, the outermost regions should be allowed to apply for multiple European sources of funding.

5.3.18. To drive forward liberalisation of the energy markets, adopt safeguards to guarantee tariffs equal to or lower than those in mainland Europe and to promote priority access for the outermost regions to horizontal energy programmes.

5.3.19. Concerning the environment, to facilitate access to European funding for environmental management infrastructure and introduce adjustments and derogations to horizontal environmental rules, whilst bearing in mind the position of the outermost regions as part of the natural environment.

5.3.20. In relation to SMEs and the development of new productive activities and services, to consider the following measures: promoting the development of measures conducive to a climate of initiative and entrepreneurship in the outermost regions; bolstering financial resources through the use of financial initiatives and programmes (risk capital, mutual guarantee schemes, etc.); helping SMEs to access these sources of funding with a view to removing obstacles to their creation and growth; promoting knowledge and use of EIB loans and risk capital operations; improving the exchange of experience and good practice regarding measures to support SMEs.

5.3.21. To take account of Article 299(2) when drawing up eligibility criteria for Community horizontal programmes. The outermost regions have frequently been unable to benefit from these programmes as they are tailored to the characteristics and needs of mainland regions, which are very different to those of the outermost regions.

5.3.22. To help develop the potential of human resources in the outermost regions, in particular by supporting measures in the spheres of education and vocational training for businesspeople and workers and ensuring implementation of the Structural Funds in the sphere of employment.

5.3.23. To consider introducing a range of measures to help alleviate the effects of illegal immigration in the outermost regions, given their situation on the outermost borders of the Community.

5.3.24. Given that the information society and technological innovation are a real opportunity to alleviate some of the disadvantages suffered in outermost regions, to give these regions priority when taking initiatives in these fields; thus, to establish in the outermost regions a series of regional integrated R&D and innovation strategies aimed at increasing significantly the participation of these regions in Community framework R&D programmes, to promote research in the main economic sectors in the outermost regions through technology transfer initiatives and projects taking account of the particular characteristics of these regions, and to promote the availability of specific R&D infrastructure, for example in relation to the exploitation of natural resources and astronomical research, taking advantage of the specific geographical and climatic features of the outermost regions.

5.3.25. With regard to telecommunications, to apply the new regulatory framework fully to the outermost regions, in particular access to infrastructure (the international, national and local networks), liberalisation of the local loop and application of a non-discriminatory tariff policy.

5.3.26. To take the necessary action to help the outermost regions cooperate with neighbouring third countries. Such cooperation is practically impossible under the INTERREG III Community initiative owing to a lack of coordination between the Community financial instrument (ERDF) and the financial instruments for cooperation with third countries (MEDA, EDF). Such action must also cover aspects related to trade, which will require the development of strategies for breaking into the markets of neighbouring third countries. Action of this kind could help to alleviate some of the difficulties derived from the lack of economies of scale in these very small regional markets.

5.3.27. To draw up, each year, a precise timetable of actions it intends to take to implement Article 299(2) and a biannual report evaluating the results obtained in the previous six-month period.

5.3.28. To reinforce the European Commission's interdepartmental group and give it sufficient human and operational resources to be able to continue developing, under optimum conditions, its work of coordination, follow-up and initiative. This would give the interdepartmental group in general, and its president in particular, greater room for manoeuvre between different units within the Commission that might be involved in matters connected with the outermost regions.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection'

(COM(2001) 510 final — 2001/0207 (CNS))

(2002/C 221/11)

On 15 November 2001 the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 May 2002. The rapporteur was Ms Le Nouail Marlière.

At its 391st plenary session held on 29 and 30 May 2002 (meeting of 29 May), the Economic and Social Committee adopted the following opinion by 105 votes to 2, with 1 abstention.

1. Introduction

1.1. This Commission proposal, which aims to establish a Common European Asylum System, is one of a series of draft directives currently being examined by the Committee. It seeks to implement Article 63 of the Treaty, the Vienna Action Plan, Conclusion 14 of the Tampere European Council and relevant references in the Scoreboard presented to the Council and the Parliament in November 2001.

1.2. This draft directive seeks to be a fundamental tool in making national asylum systems more effective and a Common European Asylum System more credible. Refugee status is governed by the 1951 Geneva Convention, as amended by the 1967 New York Protocol and by the Dublin Convention, which entered into force on 19 August 1997 and which determines the European signatory state that is responsible for examining an asylum application.

1.3. The Commission has already presented a series of proposals on the harmonisation of asylum policy, on which the ESC has issued opinions: in September 2000, a draft directive on procedures for granting and withdrawing refugee status; in April 2001 a draft directive on minimum standards on the reception of applicants for asylum; and in July 2001 a draft regulation determining the Member State responsible for examining an asylum application.

1.4. The purpose of this proposal is to establish a common definition of refugees for third country nationals and stateless persons, as well as common standards concerning their rights within the European Union.

1.4.1. This definition includes non-state organisations or agents within the definition of the perpetrators of persecution of whom the refugees are victims, in cases where the State does not provide effective protection. By adopting this approach the Commission is proposing to follow the practice in the vast majority of EU Member States whereby if the persecution is well-founded, the source of the persecution is deemed irrelevant.

1.4.2. However the proposal states that if another part of the territory of the asylum seeker's state of origin can be considered safe, then he or she can be sent back there.

1.4.3. The proposal also addresses the specific problem of women and children. It includes special rules for assessing their claims and obliges Member States to provide specific medical or other assistance to victims of torture, rape or other serious psychological, physical or sexual violence.

1.5. It should be noted that the Commission has decided to issue a single document containing minimum standards for granting and withdrawing refugee status and subsidiary protection status.

1.6. The proposal does not address the procedural aspects of granting and withdrawing refugee status or subsidiary protection status.

1.7. The proposal reflects the fact that the cornerstone of the system must be the full and inclusive application of the Geneva Convention, ensuring that no-one is sent back to further persecution, i.e. maintaining the principle of non-refoulement. This is to be complemented by measures offering subsidiary protection to persons not covered by the Convention who are nonetheless in need of international protection.

1.8. The Commission claims that its proposal aims to harmonise the application of the right of asylum in the fifteen Member States, thereby seeking to discourage the practice of 'asylum shopping', whereby asylum seekers seek out the most generous systems.

1.9. The proposal seeks to:

— set out minimum standards on the qualification and status of applicants for international protection as refugees or beneficiaries of subsidiary protection status;

— ensure that a minimum level of protection is available in all Member States for those genuinely in need of international protection, and reduce disparities between Member States' legislation and practice in these areas as the first step towards full harmonisation;

— limit secondary movements of applicants for international protection influenced solely by the diversity of the applicable rules on recognising refugee status and granting subsidiary protection status;

— guarantee a high level of protection for those who need it, preventing certain asylum applications which undermine the credibility of the system and recognising the fact that it is sometimes difficult to distinguish between economic migrants and applicants for asylum.

1.10. The proposal has seven chapters which cover the broad aspects of the proposal, the general nature of international protection, qualification as a refugee, eligibility for subsidiary protection, Member States' minimum obligations towards persons to whom they grant international protection, and rules to ensure the complete implementation of the Directive.

2. **General provisions**

2.1. *The definition of minimum standards*

2.1.1. Every claim for protection, whether it is based on one of the five reasons set out in the Geneva Convention, or is complementary or subsidiary, is a fundamental universal right. Standards may be 'minimal' on condition that they recognise, respect and protect the fundamental and universal human rights enshrined in the international texts on human rights.

2.1.2. Whilst endorsing the Commission's focus on harmonisation and integration, the Committee underscores the need to safeguard those Member State practices most favourable to claimants.

2.2. *Recognition of status*

2.2.1. Every applicant is entitled to claim refugee status, but may or may not be granted protected status by the Member State.

2.2.2. The Committee welcomes the progress made towards adopting common standards with a view to recognising the status of refugee or of complementary protection.

2.2.3. However it regrets that the Commission continues to refer to the granting of status, rather than, in line with Article 1 of the Geneva Convention, the straightforward recognition of a status existing as a result of the circumstances of the applicant, independent of recognition by the Member State ([1]).

2.2.4. The Committee notes that a draft regulation aiming to improve the Dublin Convention and its application is currently being prepared ([2]).

2.2.5. While stressing that the adoption of common standards for recognising refugee status or granting subsidiary protection marks a step forward in realising the objectives of the Tampere European Council, the Committee points out that the procedure for determining which Member State is responsible for examining the application has implications for the assessment of the claim.

2.2.6. The Committee underlines that adopting minimum standards for the recognition of refugee status should also make it less crucial to ascertain which Member State is responsible for examining the applications since applicants, when they choose to which Member State to apply, would use criteria other than potential differences in the way applications are processed.

2.2.7. As it has set out in a previous opinion ([3]), the Committee considers that it will thus be possible to take greater heed of the applicant's choice of country to apply to, taking account of the cultural and social factors which determine this choice and which are crucial for faster integration.

([1]) Council Resolution of 20.6.1995 on minimum guarantees for asylum procedures. OJ C 274, 19.9.1996 p. 13- 17.

([2]) See Committee Opinion adopted on 20th March 2002 on the Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (rapporteur: Mr Sharma).

([3]) OJ C 260, 17.9.2001, point 2.3.4.3 (rapporteur: Mr Mengozzi).

2.3. *The assessment procedure*

2.3.1. A distinction should be made between a request for international protection, an asylum claim and a request for subsidiary protection.

2.3.2. The draft directive does not address the issue of temporary protection based on a collective assessment of needs, as a decision was taken on this by the Council on 20 July 2001. This decision is of limited duration and applies to large groups [1].

2.3.3. The Committee agrees with the Commission in specifying that any application for international protection is presumed to be a claim for asylum, unless the third country national or stateless person explicitly requests another kind of protection [Article 2(g)].

2.3.4. However, the definition of application for subsidiary protection as a request 'which cannot be understood to be on the grounds that the applicant is a refugee within the meaning of Article 1(A) of the Geneva Convention, or follows rejection of such a request, ...' [Article 2(i)] presumes that the request for international protection has either been requested and then examined as a request for asylum, or presumed and then examined as such. It should be specified or added that the request itself is subsidiary, whereas the protection is complementary to non-recognised refugee status within the meaning of Article 1(A) of the Geneva Convention.

2.3.5. As pointed out by the Commission, a priority rule exists, according to which it is always the status of refugee which must be examined first during the assessment of a claim, and whereby subsidiary protection cannot be a means of weakening the protection conferred by refugee status. In addition, under the Geneva Convention refugee status confers extraterritorial rights and benefits which may take supremacy.

2.4. *Family members (Article 6)*

2.4.1. The Committee agrees that family members accompanying the applicant are entitled to claim the same status of international protection as the applicant.

2.4.2. A distinction needs to be made here between the right to claim asylum and the later stage of examining this request which would result in the recognition or non-recognition of refugee status and the benefits of international protection.

2.4.3. Indeed, although the claims are made on an individual basis and are always entitled to an in-depth and individual assessment, implementation of the standards on subsidiary protection must not contradict the provisions on the reunification of the applicant's family. This is crucial with a view to re-establishing a normal and dignified life as soon as possible.

2.5. *Women*

2.5.1. Although not explicitly covered by the 1951 Geneva Convention, the specific forms of gender prosecution — female genital mutilation, forced marriages, stoning to death for presumed adultery, and the systematic rape of women and young girls as a strategy of war, to name just a few — should be acknowledged as strong reasons for submitting an application for asylum and as legitimate grounds for granting asylum in Member States.

2.5.2. To this end, the proposal for a Directive should include guidelines which incorporate a gender dimension in applications for asylum so as better to secure equal recognition between men and women seeking asylum; on past experience, fewer women than men have been granted asylum on the grounds of political opinion. When challenging prevailing social standards, women cannot always count on protection from the state in which they live.

2.5.3. The gender dimension must also be recognised in the processing of applications for asylum: qualified, trained female interviewers and interpreters; confidentiality in the interviewing process; non-confrontational interviews with open questions allowing women to talk about their experiences of persecution in confidence; measures ensuring the physical safety and privacy of women asylum seekers in reception or detention centres; access to specific services responding to women's health needs; and access to legal aid and representation, including the right to contact and be contacted by women's NGOs and/or NGOs which deal with asylum.

2.5.3.1. To facilitate these contacts, women should receive lists of NGOs that could help them with their application process. It would also be useful if the NGOs in question could be informed when there are women at reception centres.

2.5.3.2. There is no advantage in obtaining refugee status if protection is inadequate. This is well illustrated by the case of women who are driven into prostitution. Women must be guaranteed access to decent work and be free to join a trade union.

2.5.4. Lasting solutions must be pursued such as the adoption of measures encouraging the development of women asylum seekers' skills and qualifications during the asylum process, which will facilitate their independence and subsequent integration in the host country if their claim is successful, or their re-integration in their country of origin if their asylum claim is rejected, without prejudice to other possible measures geared to their living conditions and aimed at fully restoring to them, as soon as possible, a normal and dignified life.

---

[1] See ESC Opinion in OJ C 155, 29.5.2001 (Rapporteur: Mrs Cassina).

3. **Special provisions**

3.1. *The consequences of cessation of refugee status (Article 13)*

3.1.1. The Committee wishes to draw the Commission's attention to the fact that when a residence permit is revoked but the state of origin has not yet returned the applicant's travel documents nor restored his nationality, the person no longer has protection nor valid residence documents.

3.1.2. The Committee proposes that the Commission provide for the withdrawal of refugee status (cessation) to be assessed in accordance with the same criteria as those upon which the status of recognition was based.

3.2. *Exclusion from refugee status (Article 14)*

3.2.1. The Committee does not support point 1(a). An applicant who currently benefits from protection or assistance from organs or agencies of the United Nations, other than the High Commissioner for Refugees, would in this instance be under the protection of an organ or agency which was not a signatory of the 1951 Convention and which might not be in a position to guarantee fully the rights ensuing from the recognition of his refugee status.

3.3. *The grounds of subsidiary protection (Article 15)*

3.3.1. The Committee stresses that other reasons which are not specified here may also exist. It also warns against the risk of including in the grounds for subsidiary protection other grounds which usually come under Article 1.A.2) of the Geneva Convention ([1]).

([1]) For the purposes of the present Convention, the term 'refugee', shall apply to any person who: [...] (2) 'As a result of events occurring before 1.1.1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'
In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.
See also the 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees'.

3.4. *Cessation of subsidiary protection status (Article 16)*

3.4.1. Subsidiary protection, which is complementary to the protection granted to recognised refugees under Article 1(A) of the 1951 Convention, should be improved. Subsidiary protection should therefore draw on useful and relevant humanitarian references with regard to the treatment of people seeking protection. The cessation of status should therefore not be expeditious, but should instead be based on an assessment of the criteria upon which the protection was granted.

3.4.2. The Committee also suggests using the same terms for Article 16 as for Article 13(2): The Member State that has granted subsidiary protection status to an individual bears the burden of proof in establishing that that individual is no longer in need of international protection.

3.5. *Residence permits (Article 21)*

3.5.1. Refugees granted subsidiary protection are to be granted a residence permit valid for one year (instead of five for refugees under the Geneva Convention). This principle is inconsistent with an interpretation of the Geneva Convention which allows a large number of cases to be examined individually. Complementary protection should only be relied on in cases where the grounds for the request for international protection do not, after an individual assessment, fall within the scope of the Geneva Convention. There is no reason for this form of protection to be of shorter duration.

3.5.2. Moreover, as indicated in paragraphs 2.3.5 and 3.3.1 above, subsidiary protection must not diminish the status of refugee, as established in the 1951 Convention.

3.6. *Travel documents (Article 23)*

3.6.1. With regard to the restrictions to the freedom of movement, it should be noted that the 'compelling reasons' referred to apply on the same grounds and without discrimination to both third-country refugees and stateless persons as well as nationals.

3.7. *Access to employment (Article 24)*

3.7.1. As explained in the point concerning Article 21, the fact that protection is subsidiary does not imply that it is less extensive. Equal employment rights for refugees and Member State nationals must also be granted to persons with subsidiary protection as soon as they have been recognised as having this status. The Committee supports efforts to combat illegal or clandestine work and underlines that people granted asylum but not the right to work are vulnerable to social exclusion, vagrancy or social alienation.

3.7.1.1. In the case of women, the fact that they do not have the right to work once protection is granted increases the risk of them being drawn into forced prostitution rings.

3.7.1.2. In relation to employment, as in the case of integration facilities (see point 3.9), the Committee points out that refugee reception and social support facilities (solidarity funds, charitable association activities, reception in schools, housing) are ultimately supported directly at grassroots level by local authorities (municipalities and regions).

3.8. *Freedom of movement (Article 30)*

3.8.1. Refugees whose status is recognised by one Member State, or refugees enjoying subsidiary protection, should also be granted freedom of movement in the other Member States.

3.8.2. The Committee points out that once international protection has been granted and the status recognised, the refugee or person enjoying subsidiary protection surrenders his or her passport to the host country for the duration of the protection and asylum. Since he is under the responsibility of the Member State granting him protection, he should be entitled to move freely within Member States, under the same conditions as their nationals ([1]).

3.9. *Access to integration facilities (Article 31)*

3.9.1. The same comments apply as those made on Articles 21 and 24 (residence permit and access to employment). The Committee wonders why beneficiaries of subsidiary protection must, once this status has been granted, wait for a year before benefiting from integration facilities geared to their needs, in particular with regard to employment, education, health and social well-being. Their linguistic and cultural needs could be added to this list. (The need to find a normal, dignified life as soon as possible.)

3.10. *Voluntary return (Article 32)*

3.10.1. Though the Committee supports access to voluntary return programmes, it stresses the close link between the drawing up of short-term reintegration programmes in the countries of origin and sustainable development. Such development is the best way of ensuring the peace, security and stability of populations. People whose claim has been dismissed or who have been recognised as refugees but choose at some point voluntarily to return to their countries have specific needs; more attention should be given to such needs of returning refugees when drawing up the EU's sustainable development and cooperation policies.

3.11. *Staff and resources (Article 34)*

3.11.1. The Committee welcomes the fact that the staff of the 'authorities' and 'other organisations' implementing this directive must have received the necessary basic training prior to taking up their posts, and would prefer to add continuous or specialist training needs at all stages of claim assessment process. This would be particularly relevant, for example, with regard to the reception given to women who are victims of rape or sexual violence, unaccompanied minors, or the prevention of 'recruitment' of easy prey victims of drug or sex-industry trafficking.

4. **Final provisions**

4.1. *Race*

4.1.1. The Committee supports the principle of non-discrimination in the final provisions of the draft directive and recommends that the Commission take into account the European Union's position at the World Conference against Racism, Xenophobia and Intolerance and that of foreign minister Louis Michel speaking for the Belgian Presidency to the European Parliament, according to whom: 'It has now been proven that theories seeking to confirm the existence of different human races are scientifically incorrect. The European Union hoped that the language employed would reflect this finding. It considers that the use of wording suggesting the existence of different races should be avoided. Its aim is not to deny the diversity of the human race but rather to appreciate its unity, and thereby to combat contemporary forms of racism, which regularly rely on claims of this sort. However as a result of strong opposition from some states, it has not been possible to make much progress in this direction. The European Union has felt it important to express its position of principle on this point in a final statement which will be reflected in the Conference report' (Translator's note: unofficial translation). ([2]).

4.1.2. Many refugees or asylum seekers have fled because of discrimination based on nationality or ethnicity, sometimes finding themselves hounded from state to state because of the same discrimination that is the very reason for their request for protection.

([1]) See the ESC Opinion on the Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (CES 1321/2001) Rapporteur: Mr Pariza Castaños.

([2]) Speech given by Louis Michel to the EP on 2nd October 2001: record of proceedings of the Durban Conference

4.1.3. The Committee reiterates — as it has already stated in its opinion on the Communication on Towards a common asylum procedure [1] — the Council's common position of 4 March 1996 [2], which recognises nationality in the broad sense of the term, namely independent of citizenship but including the sense of a family link.

4.1.4. The Committee urges the Commission, when proposing texts, to promote the positions adopted by the European Union within the international community.

5. **Conclusions**

5.1. The Committee supports the Commission's initiative and welcomes in particular:

— the equality of treatment with Member State nationals granted to refugees and beneficiaries of subsidiary protection with regard to employment, access to education, 'social welfare', health and psychological care, without prejudice to more generous measures in appropriate cases;

— the concept of subsidiary protection as a form of extended protection for people whose grounds for requesting asylum do not fall within the scope of the Geneva Convention but who are nonetheless in need of international protection in accordance with the principle of non-refoulement;

— broadening the scope of protection to include victims of persecution by non-state organisations or agents.

5.2. However, the Committee considers that some aspects of the proposal should be revised in order to match both the standards required in relation to the principles of international protection and the objectives set at the Tampere Council meeting.

5.3. After the tragic events of 11 September an increasing zeal for the need of security tends to undermine a climate of tolerance, acceptance, humanitarian sensitivity, prevailing in the behaviour of European refugee-immigration services, as well as the spirit and the letter of European legislation. The EESC considers that in a period of globalisation, protection of refugees and asylum-seekers and/or international protection are a humanitarian asset and must be based on an equal balance between territorial security and the safety of peoples. The Committee is convinced that in the medium to long term a strategy for invigorating civility between European citizens and refugees and asylum seekers is one of the most effective investments that will enable the European Union to remain the place of freedom, justice and prosperity for the desperates of the world, for those who cannot find hope, justice and freedom in their countries.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

---

(1) See the ESC Opinion in OJ C 260, 17.9.2001 (rapporteur: Mr Mengozzi).

(2) OJ L 63, 13.3.1996, pp. 2-7.

Opinion of the Economic and Social Committee on:

— **the 'Communication from the Commission to the Council and the European Parliament on an open method of coordination for the Community Immigration Policy', and**

(COM(2001) 387 final)

— **the 'Communication from the Commission to the Council and the European Parliament on the Common Asylum Policy, introducing an open coordination method'**

(COM(2001) 710 final)

(2002/C 221/12)

On 21 January 2002, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communications.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 May 2002. The rapporteur was Ms zu Eulenburg.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 29 May), the Economic and Social Committee adopted the following opinion by 106 votes in favour, none against and one abstention.

1. Introduction

1.1. In December 2001, the Laeken European Council, drawing on the October 1999 Tampere conclusions, reiterated the intention of adopting a common asylum and immigration policy. The purpose of such a policy is to maintain the balance between (i) the protection of refugees under the Geneva Convention, (ii) the desire for a better life and (iii) the reception capacity of the Union and the Member States. However, the debate about Commission initiatives on this front so far — draft regulations and directives, only a few of which have as yet been adopted — has shown that some Member States still have a hard time reshaping their national agenda in a way that is conducive to a common policy.

1.2. The need for a common policy based on the Tampere objectives of creating an area of freedom, security and justice remains beyond dispute. Community policy has to bear in mind two aspects: (i) immigration for humanitarian reasons and to reunite families, and (ii) migration for economic or professional reasons.

1.3. The Committee has studied the Commission proposals and initiatives closely and made detailed submissions on them. It has broadly welcomed the initiatives so far and encouraged the Community to press ahead — in a spirit of humanitarianism and solidarity — with the work that is now under way.

2. Gist of the proposals

2.1. *Coordination of immigration policy*

2.1.1. Building on the Communication on a Community immigration policy, the Commission concludes that, as an adjunct to the legislative measures provided for under Articles 61-69 of the EC Treaty, the open coordination method is an appropriate means of reflecting the multi-dimensional aspects of migratory phenomena, the large number of different actors involved and the responsibility of Member States.

2.1.2. The purpose of this method is to coordinate application of the proposed European legislation in the Member States — and to supplement the common policy that emerges as a result — in order to help ensure the further, coherent development of the key components of a common immigration policy in line with joint rules.

2.1.3. The planned guidelines tie in with the Tampere objectives and cover the following areas: management of migration flows; admission of economic migrants; partnership with third countries; and the integration of third-country nationals.

2.2. *Coordination of asylum policy*

2.2.1. In the field of asylum policy, the open coordination method is designed to assist and complement the Community legislation required by the Treaty, accompanying and smoothing the transition to the second stage of the common European asylum system. At the same time as establishing the legislative framework, the Commission is seeking to:

— formulate proposals for European guidelines and for the content of national action plans,

— coordinate national policies,

— promote the exchange of best practice,

— monitor and evaluate the impact of Community policy,

— organise regular consultations with third countries and international organisations.

2.2.2. The guidelines focus on the following areas: information about movements of refugees and asylum-seekers; the development of an efficient asylum system that offers protection to those who need it in line with the Geneva Convention; returns; relations with third countries; and integration/inclusion.

3. **General comments**

3.1. The Committee welcomes the use of the open coordination method in immigration and asylum policy as an additional mechanism to develop and support the common legislative framework. It regrets that Community legislation is advancing only slowly.

3.2. Use of this method stems from the distinctive features of the policy area involved. For one thing, it facilitates cooperation and exchange among the Member States prior to definitive legislation. It is also important for the transposition of future Community law. For another thing, all Member States face similar difficulties in connection with immigration, albeit to a greater or lesser extent, and with differing degrees of importance. The trans-European nature and the 'transferability' of the problems at hand warrant closer cooperation based on common objectives and guidelines.

3.3. Asylum and immigration policy are closely connected. Action in one area has an impact on the other. Past experience has shown that moves designed to place a stop on immigration have resulted in a greater influx by other means (e.g. via asylum systems), and in undesirable developments such as illegal immigration, smuggling and trafficking. Despite this correlation, the Committee feels that the open coordination method should be modulated to reflect the requirements of immigration policy on the one hand, and asylum policy on the other — not least because asylum and refugee policy is already substantially determined by international obligations such as the Geneva Convention on refugees, and because both Article 63 of the EC Treaty and the Tampere conclusions envisage more practical harmonisation steps and objectives. Moreover, humanitarian concerns should not be confused with immigration policy objectives.

3.4. The Committee underscores how important it is that the common legislative framework for immigration and asylum policy should move forward at the same pace. The Committee feels it would be wrong if Member States were to agree on the (if anything) restrictive measures under the common policy, without, at the same time, deciding on constructive action in pursuit of an overall approach.

3.5. Exact data are essential to assess and evaluate the immigration situation in the Member States. Despite the availability of statistics and figures in the Member States about immigration and asylum seeker movements, no comparable data exist at European level. One reason for this is the differing terminology and definitions that are used. The Committee would therefore recommend that joint statistical procedures and systems be worked out to facilitate assessment.

3.6. The Committee would deplore a situation in which use of the open coordination method resulted in a failure to implement upcoming legislative measures. The open coordination method does not replace the legislative framework that is to be established. Where this method is applied therefore, progress made in implementing legislation in the Member States should also be included in the guideline process.

4. **Specific comments**

4.1. *Coordination of immigration policy*

4.1.1. The proposed guidelines draw on — and seek to foster — the objectives of common immigration policy legislation. Given demographic requirements, the guidelines rightly stress the need for procedures able (i) to link immigration and asylum policy on the one hand, and economic and social policy on the other, and (ii) to make clear the correlation between the two.

4.1.2. Management of migration flows

4.1.2.1. Guideline 1: Developing a comprehensive and coordinated approach to migration management at national level

4.1.2.1.1. The Committee endorses the approach set out in this guideline. However, it feels that this ought not to be a mere technical analysis. Migration management procedures must never lose sight of the dignity of the people affected by the measures.

4.1.2.2. Guideline 2: Improving information available on legal possibilities for admission to the EU and on the consequences of using illegal channels

4.1.2.2.1. This guideline covers a key factor in preventing illegal or clandestine immigration. Reliable information about legal immigration options is however conditional on a wide-ranging, plausible approach to the immigration issue. Information campaigns are worthless without a clear and transparent legal framework that is also applied in practice.

4.1.2.3. Guideline 3: Reinforcing the fight against illegal immigration, smuggling and trafficking

4.1.2.3.1. This guideline addresses promoting an approach based on a balance between humanitarian responsibilities, lawful immigration and the fight against criminal smuggling and trafficking networks. The proposed measures however — tracking, sanctions and stepped-up controls — do not deal fully with the issue. In its opinions on the Communication on a Community immigration policy [1], and the Communication on the common policy on illegal immigration [2] the Committee points out the key need to legalise the situation of people who, not least as a result of restrictive immigration policy, are living a clandestine existence within the Community.

4.1.2.3.2. Illegality arises not only because people have entered a country illegally. Depending on the legal basis in the individual Member States, the loss of existing rights of residence can also place people in an illegal situation.

4.1.2.3.3. The Committee feels that the guideline process should also consider (i) the living conditions of foreigners and their families who are illegally resident in the Member States, and (ii) exchanges between Member States on what legalisation (regularisation) measures are feasible and appropriate.

4.1.3. Admission of economic migrants

4.1.3.1. The Committee welcomes the opening-up of the European labour market to managed, demand-based immigration. It has studied and assessed the relevant proposed directives on, for instance, the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities [3]. The Committee recommends a more pro-active and rapid approach to providing opportunities for legal immigration, and also attaches tremendous importance to cooperation with the countries of origin.

4.1.3.2. Guideline 4: Establishing a coherent and transparent policy and procedures for opening the labour market to third-country nationals within the framework of the European employment strategy

4.1.3.2.1. It is important to consider the contribution migrants can make to the labour market, both in terms of social integration and with a view to fostering receptiveness towards them. The Committee welcomes the role to be given to non-governmental organisations and migrants' associations.

4.1.3.2.2. The Committee agrees that particular attention must be paid to the situation and needs of migrant women. It proposes special consideration for this issue in the Employment Guidelines in a bid to combat discrimination and foster social integration through both access to employment and equal opportunities.

