ISSN 1725-2423

Official Journal of the European Union

C 221

Volume 48

English edition

8 September 2005

Information and Notices

Notice No | Contents | Page

EN

Price:
30 EUR

(Continued overleaf)

EN

(Continued on inside back cover)

EN

II

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

414th PLENARY SESSION, HELD ON 9 AND 10 FEBRUARY 2005

Opinion of the European Economic and Social Committee on the XXXIIIrd Report on Competition Policy — 2003

(SEC(2004) 658 final)

(2005/C 221/01)

On 4 June 2004, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the XXXIIIrd Report on Competition Policy — 2003

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 11 January 2005. The rapporteur was Mr Chiriaco.

At its 414th plenary session, held on 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion with 75 votes in favour and one abstention:

1. **Introduction**

1.1 The 2003 annual report highlights changes to the internal organisation of the sector and to the working methods of the Commission, and documents the way the Commission secures coherence within the fabric of European economic governance.

1.2 EU competition policy plays an important role in achieving the competitiveness goals set out in the Lisbon strategy. It encompasses not only antitrust and merger rules, but also the application of an efficient and firm state aid discipline.

1.3 To enable trouble-free accession for the 10 new Member States, the Commission developed a common set of competition rules for all the Member States, to ensure fair application of state aid rules, highlighting the importance of tackling state intervention which distorts competition, with the same commitment as is applied to company law.

1.4 In 2003, 815 new cases of competition law infringements were recorded, and measures included the establishment of the post of consumer liaison officer to ensure a permanent dialogue with European consumers, whose welfare is the prime concern of competition policy, but whose voice is not sufficiently heard when individual cases are handled or policy issues discussed. The role of the consumer liaison officer is not confined to merger control, but also concerns the antitrust field — cartels and abuses of dominant positions — as well as other competition-related policies.

1.5 In October 2003, the European Commission published draft rules and guidelines on technology transfer licensing agreements, on which the EESC has already issued an opinion ([1]). The proposed reform takes into account developments in this type of agreement in recent years and is aimed at simplifying and broadening the scope of the Community block exemption regulation. The new provisions offer the following advantages:

— the block exemption regulation will have only a black list: whatever is not explicitly excluded from the block exemption is now exempted;

— a clear distinction is drawn between agreements between competitors and agreements between non-competitors;

— there are already plans to adopt a 'modernisation package'.

([1]) OJ C 80 of 30.3.2004

1.6 The Commission appointed a chief competition economist to take up office on 1 September 2003, while also giving a positive boost to the role of the hearing officer. The chief economist has three main tasks:

— to provide guidance on economics and econometrics in the application of EU competition rules; this may include contributing to the development of general policy instruments;

— to provide general guidance in individual competition cases from the early stages;

— to provide detailed guidance in the most important competition cases involving complex economic issues, in particular those requiring sophisticated quantitative analysis.

1.7 Hearing officers, meanwhile, have been granted greater powers and autonomy in the role of defending the right to be heard in certain competition proceedings. They are directly answerable to the commissioner responsible and do not take instructions from the Competition DG. They may intervene whenever legitimate due process issues are at stake, must organise and conduct oral hearings objectively, and decide whether third parties should be heard and whether fresh documents may be produced. They refer to the relevant Commissioner on all issues.

2. **Application of antitrust rules — Treaty Articles 81 and 82**

2.1 In October 2003, the Commission launched the final phase in the process of reforming the enforcement of EU antitrust rules (known as the modernisation package) to facilitate the application of the enforcement powers vested in the competition authorities and to elaborate on the cooperation mechanisms with national competition authorities (NCAs) and national courts provided for by Regulation 1/2003.

2.2 The modernisation package contains a new implementing regulation, addressing the modalities for hearing the parties concerned and a range of other procedural issues, such as access to files and the treatment of confidential information. The six draft notices concern in part mechanisms for cooperation within the network of European competition authorities and between the Commission and national courts, the concept of effect on trade between Member States, the treatment of complaints, and guidance letters to be issued to assist companies in assessing novel or unresolved questions. For comments on the modernisation package as a whole, the reader is referred to the EESC opinion [1].