4.1.4. Partnership with third countries

4.1.4.1. Guideline 5: Integrating migration issues into relations with third countries, and in particular with countries of origin

4.1.4.1.1. This guideline ties in closely with political, economic and social issues, and with questions of development policy and human rights. In its opinion on a Community immigration policy [1] the Committee noted key elements of the partnership: increased support for economic and human development in the countries of origin; enhanced mobility between countries of origin and host countries; and support for voluntary return measures.

4.1.4.1.2. The measures proposed under Guideline 5 are important factors in a common approach to migration. Particular attention should be paid to measures to promote mobility between Member States and third countries.

4.1.5. Integration of third-country nationals

4.1.5.1. Guideline 6: Ensuring the development of integration policies for third-country nationals residing legally on the territories of the Member States

4.1.5.1.1. Vigorous backing must be given to social integration policies by pursuing a forward-looking approach to fostering integration. The success of a common immigration policy indisputably depends on integrating migrants into the host country. The basic elements of this are fair treatment, equal rights and obligations, equal opportunities, measures to combat discrimination, raised public awareness and participation in public life.

---

[1] OJ C 260, 17.9.2001.
[2] EESC opinion adopted on 24.4.2002.
[3] OJ C 80, 3.4.2002.

4.1.5.1.2. The purpose of a comprehensive, long-term integration policy must be to ensure that migrants can take an equal part in the life of society (participation and equal opportunities). It is vital to promote all areas of social integration, both separately and interactively, including the labour market, education, language, culture and social and legal integration. Another key aspect of integration is participation in public life by virtue of certain civic rights — and civic duties. Integration policy must be understood as an ongoing task of social policy.

4.1.5.1.3. The measures outlined in this guideline pick up on these elements for developing an integration policy. It is particularly important to foster language learning — an essential condition of successful integration. Knowledge of the language is essential to be able to take part in the cultural, social and political life of the host country. Equally, improving the possibilities for learning foreign languages in the Member States can also play a major part in getting to know each other and understand each other better and thus in promoting the reception and integration of migrants.

4.1.5.1.4. The Committee endorses the special role given to local and regional actors, the social partners, civil society and migrants themselves in developing and implementing such integration strategies. In many Member States, it will be possible to draw on the experience of existing networks and social services involved in providing migrants with care and advice.

4.2. *Coordination in asylum policy*

4.2.1. The Committee considers the proposed guidelines helpful in achieving a more coherent common asylum policy. Although migration and refugee policy are interdependent and, in terms of immigration, can also be linked, the reception of refugees for humanitarian reasons should not be subject to the social, economic and demographic requirements of a common immigration policy.

4.2.2. First guideline: Improving understanding of migratory flows connected with humanitarian admissions

4.2.2.1. Understanding migration flows, and the causes and reasons behind it, is a key factor in assessing future policies and strategies. Political action can be improved by developing mechanisms for the exchange and use of information and analysis. Helpful pointers on this front can also be given by those non-governmental organisations that care for refugees in the Member States and are also heavily involved in social and economic development in many countries of origin.

4.2.2.2. Another useful longer-term option might be to establish a documentation centre for relevant information on countries of origin and case law, that is open to all decision-makers and to all those working in the immigration field as it relates to asylum policy.

4.2.3. Second guideline: Developing an efficient asylum system

4.2.3.1. The Committee would draw attention to the points made in its opinions on the Communication: Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum ([1]) and on the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States ([2]) which, in essence, back up the Commission proposals.

4.2.3.2. The Committee welcomes the proposed measures designed to foster the development of an efficient asylum system. It will be particularly important to work out common criteria for lodging applications. In its opinion on the Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ([3]), the Committee points out the need for appropriate harmonisation in order to reduce the significance of those factors that influence an asylum-seeker's choice of country in which to lodge his or her application. In terms of working out common criteria, this aspect should in particular be addressed as part of the guideline process.

4.2.4. Third guideline: Improving the effectiveness of the policy on returns

4.2.4.1. Immigration policy and management should also always contain a returns strand, based on consultation and cooperation with the countries of origin and transit, and the principle that return should be voluntary. The experience of Member States and non-governmental organisations — for instance with return programmes — should be taken into account here.

4.2.4.2. The procedures for involuntary repatriation mentioned under point d) should not be linked with a returns policy based on cooperation, flexibility, free choice and support.

([1]) OJ C 260, 17.9.2001.
([2]) OJ C 48, 21.2.2002.
([3]) EESC opinion of 20.3.2002.

4.2.5. Fourth guideline: Including matters relating to international protection in relations with third countries

4.2.5.1. Just as with immigration policy, relations with third countries have an important role in issues of international protection; particular attention must therefore be given to the external dimension.

4.2.6. Fifth guideline: Ensuring that policies are framed to promote the integration or inclusion of beneficiaries of international protection in a Member State

4.2.6.1. The importance of integration has already been noted in connection with immigration policy. The proposed measures — such as taking account of the special needs of children and unaccompanied minors or ensuring the participation of the various social and civil players at local and regional level — are key elements of an effective integration policy.

4.2.6.2. With regard to the measures under point f) in particular — i.e. to provide health services for victims of violence, trauma, torture or any other form of inhuman or degrading treatment — many schemes are in place in the Member States that could serve as useful models.

5. **Conclusion/summing up**

5.1. *Application of the proposed legislative framework*

5.1.1. The open coordination method is a good way to achieve coherence between the various national policies. It should be used to enable the Member States to move forward together towards the objectives defined in Tampere — a European area of freedom, security and justice. Use of the open coordination method must not however result in a delay in applying the legislative framework laid down in the Treaty and confirmed in Tampere. Member States are called upon to press ahead without delay with the steps that are deemed necessary and right.

5.2. *Inclusion of the candidate countries*

5.2.1. Consideration must be given even at this stage to including the candidate countries in the guideline process. The open coordination method would make it possible — even before the establishment of any framework for lawmaking — to introduce cooperation measures that may be useful in achieving certain objectives (such as managing migration flows or developing an efficient asylum system), while at the same time bearing in mind the particular circumstances of every country involved, without making excessive demands on them.

5.3. *Involving civil society*

5.3.1. The experience over many years of associations, non-governmental organisations and social partners in providing migrants and refugees with social advice, care and support is vital. The organisations working in the Member States have the requisite aid arrangements in place to help foster the reception, acceptance and integration of migrants. They must be involved as equal partners in the discussion process, especially with regard to the action plans at national, regional and local level.

5.4. *The public*

5.4.1. The Committee again notes the need for action (i) to raise public awareness of immigration requirements and the concerns of migrants (both for economic and also for humanitarian reasons), (ii) to secure a favourable climate of acceptance and (iii) to help combat racism and xenophobia. However, such measures can only be successful if they are also backed by political leaders and are reflected in political action.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'Social Indicators'

(2002/C 221/13)

On 15 January 2002 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an own-initiative Opinion on 'Social Indicators'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 May 2002. The rapporteur was Mrs Cassina.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion with 104 votes in favour, no dissenting votes and one abstention.

1. Report on indicators in the field of poverty and social exclusion

1.1. The Social Protection Committee (SPC) published a Report on Indicators in the field of poverty and social exclusion in October 2001, drawn up on the basis of the work carried out by the technical sub-group on Indicators, following the mandate from the Council. The conclusions of the European Councils of Nice and Stockholm called for the Council to adopt a set of indicators by 2001 to improve the understanding and comparability of poverty and social exclusion in the EU, with a view to achieving the goals set out in Lisbon designed to make a decisive impact on the eradication of poverty and exclusion ([1]) by 2010. This will support the development of National Action Plans to combat poverty and exclusion by improving the understanding of such phenomena and encouraging the exchange of good practice, in the context of the open method of coordination and the EC programme of action on this matter, established by a decision of the European Parliament and the Council ([2]). The proposed set of indicators, which should be considered as a whole rather than as a set of individual indicators, was drawn up to address social outcomes rather than the means by which they are achieved.

1.2. The methodology used by the sub-group on Indicators focused on analysing and comparing national plans for social inclusion with the emphasis on the following principles: the indicators used must capture the essence of the problem and must have an accepted interpretation and legal and scientific basis; they must be timely, whilst being open to revision; they must be mutually consistent; and they must be transparent and accessible to the public.

1.3. The set of indicators is divided up into primary indicators (covering the broad fields and the most important elements of social exclusion) and secondary indicators (supporting the primary indicators and describing other dimensions of the problem). Both these levels have been commonly agreed and defined by the Member States and will be used in the next round of National Action Plans on social inclusion. There may also be a third level of indicators that Member States themselves decide to include in their National Plans, to highlight certain specificities in particular areas, and to help interpret the primary and secondary indicators.

1.4. Primary Indicators:

— Low income rate after transfers (indicators 1a, 1b, 1c, 1d, 1e)

— Distribution of income (indicator 2)

— Persistence of low income (indicator 3)

— Median low income gap (indicator 4)

— Regional cohesion (indicator 5)

— Long-term unemployment rate (indicator 6)

— People living in jobless households (indicator 7)

— Early school leavers not in further education or training (indicator 8)

— Life expectancy at birth (indicator 9)

— Self-perceived health status (indicator 10).

1.5. Secondary Indicators:

— Dispersion around the 60 % median low income threshold (indicator 11)

— Low income rate anchored at a point in time (indicator 12)

([1]) In the Italian Publication the expression 'lotta alla povertà e all'esclusione' is used except for titles in official documents. The term 'emarginazione' (in stead of 'esclusione') means the process that can lead to 'esclusione' (to be excluded).

([2]) European Parliament and Council Decision No 50/2002/EC of 7.12.2001 establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion.

— Low income rate before transfers (indicator 13)

— Distribution of income — Gini coefficient — (indicator 14)

— Persistence of low income (based on 50 % of median income) (indicator 15)

— Long-term unemployment share (indicator 16)

— Very long-term unemployment share (indicator 17)

— Persons with low educational attainment (indicator 18).

1.6. According to the Social Protection Committee, these indicators will enable several key aspects of this multifaceted phenomenon to be comparatively measured. The SPC recommends that further work be carried out in particular on:

— identifying further indicators on living conditions, including social participation, recurrent and occasional poverty, access to public and private services, territorial issues and indicators at local level, poverty and work, indebtedness, benefit dependency and family benefits;

— measuring the gender dimension in a more satisfactory manner;

— improving the accuracy and comparability of indicators on housing (decency of housing, housing costs and homelessness), literacy, numeracy, quality adjusted life expectancy, premature mortality by socio-economic status and access to healthcare, groups not living in families, especially the homeless but also those living in institutions (children's homes, orphanages, nursing homes in general, prisons).

1.7. Lastly, the SPC recognises the importance of greater involvement of excluded people in developing indicators and the need to explore the most effective means of giving a voice to the excluded.

2. General comments

2.1. In recent opinions on several social issues, the EESC has underscored the need and the urgency to have 'high quality, comparable indicators' ([1]), 'sufficiently detailed to give a true picture of the full implications of the framework analyses'. It is especially important to develop such indicators in the field of social exclusion, given the complex and multifaceted nature of the phenomenon. The report in discussion puts forward an initial set of key indicators. The EESC strongly welcomes the work carried out by the sub-group on Indicators and by the Social Protection Committee, looks forward to further productive work from the SPC and confirms ([2]) that the EESC is most willing to cooperate and support its work as a key plank in the efficient development of National Action Plans to combat social exclusion.

2.2. The EESC welcomes in particular the dynamic approach which provides for the possibility to adapt and develop indicators. This is vital in order to exploit the full potential of the open method in this field, in which increasingly accurate and up-to-date comparisons of national situations and best practice are needed. The EESC also applauds the fact that the Sub-Committee on Indicators has already begun to examine in depth the key issues of illiteracy, cultural inclusion and housing with a view to identifying new indicators and to hone existing ones.

2.3. However it is important to check that the definition, and therefore the content, transparency and acceptability of indicators is sufficient and whether some indicators need further clarification in the short term. The EESC would like to contribute to this by submitting the following comments and suggestions to take work a step further.

3. Specific comments

3.1. The EESC notes that the majority of indicators concern income and considers that this could lead to an imbalance in relation to the indicators describing and comparing the qualitative aspects of social exclusion. The EESC is aware that the key indicators were chosen objectively and factually, but underscores the urgent need to define indicators that will give an accurate picture of social participation, access to services and self-perception of social exclusion. In several of its opinions, the EESC has maintained that an adequate level of income from employment is a necessary but insufficient condition to avoid or break out of the cycle of poverty and social exclusion. The EESC is not contradicting the conclusions of the Barcelona Summit ([3]) which state that 'the best instrument for inclusion is employment'; it is simply providing a necessary clarification, in view of the multifaceted nature of exclusion.

([1]) Quality of employment, OJ C 311, 7.11.2001. Safe and sustainable pensions, OJ C 48, 21.2.2002.

([2]) Proposal for a Council Decision setting up a Social Protection Committee, OJ C 204, 18.7.2000, p. 2.3, 2.3.1.

([3]) Part III, Contributions to the debate, Employment and Social Policy.

3.2. The fight against social exclusion and poverty is part of the Lisbon strategy which was confirmed at the Barcelona summit indicating the need to significantly reduce the number of people risking poverty and exclusion by the year 2010 [1]. In its summary report, the Commission also indicated the goal of reducing such a risk by 50 % by the same year. Since the main feature of the Lisbon Strategy is the high quality of the European model of development in economic, social and technological terms, the EESC highlights the need to keep the concept of quality a priority at all times, both in measures to foster the employability of persons suffering from or at risk from exclusion, and in defining statistical instruments.

3.3. The indicators referring to education and skills need to be supplemented and refined. For example, 'low educational attainment' does not cover a key element which the majority of excluded persons have in common: the inability to perceive themselves as citizens, and to fully understand and exercise their rights and duties. This is predominantly due to a poor basic education, but also and especially to a loss of awareness of themselves and of reality, worn down by the struggle to provide for their own basic needs. It is also essential to be able to tackle cases of 'functional illiteracy' and therefore to be equipped with the instruments needed to analyse and quantify this phenomenon. In addition, the EESC notes that in its opinion on the programme to combat exclusion and poverty [2], it identified the risk of new forms of exclusion and poverty linked to the development of new technology. If excluded members of society cannot access the knowledge society, new forms of exclusion risk being created. This aspect should be tackled when drafting additional indicators.

3.4. The transfers mentioned in Indicators 1a, 1b, 1c and 1d refer to social security benefits granted to individuals or families. The EESC considers that comparisons could be distorted if the level of taxation and contributions is not taken into account in this equation, since it is well known that these figures differ greatly between Member States.

3.5. A further problem lies in calculating standards of purchasing power. Since the Eurostat criteria are automatically applied to determine this, as is done for surveys and reports on economic and social cohesion, distinctive regional and local factors are overlooked. Purchasing power can vary significantly within countries, regions and even within a single city. The provision for a third level of indicators enables Member States to develop their own method of assessment, broken down into regions or districts. The EESC hopes that Member States will give this problem due attention when defining indicators and when implementing National Action Plans to combat social exclusion.

3.6. The definition of Indicator 1b on 'low income rate after transfers with breakdowns by most frequent activity status' should be supplemented with a reference to irregular or occasional activities and activities that are not officially registered (irregular or undeclared work). These types of activity are very common amongst excluded persons and are a factor in triggering or exacerbating the conditions for social exclusion.

3.6.1. The EESC is aware that it is extremely difficult to map irregular or undeclared employment, but underscores the fact that people working in irregular conditions, although benefiting from a certain level of income, do not have access to minimum guarantees and the protection granted by contract employment. They find themselves on the margins of society and indeed of the law. Thus every effort must be made to study irregular employment in depth in order to be able to tackle the phenomenon and those who profit from it, and aim to break the fatalist cycle that leads excluded and deprived persons to seek and accept this type of employment. There is a whole stratum of people whose earnings come from irregular work and who end up being not only excluded but even invisible from the rest of society. An indicator should be developed to anticipate the future risk of poverty caused by failure to pay contributions. Strong synergy between national plans for social inclusion, national plans for employment and fiscal policy is needed to tackle and overcome the scourge of undeclared employment.

3.7. Indicator 1c on types of family also appears not to take into due consideration the following two cases:

3.7.1. Large families ('three or more children' is too generic). It is true that households with many children to care for are in a minority, but this proportion changes for households living in extreme poverty, where many families have two or three times more children than average households.

3.7.2. One-parent families, for whom it makes a considerable difference whether there is one child to care for or two or more, especially if the children are very young. With more than one child to provide for it is practically impossible for a lone parent to earn a sufficient income. As a result, they become dependent on social security payments, sometimes increasingly so.

---

[1] Presidency Conclusions, point 24.

[2] Proposal for a decision of the European Parliament and of the Council establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion fillin titolo , OJ C 14, 16.1.2001, point 2.5.1.

3.8. The EESC welcomes the fact that the indicator on 'low income rate after transfers with breakdowns by tenure status' (1d), is soon to be developed, and that Eurostat has begun the procedure to commission a study on this matter. It highlights the importance of the Member States reaching an agreement on the definition of persons without a fixed abode, who represent a significant and specific percentage of excluded persons. Moreover, there should be a distinction between non rent-paying tenants and owners, since the latter still has to pay for the upkeep of the property, whilst the former needs only to pay subsistence expenses.

3.9. Indicator 9 (life expectancy) should be separate from disability-free life expectancy, which Eurostat already provides for the Member States. The phenomenon of non-self sufficiency is becoming increasingly common, especially amongst older people and disabled people, and this must also be taken into account.

4. **Suggestions for the next stages of work**

4.1. The Social Protection Committee notes that a series of new indicators should be defined and others improved, made more accurate and useful for comparative analysis (see point 1.6). The EESC believes that priority should be given to indicators measuring social participation and access to services, especially health services. The EESC also underscores its comments on education and skills (point 3.3), employment (point 3.6) and life expectancy (point 3.9).

4.1.1. The EESC does not believe that social participation should be measured against a common standard but against the possibility of access to social activities, entertainment and events, according to the relevant national customs and culture. There are many forms of exclusion which do not depend directly on the absence or inadequacy of income but on the absence of an open and motivating context that fosters human relations and group activities outside the family and workplace. The EESC believes that all Member States should develop their own third-level indicators for this, but also advocates holding a discussion to assess the possibility of defining certain common parameters.

4.2. Moreover the link between recurring or occasional poverty and the development of intermittent or very occasional employment should be studied to establish whether this type of employment has created a new category of excluded persons.

4.3. When working on indicators on indebtedness it is important to distinguish between indebtedness (which can usually be managed by an individual or household with a secure income) and over-indebtedness (which leads to inability to deal with the debt itself). This phenomenon affects Member States to differing extents but it is often the first step towards poverty and social exclusion. The EESC has followed this issue for a while and adopted an opinion on this matter at its plenary session of April 2002 ([1]). At this stage the Committee would like simply to note that the problem of over-indebtedness cannot be tackled solely within the framework of National Action Plans to combat social exclusion and poverty since it is related to a network of bank and market mechanisms which should be broached by a combination of national and Community measures.

4.4. Lastly, clear indicators on the health and sanitation of excluded persons should be drawn up in reference to housing and the workplace, because the current set of indicators only contains a self-defined health status by income level (indicator 10). It could be interesting to develop indicators to assess not only access to medical and health services but also a person's awareness and inclination to keep in good health and to follow the basic rules of preventative medicine (gynaecological and dental check-ups, eye tests etc.), whilst taking into account the subjective differences between people living in poverty and people suffering from acute social exclusion, such as those with no fixed abode.

([1]) Household over-indebtedness in the European Union, OJ C 149, 26.1.2002.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on 'Options for the reform of pension schemes'

(2002/C 221/14)

In a letter sent by the Commission President, Mr Prodi, on 10 January 2002, the Commission asked the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on 'Options for the reform of pension schemes'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 May 2002. The rapporteur was Mrs Cassina and the co-rapporteur was Mr Byrne.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 102 votes to two with one abstention.

1. Introduction

1.1. At its plenary session on 29 November 2001, the EESC adopted two opinions on pensions ([1]), which were intended as an overall contribution to the discussion of the subject at the Laeken European Council. The present opinion makes a number of references to these earlier opinions, without quoting them at length.

1.2. The Laeken European Council took note of the joint report on pensions by the Social Protection Committee (SPC) and the Economic Policy Committee (EPC) and decided to launch the open method of coordination in the pensions field. It also stressed that the 'adequacy of pensions, the sustainability and modernisation of pension systems and the improvement of access to occupational pension schemes are all of particular importance for dealing with the increasing needs ([2])'.

1.3. On 24 January 2002 the Commission published the report, drawn up at the request of the Stockholm European Council, on Increasing labour force participation and promoting active aging ([3]).

1.4. The Commission President, Romano Prodi, wrote to the EESC President, Göke Frerichs, on 10 January 2002 asking the EESC to investigate the possible options for pension schemes and assess them in terms of the sustainability of social protection, public finances and growth.

1.5. The Barcelona Summit stressed the importance of active aging and the need for measures which provide incentives for a voluntary raising of the real retirement age.

1.6. While reaffirming the views expressed in the aforementioned opinions and in others directly or indirectly addressing the problem of pension schemes, the EESC intends here to examine some of these issues in greater detail. It will focus on four aspects: social sustainability of pension schemes in relation to the new needs of the changing labour situation; measures to help prolong active life; measures to improve financial sustainability; and suggestions to accompany the launch stage of the 'open method' in this field.

1.7. First and foremost, the EESC reiterates its deep conviction that any adaptation, modernisation or reform of pension schemes must be carried out with the active, aware and informed involvement of the social players, since that is the only way to create the conditions for a substantial consensus on the necessary choices to be made at national level.

2. Social sustainability in relation to the new needs of the changing labour situation

2.1. The EESC has often drawn attention to the need to ensure that pension schemes are sustainable in terms of both social cohesion objectives and the stability of public budgets. Both these objectives must be pursued resolutely by striving at national level to strike a balance between economic, fiscal, employment and welfare policies. This in turn should help to establish a satisfactory distribution between the various pension schemes (first, second and third tiers) that will make them more dynamic while also safeguarding their role in pursuing certain basic social objectives. It is only on the basis of full

([1]) On Economic growth, taxation and sustainability of pension rights in the EU (OJ C 48, 21.2.2002) and on the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Supporting national strategies for safe and sustainable pensions through an integrated approach (OJ C 48, 21.2.2002).

([2]) Presidency conclusions, point 30.

([3]) COM(2002) 9 final of 24 January 2002.

respect for this subsidiarity — guaranteed by the involvement of the social partners and the national institutional players — that the EESC is putting forward its thoughts on this matter, in the hope that this will spark an open and realistic debate between all the relevant stakeholders.

2.2. The requirement for national pension schemes to be able to meet workers' legitimate aspirations to spend the last stage of their lives in security and dignity is confirmed by virtually all the relevant Community documents. This affirmation must never be regarded as a generic principle, but as a basic objective to be pursued by adapting the various national schemes, and implementing the reforms needed now and in the future for demographic, social and budgetary reasons.

2.3. The EESC stresses that a proper response to the need for social sustainability must simultaneously take account of the structure of the labour market, the characteristics of work and likely future developments. Now more than ever, with the constant innovations in types of contract, it is essential to understand how the picture is likely to change in the medium term. The Lisbon strategy has shown the need to relaunch the European model of socio-economic development, involving the aim of full employment with a high skills content, in a context of greater participation in the labour market. The EESC reaffirms the need to pursue these objectives with maximum determination, as only resolute progress towards a higher level of better-quality employment can stabilise the fiscal resources needed to guarantee the function of solidarity performed by social protection schemes — a function which cannot be neglected without condemning our society to endemic problems of poverty and marginalisation. The Lisbon strategy, in contrast, seeks to combat these with a strong commitment and overcome them in the medium term.

2.4. Employment trends in the Member States show that job creation continues to be insufficient because of weak economic growth, the effects of the slowdown in the global economy, particularly since 11 September 2001, and a certain wait-and-see attitude on the part of investors. In view of the link between employment and pension policies, the Committee takes the view that the Union should adopt new development objectives and growth policies which would stimulate the economy and create a favourable context for solving the employment problem. As pointed out in earlier opinions, the scope for manoeuvre in public budgets is limited by the need to comply fully with the Stability Pact, which is designed to ensure proper management of economic and monetary union. This means that the reduced intervention potential of public funds must be carefully distributed so that social spending focuses on the development of active policies for the labour market and social protection.

2.5. Despite the growth difficulties mentioned above, nearly all the Member States have seen an upturn in employment involving in particular posts created through new types of contract (especially fixed-term, part-time or temporary contracts and forms of subcontracted work). These types of contract are relatively common in the 15-25 age group, especially among skilled workers aged between 20 and 25, and one would be justified in saying that a significant percentage of these jobs are transformed later into full-time, indefinite-period contracts. The EESC therefore welcomes the creation of new jobs and the development of new or different types of contract, but shares the concern of the Commission and the Barcelona Summit with regard to the quality of the work and the balance between flexibility and security of employment.

2.5.1. These new types of contract will continue to develop and create jobs, raising the question of how they will affect the social and financial sustainability of pension schemes, whether PAYG or funded. The contribution cover from workers with new-type contracts does not usually produce a continuous, regular flow of revenue. This affects the resources of the pension schemes and makes it more difficult for the workers in question to plan adequately and responsibly for their lives, careers and old age.

2.5.2. In particular, the problem arises of pension contribution cover in periods of inactivity or training between one contract and another. Without leaning towards one or other of the various solutions currently under discussion, the EESC stresses that any solution must meet the twofold need for security and flexibility. In putting forward its thoughts here, the EESC considers that all the options must be debated in a transparent and unprejudiced manner. The solutions must involve national choices that take balanced account both of the needs of all the parties involved and of the challenges facing pension systems.

2.5.2.1. The most obvious solution would appear to be for the state to take over cover for involuntary periods of inactivity. However, this would not solve the problem because it would increase the burdens on the public purse and it seems unlikely that these would be sufficiently offset by the extension of the tax base (direct and indirect taxation) fostered by the new types of contract.

2.5.2.2. Similarly, strengthening and broadening supplementary and private schemes might improve the balance between public and private schemes but it only shifts the problem without solving it for the worker. Indeed, a temporarily unemployed person, who does not generate revenue, will have one more problem if he/she also has to contribute to second-tier and third-tier schemes, always assuming that he/she is able and willing to join one, since as pointed out in

the aforementioned opinion [1] there are certain rigidities in schemes of this kind, which are not always favourable to workers with new-type contracts.

2.5.2.3. The deployment of special reserve funds — which the EESC has already supported in an earlier opinion [1] — is one useful option, but some Member States find it difficult to free up budgetary resources, raise taxation to supply the fund, or find new sources for state budgets.

2.5.2.4. The EESC is concerned to note that according to the Commission communication on Increasing labour force participation and promoting active aging, workers on fixed-term and part-time contracts have rather high drop-out rates (15 % into unemployment and 10 % into inactivity). The EESC takes the view that these data should not lead one to make hasty judgments on the types of contract concerned, but rather to take account of the need to step up measures to reduce periods of unemployment and inactivity by judiciously combining active management of the labour market, training and efficient employment advice and guidance services. If proper training is provided for the relevant types of work, worker motivation will improve.

2.5.2.5. The EESC notes that some envisage a slight increase in employers' contributions for fixed-term, part-time and temporary contracts, suggesting a sort of trade-off between the flexibility gains this type of contract produces for businesses, and the small sacrifice made in terms of a greater contribution to general welfare. This possibility is strongly opposed by others, who believe it would amount to discrimination between different types of contract, and would only serve to discourage the use of the new forms of contract.

2.5.2.6. Another idea current in the debate is that of a general increase in contributions (from both employers and employees) with a view to maintaining and/or boosting the intervention potential of social and pension expenditure, including in the future. This idea must also be discussed, but the EESC is concerned about a possible tendency to raise contribution levels, which are already quite high in almost all the Member States, and takes the view that any proposal to increase them should be assessed in terms of its probable impact on employment. The EESC notes, in passing (and to draw attention to an important methodological aspect of the problem), the results of a recent Eurobarometer survey: a sample of European citizens was asked whether, and to what extent, they agreed with the statement that 'the current level of pensions should be retained, even if this means increasing taxes or contributions'. It is significant that over 77 % of those questioned agreed either 'strongly' or 'broadly'. This does not lead to any conclusion on the merits of this type of measure, but it does bring out the fact that the European public is aware of the problems and is ready to take a direct share of responsibility for solving them. The EESC hopes that this spirit is shared by all the social players, and above all — as already repeatedly stated — that the workers and citizens of the Member States will be seriously and responsibly involved in policy choices of this type.

2.5.2.7. The EESC reiterates its concern about the position of workers who, for various reasons (including those arising from the growing trend towards new forms of contract), do not earn sufficient pension rights under present schemes following breaks in their working lives and the ensuing break in contributions. Without suggesting solutions, the EESC hopes a careful assessment will be made at national level; it points out in particular the conditions laid down by Swedish and Irish pensions law in order to deal with this state of affairs, and urges the Member States to give priority to resolving the issue [2].

2.5.3. The EESC considers that choices between the measures mooted in the preceding points and any other proposed measures could be defined through national provisions following detailed and open discussion with the social partners.

2.5.4. In any event, all types of employment contract should include full and transparent provisions on pension contributions and should contain clear information on the various opportunities, so as to enable workers to plan their working life and their pension responsibly.

2.5.5. Nonetheless, there is also a need for a European framework setting out certain guarantees regarding proper management of second-tier pension funds, and regarding the transferability of contributions between the various pension funds, thereby encouraging confidence and mobility among

[1] Opinion on Economic growth, taxation and sustainability of pension rights in the EU (OJ C 48, 21.2.2002).

[2] Under the Swedish scheme, unemployment, sickness and study allowances all confer pension entitlement. The relevant component of the state study grant corresponds to approximately 20 % of average earnings. As regards first-tier pension rights, the Irish scheme traditionally combined actual contributions with those credited to beneficiaries as a result of their compulsory social security contributions.

workers (1). This need is all the clearer after certain deplorable events that wiped out many years' pension contributions made by employees of firms which had mismanaged second-tier resources by developing irresponsible financial strategies. Although these are only isolated cases, the public alarm which they generate does not encourage workers to contribute to this type of pension scheme, nor to engage in new types of contract.

3. **Measures to help prolong active life**

3.1. The EESC has already devoted much attention to this subject in earlier opinions (2), maintaining among other things that raising the official pensionable age must correspond to the rise in life expectancy, but can never be the only response to the problems raised by the increase in levels of dependency and to the difficulties of public budgets. Nor is it enough to offer tax or other financial incentives to encourage the worker to go on working (3). Anyone who has spent a lifetime in a job which is exhausting, often relatively unskilled, and provides little job satisfaction, can rightly expect to receive a pension in line with the possibilities offered by national provisions; other workers, too, might prefer to give up a working life for a variety of reasons. In this connection, the EESC also wishes to stress the importance of getting to grips with the increasing rate of exclusion on grounds of ill health. The voluntary principle must always be upheld and safeguarded, subject to the development of adequate incentives. The EESC approves the Barcelona European Council's recommendation to raise the average effective pensionable age by five years by 2010. The reason why the EESC supports this objective is that the impact on the financial sustainability of public pension schemes could be very positive: a study by the ECFIN DG shows that prolonging working life by one year would lead to savings equivalent to 0,84 % of GDP. The objective set at Barcelona of raising the effective pensionable age could be achieved by combining measures to discourage the current trend towards early retirement with measures to encourage workers who reach the legal retirement age to remain at work on a voluntary basis (although not necessarily in the same post or with the same function).

3.2. The EESC does not wish to criticise national provisions which, in some Member States, allow workers to cease employment before they reach pensionable age. It would, however, suggest that the Member States make an overall assessment of end-of-career schemes — of which early retirement is one aspect — taking account in particular of the negative impact which they can have on state budgets, of possible alternatives to early retirement schemes (4), of the impact on labour relations, of the relationship with legislation on pensionable age and of the motives of workers. In this context, the EESC feels that, except in the case of exhausting jobs, early retirement practices should, in time, be brought to an end and in the meantime should be limited to cases of absolute necessity where there are no feasible alternatives. The EESC stresses in particular the need to make every effort, where there is an excess of manpower, to find adequate alternatives to early retirement, such as mobility towards other companies or sectors, retraining to meet new production requirements, or outsourcing, the latter being an extremely attractive and creative practice that is still not widespread enough.

3.2.1. The EESC also stresses the need to increase participation in the labour market by older workers, and in particular to take all necessary measures to encourage their re-employment after they have become unemployed, by making them more employable (training measures, recognition of skills, experience and capabilities whether certificated or not, guidance etc.).

3.3. In its recent Communication on 'Increasing labour force participation and promoting active ageing', the Commission analyses in detail the importance of the reasons which can lead workers to remain active. In particular, the prolongation of employment should be combined with specific training measures and with a clear flexibility in working hours, as is being explicitly requested by many older workers. Moreover, it is likely that, given the rise in life expectancy, a worker may prefer to remain at work for social reasons and for personal development rather than for purely economic reasons. The EESC therefore takes the view that working conditions and the position occupied in the firm should also be covered by ad hoc measures, planned around the needs and potential of the workers concerned and accompanied by new measures for involvement and participation (in profits, decision-making, collateral activities etc.). Workers who still feel useful to their employer and colleagues, and who feel that they still have skills and potential to offer, will be happy to remain at work and when they actually do retire will retain an

(1) Opinion on Economic growth, taxation and sustainability of pension rights in the EU (OJ C 48, 21.2.2002).

(2) Opinions on: 'Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Supporting national strategies for safe and sustainable pensions through an integrated approach' (OJ C 48, 21.2.2002); 'Economic growth, taxation and sustainability of pension rights in the EU' (OJ C 48, 21.2.2002); and 'Older workers' (OJ C 14, 16.1.2001).

(3) See especially the Commission Communication on 'Increasing labour force participation and promoting active aging' — COM(2002) 9 final.

(4) It is well known that early retirements have had, and still have, a considerable impact on the budgets of public pension schemes, above all because, in the years when the prospect of completing the internal market encouraged businesses to restructure, more jobs were abolished than were created by market expectations, and between 15 and 20 million early retirements took place in the EU during that period.

active and responsible outlook as a pensioner. Of course, the goal of promoting active ageing means that human resource management and development strategies will have to be expanded and better targeted, with greater involvement of workers right from the start of their careers.

3.4. Since measures to promote active ageing must meet the needs of all players in the firm, it is difficult to conceive of their being regulated in detail by national laws. However, if the firm is adequately supported by a balanced national regulatory and fiscal framework, the finer detail of the measures to be taken could be settled in negotiations between the parties at sectoral, regional or company level.

3.5. The EESC imagines that, in the context of the European social dialogue and of corporate social responsibility, there is scope for negotiated strategies to be sought which help to prolong active life. These strategies could be applied autonomously by the parties at national level, thus providing significant additional material for the benchmarking of best practice to be verified using the open method of coordination.

4. **Measures to improve financial sustainability**

4.1. The financial sustainability of pension schemes is a vital objective for ensuring social sustainability and must therefore be pursued in a balanced way, through an appropriate mix of policies and measures. The EESC is fully aware of the importance of this challenge and in no way underestimates the impact of the negative demographic trend in the Member States and candidate countries, which is increasing the dependency rate. Europe is an ageing continent ([1]), and the costs of this could impact seriously on future generations. The cumulative effect of expenditure on pensions and health poses serious potential problems for state budgets, because demographic trends are not reversed in the space of a few decades. However, the EESC feels that it is pointless, and in some cases actually damaging, for the media and some political and government circles to respond to the publication of economic and demographic studies with alarmist stances that focus solely on the risk of instability which an uncontrolled development of public pensions would represent for state budgets. But the EESC also criticises the reassuring attitude of denying, in the face of all the evidence, that the financial sustainability of pension schemes is a challenge to be taken very seriously. Incidentally, the EESC points out its earlier views ([2]) on the already obvious (although not in itself decisive) contribution of migrant workers to the financial sustainability of pension schemes, provided that such workers are taken on under proper conditions and enjoy equality of treatment with workers who are Member State nationals. The EESC therefore reaffirms the need for more resolute steps towards a fair, far-sighted Community immigration policy, and would point out that in the last two years, one out of every four new contributors to the Spanish social security system has been an immigrant from a third country.

4.1.1. The practice of tax evasion, not generalised but unfortunately quite frequent, is damaging to workers (lack of cover), honest entrepreneurs (unfair competition) and state budgets (lost tax revenue). The EESC takes the view that the Member States should take much more determined action to overcome this problem as soon as possible.

4.2. The EESC thinks that these issues must be addressed in a carefully balanced manner, so as not to arouse mistrust and fears among the public or issue soothing messages. The EU's citizens are mature adults who realise the difficulties of the situation but who must be involved in the debate on major issues and helped in their legitimate desire to secure prospects for their old age. Here it is worth noting that the abovementioned Eurobarometer survey showed that the vast majority of people in all the Member States view the situation realistically and with a sense of responsibility, and have a lucid and balanced picture of their future pensioner status.

4.3. The problems must always be viewed from a dynamic standpoint. The EESC points out that many Member States have already introduced, or are preparing, reforms designed to improve the financial sustainability of their pension systems; analyses which do not take account of the gradual impact of these reforms over time could therefore lead to (possibly serious) errors in the forecasts.

4.3.1. In nearly all the Member States which have already carried out pension reforms, eligibility conditions have been tightened up, and in some cases the amounts paid have been reduced. These operations must display the requisite financial rigour, but must never fall short of the solidarity objective of public pension schemes. Nor should they be subject to constant unforeseen adaptations, without adequate trial periods. The

([1]) Information report on the Demographic situation in the EU and future prospects — CES 930/1999 fin.

([2]) Information report on the 'Demographic situation in the EU and future prospects' — CES 930/1999 fin; and Opinion on the Communication from the Commission: A concerted strategy for modernising social protection — OJ C 117, 26.4.2000.

EESC reaffirms the need to encourage workers to share the responsibility for planning their careers and their pension expectations, but this can never be achieved by continuing to modify benefits (downwards) or by unilaterally imposing stricter conditions for the right to draw a pension.

4.3.2. Some of these reforms are already yielding results and have shown that the risk of negative effects on public finances can be significantly reduced. The reform of the Italian pension system in 1997, although leaving room for improvements, already suggests that Italy will be one of the European countries least affected by changes in expenditure (only 1,7 % between 2000 and 2050). The Commission projections — and those of some private research bodies — expect that Sweden too will have an extremely modest spending 'peak'. Both Sweden and the Netherlands are interesting examples of how the balance between the different schemes is also beneficial for the sustainability of the public schemes and is better able to contain spending in absolute terms. The problem of the 'expenditure peak' should not be overestimated, but has to be examined from several standpoints and in conjunction with the problem of the level of pension spending in relation to social spending in general and the GDP: according to the Commission projections, the Member States could face an increase in average pension expenditure corresponding to 3-4 % of GDP, but in some States this figure could reach 6 % or 7 %, which are clearly significant and worrying percentages. The EESC stresses, however, that this 'peak' has a different meaning from one country to another; it should be carefully assessed in relation to specific national conditions. For example, in a country for which a significant 'peak' is foreseen, it would be necessary to consider the health of the public finances, the potential for growth of the tax base, the soundness and proactive nature of the social protection policy, pensioners' quality of life in comparison with that of workers, the general level of development, the capacity to iron out social and regional inequalities, and the likely duration of the 'peak'. In this context, the capacity for recovering from the 'peak' and the time taken to do so appear to be as important as its magnitude ([1]).

4.3.3. The EESC reiterates its firm conviction that the most advanced, balanced and acceptable reforms are those which arise from joint planning involving the social partners and governments (see the recent EESC opinion on 'Supporting national strategies for safe and sustainable pensions through an integrated approach' ([2]).

4.3.4. Careful analysis of the documentation now available reveals interesting data which can suggest innovatory, flexible and effective solutions. A study by the ECFIN DG ([3]), for example, shows that a gradual increase of 5 % in the labour market participation rate could lead to savings amounting to 0,5 % of GDP, and that prolonging working life by a year would entail a saving of 0,84 % of GDP. As stated in point 3.1 above, measures to prolong working life must safeguard the voluntary element, but if a significant percentage of workers could be sufficiently motivated to remain active, perhaps even for two or three years after reaching pensionable age, the benefits could accumulate.

5. Suggestions for launching the 'open method' in this field

5.1. The ideas set out in the points above, which could supplement political options on pension reforms, nearly all relate ([4]) to initiatives to be taken at national level, the efficiency of which would be increased by comparison and examination using the 'open method'. The EESC would emphasise the potential of this method for finding innovatory solutions, for refining the capacity for analysis and comparison among the Member States, and for ensuring the joint endeavour to achieve the social and financial sustainability of pension schemes. Moreover, the EESC reaffirms the need for substantial, continuous involvement of the social partners (especially at national level) on the one hand and of the applicant countries on the other, as stated in the aforementioned opinions.

5.2. In this context, it is essential to develop forecasting indicators which take progressive account of the reforms being made, and which can be used to gauge whether pension schemes effectively correspond to social needs, the gender dimension, trends in the labour market and the macroeconomic and budgetary conditions of the Member States. Alongside the data and analyses in national reports, this could provide a framework of indicators accepted by the Member States as a way of regularly verifying not only the effects on the budget but also the resulting social developments.

5.3. As to the subjects for debate, the EESC suggests that priority be given to the question of incentives and reasons for prolonging working life, and to the development of accurate benchmarking of best practice in this field.

([1]) On this subject, see the criteria adopted in the Merrill Lynch study to assess the sustainability of pension reforms in Europe.

([2]) OJ C 48, 21.2.2002.

([3]) Reforms of the pension systems in the EU: an analysis of the policy options, Chapter 5.

([4]) The exception is the Community framework to facilitate the transferability of second- and third-tier pensions (see point 2.5.5).

5.4. Finally, the EESC points out the need to involve the applicant countries as soon as possible in developing the open method of coordination on pensions, emphasising that the considerable diversity in the systems of the future member countries, as well as the diversity in macroeconomic and income conditions, will pose new problems, but will also offer significant opportunities for those countries to cooperate and integrate with the European model of economic and social development.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings'

(COM(2002) 13 final — 2002/0020 (CNS))

(2002/C 221/15)

On 6 February 2002, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 May 2002 (rapporteur working without a study group: Mr Cavaleiro Brandão).

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 109 votes in favour and one vote against, with no abstentions.

1. **Objectives of the proposal**

1.1. On 18 January 2002, following the Green Paper on legal aid in civil matters ([1]) (February 2000) and a hearing with national experts and professional circles concerned (February 2001), the European Commission adopted a draft directive aimed at setting up a European system of free legal aid in cross-border civil disputes and thereby increasing the resources available to citizens to ensure their rights of access to justice.

1.2. As the legal basis for its initiative, the Commission cites Article 61(c) of the Treaty, which commits to the objective of progressively establishing an area of freedom, security and justice and provides for adoption by the Council of measures in the field of judicial cooperation in civil matters to eliminate obstacles to the good functioning of civil proceedings [Article 65(c)].

1.3. According to the proposal, anyone involved in a civil dispute, acting as claimant or defendant, who does not have sufficient resources, may benefit from the services of a lawyer and be represented by him/her in court at no charge. The legal aid also covers the pre-litigation stage and extra-judicial procedures. The Member State of the forum provides the aid, including the costs resulting from the cross-border nature of the dispute, such as interpreting, translation and travel expenses. The Member State of residence of the claimant will bear the costs of a local lawyer, particularly in the pre-litigation phase. Reasons must be given for any rejection of a request for legal aid. The system will be managed by a network of bodies chosen by each Member State and empowered to send and receive aid applications. The Commission will also establish a standard form for the transmission of aid applications.

([1]) Cf. Green Paper on Legal Aid, COM(2000) 51 final.

2. General comments

2.1. The Committee warmly welcomes the Commission proposal.

2.2. The fact is that the progressive integration of Europe and increasingly dense networks of personal, economic, commercial and business relations have resulted in an exponential rise in the number of cross-border legal disputes.

2.3. It is not just large companies that are involved in such disputes. It is now increasingly the case that small businesses and individual citizens face legal problems and questions beyond the borders of the Member State where they are from or where they are based.

2.4. Individuals or enterprises that feel the need to defend or assert their rights in a Member States other than their own have to overcome additional difficulties. These difficulties are considerably greater if the person concerned does not have adequate financial resources and is therefore forced to have recourse to a public legal aid scheme.

2.5. A person threatened with proceedings or wishing to bring proceedings abroad may need legal aid at three stages. Firstly, pre-litigation advice; secondly, the services of a lawyer in court and exemption from court costs; and thirdly, assistance at the stage of having a foreign judgment declared enforceable or being enforced [1].

2.6. The cross-border claimant has to deal with different arrangements from Member State to Member State, particularly with regard to the nature and scope of legal aid, as well as financial eligibility.

2.7. The Committee therefore endorses the Commission's intention as expressed in the present proposal to ensure that a cross-border claimant is treated in the same way as if he resided in the Member State of the forum and that the difficulties inherent in the cross-border nature of the dispute do not constitute an obstacle to the granting of legal aid.

2.8. The Committee also endorses the choice of a directive as the appropriate legal instrument for the proposed objectives, as it is an element in the process of creating a European area of freedom, security and justice, which has been expressly encouraged since the Tampere Council, and requires cooperation procedures between Member States and the establishment of common legal standards. The option of a convention as a legal alternative to the directive would be less suitable, particularly in view of the relative lack of success of the 1980 Hague Convention.

2.9. The proposal aims to guarantee access to justice in cross-border disputes. However, it also seems to point towards the establishment of common minimum standards at Member State level, particularly in the second paragraph of point 3 of the Explanatory Memorandum. Any doubts as to the purpose of the proposal which may arise from this must be clarified. Nevertheless, the Committee has no objection to the legal basis cited.

3. Specific comments

3.1. The first paragraph of Article 3 sets out the general principle that all persons shall be entitled to receive appropriate legal aid if they do not have sufficient resources. The Committee wholeheartedly supports this principle.

3.2. Under the second paragraph of Article 3, this aid is to include the services of a lawyer and/or 'other person entitled by the law to represent parties in the courts'. The alternative proposed is puzzling. Citizens' legal interests are best protected by professionals trained, organised and specialised for that purpose, i.e. by lawyers. It cannot therefore be of benefit to citizens' interests to include an unnecessary reference to vague alternative solutions.

3.3. Access to justice is a fundamental right and should be guaranteed for all citizens who are habitually resident in a Member State, as advocated in the Hague Convention of 25 October 1980 on international access to justice.

3.4. Article 6 enshrines the principle of non-discrimination in relation to third-country nationals, which merits the Committee's agreement and is in line with the thinking it has always advocated.

3.5. However, given that access to justice is a fundamental right, the Committee has reservations with regard to the proviso limiting the application of that principle and excluding from its scope third-country nationals whose residence status may not be regularised.

3.6. The first paragraph of Article 7 provides for the continuation of legal aid through the enforcement phase when enforcement takes place in the Member State of the forum. However, such aid should still be guaranteed even if enforcement is to take place in a Member State other than that of the forum (as will be the case when the sued party's assets are located in that other state).

3.7. Article 12 refers to emergency applications, for which it calls for a decision 'within a reasonable time before the case comes to trial'. The term 'a reasonable time' may be interpreted very differently from one Member State to another, and does not guarantee a quick decision. It would be preferable to lay down a specific and fixed length of time.

---

[1] Cf. Green Paper on Legal Aid — COM(2000) 51 final.

3.8. Legal aid should not be denied in the cases mentioned in the fourth paragraph of Article 13. Such situations do not constitute a real alternative to the proposed system, and it is unreasonable to judge the financial capacity of applicants on the basis described.

3.9. The system of legal aid envisaged in the Commission proposal appears to be aimed at individuals. Article 15 extends the scope to not-for-profit legal persons, which the Committee welcomes.

3.10. However, the Committee would argue that the facility of legal aid should also be extended to enterprises whose financial situation demonstrably prevents them from exercising their rights in the normal way, as claimants or defendants, before the courts. In fact, in a good number of Member States at least, national legal aid schemes do not exclude enterprises, making it hard to understand why they should be discriminated against and excluded from the scope of a European system.

3.11. The Committee formally expresses its support for extending the legal aid arrangements to alternative procedures for settling disputes, as it appreciates that such alternative procedures may, in an ever increasing number of cases, be quicker and more appropriate, and that, as such, they have gradually been integrated into legal systems, and should be integrated still further. It should be borne in mind that the survival of an enterprise and the jobs it provides may depend on its capacity to go to court and to assert its rights.

3.12. The Committee would reiterate here two recommendations which it made in its opinion on the Proposal for a Council Decision on the creation of a European Judicial Network in Civil and Commercial Matters ([1]).

3.12.1. Firstly, in view of the linguistic difficulties which would naturally arise in relations between the different bodies called upon to communicate, within the network of contacts and between national jurisdictions, it would be highly beneficial to adopt a single common language.

3.12.2. Secondly, and similarly in the interests of the consistency or uniformity of the system of (inter)communications within the network of contacts, it is essential to make sure that the technologies and programs used are compatible.

3.13. Finally, the Committee feels that the success of the proposed system will depend on how well it is publicised among the citizens and professionals in the field. Apart from keeping them informed, action will also be needed to cater to the training needs of these professionals. These points are glossed over in the proposal and should be addressed.

4. **Conclusion**

4.1. To summarise, the Committee warmly welcomes the Commission proposal, particularly as regards the overriding principles:

— the lack of resources of a person involved in a dispute, whether as claimant or defendant, as well as the difficulties arising from the cross-border nature of a dispute, should not constitute obstacles to effective access to justice;

— legal aid that is adequate allows the beneficiary effective access to justice and must include at least the effective support of a lawyer and exemption from, or coverage of, court costs;

— irrespective of their place of residence, EU citizens should be able to benefit from the legal aid granted to citizens of the Member State of the forum.

4.2. Nevertheless, the Committee would draw attention to the following points which need further consideration:

4.2.1. Access to justice is a fundamental citizens' right, and this being so, aid arrangements should cover all citizens who habitually reside in a Member State, regardless of their residence status.

4.2.2. Legal support should be guaranteed in the enforcement phase even if enforcement is to take place in a different Member State to that of the forum.

4.2.3. Citizens' interests must be protected by means of legal support from a suitably trained and specialised professional, i.e. a lawyer.

4.2.4. Enterprises whose economic situation warrants it should not be excluded from the possibility of legal aid.

4.2.5. To ensure the smooth functioning of the proposed system, it would be advisable to adopt a single common language and to make sure that the IT systems and programs to be used in the communication network between the various accredited national bodies are fully compatible.

([1]) OJ C 139, 11.5.2001.

4.2.6. Provision should be made for adequate technical and financial resources to publicise the system among the general public and to train professionals who will be involved in making it operative.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Coordination of economic policies in the long term'

(2002/C 221/16)

In a letter sent by the Commission President, Mr Prodi, on 10 January 2002, the Commission asked the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on: 'Coordination of economic policies in the long term'.

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 7 May 2002. The rapporteur was Mrs Konitzer.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 29 May) the Economic and Social Committee adopted the following opinion with 79 votes in favour and two abstentions.

1. **Background**

1.1. Following his speech of 28 November 2001 to the plenary session of the European Economic and Social Committee (EESC), the president of the European Commission, Romano Prodi, in a letter dated 10 January 2002, asked the EESC to draw up a number of exploratory opinions and studies on issues including the coordination of economic policies in the long term and the relationship between the broad economic policy guidelines of the economic policies of the Member States and of the Community and the economic and stability programmes of the Member States. This exploratory opinion is an initial contribution by the EESC on the subject.

1.2. Traditionally the EESC expresses its views on issues related to the coordination of economic policy in its own-initiative opinions [1] on the broad economic policy guidelines for the Member States and the Community [2].

In recent years the EESC has also adopted other own-initiative opinions on topical issues relating to the coordination of economic policy and its procedures, which also looked at more fundamental questions such as exploiting the Community's employment and growth potential, overcoming obstacles to growth and the possible contributions of the economic-policy actors to an optimum macroeconomic policy mix for the Community [3].

---

[1] Before the Maastricht Treaty consultation of the EESC (and the Parliament) on the annual report on the economic situation in the Community was mandatory on the basis of the Council's convergence decision of 18 February 1974 (74/120/EEC, Article 4). These opinions were the EESC's contribution to the economic policy guidelines.

[2] OJ C 221, 7.8.2001, p. 177 — OJ C 139, 11.5.2001, p. 72 — OJ C 48, 21.2.2002.

[3] OJ C 139, 11.5.2001, p. 60 — OJ C 139, 11.5.2001, p. 51 — CES 1487/2001 — OJ C 48, 21.2.2002.

1.3. This increased interest in the coordination of economic policy and its procedures can essentially be explained by the following four points:

(i) The success of the realisation of monetary union contrasts with the Community's lack of success to date [1] in exploiting its considerable employment and growth potential (cf. the Lisbon objectives). Despite positive initiatives, significant results have so far not been forthcoming. And yet progress in this area is of decisive importance for the future of the Community. And this can only be achieved by better designed and coordinated economic policies.

(ii) The completion of monetary union with the successful entry into circulation of the euro on schedule is strengthening people's political Community awareness and opening up the way to further progress towards a true economic and social union.

(iii) The enlargement of the Community from its current 15 Member States to 25 or more makes it all the more necessary to study, in the context of institutional reform, the procedures for the coordination of economic policy and the role of the Community institutions involved (Commission, Council, Parliament, EESC), in order to ensure that the enlarged Community remains capable of effective economic-policy action.

(iv) The Convention on reform of the EU set up by the Laeken European Council should also look at the Treaty-related and institutional aspects of economic policy coordination. This will require expert submissions which, at Community level, should mainly come from the Commission, the Parliament and the EESC. This opinion is intended to be the EESC's first contribution to this debate.

1.4. The Barcelona European Council, in point 7 of the Presidency Conclusions, also stressed the need for improved coordination of economic policy in relation to three points. The EESC would make the following comments on these points:

(i) It welcomes the intention to improve and harmonise euro-area statistics and indicators; this is an obvious necessity.

(ii) The call for a systematic analysis of the overall policy-mix in the euro area is, in its opinion, extremely important for a policy aimed at growth and employment which also ensures price stability. An analysis of this kind should, however, cover not only monetary and fiscal policy (in the sense of budgetary policy) but also the wages policy of the social partners. Wage trends are just as important as public-sector budgets for the overall policy-mix of the euro area!

(iii) It welcomes the call on the Commission to submit proposals for improving the coordination of economic policy in time for the Spring 2003 meeting of the European Council. This opportunity should be met by the Commission with determination and initiative. Where changes are needed to the Treaty they should be proposed. The proposals should be submitted in time for them to be debated by the Convention.

This EESC Opinion is intended as a contribution to the debate.

2. The Maastricht Treaty and current economic policy coordination practice in the EMU and the Community

2.1. *The philosophy behind the Maastricht Treaty*

2.1.1. The Treaty's chapter on economic policy (Articles 98-104) basically leaves responsibility for economic policy in the hands of the Member States. Economic policy is however regarded as a matter of common concern. National policies are to be coordinated so as to enable them to contribute to the realisation of the objectives of the Community, as defined in Article 2 of the EC Treaty [2]. 'The broad guidelines of the economic policies of the Member States and of the Community' constitute the Community's key economic policy document. This document takes the form of a (non-binding) recommendation of the Council, drawn up on the basis of a recommendation put forward by the Commission and the conclusions of the European Council. The Council informs the European Parliament of its recommendation. An essentially intergovernmental process has been introduced for monitoring implementation of the broad guidelines. If it is established that the guidelines are not being followed, a further recommendation may be forwarded to the Member State concerned; this recommendation may be published (as a sanction). Apart from the principle of ensuring an open market economy with free competition and promoting efficient allocation of resources, the only substantive economic policy prescriptions set out in the chapter of the EC Treaty on economic policy are the provisions relating to budgetary policy. These provisions [3] are designed to ensure that the budgetary policies remaining within the remit of the Member States do not jeopardise the centralised monetary policy of the European System of Central Banks (ESCB) aimed at maintaining price stability. The Stability and Growth Pact backs up and consolidates these provisions within the framework of the European Economic and Monetary Union (EMU).

---

(1) In point 5 of the Presidency Conclusions of the Barcelona European Summit (15 and 16 March 2002), the European Council praises the rapid reaction of economic policy to the slowing economy in 2001. The EESC believes that, whilst a severe recession was avoided, there is no cause for complacency. The Community is still far from being on a growth path, which will need to last for ten years or more if the Lisbon objectives are to be achieved.

(2) Growth and employment are amongst the objectives listed in this article.

(3) Monetary measures may not be taken to finance government deficits: state bodies may not have privileged access to capital markets; Member States shall not be liable for the debts of other states or public bodies; excessive government deficits are to be avoided (Articles 101 to 104 of the EC Treaty).

2.1.2. The chapter of the Treaty dealing with monetary policy (Articles 105-111) identifies the maintenance of price stability at the primary objective of the European System of Central Banks (ESCB) (Article 105, first sentence). 'Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2' (Article 105, second sentence).

2.1.3. The economic and monetary-policy provisions of the Treaty summarised here point up the high priority assigned to the price stability objective and show that the Treaty contains virtually no provisions with regard to the content of the macroeconomic policy mix and general economic policy. The procedural rules for coordination of economic policy are underdeveloped.

2.2. *The further development of the Treaty and current procedures*

The Maastricht Treaty's relative reticence on the subject of economic policy has been subsequently remedied in various, not always transparent ways:

— Under the Treaty of Amsterdam a new title on employment was added to the EC Treaty; this title reintroduces the Community procedure with respect to the employment policy guidelines, which are drawn up by the Council acting by a qualified majority on a proposal from the Commission after consulting the European Parliament, the European Economic and Social Committee and the Committee of the Regions [Article 128(2)]. The Treaty of Maastricht no longer makes provision for the Community procedure in respect of the guidelines for economic policy (Article 99(2), which requires only a Commission recommendation and makes no provision for consultation!). The Community procedure means that the Council acts exclusively on a proposal from the Commission, which the Council may amend by a unanimous vote but which it has to adopt by a qualified majority. This procedure has proved its worth throughout the history of European integration. It ensures that reasonable account is taken of the Community interest and that Council decisions are coherent.

— The above measures were followed by the so-called 'processes', namely:

  — the Luxembourg process dealing with labour market policy,

  — the Cardiff process dealing with structural policy (in the goods, services and capital markets); and

  — the Cologne process dealing with the macroeconomic dialogue between the parties involved in monetary, budgetary and wages policy, aimed at improving the macroeconomic policy mix in the EMU.

— The above 'processes' were complemented by the goals set out at the Lisbon European Council in respect of growth, technological progress and full employment and those of the Gothenburg European Council in relation to environmental policy.

— A further development has been the introduction of an opaque mix of consultations, arrangements in respect of non-mandatory opinions from the European Parliament, the EESC and the social partners, and endeavours by the Commission and the European Parliament to stimulate public debate on EU economic policy issues: cooperation between economic research institutes, Brussels Economic Forum;

— The important role played by the various Community committees in the economic, fiscal and employment policy spheres (the Economic and Financial Committee, the Economic Policy Committee and the Employment Committee) has been further enhanced; this development has partly taken place at the expense of the role of the Commission as the body representing the interests of the Community; the impression has also been conveyed of rivalry between the committees, lack of transparency over decision-making and problems over the composition of the committees.

— Over and beyond the central role of the ECOFIN Council, the influence of other Council formations (e.g. Employment and Social Affairs, Internal Market, Environment etc.) on the broad economic policy guidelines has also increased.