2.3 In 2003, the Commission issued five decisions against unlawful horizontal agreements, involving: French beef, sorbates, electrical and mechanical carbon and graphite products, organic peroxides, and industrial copper tubes. The fines imposed totalled EUR 400 million. The level of fines set should act as a deterrent. Investigations involve company inspections. Full immunity is granted to companies that are first to reveal the existence of an agreement and that provide sufficient evidence to carry out an investigation. The Commission will express a favourable opinion in cases where agreements between companies do not restrict competition on the relevant markets, and where consumers benefit from the cooperation. Also in 2003, the Commission ruled on three cases of violations of Article 82, relating to:

— the rates imposed by Deutsche Telekom AG on competing companies for access to the local infrastructure of its telecommunications network,

— Wanadoo's pricing strategy for ADSL services, and

— the abuse of a dominant position by Ferrovie dello Stato SpA in markets for access to the rail network, traction and passenger services.

3. **Competition policy developments at sectoral level**

3.1 2003 brought significant, though not entirely satisfactory, progress for the liberalisation process in the energy sector (electricity and gas). In June, a legislative package was passed ensuring that all European consumers will be able to choose their supplier by 1 July 2007. These provisions aim to strike a balance between incentives to build new infrastructure and the completion of the common market.

3.2 Nevertheless, there is still widespread dissatisfaction among consumers and companies in various EU countries regarding the persistently high prices and relative efficiency of these services. In the new Member States in particular, social partners and consumer organisations strongly emphasise the need for national competition authorities and public utility regulators to be guaranteed full independence.

[1] OJ C 80 of 30.3.2004

3.2.1 When appropriate and comprehensive competition legislation is in place, it is sometimes the case, in the new Member States in particular, that monitoring and enforcement agencies encounter difficulties in fulfilling their role independently. As a result, competition legislation sometimes fails to promote either consumer interests or market efficiency. The Committee is in favour of a more functional relationship between competition policy and consumer protection policies. A more organised and involved consumer movement could also aid government decision-making, and provide information on markets and anti-competitive practices.

3.3 In the field of postal services, the directive adopted in 2002 is geared towards completion of the internal market, in particular through a progressive reduction of the reserved area and the liberalisation of outgoing cross-border mail. Furthermore, on the basis of an agreement reached by the European Council, the Commission will carry out a study in 2006 to assess the impact of universal services for every Member State. Working from the results of that study, it will adopt a proposal to open up the postal market completely from 2009, including measures to secure the universal nature of the service.

3.4 The deadline for transposing the new regulatory package on electronic communications expired in July 2004. In its report on the subject, the Commission stressed the following principles in particular: markets must be analysed on the basis of the principles of competition; operators can be regulated only if they have a dominant position; all electronic communications services and networks are to be treated in a similar manner (technological neutrality). Development of, and generalised access to, electronic communications are not enough in themselves to secure the relaunch of economic growth. For that it is fundamental to increase the knowledge and skills levels of all those required to use information and communication technologies.

3.5 In the air transport sector, in 2003 the Commission decided to launch a comprehensive and non-case-related dialogue with all the industry stakeholders, in order to prepare transparent guidelines on competition enforcement issues in the field of airline alliances and mergers.

3.5.1 Progress has also been made on defining and implementing common guidelines on the application of antitrust rules in the rail sector for both goods and passenger transport.

3.5.2 In addition, there have been developments in industry dialogue in the maritime transport, motor vehicle distribution and insurance sectors, with a view to adopting or revising block exemption regulations.