— Economic policy is now also on the agenda for the spring meeting of the European Council, which is intended to provide further input for the drawing up of the broad economic policy guidelines.

— At Council level, an informal 'Eurogroup' has been set up to address the coordination of economic policy and the development of the policy mix in the EMU; the Eurogroup has however not been given decision-making powers under the Treaty.

3. The division of powers in the field of economic policy and the representation of the Community interest

3.1. Although current procedures have developed in an unsystematic and often non-transparent way, they do nonetheless have a certain logic which should be developed further.

The division of powers in the field of economic policy must in general take account of the interests both of the various levels of government in the Member States (local authorities, regions or states, central or federal government) and of the Community. It should also be borne in mind that the overall macroeconomic policy mix is determined by three groups of autonomous actors: the ESCB for monetary policy, the governments of the Member States for budgetary policy and the social partners for wages policy.

Even in a monetary union with — necessarily — centralised monetary policy, economic-policy powers should and must be centralised only to the extent necessary for the satisfactory operation of the economic and monetary union. The Community interest should, however, be appropriately represented. The representation of the Community interest concerns all the Community institutions; the Commission should exercise close supervision and should ensure that all Member States are treated equally.

3.2. The nature and intensity of the representation of the Community interest depends on the policy area, and the following distinctions can be made:

(i) the budgetary rules laid down in the Treaty (Articles 101 to 104, in conjunction with the stability and growth pact), which are to ensure that national budgetary policies do not conflict with the centralised monetary policy;

(ii) the macroeconomic policy mix in the monetary union and in the Member States of the Community (including the macroeconomic dialogue/'Cologne process');

(iii) the structural policies for the labour market ('Luxembourg process') and the goods, services and capital markets in general ('Cardiff process');

(iv) the need for a general economic assessment (further development of the Lisbon approach, longer-term economic-policy vision and the short and longer-term role of the Community in the world).

3.3. The following comments can be made on these four areas:

(i) The approach adopted in the budgetary rules can in principle be regarded as satisfactory: Treaty prohibition on (a) the monetary financing of public-sector deficits (Article 101), (b) privileged access for public-sector bodies to the capital markets (Article 102), and (c) the assumption by governments of budgetary responsibility for the commitments of other public authorities or states (Article 103); and a Treaty requirement to avoid excessive government deficits (Article 104) with suitable monitoring of compliance. In the framework of the stability and growth pact, efforts should be made during the next economic upswing to reduce structural deficits sufficiently to ensure that in future there is the necessary scope for budgetary policy flexibility over the economic cycle as part of the overall economic policy mix. In order to ensure that certain priority government expenditure (research, education, infrastructure etc.) does not suffer as a result of the budgetary-policy restraint which is in many cases necessary, reference values for these expenditure categories could be introduced into the national stability programmes and monitored at Community level. In order to take proper account of the quality of public expenditure, it is also important to focus more in future on structural aspects of public-sector budgets, going beyond pure balance considerations.

(ii) Within the monetary union the interaction of monetary policy, the aim of which is price stability, the average of the budgetary policies of the Member States in the monetary union and the average wages policies of the two sides of industry gives rise to an overall macroeconomic policy mix for the monetary union which forms the framework and defines the scope for the Member States' (and regions') own policy mixes against the background of the single monetary policy. This overall monetary union policy mix is determined by the independent central bank, the sovereign governments of the Member States and the autonomous social partners in the Community. The autonomy of these players must be respected. At the same time, however, the shaping of this macroeconomic policy mix is a matter of direct Community interest. It has a direct influence on conditions for growth and employment in the monetary union. This Community interest should be actively expressed by the Commission and specifically taken into account in Council recommendations, whilst respecting the actors' autonomy. This applies to the broad economic policy guidelines, the macroeconomic dialogue (Cologne process) and the public economic-policy debate.

(iii) Alongside macroeconomic policy, the structural policies for the labour market ('Luxembourg process') and the goods, services and capital markets ('Cardiff process') are also very important for growth and employment, particularly in the longer term. Except for the internal market competition rules, responsibility here lies mainly at national level. This is particularly true of taxation policy, education and training and the problems arising from demographic trends. And yet here too the Community interest needs to be represented — over and above the internal market rules. In relation to the employment guidelines, this interest is represented by means of the Commission's right of proposal and mandatory consultation of the Parliament, the EESC, the Committee of the Regions and the Employment Committee (Article 128 of the Treaty). The 'Cardiff process' on the other hand is much less formal and also less transparent.

In respect of both structural-policy procedures the Commission should make it clear how the legitimate representation of the Community interest can be reconciled with the necessary transparency and efficiency and with the avoidance of bureaucracy.

(iv) In terms of its economic weight the Community is already comparable to the USA, and the euro has a potential comparable to that of the dollar. In the world monetary and economic dialogue (IMF, G7 etc.) the euro is represented by the president of the central bank. But the arrangements for the external economic-policy representation of the monetary union and the Community are inadequate. This is detrimental to the Community interest and should, as a matter of priority,

be rectified in the course of the next Treaty revision. The EESC feels that Europe should also speak with a single voice in relation to its external economic representation. If the work of the Convention results in a politically strengthened Commission (e.g. with its president elected by the Parliament), the Commission, thus reformed, should be responsible for the external economic-policy representation of the Community, as it will then be able to offer greater political weight and more continuity than the presidency of the ECOFIN Council which changes periodically. Going beyond this formal consideration, the prospects for the development of the Community's economic weight should also be considered. These essentially depend on two factors:

— exploitation of the Community's employment potential (more than 30 million workers) could in the longer term, over and above productivity growth, increase the total GDP of the Community of 15 by an amount almost equal to the GDP of Germany. Indeed, the additional GDP which could be generated by the employment of 30 to 35 million more workers would be roughly of this order;

— the forthcoming enlargement of the Community will also significantly increase the Community's economic potential, and successful catching up by these countries (following the example of Ireland) could in the long term multiply the resulting economic potential. However, the challenges and risks of enlargement must be considered, and the economic and social cohesion of the Community maintained during the transition.

The prospects based on these two factors call for a long-term strategic assessment of the opportunities and risks arising from these possible developments. This includes the problem of sustainable development and applies both to development within an enlarged Community and to the Community's changed role in the world.

The long-term objectives laid down by the Lisbon European Council show that the Community institutions are open to such a debate. This must be pursued in a careful and responsible way. Once again the Commission would appear to be the most suitable focal point for an on-going debate involving the other Community institutions and the general public.

4. **Paths to progress: transparency; taking account of the Community interest and institutional balance**

In order to remedy the shortcomings in the design and coordination of economic policy, the following points should be covered in the discussion:

(i) In order to promote transparency, the Commission should submit a systematic survey of all the formal and informal procedures, 'processes' and consultations involved in the formulation and coordination of economic policy at Community level and conduct a critical analysis with a view to simplification and greater efficiency.

(ii) Efforts to promote a broad and informed public debate on Community economic-policy issues should be stepped up. The possibility should be considered of setting up an independent, European expert body to assess the Community's economic development and policy, which would perform a consultative role, stimulating analysis and public discussion through constructive criticism and proposals. The aim of this proposal is not the establishment of new bodies. Rather, it is intended to help prevent the various Community institutions setting up competing councils of experts. The important thing is to promote informed and independent public discussion of economic policy issues in the Community and the monetary union.

(iii) The ideas aimed at improved coordination of changes to the Treaty put forward in the Commission's Communication of 7 February 2001 on 'strengthening economic policy coordination within the euro-area' [1] should be taken up again and re-examined in the light of the possible discussions of the Convention and a probable revision of the Treaty.

(iv) In order to avoid excessively detailed amendments to the Treaty, further appraisal should be made of how the coordination of economic policy can be improved through secondary legislation on the basis of the Treaty. Here it should be borne in mind that the scope of Article 99(5) is restricted to monitoring the implementation of the broad economic policy guidelines [Article 99(3) and (4)]. The possibility of extending the scope of application of secondary legislation by means of a Treaty revision should also be looked at [Article 99(5)].

(v) Regarding the work of the Convention, an appraisal should also be made of the other amendments which it would appear advisable to make to the chapter on economic policy in the EC Treaty. The following points would appear to be of particular interest:

---

[1] COM(2001) 82 final.

(v-1) The text of the Treaty (e.g. Article 2 of the Treaty on European Union and Articles 2, 3, 4 and 98 of the Treaty establishing the European Community) should state more clearly that it is the task of economic policy to make a major contribution to the achievement of employment and growth objectives [1].

(v-2) The Community interest should be better taken into account by restoring the Commission's right to make proposals for the formulation of the broad economic policy guidelines [Article 99(2)].

(v-3) The role of the European Parliament should be strengthened: mandatory opinion or co-decision as majority decisions are taken in the Council (Article 99); this point should be given special attention by the Commission and the Convention with a view to the efficiency and democratic legitimacy of the procedure.

(v-4) Mandatory consultation of the European Economic and Social Committee (Article 99).

(v-5) The case for, and ways of, enshrining the macroeconomic dialogue [2] in the Treaty (possible analogy with Article 139 within the economic policy chapter — reference to secondary legislation).

(v-6) The role and composition of the Committees and cooperation between Committees to be better defined (Articles 114 and 130) (Economic and Financial Committee, Economic Policy Committee, Employment Committee — reference in Treaty plus possibility of secondary legislation).

(v-7) What should the composition of the ECB Council and the Executive Board be after enlargement?

(v-8) Can collaboration between the various Council formations (Ecofin, Employment and Social Affairs, Internal Market) be improved?

(v-9) Should the Eurogroup be enshrined in the Treaty with its own decision-making powers?

(v-10) Would it be appropriate to lay down, in the Treaty or in secondary legislation, a number of simple rules for the macroeconomic policy mix and structural policies?

(vi) The EESC considers that it would be worthwhile developing further the issues addressed in this opinion and, if appropriate, proposing new wording amending the Treaty.

[1] cf. Nyberg Opinion (OJ C 125, 27.5.2002).

[2] Following on from the 'Cologne Process' dialogue between representatives of national governments (budgetary policy), the ECB (monetary policy), the social partners (wage trends) and the Commission (representation of the Community interest) on questions concerning the economic prospects and the macroeconomic policy mix in the monetary union and the Community.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Regulation concerning sales promotions in the Internal Market'

(COM(2001) 546 final — 2001/0227 (COD))

(2002/C 221/17)

On 30 January 2002 the Council decided to consult the Economic and Social Committee, under the first paragraph of Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Internal Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2002. The rapporteur was Mr Dimitriadis.

At its 391st plenary session (meeting of 29 May 2002), the Economic and Social Committee adopted the following opinion by 64 votes to 18 with 9 abstentions.

1. General comment on the communication and the proposal for a regulation

1.1. The Communication from the Commission on sales promotions in the internal market analyses the problems arising in this area across Europe, and looks at the relevant legislative and statutory measures taken since 1996. The initial legislative steps, together with the findings of expert groups, have now created the right conditions for launching a substantial debate which will lead to common action in this area.

1.2. The Commission's Proposal for a regulation concerning sales promotions in the Internal Market, addressed to the European Parliament and the Council, is the first meaningful attempt to fill the legal gap which exists in the regulatory framework for the efficient cross-border use and commercial communication of sales promotions in the EU, consistently reflecting the Lisbon European Council's strategic goal for the Union to become the most competitive and dynamic knowledge-based economy in the world.

1.3. At the same time, the Commission has published a Green Paper on European Union consumer protection, the purpose of which is to launch an extensive public consultation on the future direction of EU consumer protection in the area of commercial practices and, more specifically, opportunities for improving the functioning of the single market in terms of business-consumer relations ('B2C') [1].

1.4. These two documents represent a determined attempt (i) to halt the excessive multiplicity of restrictions on sales promotion methods, which give rise to very serious problems on the single market, and (ii) to ensure consumers are adequately protected against unfair and illegal sales promotion practices [2].

It must be recognised that there is a lack of policy coordination by the Commission, as the Proposal for a Regulation has been submitted before the end of the debate on the Green Paper on European Union consumer protection, which addresses — inter alia — commercial practices.

The proposal regulates most commercial practices, for which the Green Paper proposes approximation by means of the 'general fairness clause'.

1.5. The communication defines sales promotions as the priority area in the Commission's commercial communication policy, laying particular emphasis on their importance as a fundamental tool for the development of cross-border trade in goods and services, and represents a generalised attempt to remove many of the identified internal market barriers to the use of sales promotions between Member States. It also pinpoints those areas requiring harmonisation while specifying provisions aimed at harmonising and updating existing national ones, to the appropriate extent, in order to create a practical, modern and legally certain regulatory environment, simultaneously offering guarantees for consumer protection, protection of minors and protection of public health.

1.6. The definitions under examination in the text of the draft regulation, together with the general wording and thrust of the communication and regulation, clearly show that sales promotions are of specific and transitory duration, involving a purely temporary offer. The legal basis for the proposal is Article 95(1) of the EC Treaty, which seeks the establishment of the single internal market and the assurance of a high level of consumer protection and public health.

---

(1) Green Paper on European Union consumer protection (COM(2001) 531 final).

(2) EESC Opinion on the Green Paper on European Union consumer protection — OJ C 125, 27.5.2002, p. 1 (rapporteur: Ms Davison).

2. **Introduction**

2.1. The Commission first engaged with the need for a policy for commercial communications in its 1996 green paper ([1]), putting the policy into place with its communication in 1998 ([2]). The Expert Group, comprising experts from the Member States, was set up in 1998 in order to consider the barriers and restrictions affecting cross-border communications and sales promotions in recognised problem areas of the internal market, focusing on the necessity of Community action based on a mix of targeted harmonisation and mutual recognition.

3. **General points concerning the communication**

3.1. The need for Community action is based primarily on the fact that analysis of the Expert Group's regulatory tables revealed that:

i. if a company cannot effectively communicate across the borders of the country where it is established and attract customers' awareness to its products or services throughout the European market, it loses the benefit of the internal market, in turn reducing consumer choice;

ii. the impact of divergences in national regulations was far greater than the Commission had initially estimated, and a limited set of measures and practices creates multiple barriers to a wide range of business activities. More specifically:

   a) a broad spectrum of service businesses is affected in the way they operate, apart from those directly involved in designing sales promotions and advertising, such as the mass media, direct marketing and public relations agencies, etc.;

   b) a multiplicity of internal market barriers persists, mostly affecting freedom of establishment, import and export of services, distortions in competition, free movement of goods, complexity of regulations and issues of legal redress. Particular attention is drawn to the impact of these barriers on SMEs which, under the present system, are disproportionately disadvantaged in sales promotions terms compared with larger businesses.

3.2. The types of sales promotions examined by the communication and considered to be of significance are:

i. simple price reductions;

ii. quantity discounts;

iii. coupons and vouchers;

iv. free gifts;

v. premiums considered to be offers other than discounts which are provided to the consumer once the latter has ordered or bought the promoted product or service;

vi. promotional contests;

vii. promotional contests/games (with or without obligation to purchase).

3.3. The communication lays down three types of provision which are needed to remove internal market barriers:

i. harmonisation of certain provisions concerning the use and communication of sales promotions;

ii. replacement of certain restrictions;

iii. application of mutual recognition.

3.4. Restrictions requiring harmonisation include:

i. transparency provisions relating to discounts, premiums, promotional contests and games;

ii. information requirements for sales below cost;

iii. protection of children and minors;

iv. facilitating extra-judicial redress.

3.5. Restrictions that the communication proposes replacing with less restrictive measures include:

i. Bans on sales promotions

   — Bans on premiums

   — Bans on sales below cost

   — Bans on making participation in promotional games subject to purchase

   — Bans on the communication of sales promotions

ii. Limitations on the value of sales promotions

   — Limitations on the level of discounts

   — Limitations on the value of free gifts

([1]) COM(96) 192 final.
([2]) COM(98) 121 final.

— Limitations on the value of premiums

— Limitations on the value of prizes in promotional contests and games of chance

iii. Limitations on discounts preceding seasonal sales periods

iv. Prior authorisation for sales promotions or any other requirement having equivalent effect.

3.6. Restrictions requiring the application of mutual recognition may be maintained at national level insofar, of course, as they are not applied in order to restrict sales promotions from other Member States. They must also be subject to the principle of mutual recognition.

This concerns restrictions:

i. resulting from the application of a general clause on good market behaviour;

ii. on value limits of sales promotions offered to minors;

iii. on the use of sales promotions to promote media;

iv. regarding the use of sales promotions for non-prescribed pharmaceutical products;

v. relating to other sectors.

4. **General comments**

4.1. The EESC agrees with the points the communication makes regarding limitations on:

a) the level of discounts (3.5.ii.1);

b) the value of premiums (3.5.ii.3);

c) the value of free gifts (3.5.ii.2);

d) the value of prizes in promotional contests and games of chance (3.5.ii.4).

4.2. In all these areas, the EESC believes that transparency and accurate information constitute the most effective form of consumer protection.

The EESC agrees that:

a) transparency measures must be harmonised in such a way as to avoid legal uncertainty resulting from reliance on general or non-detailed terms, and that:

b) transparency measures must not be open to national interpretation.

4.3. The EESC believes that use of the euro will bring significant changes in consumer behaviour in the eurozone countries: consumers are now easily able to compare prices and identify the most advantageous offers. This possibility must be safeguarded against any non-transparent or misleading sales promotion methods.

4.4. The EESC considers that the communication (a) provides enough elements to form an assessment (b) takes adequate account of the experts' reports and of all the other necessary factors relating to sales promotion issues in cross-border trade, and (c) contains careful analysis of data.

4.5. The EESC feels that the communication does not take sufficient account of local and national sales promotion practices which have been tried and judged successful.

4.6. The EESC endorses the need for a regulation on sales promotions in the internal market, as uniform measures are required in this area following the introduction of the euro, provided agreement is reached on the issues under discussion.

4.7. The EESC would voice some reservations concerning the distinction made between actions requiring:

i. harmonisation;

ii. updating and replacement of existing national provisions; and

iii. mutual recognition.

4.8. The EESC feels that examination of the question and publication of the communication have been late in coming, and that the communication fails to reflect adequately the urgency of the difficulties facing SMEs in cross-border commercial communications.

4.9. The EESC, aware that a wide range of commercial activities and services provided by SMEs will be affected by the implementation of the regulation, calls on the Commission immediately to compile and publish more detailed economic information on the economic and commercial impact it will have on cross-border trade.

4.10. The EESC is doubtful about the effectiveness of the Member States' control mechanisms with regard to transparency conditions relating to discounts, premiums, promotional contests and games.

4.11. The EESC has serious reservations regarding the effectiveness of consumer information arrangements for sales below cost.

4.12. The EESC has reservations concerning the definition of the factors establishing the existence of sales below cost and the abuse of dominant position at national level.

4.13. The EESC considers the general thrust of the provisions for the protection of children and minors to be appropriate but insufficient.

4.14. The EESC is opposed to the adoption of a mechanism based on the principle of mutual recognition for restrictions which may be maintained at national level provided that they do not restrict the import of services. There is an urgent need here to clarify which national legal provisions might be affected. Applying this principle must not provoke, in return, discrimination against companies operating in a Member State with restrictive regulations on sales promotions.

4.15. In the EESC's view, the list of forms of sales promotion examined by the communication covers a large proportion of such practices but not all, and cannot include the new forms which are constantly emerging.

5. **Specific recommendations**

5.1. *Premiums*

5.1.1. The EESC recognises that premiums are in practice an important sales promotion instrument, especially for SMEs.

5.1.2. The EESC does not fully agree with the Commission's proposal to remove all bans on price reductions prior to sales periods for the relevant products. The EESC proposes that Member States be able to retain measures aimed at ensuring that announced price reductions during sales periods are genuine, for example by requiring sellers offering discounts to display on the article in question the price charged during a specified period (e.g. one month) preceding the sales period.

5.1.3. Similarly, in order to prevent consumers from being deliberately misled by premiums, the following information should be provided:

— initial shop price;

— price of premium.

5.1.4. In this area, there must be legislative and supervisory coordination between the Member States, and transparency in order to protect consumers and SMEs.

5.2. *Sales below cost*

5.2.1. Greater account must be taken of the efforts of large wholesalers and retailers to drive SMEs from the market, SMEs being unable to match such practices.

5.2.2. The EESC is in complete disagreement with the conclusion that small, specialist businesses can use sales below cost to launch new products or create brand products.

5.2.3. In the EESC's view, the statement in the communication that the objective of sales below cost is to incite potential customers to try out a retail service at a certain moment in time is not logical. Since, for each product or service, an opportunity for substantial discounts or premiums is provided during a specific period, the reason for such strong measures is not clear.

5.2.4. The EESC disagrees completely with the communication's assertion that retailers selling below cost always do so with well-identified, innovative or branded products.

5.2.5. The EESC disagrees with the communication's position that as long as sales below cost are transparent, any risk of abuse of a dominant position should be dealt with by efficient application of competition rules: it is clear that on account of their size and financial resources, SMEs are unable to have recourse to law or the competent bodies in order to ensure that the competition rules are applied to larger companies.

6. **Specific comments on the explanatory memorandum and the proposal for a regulation**

6.1. Provided its comments on sales below cost [points 5.2-6.4-7.2.a)] are accepted, the EESC agrees with a regulation on sales promotions in the internal market on account of the need to:

i. establish uniform rules on very targeted issues;

ii. ensure price transparency and strengthen legal security;

iii. respond to the urgency for uniform rules as a result of the introduction of the euro;

iv. secure consistency with the Commission's new approach to better regulation.

In case the Commission does not accept the above mentioned comments, the Committee suggests that a directive be adopted instead of a regulation.

6.2. *Article 1 — Objective*

6.2.1. The EESC endorses the objective of the draft regulation.

6.2.1.1. Comment 1: the EESC agrees with the object of the draft regulation, provided that all the necessary measures are taken to protect consumers, minors, and SMEs which are competing in a difficult European environment, lacking both up-to-date knowledge and capital.

6.3. *Article 2 — Definitions*

6.3.1. The Committee believes that the definitions should be redrafted to distinguish between business to business communications and those between business and consumers. In particular, one-to-one communications from one business to another single business should be expressly excluded.

6.4. *Article 3 — The use and commercial communication of sales promotions*

6.4.1. The EESC agrees with the prohibition of general restrictions on the use or communication of any one or combination of types of sales promotions, but completely rejects the provision allowing, for the first time, sales below cost: it considers that this would be particularly damaging to SMEs, who are unable to apply such practices because of their size and financial resources.

6.4.1.1. Comment 1: the EESC urges the Commission to entirely remove any possibility of sales below cost from Article 3. The EESC would point out that sales below cost are already used — both legally and illegally — in a number of Member States by large retailers and wholesalers, the result being to drive SMEs off the market. The practice has already had a visible impact in many EU countries, particularly in the more remote areas, where thousands of small — primarily family-run — businesses have either gone under or contracted, unable to sustain sales below cost. Retail chains in particular — situated between producers and final consumers — pursue this promotion policy, but only ever for selected goods in specific branches. Although they account for only a small part of all products, the impression is created that all goods of the particular branch are equally low-priced, leading to confusion for the average consumer.

6.4.1.2. Comment 2: the EESC would point out that sales below cost are prejudicial not only to commercial SMEs, but also to non-brand agricultural, craft and industrial producers, since large chains can bring huge pressure to bear on producers to make them agree to such sales.

6.4.1.3. The Committee regrets that, with regard to advertising and promotions that may affect public health, approval of the Proposal for a Regulation may reduce the level of consumer protection and create inconsistencies in Community legislation. There must be a clear and unequivocal ban on promoting tobacco products and prescription medicines.

6.5. *General information to be provided*

6.5.1. Comment 1: the EESC considers Article 4 to be particularly important for consumer protection, since consumers can only make appropriate choices when full and reliable information is available.

6.5.2. In the view of the Committee the requirement to give an 'indication of a sale below cost' should be deleted. Such information serves no consumer protection function and could be misleading. Furthermore, it would be extremely difficult to determine when it applied in many cases and such a requirement would place an unjustified burden on suppliers particularly prejudicing small and medium enterprises.

6.6. *Protection of children and adolescents*

6.6.1. Comment 1: the EESC agrees entirely with the measures taken to protect children and adolescents which are set out in detail in Article 5 of the draft regulation.

6.6.2. Comment 2: the EESC considers the protection of personal data to be an issue of the greatest importance, especially since the new technologies, and new electronic sales promotion techniques, now entail the use of such information. More specifically, the EESC calls for minors to be completely and absolutely protected from the collection of such data.

6.6.3. Comment 3: the EESC considers that Article 5(2) should be expanded to include gifts or premiums that could be damaging to their psychological, as well as physical, health. This might include, for example, gifts containing immoral material, or premiums intended to exert a psychological influence.

6.6.3.1. Any participation by a child in a promotional game or contest must be subject to the prior consent of the child's legal guardian.

6.6.4. Comment 4: the EESC views Article 5(3), completely prohibiting the use of alcoholic drinks for individuals under the age of 18, as necessary. The EESC also urges the Council to monitor regularly the impact of its recommendation on the drinking of alcohol by children and adolescents [1] and to progress rapidly to more binding legislative initiatives.

6.7. *Redress*

6.7.1. Comment 1: the EESC is in full agreement with the experts on the lack of affordable judicial redress providing adequate, full legal protection for consumers. The EESC therefore advocates the introduction of non-judicial forms of redress, with which consumer organisations, professional associations and chambers of commerce might be associated.

6.7.2. Comment 2: the EESC agrees with the obligation for promoters to bear the burden of proof, since they have all the requisite information at their disposal. However, this obligation should not become an excessive burden, in particular for SMEs.

6.7.3. Comment 3: A promoter shall at the request of a court or administrative authority, provide evidence as to the accuracy of the information in respect of sales promotion referred to in Article 4, up to six months after the end of the commercial communication.

7. **Recommendations**

7.1. The EESC recommends that the Commission completely revise the Proposal for a Regulation in line with this Opinion and, in particular, the results of the public debate on the Green Paper on consumer protection, while safeguarding the consistency of the various Community policies.

7.2. However, if the Commission decides to proceed with its legislative proposal, the EESC recommends that:

a) the possibility of sales below cost be entirely removed from the draft regulation, and that no other opportunity for such sales exist;

b) rigorous and specific measures be taken to protect consumers by banning the commercial promotion of pharmaceutical products and tobacco products. With regard to adolescents and minors, protection measures must be taken to prevent an increase in the consumption of alcoholic beverages;

c) children be comprehensively shielded against collection without consent of personal data;

d) the present communication mark the outset of regular supervision of these issues and of the presence of a permanent means of intervention when required by changing internal market conditions;

e) every effort be made to ensure that SMEs, which have the means and prospects, understand they must be present on the European and international market, using sales promotions and new technologies to this end;

f) the Commission give careful consideration in its future activities to legislative coordination and the availability of effective supervisory machinery in the Member States, which will guarantee that fair competition rules apply in the internal market;

g) the fundamental information obligations set out in the annex be codified and incorporated into the regulation. A distinction must also be made in the way information is to be provided between retail sales mostly made in commercial establishments, and those through other channels (such as television, e-commerce, etc.);

h) the provisions of the directive apply to sales promotions by both private businesses and those broadly defined as belonging to the public sector.

[1] COM(2000) 736.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, which received at least one quarter of the votes cast, were rejected during the discussions:

Point 5.2

Replace by the following.

'The EESC regards the proposed obligation to supply information regarding sales below cost as unnecessary and inappropriate. There are no grounds for the authorities to interfere in a company's pricing or to require it to indicate to competitors and customers how prices are calculated. In cases where 'sales below costs' are a reflection of a company abusing its dominant position, the situation should be dealt with under competition law.'

Reason

Rules which place a general ban on 'sales below cost' are inappropriate for many different reasons, e.g.:

— As a principle it is unacceptable in a market economy for authorities to be able to interfere in a firm's pricing. In cases where 'sales below cost' are a reflection of a firm abusing its dominant position through price cutting, this should be tackled through competition law.

— To prevent firms from adjusting their pricing to the market situation and introducing themselves and new products on markets through 'promotional offers' both hinders the consumer from making an advantageous purchase and restricts the capacity of firms — perhaps particularly small firms — to establish themselves on markets.

— Where markets are not just small local markets, it can be hard to implement rules banning prices below cost in a reasonable manner since a firm's cost price for supplying a product may vary significantly — due to major differences in purchase and transport costs etc. — from one market area to another. A retailer operating on several national markets who wishes, in connection with a marketing campaign, to apply a uniform extra price (in euro) can be prevented from doing so because the lowest price cut necessary to make any impact on one part of the market — e.g. in Belgium — can mean that the price is below the firm's cost price for the product in southern Germany. A provision banning sales under cost could therefore run counter to the key aim of the Commission's proposal on sales promotions, viz. to reduce fragmentation on the single market.

Result of the vote

For: 31, against: 53, abstentions: 7.

The following Section opinion texts were rejected in favour of amendments adopted by the assembly:

Point 6.2.1

'The EESC endorses the requirements and objective the draft regulation sets out to meet, i.e. to ensure the proper functioning of the internal market by eliminating restrictions on the free provision of services and guaranteeing the freedom of establishment.'

Result of the vote

For: 39, against: 40, abstentions: 6.

Point 6.6.2

'Comment 2: the EESC disagrees with the blanket obligation for promoters to bear the burden of proof, since this category often includes SMEs which do not have the financial ability to conduct protracted legal disputes or to provide the mandatory information set out in the annex. More specifically, it should be left up to judges to decide who should bear the burden of proof, in line with the relevant circumstances.'

Result of the vote

For: 27, against: 48, abstentions: 8.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities'

(COM(2002) 71 final — 2002/0043 (CNS))

(2002/C 221/18)

On 20 February 2002 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 May 2002. The rapporteur was Mr Pariza Castaños.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 29 May), the Economic and Social Committee adopted the following opinion by 44 votes to two with no abstentions.

1. Summary of the proposal for a directive

1.1. The aim of the draft directive is to step up the fight against illegal immigration and trafficking in human beings through cooperation with its victims. They are to be granted a special residence permit if they cooperate in combating these activities. Cooperation may take the form of providing information, lodging a complaint, or giving evidence in a trial.

1.2. The residence permit granted to such persons will be valid for six months, and may be renewed if the conditions under which it was initially granted continue.

1.3. The draft directive considers victims of trafficking in human beings to be those so defined in the UN Protocol on trafficking, basically meaning the women and children concerned. It deems the victims of action to facilitate illegal immigration to be persons who have suffered harm, such as having their lives endangered or being physically injured.

1.4. Once the authorities have come into contact with victims, they are to inform them of the possibility of obtaining the residence permit, and grant a 30-day reflection period in which they can decide on whether to cooperate. During this period, they will receive assistance and care.

1.5. The directive makes no provision for victim or witness protection, since this is already governed by European or national legislation.

2. **General comments**

2.1. The proposal for a directive encourages victims to cooperate in combating illegal immigration. It defends the victims of trafficking and smuggling of human beings by offering them the opportunity of escaping from their plight through cooperation with the authorities.

2.2. The draft directive is a useful tool for combating illegal immigration, and ties in with the range of legislative proposals being drafted by the Commission to equip the EU with a common policy on immigration and asylum. However, the Committee would once again urge the Council to speed up its work, since its attitude is deeply disappointing to European citizens. One of the factors driving illegal immigration is the lack of a common policy for managing migratory flows through legal channels.

2.3. The Committee also wishes to point out that illegal immigration is caused by poverty, lack of opportunities, injustice and human rights violations. The way in which the Member State authorities treat those affected by illegal immigration must always be based on respect for human rights and humanitarian values.

2.4. It is not easy to secure the cooperation of victims, since they are often threatened by criminal networks. They are also frightened and suspicious of contact with the authorities. Their cooperation must therefore be properly acknowledged and rewarded. Victims who cooperate with the authorities must receive all the necessary guarantees and legal support from the outset.

2.5. The Economic and Social Committee hopes that two objectives will be met: the first is to obtain real cooperation from victims, so that the criminal organisations trafficking and smuggling human beings can be combated more effectively; the second is for victims, in exchange for the risks they take in cooperating, to be offered the best means of escaping from networks on which they are dependent and which exploit them. Their protection should be guaranteed by the authorities.

2.6. While the Committee welcomes the positive progress represented by the draft directive, it would suggest a number of changes to enhance its effectiveness.

2.6.1. The proposed residence permit to be granted to cooperative victims is of short duration. A six-month permit is not enough. Permits should be for one year, and renewable: this is an attractive and fair offer which will induce victims to opt for the cooperation which is asked of them.

2.6.2. The draft directive uses the term 'victims of action to facilitate illegal immigration' only in connection with those who have suffered some harm, such as threats to their lives or physical injury. Only such individuals may benefit from cooperation with the authorities. The Committee believes that if the main aim is to fight organised crime, cooperation should also be sought from persons who have been in the hands of such organisations without having been endangered or suffering physical injury.

2.6.3. The directive should envisage dealing with groups of victims. Victims often belong to a group sharing the same situation. When an individual from a group contacts the authorities and begins to cooperate, great discretion will probably be needed so as not to alert the criminal network involved. At an appropriate point in the process, however, the other victims from the group should be given an opportunity to cooperate with the authorities by lodging complaints against the criminal network, and should be eligible for the legal residence permit. In some cases, this could be of great value in ensuring that police and court action is effective.

2.7. The role of social associations is scarcely touched upon in the proposal, although the Committee believes this could be of huge significance. Provision should be made for a social association providing assistance to a victim to encourage him or her to enter into cooperation with the authorities, and to be involved throughout the ensuing procedure, during both cooperation with the judicial authorities and the process of granting and renewing the residence permit. Social associations could provide legal assistance to victims, together with whatever social support is required to complement public assistance from the authorities.

2.7.1. Since the criminal networks involved in trafficking, smuggling and exploiting people are often international, international networks of social associations have a vital role to play in assisting victims. Such associations must be supported by the national and European authorities.

2.8. The proposal for a directive refers to the victims of action to facilitate illegal immigration and trafficking in human beings, but does not give a detailed explanation of what cases trafficking involves. It does however stipulate that '"Trafficking in human beings" means the offences defined in Articles 1, 2 and 3 of the Council Framework Decision' on which a political agreement was reached at the Council meeting of 27 and 28 September 2001 [1]. Article 1 of the Framework Decision states that trafficking in human beings for both sexual exploitation and labour exploitation is covered, and refers to 'practices similar to slavery or servitude'.

(1) Article 2.c).

2.9. Consequently, the victims of labour exploitation are also protected by the draft directive, and may obtain residence in exchange for cooperation with the authorities, in extreme cases. However, in the Committee's view, the meaning of labour exploitation should be made clearer. The Committee believes that this should not be confused with 'illegal employment': there may be many cases in which employers take on workers with irregular status because they have no other choice, without this going hand-in-hand with exploitative work conditions. Labour exploitation occurs when the working conditions are considerably out of balance as compared to generally accepted working conditions, infringing established legislation and labour standards. Simple exceeding of the usual conditions is not enough.

2.10. Police forces should have special services for dealing with the victims of these crimes, in order to increase trust and cooperation on the part of victims. Experience with services of this kind in some Member States has been very promising.

3. **Specific comments**

3.1. *Article 8.1*

In connection with the reflection period of 30 days granted to victims to whom cooperation with the authorities is offered, it should be borne in mind that such cooperation may be proposed by a social association. For this reason, the Committee proposes that Article 8.1 be amended. In such cases, the victim or victims must also be granted the reflection period, with the accompanying assistance and care measures, as soon as the association proposes cooperation with the authorities (i.e. even before the victims have contacted the authorities).

3.2. *Article 8.4*

The requirement for the individual to have severed links with the authors of the offences should be interpreted in a flexible way, since the break will frequently be gradual. Support for victims must however be provided from the moment cooperation begins.

3.3. *Article 10.1*

3.3.1. In [the Spanish version of] Article 10.1(a), the word 'necesidad' should be replaced by 'utilidad' [translator's note: this is intended to bring the Spanish version into line with the English and other language versions].

3.3.2. In Article 10.1(c), in the light of the point 3.2 above, the authorities should adopt a flexible approach, with constant concern for the interests of the victim who is providing cooperation. The current wording of the article may restrict victims' safeguards.

3.3.3. The authorities should at all times act in such a way that the rights and safety of the victim prevail over all other considerations.

3.4. *Article 10.3*

The Committee considers that this and other points referring to the six-month permit should be amended to specify a one-year temporary permit. Two channels for renewal should be provided: continuation of the initial conditions of cooperation with the judicial authorities, or fulfilment of the requirements for renewal of an ordinary residence permit (in any of the forms in which such permits are granted: for self-employment, employment, etc.).

3.5. *Article 10.4*

Family members accompanying a victim should also be granted residence. The Committee therefore considers the wording of this point, under which permits on humanitarian grounds are at the discretion of the Member States, to be inappropriate.

3.6. *Article 14.a)*

Victims who are minors must always enjoy the most favourable conditions, in keeping with international treaties. Protection of minors prevails over all other considerations. This point should grant social associations broad scope to define the conditions under which minors cooperate with the authorities. Cooperation, however, can only be explicit where minors have the necessary maturity.

3.7. *Article 14.b)*

The Committee supports the stipulation that Member States shall ensure that minors have access to the educational system under the same conditions as nationals. In consequence, the second sentence of the point, allowing Member States to limit educational access to the public system, should be deleted.

3.8. *Article 14.c)*

In the case of unaccompanied minors, the first requirement must be to place them under the guardianship of the public authorities.. Aspects concerning their legal representation and cooperation should be dealt with subsequently.

3.9. *Article 15*

It should be made clear that for all victims, return to the country of origin is always a voluntary option. Where minors are involved, it must be ensured that they possess the maturity necessary to formulate their wishes.

3.10. *Article 16.1*

In accordance with the comments made in point 3.4 above, this article should allow resident permits to be renewed on grounds other than those on which they were originally granted. More specifically, they should be renewed when the conditions for renewal of residence permits under each Member State's legislation are met.

3.11. *Article 16.2*

Member States should adopt a positive attitude to granting permits to victims following completion of the cooperation process. Consequently, the Committee believes that ordinary aliens law, as specified in the point, should also apply to permit renewal, without the need to apply for a new permit.

Brussels, 29 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing an ecopoint system applicable to heavy goods vehicles travelling through Austria for the year 2004'

(COM(2001) 807 final — 2001/0310 (COD))

(2002/C 221/19)

On 30 January 2002, the Council decided to consult the Economic and Social Committee, in accordance with Article 71 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 April 2002. The rapporteur was Mr Kielman.

At its 391st plenary session, held on 29 and 30 May 2002, (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 81 votes to 19, with 10 abstentions:

1. Introduction

1.1. An agreement between the European Economic Community and the Republic of Austria concerning the transit of goods by rail and by road was signed on 2 May 1992; upon the accession of Austria to the EU, these provisions were incorporated into EU law. The ecopoint system which expires on 31 December 2003 was laid down in the above agreement.

1.2. The aim of the ecopoint system is to secure over the 12-year life span of the system (1992-2003) a 60 % reduction in NO_X emissions from lorries with a maximum authorised weight of more than 7.5 tonnes, used for the transit of goods by road through Austria.

1.3. The system could have expired on 31 December 2000 if, by that date, NO_X emissions had actually been cut by 60 % compared with the reference year, 1991.

1.4. However, analyses showed that by the end of 2000 the reduction had been 55 % rather than 60 %. The ecopoint system will thus remain in force until 31 December 2003.

1.5. A ceiling was also set on the actual number of transit journeys. The number of journeys by vehicles from EU Member States in any given year was not to exceed 108 % of the number for the reference year of 1991.

1.6. In view of the fact that the ecopoint system remains in force up to 31 December 2003, the Laeken European Council of 14 and 15 December 2001 called, in point 58 of the Presidency Conclusions, for the system to be extended as a temporary solution. The European Commission takes the view that such an extension furthers the goal of protecting the environment in vulnerable areas such as the Alpine region.

1.7. This measure is deemed necessary by the Commission pending the adoption of the framework proposal on charging for the use of infrastructure, as set out in the White Paper on European Transport Policy for 2010.

1.8. Should the framework proposal not be adopted, the proposal under review makes provision for a possible extension in 2004 for one year (2005) and thereafter a second year, at most (2006). In the Commission's view, there are legal grounds for this action.

1.9. In Annex 1 to the proposal, the total number of ecopoints for the EU-15 for 2004 is set at 9 422 488, the same figure as for 2003.

2. General comments

2.1. The ESC believes that the reasons for the Commission's proposal can be ascribed to the need to take account of, on the one hand, the requirements in respect of the freedom of movements for goods and services — one of the four basic freedoms — and, on the other hand, concern for environmental protection in vulnerable areas, such as the Alpine region.

2.2. The ESC believes that this latter concern was one of the contributory factors behind the establishment of the ecopoint system in 1992, under which less-polluting lorries are charged fewer ecopoints than more polluting vehicles.

2.3. The ESC highlights the fact that the ecopoint system applies only to road transit traffic through Austria. No such system applies to other forms of transport.

2.4. The ESC also believes that not only environmental factors, but also socio-economic issues, are important in assessing the Commission proposal. It should therefore be borne in mind that there are still no suitable alternatives, above all qualitatively speaking, to transit traffic through Austria, even though Protocol 9 stipulates that the Community and the Member States concerned are to adopt measures to promote rail and combined transport. In this respect, the Committee suggests that the Commission promote consideration of the appropriate measures to boost demand for this type of transport, and strongly urge all the national governments to boost combined rail transport, especially in the areas of infrastructure and locomotives.

2.5. In the proposal for a regulation the ESC sees the trade-off between free movement of goods and services on the one hand, and environmental protection on the other, as the basis for ensuring quality of life. The ESC therefore accepts as a compromise the Commission's decision not to set a limit in its proposal on the number of actual transit journeys that can be made from 1 January 2004. The ceiling set in 1992 of 108 % of the number of transit journeys made in 1992 has been perceived in the past few years by the transport sector as restrictive and unjustified, because more and more less-polluting lorries are being used. The ESC also notes that the title of the Proposal for a Regulation refers to the establishment of an ecopoint system for the year 2004 only. The ESC therefore takes the view that the provisions of Article 3(3) should be deleted as the adoption or failure to adopt the framework proposal on charging for the use of infrastructure mentioned in Article 3(3) cannot seriously be regarded as providing a legal basis for an automatic extension of the ecopoint system after 2004. Subsequent extensions will have to be decided upon individually and only on the basis of specific proposals put forward by the Commission.

2.6. The ESC also wishes to point to the situation that will arise if new Member States accede before the ecopoint system expires. In that case, separate arrangements will have to be made for transit traffic.

3. **Specific comments**

3.1. The ESC believes that the number of ecopoints for 2004 set out in Annex 1 of the Commission's proposal — 9 422 488 for the EU-15, the same number of points as for 2003 — is restrictive, although it does constitute a reasonable starting point, in the light of the Commission's proposal.

3.2. The ESC assumes that the number of ecopoints available for 2004 will be allocated between the Member States in accordance with the same criteria which were applied when the system was introduced in 1992, namely the number of transit journeys actually made in 1991.

3.3. The ESC takes the view that every effort must be made to provide as soon as possible an adequate number of high-quality rail links for road transit traffic, so that really affordable alternative transport options are available.

3.4. The Committee believes that in future Commission studies, account should be taken of economic, competition-related and operational factors arising from the need to make the south-north and west-east flow of goods as smooth as possible.

3.5. The ESC also feels it is very important in this context to develop a coherent and consistent transport policy for vulnerable regions, such as the Alpine region, although the interdependence of the countries in question means that measures cannot be taken unilaterally, so as to prevent detours, for example.

3.6. In this connection, the ESC supports more favourable treatment for less-polluting vehicles compared with the more-polluting types. This should apply both in respect of the number of ecopoints charged per journey and of taxation.

Thus for example a system could be developed at European level to protect vulnerable regions, whereby the environmental impact of the transport mode would affect the choice of mode more than is currently the case.

4. **Summary and conclusions**

4.1. The ESC believes that the Proposal for a Regulation establishing an Ecopoint System applicable to heavy goods vehicles travelling through Austria for the year 2004 as put forward by the Commission, is open to question.

4.2. The proposal should be seen as a temporary solution, applicable to the year 2004 only, pending adoption of the framework for infrastructure charging provided for in the White Paper on European Transport Policy for 2010 and subject to the deletion of Article 3(3), as there is no serious legal basis for this latter provision.

4.3. The ESC wishes to make the following comments on various points of the Commission proposal:

— in the short term a real effort must be made to meet the commitment to provide an adequate number of high-quality rail transit routes for carriage of goods;

— the provision of the same number of ecopoints for the 15 EU Member States as in 2003, with the same distribution of ecopoints between the Member States as hitherto and non-application of the 108 % rule, is considered by the ESC to represent an acceptable compromise;

— the ESC points out that less-polluting goods vehicles should also benefit from more favourable tax treatment than more-polluting vehicles;

— to protect vulnerable regions in Europe, the ESC thinks it is important to develop a system at European level whereby the environmental impact of the mode of transport affects the choice of transport mode more than is currently the case.

Brussels, 30 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, which were supported by at least a quarter of the votes cast, were rejected when put to the vote:

Point 2.5

Delete the final three sentences of this point:

'from "The ESC also notes that the title of the Proposal for a Regulation ..." to "on the basis of specific proposals put forward by the Commission".'

Result of the vote

For: 37, against: 41, abstentions: 11.

Point 4.1

Replace the existing text of point 4.1 by the following:

'The ESC believes that the Proposal for a Regulation establishing an ecopoint system applicable to heavy goods vehicles travelling through Austria for the year 2004, as put forward by the Commission, is a controversial but nonetheless acceptable proposal.'

Result of the vote

For: 30, against: 47, abstentions: 13.

Point 4.4, 3rd indent

Add the following:

'... more polluting vehicles; by way of example, the ecopoint system could be confined to vehicles belonging to categories EURO 0, I and II, whilst vehicles belonging to categories EURO III and above could be exempted from the system in order to encourage their use.'

Result of the vote

For: 45, against: 59, abstentions: 8.

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — Towards a global partnership for sustainable development'

(COM(2002) 82 final)

(2002/C 221/20)

On 14 February 2002 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Sub-committee on Towards a global partnership for sustainable development, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 May 2002. The rapporteur was Mr Ehnmark.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 30 May 2002) the Committee adopted the following opinion by 85 votes, with 1 abstention.

Summary

1) The Earth Summit in 1992 raised high expectations that a new global coordinated effort was under way in support of the developing countries and regions. With elaborate preparatory work and the emergence of broad consensus in its resolutions and recommendations, the Earth Summit gave every sign of being a milestone in the global pursuit of progress, welfare and safety. Ten years later, however, it is necessary to recognize that the Earth Summit was a success verbally but not operationally. The calls for solidarity in action for development have not materialized.

2) The United Nations Millennium Declaration, adopted in September 2000, set out a new global platform for progress and welfare with eight fundamental goals (see footnote). An ambitious timetable was set for seven of the goals. The Millennium Declaration raised new and high expectations that now a new global effort was under way in support of development and welfare. Two years later, however, it is necessary to recognize that the Declaration so far mainly has been a success verbally. The calls for solidarity have not materialized in action for development ([1]).

([1]) The 8 Millennium Goals are the following:
- Eradicate extreme poverty and hunger; halve between 1990 and 2015, the proportion of people with incomes below US dollar 1 per day;
- Attain universal primary education by 2015;
- Promote gender equality and empower women;
- Reduce child mortality;
- Improve maternal health;
- Combat HIV/AIDS, malaria and other diseases;
- Ensure environmental sustainability;
- Develop a global partnership for development.

3) The World Summit on Sustainable Development (WSSD), in September 2002, is a new opportunity. High expectations have been built up. The preparatory work, however, gives more reason for worries than for hopes. WSSD should perhaps best be seen as one more step in a long process — but a step that has to produce tangible results and agreements on concrete action. There is no need for more solemn declarations. WSSD should focus on global partnerships and firm commitments launching global sustainable development, with priority to poverty eradication. The European Economic and Social Committee (EESC) calls on the participating governments and organisations not to lose this focus. WSSD must be the occasion for all nations and peoples to shoulder responsibility for the well-being through solidarity of this generation and those to come.

4) Specifically, it is of paramount importance that WSSD give a strong signal to the peoples of the World that there is from then on firm commitment from both developed and developing countries to join in a new and major effort for global welfare and progress. It is vitally important that WSSD sweep aside the clouds of uncertainty and disappointment left over from the Earth Summit. This is no time for another time-out in the joint efforts for global development. Steadily our globe is moving towards a situation with severe limits for mankind to exist. There must be a start with a major effort for our common welfare and future. WSSD's job is not to renegotiate the recommendations from the Earth Summit, or the Millennium Goals, but to agree on action to implement them. Let it not be said in two or ten years' time that the WSDD was yet another disappointment! No, take the positive results from the Food World Summit, and the Monterrey Conference on Development Financing as pointing the way to success at WSSD!

5) The basic agenda for the World Summit stands, as formulated by the Earth Summit and the Millennium Declaration. The launch at Doha of a new agenda for development and trade must be followed up, as well as the Monterrey agreement on development finance. Poverty reduction and management of natural resources are key issues: the reversal overall of the trend towards environmental degradation is of overarching importance. Sustainable development must very clearly include economic, social and environmental objectives.

6) Since the Earth Summit, some features have grown in importance. The signs of imminent environmental crisis is one such. The vicious circle of poverty, diseases and illiteracy is another. A third is the emergence of a global knowledge-based economy, which creates new challenges for developing countries. As a recent UNCTAD report makes clear, there is a real risk that developing countries stay confined to relatively low-skill inputs to products and services in this new global economy. Human resources development will be all the more essential. The EESC proposes that education and training be given an overarching priority at WSSD.

7) Sustainable development is essentially a matter of solidarity, between generations and between peoples and nations. The European Union has shown responsibility by taking the lead in deciding a strategy and programme for sustainable development. The global impact of this decision should not be underestimated. The EESC fully supports the Council and the Commission in their endeavours to take forward the decisions of the European Summit in Gothenburg 2001. With these decisions on sustainable development the European Union has been able to project a new platform in international cooperation and a leading role for itself. This is a unique opportunity. The European Union should take the lead in forging a concrete WSSD action programme and in giving shape to partnerships needed to ensure the real work gets done.

8) The EESC fully accepts the importance of the eight Millennium Development Goals, decided in 1999. The Committee particularly emphasises the importance of the first three of these: — cutting by half over 15 years the proportion of people whose incomes are below one US$ a day, — achieving universal primary education by 2015, and — eliminating gender disparity in primary and secondary education by 2005, and in other levels of education by 2015. In total, the eight goals represent an extremely ambitious agenda for shaping a better world. To achieve this, we need more research directed towards the key development issues, and particularly in energy, climate change and transport.

9) The EESC emphasises the need for achieving at WSSD a coherent policy and action mix that sets the eight Millennium goals within a context of the three pillars of sustainable development — economic, social and environmental. It would be disastrous if WSSD brought deadlock between environmental protection and economic and social development. To help avoid that, strong emphasis must be laid on the close links between certain major factors effecting sustainability, such as population growth, environmental degradation, poverty and economic stagnation.

10) The EESC has taken note of the positive outcome of the Monterrey Conference on financing development. This can be taken as a break-through in the field of mutual commitments for development. At the same time, it must be emphasised that aid does not alone solve the problems. With radically better trade options for developing countries, there will be less pressure for development aid. With constructive debt relief, there will be better options for the developing countries to embark on new efforts. However, flat debt relief may not always yield the expected results. The EESC recommends that debt relief be conditioned on measurable progress leading to sustainable development, including increased environmental protection. The EESC recommends the EU to examine further the scope for renewed efforts to expand debt relief for developing countries.

11) Progressive elimination of trade barriers is an essential tool for promoting development. The European Union has taken a forward-looking step with its decision to abolish tariffs on all parts of trade ('everything but arms') with the 48 poorest countries. The EESC calls on other developed countries to take similar steps. It also calls on the European Commission to explore the possibilities of extending the 'everything but arms' deal to more developing countries.

12) The creation of new jobs is a key feature in any plan for reducing poverty. In the past job creation has too often been at the expense of the environment. This has to be changed. WSSD should insist on the positive linkages between environmental good practice and job creation. It should moreover establish job creation as one of the basic pathways for reaching the Millennium goals. Job creation should go hand in hand with promotion of core labour rights.

13) WSSD should highlight the importance of women in the development process, particularly in the least-developed countries. New partnerships should be established with the objective of providing education and training particularly for women, and covering both basic issues such as food safety and health and economic ones such as development of cooperatives and business techniques.

14) Agriculture output has to be raised radically in the developing countries if the objective of cutting by half the proportion of those in extreme poverty is to be met. Helping their farm sector to be viable and self-sustaining is a delicate but essential part of any global sustainable development strategy.

15) If developing countries are to benefit from globalisation, good government and effective administration are most important. The WSSD should launch partnerships for the training of administrators in the developing countries.

16) Foreign Direct Investment by business constitutes the major part of the financial flow to developing countries. An objective of WSSD should be to establish partnerships for investment between business and governments. This could be part of endeavours similar to the United Nation's Global compact initiative. As shown in many studies, business investments are directed increasingly to places with highly competent labour.

17) Sustainable development on a national, regional and global scale presupposes advanced knowledge generated in research and development. Sustainable development is in itself a call for strengthening the knowledge factor. The EESC proposes the launching of new global scientific networks working on the long-term issues of sustainable development, particularly in the fields of energy, water supply and food safety.

18) Organised civil society, including the social partners, have an important mission in promoting sustainable development, on a national, regional and global scale. In the whole development process, organized civil society must be closely involved, contributing to social, economic and environment programmes. Organized civil society also has a key role in raising understanding. The EESC proposes the setting up, as the EU is doing, of national, regional or global biennial stakeholder fora, as a means of public involvement in promoting and monitoring sustainable development.

19) The EESC calls on the governments participating in WSSD to do their utmost to steer the Summit to a constructive, concrete and clear result, launching new efforts for economic, social and environmental progress on the global level, and presenting action for reaching the eight Millennium development goals. High expectations for this have been built up. NGOs and other active bodies in society are heavily committed and supportive. It is indeed a unique opportunity.

1. **The road to Johannesburg**

1.1. The Earth Summit in Rio de Janeiro launched sustainable development as a global objective, with the three pillars of economic, social and environmental development as equally important and mutually interlinked. The key word for this global objective was and is solidarity, between generations and between peoples and countries.

Sustainable development is essentially a total picture of action with the aim of shaping a good life for the present generations without jeopardizing the options for the next generations.

The Summit emphasised that in practical terms, sustainable development had to be build on participation, ultimately at local and provincial level. Under the headline of Agenda 21 a vast array of initiatives was welcomed.

1.2. In general terms, however, it is an obvious truth that the expectations of Rio have not been met.

On a global scale, a number of set-backs have been registered, notably the difficulties in the adoption of the Kyoto protocol on greenhouse gas emissions.

The delays in meeting the Rio objectives with concrete action can also partly be seen as an effect of the global economic downturn during the 1990s. It is, however, a very obvious observation that countries have found the Rio objectives to be more difficult to implement than expected.

1.3. From one group of countries, however, a concrete and challenging answer has been given to the Rio expectations.

For the European Union the Council endorsed in June 2001 a far-reaching strategy and action plan for sustainable development, and emphasised that all future initiatives and actions should be assessed in terms of impact on sustainable development.

The EU is thus setting itself a profile as a global leader in transforming the objectives from Rio into concrete political actions.

1.4. Of particular importance in the EU strategy is the commitment by member countries to develop national strategies for sustainable development, and to deliver annual reports on what is being done. This gives a valuable opportunity to compare actions and results.

1.5. The preparatory work for WSSD has lasted for a number of years, with a vast number of policy studies, seminars and conferences. One key recent event was the international conference on the financing of development in Monterrey. By most standards, the Monterrey signal to the developing world was positive: the developed countries agreed to make substantial increases in development assistance over the next few years, reaching the overall level of 0,7 percent of GNI within 8 years (which means an additional US dollar 200 billion in development aid).

1.6. Within the European Commission, preparatory work started in essence with a communication on experience after Rio, issued in the Spring of 2001.

1.7. The European Commission suggested four strategic objectives that the EU should seek to obtain through the Summit:

— increased global equity and an effective partnership for sustainable development;

— better integration and coherency at the international level;

— adoption of environment and development targets to revitalise and sharpen the political commitment; and

— more effective action at national level with international monitoring.

1.8. In February, 2002, the Commission adopted a new communication in respect of WSSD.

In this Communication, the Commission sets out the case for a new global partnership for sustainable development and identifies issues on which attention should be focused at the World Summit — and which can be addressed in concrete terms. Because of the difficulties in the preparatory work at the United Nations level, the priorities of the EU for the WSSD are under review with a view to making them more operational focussing on education, health, fisheries, forests, water, energy, funding, governance and policy coherence.

2. **Shaping a global strategy for sustainable development**

2.1. The preparatory work for WSSD at the United Nations reveals similar planning issues as those treated by the EU.

2.1.1. Sustainable development is by definition a programme based on parallel and interacting considerations concerning economic, social and environmental issues. Rightly, it has been stated that the most important aspect of the SD strategy is to have elevated environmental issues to the same high importance as economic and social ones. However, the interaction between the three pillars has proved difficult to illustrate and concretise. Which are, to take an example, the links between environment objectives and job creation? Or to put it another way, how to avoid conflict between environment on one side and economic and employment development on the other?

The experiences from the EU demonstrate that the theories behind the interacting three pillars require a new, modular way of planning.

2.1.2. The European Summit in Gothenburg in June 2001, solemnly declared that SD should be the new overriding objective for the Union and that all proposed new actions and programmes should be subjected to SD impact assessments. In reality, this high ambition has been very difficult to reach. Policy coherence between a wide and disparate set of organizations is most difficult to achieve. Ultimately, it will probably necessitate policy coordination at a very high government level. Otherwise, the objectives of SD can be cut back to a vision with no real impact.

2.1.3. Sustainable development will in a longer perspective have profound effects on issues such as transport and energy consumption, and will influence policies for food safety and agricultural output. Counteracting climate change is a key case; reducing waste of natural resources another. The list can be much longer. The point is that all policies which affect and change every-day life of citizens must ultimately be based on active and full support from the citizens themselves. Strategies for SD cannot be built only top down, even if they may have to be started that way. A parallel process from bottom-up is necessary.

Active consultation with organized civil society, including the social partners, and active participation from their side in monitoring and implementation of actions for SD is a necessity and in reality the only way to reach a successful result.

2.1.4. SD strategies are most often seen as dealing exclusively with economic, social and environmental issues. However, since SD strategies are by nature inter-national, there are also other dimensions that deserve attention. Understanding why another country has taken a specific SD decision means trying to understand some of the history or value systems of another country. The consequence is that SD strategies must provide for communication and cultural awareness with regard to other, neighbouring countries.

2.2. The Millennium declaration on key development goals to be achieved within a limited time represents a breakthrough in the global attempts to shape a long-term and concrete policy for global development. The decision to adopt the eight objectives was taken by the UN, IMF, World Bank, OECD, G7, G20 and all major developed and developing countries.

Against this background, one of the very crucial challenges for the World Summit in 2002 will be to agree on how to define priorities and modalities in the implementation of these Millennium goals.

2.3. Obviously, key issues at WSSD will be How and When and with Which resources, rather than setting new objectives.

2.3.1. Of particular importance will be issues such as the:

— improvement of the terms on which the poorest countries participate in the global economy and in particular adoption of an improved trade regime for them;

— adoption internationally by business of high corporate standards for engagement as reliable and consistent partners in the development process, and a

— substantial transfer of additional resources from the richest to the poorest countries in the form of investments for development.

2.3.2. The list is in fact an illustration of the effects of globalisation and the challenges it sets for both developed and developing countries. Governments have to take note of the intensively competitive climate in the globalised world economy. Efficient administration is more important than ever. Shaping an attractive investment climate requires political leadership, good management and capacity for forming partnerships. Trade is more and more becoming a key issue in the development process. Official development assistance and direct investments add to the resources but trade is for most countries the heart of the matter.

2.4. The task of the World Summit is indeed multiple: it has to address at global level long-term issues for achieving sustainable development, while at the same time reconciling popular fears of globalisation with proposals for standards in fields such as health, consumer protection and the environment, and ensuring that fundamental labour standards are maintained.

3. **A platform for the EU in Johannesburg**

3.1. The Commission Communication of February 2002, lists some 39 EU actions grouped under six headlines: trade, fighting poverty and promoting social development, sustainable management of natural and environmental resources, improving the coherence of EU policies, better governance at all levels, and financing sustainable development.

The EESC supports this more focused way of defining the priority issues as actions for the WSSD.

The EESC comments as follows on the Commission communication.

4. Harnessing globalisation: trade for sustainable development

4.1. The Doha Development Agenda is the basis for the agreement at the World Summit on trade issues. The task of the World Summit should be to identify measures that support and complement the DDA and Monterrey processes. This is an area of incentives for environmentally and socially sustainable production and trade.

4.2. The Commission is proposing eight more specific issues for further EU work and action, including promoting the participation of the developing countries in the international trade system, by way of pressing ahead within the WTO. The Commission would like to reinforce the role of the Generalised system of preferences (GSP) for sustainable development by introducing in 2004 a more modulated system; the Commission advocates in more general terms a strengthening of the sustainability dimension of bilateral and regional trade agreements.

4.3. The EESC supports the outline of the proposal for an EU position on trade and development. The proposal is congenial with the EU positions at the Doha WTO meeting.

4.4. However, the Committee would add a few comments. The WTO, being the key instrument for promoting trade, should itself find reason to develop its stance and profile and give its programmes and actions a more human face. The Committee is planning to work on an opinion with exactly this in view.

4.5. There is scope for further initiatives to promote trade between developing and industrialised countries. Recently, it has been suggested from one EU country that an expert assistance centre (a kind of 'ombudsman') be established to help developing countries find their way past administrative hurdles facing their exports to the developed countries. The Committee finds such an initiative worth examining also in the context of WSSD.

4.6. One issue that would have been expected in the Commission communication is the 'everything but arms'-initiative and the question of how to motivate other countries to follow suit. The initiative applied to the 48 least-developed countries. Now is the opportunity to look into the possibility of extending this initiative further.

4.7. The Committee has taken note and strongly endorses the Commission proposed action to encourage European companies' commitment to corporate social responsibility by supporting adherence to the OECD guidelines for foreign investors, and by developing initiatives as a follow-up to the Commission's Green Paper promoting a European Framework for Corporate Social Responsibility.

4.8. Trade stimulates direct investment in particular for production facilities. The shaping of a positive climate for such direct investments by business is crucial. The development agenda from Doha provides for steps in this direction. The Monterrey conference added more. The UN Global Compact constitutes another. Some NGOs, including OXFAM, and Think-tanks have added more in recent times. The World Bank is pursuing an ambitious programme aimed at raising human resource levels by way of skills teaching, education and training. The ILO has added an important dimension with its Decent Work programme.

4.9. The EESC finds it urgent and essential that WSSD agree, in its follow-up to Doha and Monterrey in particular, on a platform of measures for stimulating greater FDI in LDCs.

4.10. At the same time WSSD must take account of the need to fashion an overall policy covering aid, investment and debt relief. For many developing countries debt relief continues to be a key issue to be resolved if they are to become more self-reliant and able to make better use of resources from abroad.

The EESC calls on the EU to examine further the scope for renewed efforts to expand debt relief for developing countries.

5. Fighting poverty and promoting social development

5.1. The Commission focuses on actions for poverty reduction and eradication of hunger, in line with the Millennium development objectives. Specifically, it proposes to further focus EU development policy on the central objective of poverty reduction, to be reflected in tighter concentration of resources on LDCs and on the poorest groups in developing countries.

5.2. The EESC supports the proposed actions. It is essential that they, as the Commission emphasises, include measures for water supply and sanitation, and in a wider sense measures for health services with access to — and tiered pricing of medicines.

5.3. The Commission proposes to integrate further the gender perspective in relevant EU policies. The Committee would have appreciated fuller analysis of this aspect, even bearing in mind that the Commission last year published a communication on gender issues in development policies ([1]). An EU platform for the World Summit presents a major opportunity for communicating on these issues.

5.4. The role of women in changing life-style patterns and for promoting acceptance of new ways is essential and cannot be overestimated. Educational efforts in this regard should therefore give priority to reaching out to women, as should actions to assist in changing food, health and sanitation habits.

5.5. In this context, the decision taken by the United Nation's Conference on Population and Development (UNCPD) in 1994 should be recalled. The UNCPD agreed that access to family planning services and acceptance of reproductive rights of women are prerequisites to improving the situation of women.

5.6. The Committee has noted the proposal to promote research on issues related to sustainable development and strongly supports it. The Committee has, inter alia, taken note of new research projects on modalities for changes in production and consumption patterns. This is obviously an area where it is urgently necessary to have more basic information — and a wider basis for dialogue.

6. **Sustainable management of natural and environmental resources**

6.1. The first priority is to reverse by 2015, both nationally and on the global scale, existing trends in the loss of environmental resources. A second priority objective is to develop sectoral and intermediate objectives in some key sectors — water, land and soil, energy and bio-diversity.

6.2. More specifically, the Commission plans to launch an initiative at the World Summit for a global partnership to promote sustainable water resources.

6.3. The EESC supports the Commission proposals under this important sector headline. The proposals for water and for energy, in particular provision of renewable sources of energy, are highly relevant and should be given very high priority at the World Summit. Some countries and regions may well lead the way but for global solutions to be sustainable, best practice and latest technology has to be updated and spread far and wide across the globe, not kept as a privilege of the few.

6.4. In this context, further development of the EU SD strategy is in itself one of the best contributions that can be made both to the World Summit and to work thereafter. Plans for an EU action programme on forest law enforcement, governance and trade is an important contribution, as well as initiatives at an international level to address violations of forest law and forest crime. Developing an EU strategy for distant water fisheries is another good instance.

6.5. Ratification of the Kyoto protocol is a key step in long-term efforts to halt climate changes. However, even as the Kyoto protocol is being ratified, there is need to start looking ahead, at further and future steps. Here, the EU could take an initiative with respect to new commitments to higher emission reduction targets.

6.6. One proposal notes the need to encourage investments in affordable, sustainable and environmentally friendly modes of transport. The Committee would have welcomed further extrapolation of this point.

6.7. Transport is becoming a major item in all SD strategies, be it in developed or developing countries. It is closely related to both urban and rural development and to the way societies organise their work and living. It is closely geared to developments in transport technologies. The Committee would appreciate if the Commission could address this problem area in a vigorous way.

6.8. The Commission suggests that the EU attach particular attention to promoting regional and sub-regional responses to environmental and social as well as economic challenges, within the overall objective of creating sustainable development. Such an approach could be used as part of the Euromed cooperation.

([1]) COM(2001) 295 final.

6.9. The Committee strongly supports this, as it is in line with the experiences of the Committee in cooperation within the Mediterranean area. The Candidate countries represent another challenge; as Members, they will automatically be part of the overall EU strategy, but they will need considerable support before accession and after to catch up with the present Member countries.

7. **Improving the coherence of European Union policies**

7.1. In line with the structure and direction of the EU SD strategy, the Commission emphasises the need for new initiatives to review policy coherence across all policies related to sustainable development.

7.2. The Committee has had the occasion to underline the key importance of this a number of times.

It reiterates its firm opinion that the institutions of the European Union must take more vigorous steps in order to achieve the degree of policy coherence needed to implement a coherent policy for sustainable development — be it within the European borders, or as part of a global effort resulting from the World Summit.

8. **Better governance at all levels**

8.1. A priority is to ensure good governance at all levels and within all countries so as to achieve common sustainable development objectives.

The Committee noted the Commission's observations on the need for efficient and communicative governance at all levels, actively involving organised civil society including the social partners in both planning and implementation.

The Committee has had occasion to comment on this in previous opinions on sustainable development [1].

8.2. The role of business in promoting development should be promoted. The UN has launched the Global Compact initiative as one mechanism for promoting active business involvement in the development processes, and in reaching the Millennium objectives.

8.3. The EESC strongly supports this initiative, and would like to express its hope that parallel initiatives can be taken at national or European level.

9. **Financing sustainable development**

9.1. The Monterrey UN conference in March 2002, reached an agreement on slow but steady increases in the amount of financial resources to be made available for sustainable development. On the whole, the outcome of the conference should be taken as a success.

Obviously, these resources will not be enough. On the other hand, they represent an important change of trend.

9.2. One key issue for further consideration will be how to stimulate a further increase in direct investment in developing countries. Here again, the heart of the matter lies in the criteria which determine where investment is made. And again, the importance of human capital is at the centre.

The EESC, in supporting the Monterrey agreement that industrialised countries should increase their ODA levels to app. 0,7 % of GNP, calls for further initiatives to stimulate direct private sector investment.

10. **Additional issues for a global strategy for sustainable development**

10.1. The European Commission has presented a well-focused platform for the negotiations before the Johannesburg World Summit. The EESC has commented on this above.

In addition to these considerations, the Committee would like to propose the inclusion of the following issues in the negotiating platform for the World Summit.

10.2. The Millennium objective of primary school for all children by the year 2015 must be seen as the first step in a major global investment in human capital. Vocational training partly included in primary school, partly beyond, should be the next strategic step in shaping a Global Knowledge Society. A recent UNCTAD report has underscored the risks for developing countries of not investing more in education and training: the high-skill components of products remain import items, and only low-skill parts are located to a developing country.

---

[1] ESC opinion on 'The preparation of a European Union strategy for sustainable development' — OJ C 221, 7.8.2001;
ESC opinion on 'A sustainable Europe for a Better World' — OJ C 48, 21.2.2002;
ESC opinion on 'Sustainable Development Strategy' — OJ C 94, 18.4.2002.

10.3. The EESC proposes that the World Summit should consider setting up a special committee with the twin task of monitoring implementation of the Millennium objective and setting out plans for a major vocational training effort. The emergence of a global knowledge-based economy necessitates a new urgency in the investments in education and training.

10.4. The role of women in shaping sustained development can easily be underestimated, due to traditional and/or cultural patterns. In the least-developed countries, women have a particular role in changing food, health and sanitary habits.

10.5. The EESC proposes that the World Summit highlight the importance of women in the development process and initiate a joint new effort for supporting women who try to become economically active as entrepreneurs, by way of training, micro-level capital, administrative support, sharing of experiences. The European Union should take special responsibility for initiating such an effort, by way of partnerships with social partners, industry, training bodies, commercial institutions and international bodies.

10.6. The Millennium objective to halve the numbers living at or below US dollar 1 per day by 2015 requires a vast number of interacting initiatives. Job creation is one of the obviously most important. Job creation relies on production possibilities, the existence of markets, the availability of investment capital and education and training options, to mention but those. It also depends to some extent on needs and available financing of public utilities. Above all, there must be consumers and markets for products and services.

10.7. The EESC calls on the World Summit to focus on the importance of job creation as a tool for reaching a number of development objectives. The Committee proposes that a special International Task Force be set up with the purpose of identifying strategies and measures for job creation, in the light of the results of the Monterrey Conference and the World Summit itself.

10.8. The population issue has an obvious and integral importance in all consideration of sustainable development. Some new trends in population statistics may indicate that previous trends are not so irreversible as many had thought. Some 13 of the most populous countries have indicated sharply falling birth rates, to or under the level of two children per woman. The obvious cause is that increasing numbers of women seek to enter the labour market.

10.9. The EESC, in recognition of the significance of new statistical trends, suggests that on the subject of population growth the World Summit could conclude that a new global study is needed on current trends for birth rates, and in the light of that on strategies for achieving balance between economic, social and environmental development on the one hand and population development on the other. The study should also take into account the ageing of populations all over the Globe, and the demographic and economic consequences of this.

10.10. The large urban conglomerations in developing countries offer particular challenges for sustained development. In an often extreme way, some rural areas do the same. In both cases, the current situation is the result of many years of incapacity to understand and act on the complex factors causing overpopulation in urban areas and underpopulation — and often extreme underdevelopment — in rural areas. At the same time, the very large conglomerations constitute major problem-areas for food, health, housing, sanitation, pollution, education, law and order, transport, etc.

10.11. The EESC is convinced that global measures for sustainable development must include special efforts to correct unsustainable trends in urban and rural areas, both in developing and also in a number of industrialised countries. The Committee proposes that the World Summit notes the situation in urban and rural areas in many developing countries and calls on the countries to share experiences and solutions. Preparations should start for a global programme on Sustainable Megalopolis.

10.12. In line with the Rio Conference ten years ago, countries should elaborate national strategies for sustainable development. In the European Union, a number of countries have done so, at the request of the European Council at Gothenburg in June 2001.

Although such national action plans are at a first stage of development, they constitute a rich well of information and experience. The Committee proposes that the European Commission in cooperation with relevant international institutions establish new and easily-accessible data and information services make this information open for all.

10.13. Energy and transport are inevitably placed in the forefront of all deliberations on sustainable development. The Economic and Social Committee has presented its views on these issues on a number of occasions.

Given the importance of these issues and the existence of a considerable amount of research and analysis on them, the European Economic and Social Committee proposes that a joint stock-taking be initiated by the World Summit. The purpose would be not so much to find new solutions but to establish a broad state-of-the-art survey, as a basis for new measures.

10.14. Industry has an obvious and essential role in development efforts. A number of new initiatives have been taken to involve industry more in projects and to invest more in production in developing countries.

10.15. The EESC has noted the various initiatives taken to involve business and industry in the processes of economic, social and environmental development. It is a fact that their greatest effort has been made under the first pillar of sustainable development. The Committee, convinced that industry at large will understand and appreciate the benefits of active involvement in social and environmental development as well as economic, proposes that the World Summit express its support for full involvement of industry in the process of sustainable development and give due weight to the OECD guidelines for multi-national corporations.

The Committee welcomes initiatives such as the Global Compact, and expresses its hope that this specific initiative will be spread more widely.

10.16. The Social Partners and organised civil society at large have a crucial role to play in global sustainable development, on all sides. The European Commission has recognised this, as has the UN preparatory committee — although the latter has so far failed in its efforts to agree on a text.

10.17. The EESC emphasises its own position that the social partners, and organised civil society at large, have an essential role in the full cycle of these processes, from an early planning stage through monitoring, implementation and finally evaluation and follow-up.

10.18. The Committee reiterates its position that representatives of social partners and of organised civil society at large should be given the opportunity to take part in broad stock-taking exercises, biennially or every third year. Such stakeholder fora should constitute an essential opportunity for democratic participation, transparency and accountability.

11. **The Role of the European Union**

11.1. The difficulties in reaching an agreed platform for WSSD — and preliminary agreements in line with that — suggest that the Summit may end up with more limited results than expected. This would be most sad and regrettable. In such a situation it must be of the first importance for the EU to take on a leading role in trying to forge a platform and an action programme that could find broad agreement in Johannesburg.

11.2. Global sustainable development is an area for which the EU can furnish a very particular contribution based on experience within the Union itself. The EU must be prepared and ready to play a very leading role in the lead up to Johannesburg. It must furthermore be ready to assume an active role in the follow-up to WSSD.

11.3. In this long process of global development the next station after Johannesburg should not be ten years ahead. The conclusions of WSSD should include a full and vigorous agenda for the follow-on.

Brussels, 30 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on:

— **the 'Proposals for Council Decisions concerning the specific programmes implementing the Framework Programme 2002-2006 of the European Community for research, technological development and demonstration activities concerning the specific programmes implementing the Framework Programme 2002-2006 of the European Atomic Energy Community for research and training activities', and**

(COM(2001) 279 final — 2001/0122 (CNS) — 2001/0123 (CNS) — 2001/0124 (CNS) — 2001/0125 (CNS) — 2001/0126 (CNS))

— **the 'Amended proposal for a Council Decision concerning the specific programme 2002-2006 for research, technology development and demonstration aimed at integrating and strengthening the European research area'**

(COM(2001) 594 final — 2001/0122 (CNS))

(2002/C 221/21)

On 6 July 2001, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposals.

On 8 November 2001, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned amended proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May. The rapporteur was Mr Bernabei.

At its 391st plenary session (meeting of 30 May 2002), the Economic and Social Committee unanimously adopted the following opinion.

1. Recommendations in brief

1.1. The European Economic and Social Committee, having regard to:

1.1.1. the need to incorporate the specific programmes into the strategic objective of the Lisbon process as reaffirmed by the European Council in Barcelona on 15 and 16 March 2002, above all in terms of competitiveness and the sustainable development of a knowledge-based European economy;

1.1.2. the need to set an increase of about 50 % as a medium-term goal for the period beyond the VIth framework programme, while calling on Member States and industry to do likewise, as formally underlined in Barcelona with regard to both financial and human resources;

1.1.3. the need to respond to the challenges indicated therein by fully integrating research and innovation efforts by means of: the concentration of objectives, a balanced set of traditional and innovative instruments, continuity of action, simplification, flexibility, transparency and autonomy, but above all by expanding the common technological base and proving an open and attractive partner on the international stage;

1.1.4. the catalyst role which the specific programmes can play in integrating the various European components (public and private, academic and business, large and small) and in integrating national and regional, Community and European efforts, with a view to scientific/technological/innovative development and informed choices for the future 2006-2010 VIIth framework programme;

1.1.5. the vital need to accompany the development of the programmes and individual lines of action with a well-organised and defined system of management and advisory bodies at various levels, to provide dialogue interfaces and platforms, and direction and supervision, and thus build a consistent and balanced framework of governance for the integrated research and innovation area.

1.2. Recommends that the European Parliament, the Council and the Commission:

1.2.1. develop a plan of attack for a strong and coherent common research and innovation policy, encompassing the VIth framework programme and an integrated research-education strategy, modernising the rules for public involvement in supporting interactive technological innovation processes, promoting the release onto the market of research results, of public research in particular, promoting stronger

and more organic interactions between the business world and scientific community and academia, broader and more flexible forms of public-private partnership, and a firm and transparent European system of innovation services;

1.2.2. improve the structure of the specific programmes to make them as clear and transparent as possible and better able to bring together all the elements, regardless of their type and size, for the balanced broadening of the common scientific and technological base in a concentrated number of thematic priorities;

1.2.3. split the specific programme on 'Integrating and Strengthening the European Research Area' into two:

— a specific programme with medium-long term priorities with seven dedicated budget lines and short-medium term horizontal activities organised around three dedicated budget lines;

— a specific programme on coordinating and developing the European Research Area coherently, to include: supporting the coordination of national/European activities with pre-defined cooperation protocols; supporting coherent policy development; creating a permanent cycle of Distributed Strategic Intelligence not least to foster a clear, informed and transparent approach in the VIIth framework programme;

1.2.4. broaden international cooperation fields, plans and procedures by extending the areas covered to include Latin America and Asia, the ACP countries and South Africa, and provide for cooperation opportunities suited to smaller bodies, in the mould of Craft international;

1.2.5. build into the specific programme on 'Structuring the European Research Area' a budget line dedicated not only to research/innovation interfaces, but also to regional RTD initiatives;

1.2.6. give full application to the European Charter for Small Enterprises, and in particular to the Committee's proposals in the area of research and innovation by means of appropriate instruments, technology mediators and an information and advice policy involving economic and professional intermediaries such as industrial associations and chambers of commerce and craft associations directly and more actively;

1.2.7. provide SMEs with opportunities to take part both in specific horizontal activities designed for them and the budget line on 'Research/innovation interfaces and regional research and innovation initiatives' of the specific programme on 'Structuring the European Research Area', and within each line of the thematic priorities (minimum of 15 %) with their own independent proposals and collective and cooperative research instruments;

1.2.8. develop the specific 'JRC-EC' and 'JRC-Euratom' programmes as the hub of a pan-European research network, a European network of scientific technical reference systems, acting as an integrator of knowledge and researchers at international level and a bridge between research and civil society and policy makers, complementing permanent staff with 15-20 % international fellowship holders;

1.2.9. bolster the specific programme on 'Nuclear Energy', for safe, clean and risk-free energy, supporting fusion and the ITER project, shoring up and broadening activities on radioactive waste and nuclear safety in the enlarged Union, in particular by developing new safer technologies that generate less waste;

1.2.10. offer — but not predetermine — a toolbox of instruments to all the potential players, so as to energise participation and not straitjacket it: 'new' and 'old' instruments should be set off against each other to promote the best and most user-friendly tools that respond best to the needs of the final users;

1.2.11. ensure that the basic Community decisions within the institutional decision-making process, lay down transparent characteristics, criteria and procedures for the new integrated projects, networks of excellence and collective research projects: in particular, the selection and evaluation criteria must form part of a predefined set of elements from which the most relevant can be chosen for the work programmes, information packages and individual calls for proposals;

1.2.12. provide for Nano Integrated Projects with fewer participants, a shorter duration and dedicated calls for applications, in order to ensure that at least 15 % of the thematic priority resources go to smaller bodies in the Community and the applicant countries, while also including 'Tuition Projects' among the implementation instruments for the specific programmes, as a means of supporting above all the smaller partners in research and innovation initiatives, and accelerating their progress on the stairway of excellence;

1.2.13. ensure that the system for governing the specific programmes of the VIth framework programme is able to support, steer and control this large-scale integration process by means of a systematic and intercommunicative advisory-management framework embracing: programme committees and their organisation into theme-based and specific subcommittees; the relaunch of a new Crest; the European advisory groups (EAGs) for each specific programme and budget line and relations with the scientific committees for the integrated projects and networks of excellence, on the one hand, and with the new EURAB on the other.

2. **Introduction**

2.1. On 10 December 2001, the Research Council came to a political agreement on the two framework programmes and a common position was adopted on 28 January 2002. On 30 January 2002, the Commission then adopted amended proposals for decisions on the specific programmes, with a five-programme structure to implement its proposals under the two 2002-2006 framework programmes.

2.2. On 10 January 2002, the Commission presented amended proposals on the rules for participation, on which the Committee issued an opinion on 21 February 2002.

2.3. With regard to the VIth EC framework programme, the Commission is proposing to organise the specific implementing programmes as follows:

— grouping together all thematic areas under a specific programme on 'Integrating and Strengthening the European Research Area', along with all coordination and coherent development of research and innovation actions, for a total of EUR 12 855 million;

— grouping together all horizontal, structural and support activities under a specific programme on 'Structuring the European Research Area', earmarking resources of EUR 2 655 million;

— establishing, in accordance with the provisions of the Treaty establishing the European Community, a specific programme for the 'JRC — Joint Research Centre', with budget appropriations of EUR 760 million.

2.4. With regard to the VIth Euratom framework programme, the Commission proposes two specific programmes:

— a single specific programme for nuclear fission and fusion, and safety and disposal of nuclear waste, known as 'Nuclear Energy', for a total of EUR 940 million;

— a specific programme for JRC activities carried out on behalf of the European Atomic Energy Community, with Community funding of EUR 290 million.

3. **General comments**

3.1. The Committee is firmly convinced that the implementation of the VIth framework programme, through the full development of its constituent specific programmes, should be fully incorporated into the strategic objective set by the Lisbon European Council and reiterated at the Stockholm and Gothenburg summits, namely that of making the European Union the most competitive and dynamic knowledge-based economy in the world, in terms of sustainability, with more and better jobs and greater economic and social cohesion throughout the Union, over the next decade.

3.2. The Committee regrets the slowness of the response to that objective and especially the fact that various components essential to the strategy have been put on hold, such as the adoption of the Community patent and of a transparent and competitive European patenting system ([1]), the effective launch of the Galileo joint undertaking ([2]) and faster progress on the ITER decision. The Committee also believes that to optimise the economic and social impact of Community research and innovation activities, a more pro-active approach must be taken to technological challenges and the Community must boost its capacity to harness all existing and potential forces, broadening the European scientific and technological base of human, academic, industrial and financial resources.

3.3. The Committee welcomes the Council's common position, which 'indicates a strong convergence of the position of Council with respect to both the European Parliament and the Commission' ([3]), leaving grounds to hope that the VIth framework programme and its specific implementing programmes will be adopted rapidly. This, together with the definitive adoption of the rules of participation ([4]), will enable the timely and appropriate development and implementation of Community RTDD activities, making a smooth transition from the Vth framework programme.

([1]) OJ C 155, 29.5.2001.
([2]) OJ C 48, 21.2.2002.
([3]) See Communication from the Commission to the European Parliament SEC(2002) 105 final of 30.1.2002.
([4]) See EESC opinion on the rules for participation in the VIth framework programme, OJ C 94, 18.4.2002.

3.4. In the Committee's opinion, the structure, instruments and scientific and technological content of the VIth framework programme's specific programmes and the way they are implemented must therefore provide a clear response to that challenge:

— in terms of the internal integration of research efforts: structuring the lines of action, concentrating resources on a limited number of priority themes, establishing a balanced framework of old and new instruments, simplifying their internal management, and increasing the flexibility, independence and continuity of Community research and innovation;

— and also in terms of transparency and equal access, appropriate and predefined selection and evaluation criteria, open and simple access, a user-friendly approach for potential players of all sizes and types, a clear economic and social impact, more highly skilled jobs and new and more technologically innovative companies, integration and more dialogue between the scientific world and society and between academia and business, a more present and globally visible international dimension that can attract scientific and technological cooperation and intelligence in a broader spectrum of subjects and geographical areas, on the basis of mutual interest and coherence with the relevant Community policies.

3.5. The Committee believes that the implementation of the VIth framework programme should fully reflect the central importance of the Lisbon strategy. Practically speaking, the challenge is how to make a positive shift towards the establishment of a European research and innovation area that can unite an increasing number of companies, research centres and universities of all sizes on the road to excellence and the knowledge-based society, while also making Europe a magnet for excellence and intelligence from the rest of the world.

3.6. In this respect, for the Community action to succeed, the Committee would stress the need to ensure that the approach taken by the implementing programmes of the VIth framework programme reflects these aspects sufficiently to generate the necessary accumulation of new research and innovation players within the EU and also to attract more new players and expertise from outside the EU. Meanwhile care must be taken to ensure that the need for integration and a critical mass, flexibility, independence and streamlined internal management are not bought at the cost of the basic principles of transparent and equal access, firm and unambiguous eligibility, selection and evaluation criteria, clear points of reference and a user-friendly approach, and visibility in the economic and social impact of research and innovation efforts.

3.7. As it reiterated in its opinions on the European research area, on the evaluation of the impact of RTD (from the Vth framework programme towards the VIth framework programme), and on the proposals for a VIth framework programme, the Committee would stress the ongoing need to focus on:

— securing continuity and minimising the risks associated with the introduction of new untested structures and instruments;

— applying both the current instruments and new ones provided for in the VIth framework programme in parallel as tools for the players in each call for proposals to choose from;

— avoiding closed circles or unfair or unequal access to resulting calls, and making predefined selection and evaluation criteria transparent;

— bolstering the new instruments with accompanying measures (tuition outside the Commission), training and feasibility/exploratory studies/projects, training external tutors to accompany individual projects using the new instruments;

— avoiding an overall increase in bureaucracy and reducing the cost and management burden of projects, regardless of who is supporting them;

— preserving both basic research, as the source of new concepts and resulting technologies, and applied research and innovation to foster a fully inter-active process, with efficient and responsible financial management;

— establishing a European research area that is open to cooperating with the associated countries and the other relevant third countries, with joint research projects based on mutual interest, covering a broader spectrum of areas, including: Latin America and Asia; the ACP countries and South Africa; cooperation with the industrialised countries, the USA, Japan, Canada and Australia in particular, must be encouraged on the basis of reciprocal openness and mutual interests;

— enlarging and enriching the participation of SMEs in the VIth Framework Programme beyond the present level of 20-22 %, in the spirit of the European Charter for Small Enterprises [1], with a special emphasis on small and micro-enterprises involved in traditional activities and intermediate technologies, by means of an active awareness-raising policy offering advice on how they can make the most of their potential capacity both as players in the priority thematic areas and in short-term incremental research applying a bottom-up approach;

[1] OJ C 48, 21.2.2002.

— encouraging all sources of innovation, including traditional ones, by allocating a large portion of the resources reserved for SMEs in the thematic priorities, by means of flexible participation instruments;

— gearing mobility initiatives towards increasing academia-business interactions and developing the European Research Area, with the full involvement of the applicant countries and greater international cooperation;

— ensuring greater research/innovation interaction with measures centred on the establishment and streamlining of networks, economic and technological intelligence activities, and new regional RTD initiatives, giving a regional dimension to the new instruments;

— boosting the JRC's strategic inter-institutional role of helping decision-makers in the interests of public safety, providing a neutral scientific and technological frame of reference for policies and for the Community institutions including the Committee itself;

— creating strategic intelligence networks to monitor and control quality and excellence, and develop new perspectives for the transparent and effective preparation of the VIIth framework programme;

— strengthening the Euratom programme, to promote safer nuclear energy, including the aspects of production and transport and the storage of nuclear waste, and to enhance the development of the fusion option.

3.8. The Committee is of the view that despite the efforts made up to now to hammer out an action strategy for a strong and coherent common European research and innovation policy to underpin a competitive knowledge-based society, further practical efforts are needed in this direction. These must include creating a genuinely integrated area with an integrated research-education strategy, modernising the rules on state aid in support of interactive innovation processes, encouraging the release onto the market of public research results, stepping up networking between industry and academia and public-private partnerships, and supporting the creation of a European system of innovation services.

3.9. In the Committee's view, this action strategy must not only encourage scientific and technological development, but also develop complementary measures to accompany the structural changes, in order to fully exploit the potential of new findings and new technologies. The aim should be to ensure that society as a whole can share in the resulting benefits and uncork the Union's considerable innovative potential in terms both of human resources and of financial and technological capital, removing structural, legal, fiscal, administrative and operational hurdles and establishing appropriate economic framework conditions.

3.10. At the same time, the Committee would once more stress the validity of its recommendation of 'setting an increase of about 50 % as a medium-term political goal for the period beyond FP6, while appealing to Member States and industry to act likewise on their part' ([1]).

4. Implementation structure and content of the EC specific programmes

4.1. The Committee believes that the VIth EC framework programme must comply with criteria on maximum clarity and transparency, concentration and balance, internal and external consistency, controllability, visibility and accessibility. The programme must be fully integrated in the action strategy for an integrated research and innovation area, as set out in points 2.8 and 2.9, beginning as of now to build integration pathways as constituent parts of the next multi-annual plan.

4.2. In the Committee's view, the VIth framework programme should be structured as follows:

— a specific programme on two groups of priorities: one on priority medium/long-term theme-based research areas, the other on specific short/medium-term priorities, each priority with its own budget line;

— a specific structural programme, with three dedicated budget and management lines: one for research and innovation interfaces and regional research initiatives; one for researcher mobility, another for research infrastructure;

— a specific programme for coordination and coherent development of research actions between the various tiers of the European research area, science/society relations, the gender balance and distributed strategic intelligence;

— a specific programme for the EC JRC.

5. The first specific programme: integrating and strengthening the European Research Area

The first specific programme should, in the Committee's view, be set out as follows:

([1]) OJ C 260, 17.9.2001, point 4.1.1.1.

5.1. *Priority medium/long-term research themes*

5.1.1. A) for maintaining, improving and securing the foundations for our standard of living and resources:

5.1.1.1. A dedicated budget line for genomics and biotechnology for health, comprising two separate fields:

a) Advanced genomics and its applications for health (gene expression and proteomics, structural genomics, comparative genomics and population genetics, bioinformatics, multidisciplinary functional genomics approaches to basic biological processes, applications of knowledge and technologies in the field of genomics and biotechnology for health, technological platforms for the development of new diagnostic, preventive and therapeutic tools).

b) Combating major diseases (combating cardiovascular disease, diabetes and rare diseases, combating resistance to antibiotics and other drugs; studying the brain, combating diseases of the nervous system; studying human development and the ageing process; combating cancer; combating communicable diseases linked to poverty, in particular HIV and TB; combating malaria).

5.1.1.1.1. The Committee recommends placing a greater emphasis on bio safety and biomonitoring among the research priorities, as highlighted in the Committee opinion on the strategic vision of life sciences and biotechnology ([1]). Furthermore, it welcomes the Commission's statement for the minutes of the Research Council on 10 December 2001 on aspects of bioethics. Greater emphasis should also be placed on biomedical technologies and degenerative diseases. Furthermore, the themes of non-food allergies and rheumatic diseases should, in the Committee's view, be included under sub-section b).

5.1.1.2. A dedicated budget line for energy, transport, sustainable development and global changes:

a) Sustainable energy systems ([2]): 1 — short/long-term activities: clean energy, in particular renewable energy sources and their integration in the energy system, including storage, distribution and use; energy savings and energy efficiency, including the results obtained from the use of renewable raw materials; alternative motor fuels; 2 — medium/long-term activities: fuel cells, including their applications; new technologies for energy carriers, transport and storage, in particular hydrogen; new concepts and technological discoveries in the field of renewable energy resources.

b) Sustainable surface transport: 1 — environmentally friendly transport systems and means of transport: new technologies and new concepts for all modes of surface, rail, road and waterway transport; advanced design and production techniques; 2 — safer, more effective and more competitive transport: rebalancing and integration of the various modes of transport; road, rail and waterway safety and combating traffic congestion.

c) Climate change and ecosystems: impact and mechanisms of greenhouse gas emissions and atmospheric pollutants on climate, ozone depletion and carbon sinks such as oceans, forests and soil; water cycle, including soil-related aspects; biodiversity and ecosystems; strategies for the sustainable use of land, with emphasis on coastal zones, agricultural land and forests; operational forecasting and modelling, including global climate change observation systems; complementary research on the development of advanced methods for risk assessment and methods for appraising environmental quality, including relevant prenormative research on measurements and testing.

5.1.1.2.1. The Committee is very pleased to note that its comments ([3]) on the priority themes of 'Energy' and 'Transport' have been taken on board but would argue that conventional fuels should also be included as a theme, not least in view of the forthcoming absorption of the ECSC Treaty. It recommends amending the titles of those priorities as suggested above to 'Energy and Transport, Sustainable Development and Global Changes'. It would also stress once again that the 'sustainability' aspect should be highlighted in the recitals as a feature of all the VIth framework programme specific programme themes.

5.1.1.3. A dedicated budget line for food quality and safety including:

— Epidemiology of food-related illnesses and allergies, including the impact of diet on the health of children; environmental health risks linked to the food chain; impact of food on health (new products, products resulting from organic farming, functional foods, products containing GMOs ([4]), and those arising from recent biotechnology developments); traceability processes all along the production chain; methods of analysis, detection and control; safer and environmentally-friendly production methods and healthier foodstuffs; impact of animal feed and medicine on human health; environmental health risks linked to the food chain (chemical, biological, physical).

([1]) See EESC opinion CES 1425/2001, OJ C 94, 18.4.2002, and new opinion in preparation.

([2]) The Committee is preparing an additional opinion on energy research.

([3]) OJ C 260, 17.9.2001, points 1.1 and 7.3.2.

([4]) Genetically modified organisms.

5.1.1.3.1. The Committee welcomes the emphasis placed on food quality alongside the essential safety aspects, with a view to improving safety for both consumers and producers. However, it cannot ignore the fact that certain aspects of this priority theme overlap with the first priority theme and priority 2c, with the risk that potential participants may be confused. In any case, this theme should be linked to the relevant JRC activities and the horizontal activities supporting Community policies, especially regarding the common agriculture and fisheries policies. Furthermore, the Committee, as highlighted in its opinion on the strategic vision of life sciences and biotechnology [1], recommends launching new areas of research to address the questions that are still raised concerning GMOs and giving priority to strategies aimed at improving food quality. The Committee believes that projects must be planned to facilitate adjustments in the food industry to take account of new quality standards, new findings and new technologies.

5.1.1.4. A dedicated budget line for citizens, democracy and new forms of governance/ science and governance:

— Implications of European integration and enlargement for governance and the public; breakdown of areas of responsibility and new forms of governance; issues relating to conflict resolution and the restoration of peace and justice; new forms of citizenship and cultural identities.

5.1.1.4.1. The Committee sets great store by this line of humanities and social sciences research, but believes that it should also include the 'Science and Society' actions currently included in the second specific programme entitled 'Structuring the European Research Area' with which it is closely linked. This applies in particular to the 'Science and governance' aspects, with which coordination would in any case be necessary. It is also important that there be a link with the activities of the JRC, especially in the area of techno-economic foresight. The theme 'Knowledge-based European society and social cohesion' should definitely be included, along with 'Science and the world of work and business'.

5.1.2. B) For improving and promoting scientific knowledge and technological development with a view to sharpening competitiveness:

5.1.2.1. A dedicated budget line for information society technologies:

— applied IST research addressing major societal and economic challenges: technologies for trust and confidence; research to resolve major societal problems; research to resolve problems associated with business and employment; complex problem solving in science, engineering, business and society in general;

— communication, computing and software technologies: communication and network technologies; software technologies, embedded and distributed systems;

— components and microsystems: micro, nano and optoelectronics; micro and nano technologies, microsystems, displays;

— knowledge and interface technologies: knowledge technologies and digital content; intelligent interfaces and surfaces.

5.1.2.1.1. These thematic priorities take a different approach aimed largely at problem solving while also focusing on technologies that in some cases can also be found under priority 6. The Committee feels that greater clarity may be required, not least to give potential participants clear directions. The approach taken in the Council's common position appears clearer. According to the Committee, there should be a greater emphasis on research into digital security.

5.1.2.2. A dedicated budget line for nanotechnology and nanoscience, knowledge-based multifunctional materials, new production processes and devices:

— nanotechnologies and nanosciences: long-term interdisciplinary research into understanding phenomena, mastering processes and developing research tools; nanobiotechnologies; nanometre-scale engineering techniques to create materials and components; development of handling and control devices and instruments; applications in areas such as health, chemistry, energy, optics and the environment;

— knowledge-based multifunctional materials: development of fundamental knowledge; technologies associated with the production, transformation and processing of knowledge-based multifunctional materials and biomaterials; engineering support for materials development;

— new production processes and devices: development of new processes and flexible and intelligent manufacturing systems; systems research and hazard control; optimising the life-cycle of industrial systems, products and services (hybrid technologies and new organisational structures).

5.1.2.2.1. The Committee believes that research into product and material safety should be given an explicit mention. It would also be useful to include the subject of supramolecular and macromolecular architecture, as suggested in the Council's common position, along with image-guided robotic surgery and nano- and micro-robotics.

[1] See EESC opinion CES 192/2002 of 20.2.2002, OJ C 94, 18.4.2002.

5.1.2.3. A dedicated budget line for aeronautics and space:

— Aeronautics: strengthening competitiveness; improving the environmental impact of engine emissions and noise; increasing aircraft safety; increasing the capacity and safety of the air transport system; Space: Galileo; GMES.

5.1.2.3.1. The Galileo programme research conducted in close cooperation with the ESA is very important and must be treated as such in view of the major implications it will have on the competitiveness of many sectors of European business and society. On the subject of aeronautics, the Committee would also stress the need to explicitly include all types of civil aircraft, in accordance with the decisions of the Council and the Parliament at the first reading. This is necessary in order to safeguard the skills and knowledge of major European industrial sectors facing intense international competition and to harness the efforts of a greater number of players.

5.2. *Specific priority short/medium-term horizontal actions*

5.2.1. supporting Community policies and anticipating scientific and technological needs:

— Research to back up Community policies: sustainable management of Europe's natural resources; offering the people of Europe health, security and a future; underpinning the economic potential and cohesion of a larger and more integrated Europe.

— Research to explore new and emerging scientific and technological issues.

5.2.1.1. The Committee endorses the intended support for Community policies such as the common agricultural and fisheries policies, common transport policy, the environment and energy policies, and the Community policy objectives set by the European Councils. As far as the exploration of new cutting edge technologies is concerned, especially in multi-thematic and interdisciplinary areas, it is important that they be selected transparently in the context of multi-annual planning, taking full account of the opinions expressed by the European advisory groups which are to follow the development of the framework programme's thematic priorities, by the specific programme management committees (and subcommittees) and by the EURAB body. Activities in this area should be the subject of an independent activity report including forward studies from the Seville IPTS and summaries on distributed strategic intelligence activities, to be submitted annually to the European Parliament, the Council and the European Economic and Social Committee, not least with a view to preparing the future guidelines for Community RTTD.

5.2.2. Research and incremental innovation for SMEs, for cooperation between SMEs, research centres and universities, for business and professional joint research groupings and organisations, for the establishment of new high-tech companies, and for the creation of new innovative SME networks.

5.2.2.1. In the Committee's view the horizontal research activities for SMEs should be considered as additional to the 15 % minimum quota for SME-related activities within the thematic priorities of the first specific programme. It stresses the horizontal 'bottom-up' activities in the free section, should be sure of a critical mass of financial resources of over 50 % more than the level allocated in the first reading. The rules for participation in cooperative and collective research projects should enable an increasing number of small companies to take part in both horizontal and thematic activities, partly through national- or regional-level intermediary bodies such as industrial or professional associations and chambers of commerce and craft associations. This is explained in the Committee opinion on the subject [1].

5.2.3. International cooperation, with actions of mutual interest aimed at the economic and social needs of groups of third countries.

5.2.3.1. The Committee stresses that international cooperation is essential for the establishment of a European research and innovation area that is attractive and open and able to focus EU and non-EU human and financial resources on the goal of a European knowledge-based society at the vanguard of sustainable global economic development. It recalls that the international cooperation activities include two lines of action of equal bearing, one developed in the context of the thematic priorities and the other in the context of the horizontal activities. The Committee feels that it is crucial that the two lines be coordinated as a single entity and that responsibility for coordination be clearly identifiable within and above all outside the European Union.

5.2.3.2. The Committee cannot overstress the need to lend clarity and transparency to the international dimension of European research policy and once again proposes that the horizontal international cooperation activities involve the following groups of third countries: Mediterranean and Balkan countries, Latin American and Asian countries; former Soviet Union countries, ACP countries and South Africa; for the industrialised countries, such as the USA, Japan, Canada and Australia, participation should be encouraged on the basis of real openness and reciprocal interests.

[1] See EESC opinion, CES 185/2002, OJ C 94, 18.4.2002.

5.2.3.3. The Committee believes that specific mechanisms should be provided to facilitate international cooperation for SMEs and small research centres (Craft international being a case in point). The Committee would underline the importance of predefined plans with automatic mechanisms to allow for real synergy in the implementation and running of international scientific and technological cooperation with Community cooperation and technical assistance programmes in the above-mentioned country groups, with a view to ensuring that the Union's policies have a consistent and visible profile abroad.

6. **The second specific programme: structuring the European Research Area**

A second specific programme should be dedicated to the structural aspects of the framework programme, with a view to completing the European research and innovation area, using the following three dedicated budget lines:

6.1. Research/innovation interfaces and regional research and innovation initiatives; to coordinate and improve the various types of existing and emerging networks; to establish national/regional CORDIS services linked up with European CORDIS services; to strengthen economic and technological intelligence services; to optimise the flow of risk capital towards innovation in the euro market; to bolster interregional structures and networks with instruments through integrated transregional programmes and transregional networks of excellence; to coordinate the innovation and dissemination activities of integrated thematic projects and networks of excellence; to develop regional benchmarking and road mapping projects; to help small entities set up and manage European research projects; to support the establishment of GRID systems between companies, research centres and universities at regional and interregional level and also with areas bordering the Union; to set up RTDD actions tied in with the Structural Funds and other relevant financial and cooperation instruments, in particular the Innovation 2000 initiative, the EIF and the EIB.

6.1.1. The Committee is disappointed that the financial resources of this budget line are actually lower than those indicated in the previous framework programme and calls for them to be increased. With the Lisbon process in mind, innovation activities and regional and interregional initiatives will play a critical role in the establishment of the European area for research and innovation, with a view to countering the European innovation paradox. The Committee would also stress the importance of dedicated instruments for integrated projects and transregional networks of excellence as well as tuition measures, especially for small bodies. There should also be predefined plans for joint implementation with the Community measures for innovation and regional development.

6.1.2. The Committee would stress the importance of the economic and technological intelligence actions and would like to see a more heavyweight financial appropriation for this.

6.2. The mobility of human resources, including: exchanges between university/industry and between public and private research centres; support for individual researchers; the promotion of excellence; the return and reintegration of researchers; support for young researchers and the gender balance. More specifically:

— Host-driven actions: training networks by means of Marie Curie research; Marie Curie host fellowships for early stage research training; Marie Curie host fellowships for the transfer of knowledge; Marie Curie conferences and training courses.

— Individual-driven actions: Marie Curie intra-European fellowships for EU and associated country researchers; Marie Curie outgoing international fellowships for EU and associated country researchers; Marie Curie incoming international fellowships for third country researchers.

— Excellence promotion and recognition: Marie Curie excellence grants for a research programme to be developed; excellence awards for recognition of researchers; Marie Curie chairs.

— Return and reintegration mechanisms: grants to help EU and associated country researchers, those that have had a Marie Curie fellowship in Europe and European researchers outside Europe, return home to their country or region of origin and reintegrate professionally.

— Initiatives to foster synergies with national and regional programmes, involving 'proximity support' for researchers and national and regional support for networking and new management methods.

— Support for training actions in other framework programme activities, providing assistance regarding common evaluation and selection criteria and the promotion of common approaches among the activities.

6.2.1. The Committee takes the view that scientific and technological human resource training and mobility activities are crucial for Europe and in that respect it welcomes the considerable financial resources allotted to this budget line. It also believes that a significant portion of these resources (at least a third) should be linked more directly to the framework programme's thematic priorities. In addition, the (two-way) link between the academic world and industry should have top priority in terms both of the critical mass of financial resources and the development of activities. Resource management should be as decentralised, red tape-free, lean and close

to the final user as possible. Lastly, there should be research into administrative, tax- and social security-related obstacles to the mobility of scientists, engineers and researchers within Europe, in order to back up the work to remove the barriers to mobility decided on by the Council and to create a career structure for these professionals that is accepted throughout Europe, both by industry and the academic world.

6.3. Research infrastructure with support geared towards: major infrastructure and networks; the development of infrastructure on a small and medium scale; the development of new infrastructure. The aim of this budget line is to:

— ensure that European researchers have access to the infrastructure they require;

— support a coordinated approach to the development of new and existing research infrastructure, at regional and transregional level.

6.3.1. Five support schemes are proposed:

— transnational access to major infrastructure for research groups or individual researchers;

— integrating activities for the supply of network services and the execution of joint projects to facilitate the exploitation of research findings, especially by SMEs, with integrated initiatives and coordination measures;

— development of a communication network in connection with the thematic priority 'Information Society Technologies' for all European researchers by means of Geant, GRID-type distributed computational models, specific high performance test-beds, and electronic publishing services;

— preparatory and technical feasibility studies to prepare new infrastructure taking into account all the potential users and in synergy with contributions from the EIB and the Structural Funds;

— development of new infrastructure with a limited number of projects taking into account the Member States' opinions, giving additional support to EIB or Structural Fund contributions.

6.3.2. The Committee agrees with the importance given to the support of research infrastructure, which clearly has great capacity to contribute to the future competitiveness of the Union, in order to raise and accelerate the performance of European research, provide top-level services to SMEs, foster the dissemination and exploitation of research results, and set up high-quality centres of excellence for regional transnational development. Synergic use of the Community's regional policy instruments would be easier if they were more focused on the strategic objective of establishing, throughout the Union, the most competitive knowledge-based society in the world.

6.3.3. The Committee would stress the importance of the excellence of network capacity — irrespective of whether the participating bodies are large, medium or small — for providing effective support, not least in terms of network proximity, for the establishment of a well-equipped and cohesive European area for research and innovation.

6.4. The proposed Science and Society budget line is discussed in point 5.1.1.4.1 above, which reiterates comments made in the relevant Committee opinion [1].

7. **The third specific programme: coordinating and developing the European Research Area coherently**

A third specific programme should, in the Committee's view, be dedicated to ongoing activities such as coordination, coherent policy development, and building and developing a permanent cycle to monitor/evaluate/assess/and forecast research and innovation activities at the various levels of the European research area, using the following budget lines:

7.1. Support for the coordination of activities, in particular developing joint initiatives, such as:

— the coordination of national activities, especially in the field of health, biotechnology, the environment and energy, providing incentives and supporting joint initiatives for a number of countries and developing instruments to promote synergy between national activities of common strategic interest;

— the coordination of European-level activities, developing cooperation and joint initiatives with COST, Eureka, and the ESA and also working platforms with ESO, EMBL, ESRF, ILL and CERN, and possible similar new European initiatives, promoting international cooperation with initiatives such as Intelligent Manufacturing System and Human Frontiers;

---

[1] OJ C 221, 7.8.2001.

7.2. Support for coherent policy development: creating warning systems for bottom-up processes and for new processes and ideas and possible concepts; pinpointing challenges and sectors of common interest; harmonising the benchmarking of national policies; providing systematic synoptic and permanent frameworks, broken down by like groupings of national/regional research and innovation initiatives for the use of public and private operators; setting up a strong network of planning bodies with JRC support to underpin government/parliament decisions; developing a benchmarking system for research and innovation policies at the various European, national and regional levels; expanding the activities on mapping excellence; conducting studies and identifying and disseminating best practice in order to improve the regulatory and legislative environment for research and innovation in Europe, and thus encourage private sector investment in research and technology.

7.3. Permanent cycle of Distributed Strategic Intelligence (new budget line): to secure a single vision, a clear and transparent economic and social impact, and real momentum and legitimacy for forward-looking Community programmes, as part of the coherent and coordinated completion of the European research and innovation area, a network for the dissemination of intelligence at European, national and regional level must be set up and financed in order to monitor and evaluate technological developments and their impact, and provide for possible future developments as part of an integrated, bottom-up, monitoring-evaluation-assessment-forecasting cycle.

7.3.1. The Committee believes that coordination within the framework programme and at Community level with other international, European, national/regional levels should be a major element of the VIth framework programme as should consistent policy development. The fact that Community budget resources are still too restricted compared with the global sum of the European effort means that the Community can only act as a catalyst in this area. For this reason, it is essential that such activities be formulated in a specific independent programme with its own management committee and European advisory group (EAG), which should be the hub of future planning of the VIIth framework programme and its full incorporation into the action strategy for a genuine integrated research and innovation area, as described above in points 2.8 and 2.9.

7.3.2. The Committee is therefore in favour of bolstering these activities and recommends developing joint voluntary plans for standardising procedures for calls for applications, for selection and evaluation systems, and for publicising access and making it transparent. It also recommends developing coordinated and coherent co-normative and pre-normative activities as an essential factor in the competitiveness of the European system and harmonised statistical survey systems, also at disaggregated level. The Committee would stress the need to use cooperation protocols, such as the one agreed with CERN, to formalise cooperation with the other European research bodies and also agreed Community standard protocols for cooperation between Member States and between regions.

7.3.3. Lastly, the Committee would repeat the comment it made in its opinion on the VIth framework programme [1], that a strong, adequately financed Distributed Strategic Intelligence measure as described in point 6.3 is essential for the establishment of a cohesive and coherent European area for research and innovation, for effective and informed implementation of the VIth framework programme and for a clear, informed and transparent approach to the VIIth framework programme.

8. **The JRC-EC specific programme**

8.1. The Commission proposal for the content of the specific JRC-Joint Research Centre programme can be broken down as follows:

— food, chemical products and health, with priority measures for: food safety and quality; genetically modified organisms; chemical products, biomedical applications;

— environment and sustainable development: assessing and preventing global changes; protection of the European environment (air and water quality and terrestrial resources); contributing to the sustainable development of energy, environmental assessment, supporting the Global Monitoring for Environment and Security initiative;

— technological foresight: techno-economic foresight; international foresight cooperation forum;

— reference materials and measurements: Community Bureau of References and certified reference materials; metrology in chemistry and physics;

— research into public safety and protection against fraud: international civil protection; natural and technological hazards and emergencies; cyber-security; monitoring respect for EU regulations and the fight against fraud;

— research training and access to infrastructure: training grants and international researcher mobility.

[1] OJ C 260, 17.9.2001, points 11.4, 11.4.1, 11.4.2 and 11.4.3.

8.2. The JRC conducts vital networking activities to support the European research and innovation area, other EU policies, product and process safety, international cooperation, enlargement and Mediterranean cooperation, researcher training and mobility, and technology foresight to back up the permanent cycle of Distributed Strategic Intelligence. The Committee would stress the strategic interinstitutional role that the JRC can play in assisting policy-makers, by providing a neutral scientific and technological basis for policies and the Community institutions, including the European Economic and Social Committee.

8.3. In the Committee's view, the JRC is the EU hub of a pan-European research network, a European network of scientific technical reference systems, acting as an integrator of knowledge and researchers at international level and a bridge between research and civil society: with regard to this last point, the Committee would underline the importance of synergies with the thematic priority 'citizens, democracy and new forms of governance/ science and governance'. The Committee feels that the horizontal activities, and more specifically the technology foresight activities, should be allocated more financial resources, as should the other research training and infrastructure access support measures. The Committee is strongly in favour of giving the JRC an opportunity to play a full part in all the Community instruments, in addition to the direct actions of its own institutes. The Committee stresses the role that the JRC must play internationally in training scientific staff, in order to attract intelligence and knowledge within the international scientific and industrial Community. The planned 10 % cut in permanent staff must be more than made up for with a quota of 15-20 % of international fellowship holders.

9. **Implementation structure and content of the Euratom specific programmes**

The Committee endorses the implementation structure for the VIth Euratom framework programme specific programmes, i.e.:

— a specific programme on nuclear energy;

— a specific JRC (Joint Research Centre) — Euratom programme.

9.1. There are currently two different methods of producing energy by means of nuclear reactions: fusion, which uses very light nuclei such as deuterium, tritium and helium, and fission, which uses very heavy nuclei such as uranium. The Committee notes that the two methods differ significantly in terms of techniques used, the related problems, the resources required and available, and environmental aspects. Assessment of their long-term potential and measures taken must therefore be differentiated accordingly.

9.1.1. Nuclear fusion is full of potential in terms of safety, the almost unlimited availability of resources, the minimal amount of waste generated and the absence of any 'greenhouse gases'. Although research on the subject is still at the development stage, European tests have produced impressive results and the Committee is convinced of the need to continue and accelerate Community efforts and give this positive option full backing with appropriate financial resources.

9.1.2. The fission reactors have generated ten-yearly results showing a significant efficient and safe contribution to the EU electricity market and, by their very nature, to a reduction in CO_2 levels. However, one of the problems intrinsic to existing fission reactors is that they produce significant quantities of nuclear waste, although there are no emissions of CO_2 or any other greenhouse gases. Another problem is plant safety. The absence of a broad consensus on the treatment and storage of waste is one of the main obstacles to the more widespread future use of energy from fission. The Committee would reiterate the need for research in order to develop and certify disposal technologies, locate appropriate sites, promote scientific knowledge of safety assessment methods, develop fair decision-making processes, and explore new types of reactor and fuel cycles, as well as clarifying the prospects for industrial scale disposal with proper safety outlay.

9.1.3. The Committee believes that one reason for society's aversion to nuclear technology is of a socio-economic nature and lies in the lack of adequate and reliable information on the opportunities and risks involved. That gap must be bridged, first and foremost by means of broad educational programmes in schools and universities, and research and teaching must not be restricted to major projects in those disciplines. In a broader context, this shortcoming is part of the more general problem of the general public's poor education in the field of the natural sciences and the associated modern technologies, as the Committee noted in its opinion on 'Science, society and the citizen in Europe' ([1]).

9.2. *The specific programme on nuclear energy*

The specific programme on nuclear energy centres on three priority thematic research areas:

— controlled thermonuclear fusion;

— nuclear waste management;

— radiation protection.

([1]) OJ C 221, 7.8.2001.

In addition to these three budget lines there are other activities in the field of nuclear technology and safety.

9.2.1. Regarding the dedicated budget line for controlled thermonuclear fusion, the Committee believes that the progress made in research into nuclear fusion justifies a major effort to build a fusion-based power station. In the latter half of the century, energy from fusion could help to generate emission-free electricity on a large scale. The contribution made to this process by JET and the other European laboratories bears witness to the success of the European research area, which has already been established in this field.

9.2.1.1. The Committee approves of the proposed contents of the Next Step project for demonstrating the scientific feasibility of fusion, using JET and existing installations to back up the Next Step with the development of concepts, such as the 'stellarator', optimising specific techniques for commercial use and developing the physics and technology basis of fusion materials.

9.2.1.2. The Committee would once again recommend an increase in the financial resources earmarked for fusion beyond the EUR 750 million indicated in the Council common position and adopted by the Commission, in particular to support the ITER project (with EUR 200 million) and the negotiations for the establishment of an ITER legal entity, its location in Europe and its implementation jointly with international partners. The Committee is pleased to note that the European Parliament shares this view.

9.2.2. As far as the budget line for radioactive waste management is concerned, the Committee feels that the Commission's proposals regarding the content of the specific budget line should be expanded to incorporate the processing and conditioning of waste in addition to research on storage processes, research to reduce the impact of waste, and research on new reactor technologies and in particular on the High Temperature Reactor (HTR) and the study of power conversion systems and their application.

9.2.2.1. As for the resources provided, the Committee is disappointed by the excessive and in its view unjustified budget cuts, especially in the field of radioactive waste management, where the figures first proposed by the Commission have been cut by 40 %. This reduction is in clear contradiction with the need to develop appropriate and proven technologies that can provide decision-makers and the public with evidence that risks are being minimised and the most is being made of the opportunities for emission-free nuclear fission power stations that generate smaller and wholly manageable quantities of radioactive waste.

9.2.3. With regard to the radiation protection budget line, the Committee feels that radiation protection activities, studies into innovative concepts for new and safer processes, education and training in nuclear safety and radiation protection are essential for Europe and its industry, above all, for the sake of protecting the public and preserving fission energy as a major element and a long-term option for the supply of safe and risk-free power. The Committee would reiterate the recommendations made on the subject in its opinion on the VIth RTD framework programme [1] concerning existing nuclear power stations in the applicant countries and neighbouring states. The European Union and its industry must develop a policy and appropriate technical and scientific solutions here, bearing in mind recent developments and the plans of Russia and the United States to develop advanced types of reactor and build a large number of new plants.

9.2.3.1. On the subject of budget appropriations, the Committee believes that the limited resources earmarked should be restructured to reflect the importance of the activities in this field.

9.2.4. The other activities in the field of nuclear technologies and safety concern support for Community health, energy and environment policies, the aim being to maintain a high capacity in areas not covered by the thematic priorities and to contribute to the establishment of the ERA. The financial resources allocated to these activities could, in the Committee's view, be reshuffled in order to increase the budget line for radioactive waste management.

9.3. *The JRC-Euratom specific programme*

The activities proposed for the JRC-Euratom specific programme are as follows:

— radioactive waste management and safeguarding nuclear materials: spent fuel and high level waste treatment and storage; Euratom and IAEA safeguards; support for activities aimed at the non-proliferation of weapons of mass destruction;

— safety of different types of reactor, monitoring and metrology of ionising rays: safety of different types of reactor, monitoring of ionising radiation.

9.3.1. The Committee wonders why the specific JRC-Euratom programme includes no activities relating to the medical applications of nuclear research, despite their having a long tradition of success and being of great interest to university networks, research centres, medical associations and the pharmaceutical industry. The mention made of these activities in the JRC-EC specific programme appears neither

[1] OJ C 260, 17.9.2001.

adequate nor relevant. The reduction in the budget for the overall programme is unjustified, particularly for waste management and the safety of fissile material and reactors, above all with enlargement on the horizon. The Committee also sets great store by the targeting of clearly identified financial resources for training researchers and highly-qualified staff to maintain and develop nuclear expertise in the Union and the associated States, particularly in the light of enlargement.

10. **The instruments proposed for the implementation of the specific programmes**

10.1. The Committee has already commented on the general framework relating to the new instruments proposed in the draft framework programme for specific thematic programmes. It called unanimously for:

— the relevant mechanisms to be defined and assessed for effectiveness and feasibility;

— these mechanisms to be backed up with some of the instruments currently available in the Vth framework programme. This would extend rather than restrict stakeholder participation;

— the mechanisms provided for in the back-up measures to be bolstered with instruments for tuition, training and feasibility/exploratory studies;

— the scale and duration of projects to be flexible, in order to ensure that they are accessible to and can be managed by all potential participants — including minor ones;

— the players to be given a choice of 'toolbox' that is not predetermined in the calls for applications;

— definition of the conditions whereby consortia may 'arrange their own competitive calls (...), provided that they act within the framework defined by the Commission in order to ensure transparency, equal treatment and consistency with the programme's objectives' ([1]).

10.1.1. On this note, the Committee is glad that the Commission has taken on board a few of the suggestions it made in its opinion of 11 July 2001, for instance on maintaining certain Vth framework programme instruments such as the specific research projects along with the new instruments proposed for the VIth framework programme, in order to secure greater participation of players, large and small, in Community research activities, as protagonists in the European Area for Research and Innovation.

10.1.2. The instruments provided for the various strands of the specific programmes need a clear, transparent and simple framework of access arrangements and procedures for financial involvement, and must fit in with the Commission's own guidelines for State aid to research.

10.2. *Instruments planned in the proposed specific programmes*

10.2.1. Networks of excellence

10.2.1.1. The Committee feels that the elements demonstrating the level of integration of the networks of excellence should necessarily include the level of integration between industry and academia, that the level of excellence in services supplied to the scientific and industrial community should be among the main criteria considered and that this criterion should provide the networks of excellence instrument with a clear dynamic, avoiding crystallisation into predefined closed circles, with predetermined interim objectives that can be measured and monitored by the Commission's scientific officer. The Committee is also firmly convinced that, where appropriate, the group of participants in the networks of excellence should expressly include an industrial partner and network users, in particular SMEs, in order to ensure it dovetails with the action strategy described in points 2.8 and 2.9 of this opinion. The Committee feels that the selection and evaluation criteria should in all cases belong to a predefined set of elements from which those specified in the work programme and information package may be chosen. These must take into account the need to encourage the establishment of new networks of excellence and networks of excellence for small/medium-sized bodies. Changes in objectives and partners mid-project must be made with maximum transparency and on the basis of common predetermined rules, under Community supervision and control.

10.2.1.2. The Committee has serious misgivings about the proposed system of joint and several liability and would refer back to its opinion on the rules for participation ([2]). In the Committee's view, immediate clarification is required of the two divergent approaches to eligible costs: the negative list proposed for the VIth framework programme and the positive list given in the rules on State aid for RTDD.

([1]) See EESC opinion, OJ C 94, 18.4.2002.

([2]) See EESC opinion, OJ C 94, 18.4.2002, points 3.2.5, 3.2.5.1 and 3.2.5.2.

10.2.1.3. The management subcommittees to be set up for every dedicated budget line should share in the decision-making on final evaluations for accepting proposals on changes to networks of excellence.

10.2.2. Integrated projects

10.2.2.1. The Committee welcomes the fact that the scale of an integrated project will no longer be used to discriminate in access to the instrument and that the critical mass of the integrated project will be assessed qualitatively and not quantitatively, although all forms of discretion will have to be avoided. The Committee believes that for these projects too, the consortium must achieve a strong synergy between industry and academia, and between private and public bodies, with the full participation of smaller bodies, SMEs in particular, and of the final users. On this note, provision must be made in each integrated project for the presence of partners from academia and from SMEs and also users as key participants.

10.2.2.2. The Committee thinks that in the interests of adaptability and flexibility, the integrated projects should include a category for smaller bodies in the form of Nano Integrated Projects to account for a large portion of the 15 % of resources earmarked for SMEs in the thematic priorities, with a shorter duration (two to three years), fewer partners (two bodies from two different countries) and dedicated calls for applications.

10.2.2.3. Each integrated project must have clearly defined, measurable and quantifiable objectives, including clear elements relating to forecasts of innovation potential in terms of the use of knowledge acquired on route and at the end (i.e. new activities or expansion of existing activities, spin-offs, establishment of new innovative companies and the marketing of knowledge). As for the networks of excellence, the selection and evaluation criteria must belong to a set of elements predefined in the relevant rules. Maximum transparency must be secured at Community level in changes to the integrated projects' objectives and membership.

10.2.3. Collective research projects

10.2.3.1. The Committee would reiterate its fully positive stance on this new instrument. Its use should not be limited to the budget line dedicated to SME horizontal activities, but should also be made available for the other specific budget lines of the specific programme on integrating the European research area and, in particular, for the thematic priorities and specific support measures for international cooperation included in these budget lines. Likewise, this instrument should be used in the context of the budget line for research/innovation interfaces and regional research and innovation initiatives, in the specific programme on structuring the European research area.

10.2.3.2. Furthermore, a significant portion of the increased budget line for horizontal research activities involving SMEs should be reserved for use through this instrument.

10.2.4. Cooperative research projects

10.2.4.1. The Committee is pleased that this instrument is being retained, as it has already proved its worth in previous framework programmes. The Committee believes that the use of this instrument should be extended to the implementation of the budget lines for the entire programme on integrating the European research area, especially in the area of financing thematic activities and international cooperation, for which the Committee is in favour of supporting CRAFT International. Furthermore, as stressed in its opinion on the rules for participation ([1]), the Committee recommends taking appropriate measures to simplify the method of submitting documentation and calls on the Commission to draft an action plan to define such procedures, for instance through the decentralisation of the pre-selection systems and the allocation of global grants to intermediaries.

10.2.5. Participation in national programmes carried out jointly (under Article 169 of the EC Treaty)

10.2.5.1. These programmes will cover priority research areas of the VIth framework programme. Their joint implementation will involve drafting harmonised work programmes, coordinating the assignment of budgets, redirecting certain actions to increase complementarity, and launching joint calls for proposals ([2]).

10.2.5.2. The Committee has already commented on this area in its opinion on the framework programme proposals (point 7.4.5 and those following in particular) ([3]).

([1]) See EESC opinion, OJ C 94, 18.4.2002.
([2]) See COM(2002) 43 (EN), p. 86.
([3]) OJ C 260, 17.9.2001.

10.2.6. Specific targeted research projects

10.2.6.1. These projects are structured like those in the 1998-2002 Vth framework programme, and the Committee feels that they should be an integral part of the options offered in parallel to the other instruments mentioned above, in each call for proposals concerning the implementation of the thematic priorities. The Committee feels that it would be a positive and progressive idea to put the various implementation instruments in competition with each other, in order to measure their actual efficiency and degree of adaptation to the requirements of public and private users, who are the main players in the achievement of technological progress and its application for the realisation of the Lisbon strategy and of an integrated research and innovation area in Europe.

10.2.6.2. While agreeing that the new network of excellence and integrated project instruments should be used 'from the start of the programme in each thematic priority area', the Committee feels that all the instruments described above should be offered in parallel for the implementation of the specific programme on integrating Community research, to ensure that the winners are those that are the best and most user-friendly and those that respond to the requirements of the participants rather than to the requirements of those responsible at Community level for programmes and the relevant calls for proposals.

10.3. *Other instruments*

10.3.1. The instruments proposed for the implementation of the specific programmes include:

— coordination actions;

— specific support actions;

— specific targeted innovation projects;

— integrated infrastructure initiatives;

— actions to promote and develop human resources and mobility.

10.3.2. According to the Committee, the implementing instruments of the second specific programme on structuring the European research area should also include a specific 'Tuition Projects' instrument to support smaller organisations, above all, in research and innovation initiatives, accelerating their progress on the stairway of excellence for full participation particularly in integrated projects and transregional networks of excellence.

10.3.3. The Committee takes the view that the actions for the promotion and development of human resources and mobility should: have as their main objective the interconnection between academia and industry; aim to attract internal and international excellence, particularly young people; be to a large extent associated with the priority themes [1]; provide simple decentralised procedures, close to the potential users.

10.3.4. As for the integrated initiatives for research infrastructure, the Committee agrees that support should be given to the network activities associated with support or research activities, financing new infrastructure but also bolstering smaller existing structures. As for the specific support actions, interconnection with the GEANT project should definitely be built into all of these, as nearly a third of the Community resources for this budget line are earmarked for this.

10.3.5. Lastly, on coordination and the other specific support actions, concerning both the first and second specific programmes and the one relating to policy coordination and cohesion and distributed strategic intelligence, the Committee feels that there should be more detail as to their working procedures and that they should at all events not be limited to just organising conferences and meetings and setting up expert groups.

10.3.6. These actions are strategically and operationally vital for securing the establishment of the integrated research and innovation area and its harmonious development, and for laying the foundations for its responsible and informed projection into the VIIth 2006-2010 framework programme and subsequent Community action planning. The specific support actions could include grants for feasibility studies and exploratory projects for the smaller research bodies, and not just for new research infrastructure, in order to help them to participate in the framework programme, especially in peripheral and remote areas and in the applicant countries.

11. **The governance of the specific programmes**

11.1. The implementation of the VIth framework programme introduces major new aspects in its aims, approach and structure and in its implementing instruments and procedures. It aims to be a catalyst for a major process integrating the various public, private, academic and industrial strands of European research and of national, regional, Community and European efforts, and it demands strong links between the relevant decision-making levels.

[1] OJ C 260, 17.9.2001.

11.2. It is therefore indispensable that the Commission have access to a well-organised and well-defined system of management and consultative bodies for interface and dialogue, conferring about decisions and policies in the implementation of the specific programmes of a framework programme designed to establish an integrated research and innovation area in Europe, which by its very nature must involve diverse parties from the Member States and the applicant and associated countries.

11.3. In this light, the presence of governmental programme committees, the European committee of governmental experts for research and technological development — CREST, the independent body of academic and industrial representatives — EURAB, and the European advisory groups from industry and research — EAG, should in the Committee's view, be able to operate on the basis of the proactive and interactive support of Commission action so that all the prime elements of the European research and innovation system can move in a transparent, harmonious and cohesive way. As regards the JRC, the Committee believes it would be useful for the relevant management boards of the institutes to act as supervisory bodies in addition to observers from the other European institutions, including the European Economic and Social Committee.

11.4. As regards the programme management bodies, the Committee is in favour of a horizontal committee for each specific programme that can bring the various actions of the programme together into an overall picture. A central role would be given to that committee and its respective subcommittees for each thematic action and sub-theme. These bodies would, in the Committee's view, provide the main place for forming and galvanising a genuine European research area for every field of science and technology, and the starting point for task allocation and cooperation.

11.5. The Committee believes, for this reason, that the scope of the activities and responsibilities of these committees must be clearly defined and based on predefined schedules for meetings whose make-up will vary in accordance with the individual thematic budget lines planned for each individual programme. These committees should meet on a regular basis and their functions should be not only consultative but also co-decisional, in particular regarding the definition of work programmes, information packages, calls for proposals, proposal evaluation and user guides.

11.6. The Committee feels that the role and function of a new CREST — a body which was set up several decades ago — in the implementation of the VIth framework programme must be reassessed and strengthened, to enable it to provide a valuable link between players and specialists on specific topics at Community, national and regional level, the aim being to establish an integrated research and innovation area. To this end, the new CREST should also be organised around specialist groups for the various individual framework programme themes, promoting integration between the Community level and national/regional level.

11.7. The Committee is of the opinion that European advisory groups (EAGs) should be set up for each budget line of the specific programmes, in order to encourage the full involvement of the scientific and industrial worlds and of SMEs and intermediate and final users in the gradual implementation of the VIth framework programme, and also in preparing for the VIIth framework programme. The EAGs should also develop contacts and links with the recently formed body EURAB, whose tasks and functions should be better defined and whose work must be sufficiently transparent, visible and publicised.

Brussels, 30 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on genetically modified food and feed'

(COM(2001) 425 final — 2001/0173 (COD))

(2002/C 221/22)

On 2 October 2001, the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 May 2002. The rapporteur was Ms Thomas.

At its 391st plenary session on 29 and 30 May 2002 (meeting of 30 May), the Economic and Social Committee adopted the following opinion by 53 votes to 40, with four abstentions.

1. **Introduction**

1.1. The Commission proposal aims to establish a framework to provide improved, harmonised, uniform and transparent procedures for the safety assessment of genetically modified (GM) food and GM animal feed. Its main objectives are (i) to protect human and animal health (ii) to lay down Community procedures for the regulation of GM food and feed and (iii) to provide for the labelling of GM food and feed to allow the consumer to have a genuine choice.

1.2. The Commission proposal covers GMOs used as food or feed or food or feed containing, consisting of or produced from GMOs, or containing ingredients produced from GMOs (Articles 3 and 16). Products 'produced from a GMO' involves those products in which a proportion of the end product has been derived from the original GM material. These would be covered by the proposed regulation. Those products which have been produced with the assistance of a GM organism but where no material derived from the organism is present in the end product termed products 'produced with a GMO' would not be covered. This is in line with the current provisions of the Novel Foods Regulation.

1.3. The proposal enables a single application to be filed to obtain both the authorisation for the deliberate release of a GMO into the environment and for authorisation for the use of this GMO in food or feed.

1.4. The current authorisation procedure for GM foods is set out in Regulation (EC) No. 258/97 on novel foods and novel food ingredients [1]. Feed containing GMOs have so far been authorised in accordance with Directive 90/220/EEC [2]. There is no authorisation procedure for GM feed.

1.5. The authorisation granted in accordance with the established procedure is to be valid throughout the Community for a period of ten years and will be renewable.

2. **Labelling**

2.1. The proposal extends the current labelling provisions to all GM food regardless of whether DNA or protein can be detected. All food and feed products which are subject to authorisation under the proposed regulation would be subject to mandatory labelling. Thus a number of foodstuffs which are not currently required to be labelled such as highly refined oils derived from GM crops, will be required to be labelled. Similarly, several animal feeds, currently unlabelled, would have to be labelled.

---

[1] See Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EEC) on novel foods and novel food ingredients, OJ C 108, 19.4.1993 p. 8.

[2] See Opinion of the Economic and Social Committee on the Proposal for a European Parliament and Council Directive amending Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms, OJ C 407, 28.12.1998, p. 1.

3. **Implementation**

3.1. GM material may be present in minute amounts in non-GM food and feed as a result of adventitious or technically unavoidable contamination. In these cases, food or feed would not be subject to the labelling requirements of the proposed regulation. It is proposed to establish a threshold of 1 % for minute traces of GM materials. Food or feed containing less than this amount would not need to be labelled.

3.2. Applicants are required to provide a method for detection, including sampling and identification of the transformation event for the purpose of ensuring enforceability.

3.3. It is proposed to establish a Community Reference Laboratory to test and validate the proposed methods for sampling and detection to provide the means for a harmonious approach for control across the Community.

3.4. The Member States are required to introduce effective penalties for infringements of the provisions of this Regulation (Article 44).

4. **General comments**

4.1. The proposal for a Regulation of the European Parliament and of the Council on genetically modified food and feed examined in this opinion should be seen in a wider social context. The continuing moratorium on authorisation for the placing on the market of new GMOs in Europe seems set to end. Agriculture in Europe is on the threshold of a new era in which widespread use will be made of genetically modified products.

4.2. The Committee sees it as a major failing that this period of moratorium has not been used as an opportunity for a structured debate encompassing the whole of society on the pros and cons of employing genetic engineering in agriculture.

4.3. There are widely differing views on genetic engineering within society. However, it is fair to say that arguments vary considerably according to the context. A clear distinction is made between 'red genetic engineering' (the use of genetically engineered products in medicine) and 'green genetic engineering' (the use of genetically engineered products in agriculture and the food industry).

4.4. There are also two distinctive aspects to the debate on green genetic engineering. The first concerns the deployment of genetically modified organisms in the open countryside (i.e. not within closed conditions) and the use of these by man and animal. The second concerns the use of genetically modified enzymes, vitamins, additives, etc. produced in closed conditions in the processing of agricultural raw materials. The EESC feels it is important that the Commission also adopts this distinction.

4.5. It is also clear in the light of the recently published European Environment Agency report on gene transfer from GM plants [1] that consumers want to be given clear information not only about products, but also about the product chain.

4.6. The European Economic and Social Committee acknowledges the initiative made by the Commission in combining the Proposal for a regulation of the European Parliament and of the Council on traceability and labelling of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC [2] and the Proposal for a Regulation of the European Parliament and of the Council on genetically modified food and feed. The Committee especially welcomes the 'one door — one key' procedure which should reinforce both safety and consumer confidence. The EESC accepts that the current Community legislation on GMOs needs to be extended to animal feed and that there needs to be a specific evaluation of genetic modification relating to substances such as food additives, flavourings or feed additives, where they have been produced from GMOs. The EESC is concerned that the two proposals in question only apply to products produced from GMOs, but not to products produced with a GMO, thus excluding certain important links in the food chain from the scope of the proposed regulations. It also urges the Commission to support consumer information campaigns to highlight the possible advantages and risks of GMOs, so as to enable people to make more informed choices.

4.6.1. The Committee notes that some parts of the proposal are complex and could give rise to misinterpretations, e.g. in the cases of Recital 15 and Articles 3 and 16. It thus recommends that the Commission further clarifies and simplifies concepts such as those referred to in Article 2(3) and (6).

---

(1) Genetically modified organisms (GMO): The significance of gene flow through pollen transfer, Environmental issue report No 28 of the European Environment Agency.

(2) See Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council concerning traceability and labelling of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC, adopted on 21 March 2002.

4.7. The Commission's proposal on GMOs comes at a time when consumer confidence in safety has been undermined by a series of food scares. Inevitable feelings of uncertainty about new and unfamiliar products are played upon by the mass media and doubts have arisen about the rigour of safety tests meant to assess risks to human health. Moreover, there is an increasing distrust of government departments, politicians, journalists — and even of scientists, which was to some extent compounded by the slowness to react in the BSE crisis. The Committee therefore stresses the importance of effective deployment of the European Food Authority so as to ensure an adequate level of food safety. Also, clear, understandable, accurate and informative classification and labelling has the potential to make an important contribution to dispelling such doubts. The Eurobarometer data provides strong evidence that consumers want to be able easily to identify food that contains GM materials or which has been produced using GM substances. Only on the basis of labelling can a consumer's right to choose be ensured.

4.8. The rationale in the proposal for labelling food and feed products which do not contain any GM materials but which have been produced from GMOs needs to be explained more clearly. The Committee notes that such products will have already been subject to rigorous safety tests with regard to human health (including allergenicity). If the purpose of labelling these products is to inform the consumer that such products, while containing no GM materials, nevertheless originate from GM crops, and thereby provide him or her with more choice, this should be explicitly set out. The EESC regards this in principle as an important advance. However, it will be difficult to explain to consumers why products such as highly refined oils derived from GM crops have to be labelled (even if the modified DNA sequence is not detectable), while animal products derived from animals fed on GM feeds do not. The Committee considers that, in order to ensure complete freedom of choice for the consumer, it is vital to define in the clearest and most transparent way possible the rules for labelling GM products, including food and feed derived from GM crops or products produced with a GMO whether or not containing protein or genetic material detectable from analysis.

4.9. The EESC calls on the Commission to give further thought to the rationale behind the draft proposal. The issue of employing genetic engineering is decided on the basis that only products which in no way harm the environment or consumer health may be authorized and used. This would mean that the consumer could have 'blind trust' in all products. Nevertheless, the Commission proposes to provide consumers with information which will enable them to make their own decisions. The Committee welcomes this wholeheartedly. However, if for example animal products involving GM feed are not covered by the labelling regulations, consumers will be deprived of the freedom to choose all the way along the 'animal product' production chain; they will be unable to determine whether or not genetic engineering has been involved in the manufacture of the products they buy.

4.10. Food and feed products which have been derived from GM materials but which do not contain any transgenic materials (i.e. DNA and/or protein) might encourage illegal practices and fraud. The Committee is concerned that reliance on documentation for authenticity may not be sufficient to avoid fraud. Some products derived from GM crops such as highly refined oils will be identical in composition to non-GM products. The labelling and detection procedures set out in the proposed regulation do not make clear how enforcement will deal with fraud. The Committee thinks that, in order to be able to resolve these problems and safely follow all GM products throughout the food chain, an effective system of traceability must be better defined.

4.10.1. The Committee welcomes the fact that the proposed Regulation is also to apply to imports from non-EU countries. Effective measures must, however, be taken to ensure that imported products meet the same conditions. In order to guarantee fair competition between the EU and non-EU countries, there must be reliable and effective controls and labelling systems, particularly in the case of imported products. The Committee suggests that a set of standards should be laid down for cases of accidental contamination below the established threshold for GM products authorised in non EU countries but not authorised in the EU.

4.11. There have been concerns that the proposed regulation will lead to increased costs to the consumer. The Committee accepts that the new labelling requirements will impose costs on the final product and that the resulting consumer benefits are broadly supported by the general public as evidenced by for example, the Eurobarometer survey [1] conducted in 2001. However, the Committee suggests that the Commission undertake a regulatory impact assessment to ascertain the costs of traceability, segregation and labelling.

[1] Eurobarometer 55.2 'Europeans, Science and Technology', December 2001, European Commission, DG Research.

4.12. The EESC regards it as a fundamental failing that GM plants are to be authorized in the absence of any clear liability regulations. It is already possible to foresee that complaints will be brought before the courts. For example, the transfer of GM pollen to fields cultivated in accordance with the EU Regulation on organic farming will mean that the farmer concerned will no longer be able to market his produce as 'organic' because it will show up (transferred) GM components. This will obviously cause him some financial loss which no-one can be held liable for in the absence of any clear regulations. The EESC considers it unacceptable that there are no clear regulations on liability.

5. **Specific comments**

5.1. The Committee accepts that there is a need to set a reasonable threshold for the level of minute traces of adventitious GM materials in conventionally grown foodstuffs (i.e. non-GM). It further accepts that a level of 1 % is at present in line both with the threshold for other substances and with what is technically feasible (Article 5 and Article 18). Nevertheless, the situation should regularly be reviewed as methods of detection improve, so that limits can be set close to the threshold of detectability.

5.2. As regards the definition and introduction of thresholds of contamination for food and feed, the Committee thinks there should be a standard method of analysis recognised at EU and international level as a reference. The Committee therefore welcomes the Commission's proposal to establish a Central Reference Laboratory for the purpose of testing and validating the proposed methods for sampling and detection. It takes the view that effective implementation and management of the proposed labelling and traceability of GM foodstuffs will depend on an efficient and harmonised approach across the community (Article 33).

6. **Conclusion**

6.1. The European Economic and Social Committee broadly welcomes the initiative introduced by the Commission to clarify and extend the current regulatory framework. GM crops are being widely grown in parts of the world, namely the US, China and Argentina. In Europe, where there is a moratorium on authorisation for the placing on the market of new GMOs, the majority of citizens wish to avoid GM food. The Committee notes that the primary objective of the proposal is to protect human and animal health and welfare in addition to consumers' interests (Article 1). However, the proposal is concerned with authorisation for use and consumption and with labelling of products which will have already been rigorously evaluated for health and environmental risks. The new regulations will enhance transparency by promoting the labelling of GM foodstuffs in the food chain and will promote consumer choice. The extension of regulatory controls to animal feed is particularly welcomed.

6.2. However, the EESC considers that the labelling of GM products should be extended to all foods and animal feed that have been produced with GMOs, that is those products which have been manufactured with GM food processing aids such as enzymes as well as non-GM enzymes which have been produced from GM micro-organisms. This extension will enable consumers to be fully aware of the application of genetic engineering throughout the food product chain and enable them to make a more informed choice.

6.3. The EESC welcomes the proposal to label as GM those food and feed products which have adventitious content of GM materials of 1 % or more. It recommends that a set of standards be developed for application to those imported GM products which are approved in their country of origin but not in the EU. The EESC takes the view that products where the proportion of GMOs has not exceeded 1 % throughout the production chain will in future be regarded by many consumers as being 'quality products', on a par with certain regional products, free-range eggs or organic produce, for example.

6.4. The Committee also recommends that the rationale for the labelling of foodstuffs derived from GM products but which do not contain any GM materials be clearly laid out. If the main reason for labelling these foodstuffs is to increase the social and political acceptability of foods derived from GM crops, then this should be clearly stated. The introduction of labelling could be enhanced by a parallel initiative to explain the distinction of foods made 'with' GMOs from foods made 'from' GMOs to consumers.

6.5. The Committee suggests that the proposed system is evaluated for its vulnerability to fraud and the wider question of enforcement addressed. This is particularly relevant to the proposal to label those foodstuffs which are derived from GM crops but which contain no detectable DNA or protein.

6.5.1. As is their right, consumers are demanding increasingly strict food safety rules throughout the food chain. The Committee takes the view that in order to rise to the challenge of consumer demands, European industry has a vital role to play, guaranteeing the marketing of safe, high-quality products and promoting research and proper evaluation methods. European industries, being subject to strict controls, have to supply accurate, transparent and full information: in the light of the possible risks and benefits of using GMOs, European industries can therefore provide the best option for consumers.

Brussels, 30 May 2002.

The President

of the Economic and Social Committee

Göke FRERICHS

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, which received at least one quarter of the votes cast, were defeated during the discussion:

Point 4.6

Delete the following sentence:

'The EESC is concerned that the two proposals in question only apply to products produced from GMOs, but not to products produced with a GMO, thus excluding certain important links in the food chain from the scope of the proposed regulations.'

Reason

If products had to be labelled when they contained no detectable GMOs, this would give rise to fraud; it would also suggest that there was a difference in the level of safety between identical products. That is not the case.

Result of the vote

For: 46, against: 55, abstentions: 1.

Point 4.8

Delete the following sentence at the end:

'The Committee considers that, in order to ensure complete freedom of choice for the consumer, it is vital to define in the clearest and most transparent way possible the rules for labelling GM products, including food and feed derived from GM crops or products produced with a GMO whether or not containing protein or genetic material detectable from analysis.'

Reason

If products had to be labelled when they contained no detectable GMOs, this would give rise to fraud; it would also suggest that there was a difference in the level of safety between identical products. That is not the case.

Result of the vote

For: 42, against: 54, abstentions: 1.

Point 4.9

Delete the following sentences at the end:

'This would mean that the consumer could have 'blind trust' in all products. Nevertheless, the Commission proposes to provide consumers with information which will enable them to make their own decisions. The Committee welcomes this wholeheartedly. However, if for example animal products involving GM feed are not covered by the labelling regulations, consumers will be deprived of the freedom to choose all the way along the 'animal product' production chain; they will be unable to determine whether or not genetic engineering has been involved in the manufacture of the products they buy.'

Reason

Once again, reference is wrongly being made to food safety. In addition, labelling is being urged for even more products where there is no evidence from analyses of the existence of GMOs. This leads to higher cost prices, encourages fraud and brings about distortions of competition, since it is impossible to check imports properly.

Result of the vote

For: 43, against: 58, abstentions: 1.

Point 5.1

Replace the second and third sentences with the following:

'The Committee proposes that the 1 % threshold be reconsidered and that any new threshold value should ensure that GMO-free production is possible under existing farming practices and without the need for higher cost measures.'

Reason

It is incorrectly implied that GMOs are dangerous substances, although in fact they have to satisfy all safety criteria. It must be made clear that a threshold lower than 1 % would make GMO-free production impossible without excessive additional costs.

Result of the vote

For: 36, against: 54, abstentions: 6.

Point 6.2

Delete.

Reason

Such an extension of labelling is completely pointless, as there is no way of detecting GMOs. This would only further increase the likelihood of fraud. Moreover, such labelling is incompatible with WTO rules.

Result of the vote

For: 41, against: 57, abstentions: 1.

Point 6

Add a new paragraph to point 6:

'The labelling rules and the cultivation of GMO products must not impose costly additional measures on EU producers of GMO-free products. This means that the labelling threshold must be sufficiently high to ensure that under normal production conditions no special measures need to be adopted in order to remain below it.'

Reason

This conclusion needs to be drawn in order to prevent GMO-free production being threatened by GMO production. On the one hand, measures may be needed which will increase costs, and on the other hand, there is the danger of lower yields if a product has to be labelled as a result of contamination from GMO crops. The latter case would apply if it were no longer possible to sell an organic product as such, as a result of exceeding the labelling threshold. Depending on the situation of the market, non-organic GMO-free product yields might also suffer.

Result of the vote

For: 38, against: 54, abstentions: 3.