3.5.3 This dialogue should also consider comparable forms of tax treatment.

3.6 *Media*: the Commission believes that media pluralism is fundamental to both the development of the EU and the cultural identity of the Member States, but stresses that responsibility for the control of media concentration rests primarily with the Member States. The application of competition policy instruments is limited to addressing the structure of the underlying market and economic impact of media undertakings' behaviour, and to controlling state aid. They cannot replace national media concentration controls and measures to ensure media pluralism. The function of competition rules is limited to resolving problems raised by the creation or strengthening of dominant positions in the respective markets and the foreclosure of competitors from those markets.

3.6.1 It can be seen that the Commission's approach, though correct in theory, has not been able to prevent or oppose dominant positions and the related anti-competitive practices in certain countries in particular. Different markets are concerned, and the television advertising market, not yet adequately examined, is of increasing importance when it comes to protecting pluralism.

3.6.2 Furthermore, the methods some media groups use to strengthen a dominant position have been overlooked, in particular the use of poison pills and multiple voting rights which permit a minority shareholder to control a company through voting rights in excess of their shareholding.

3.6.3 The Commission will therefore have to be exceptionally vigilant in the application of competition rules and practices.

3.7 *Liberal professions*: A study carried out for the Commission by the Vienna-based Institute for Advanced Studies (IHS) has been made accessible to the public. The study reveals differing levels of regulation of service provision among Member States and among the various professions. The study concludes that in countries with less regulation and more freedom in the professions, more wealth can be created overall.

3.7.1 The conference on the regulation of professional services held in Brussels in October 2003 brought together 260 representatives of the professions to discuss the effects of rules and regulations on business structure and consumer protection.

3.7.2 At the conference, Commissioner Monti announced the Commission's intention to issue a report on competition in professional services in 2004. This report, which contains some important pointers and guidelines, was published on 9 February 2004.

4. **Reform of the merger control system**

4.1 On 27 November 2003, the Council reached a political agreement on a recast Merger Regulation incorporating most of the reforms proposed by the Commission in December 2002. These reforms involved non-legislative measures designed to streamline the decision-making process, strengthen economic analysis and provide better protection for the rights of defence. In addition, a chief competition economist was appointed and panels set up to ensure the conclusions are totally independent. On the subject of merger evaluation, the reader is referred to the EESC opinion on the *Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital* ([1]).

4.2 *Objective*: to ensure that the substantive test in the Merger Regulation (dominance test) would cover all anti-competitive mergers effectively while at the same time ensuring continued legal certainty. The substantive test criteria were compared with those of the 'substantial lessening of competition' test and the terms of the new test adopted are as follows: 'a concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the common market'.

4.2.1 The new regulation, in stating '*in particular as a result of the creation or strengthening …*' hints at potential for enlarging the scope of application of the ban, no longer strictly linked to the requirement of a dominant position. Nevertheless, this rule will have to be interpreted in the light of the content of the joint Council and Commission declaration on Article 2 with reference to the 25th recital to the Regulation ([2]), which states that this concept '*should be interpreted as extending, beyond the concept of dominance, only to the anti-competitive effects of a concentration resulting from the non-coordinated behaviour of undertakings which would not have a dominant position on the market concerned.*'. It follows that the scope will continue to be defined in relation to the concept of dominance.

4.3 *Guidelines on assessing horizontal mergers*: i.e. mergers between competing, or potentially competing, firms. These mergers will only be unlawful to the extent that they enhance the market power of companies in a manner which is likely to have adverse consequences for consumers, notably in the form of higher prices, poorer quality products, or reduced choice. This is irrespective of whether the anticompetitive effects result from the creation or strengthening of a single dominant market player or from a situation of oligopoly. The impact of a merger will, moreover, be assessed in relation to what would otherwise have occurred in the market. This may mean, for example, that the acquisition of a failing firm would not justify intervention by the Commission.

4.4 *New best practices:* as part of the 2002 package of reforms, a consultation was held and completed in February 2003. The aim was to provide guidance for interested parties on the day-to-day conduct of EU merger control proceedings.

5. **International cooperation**

5.1 The Commission is an active participant in the International Competition Network's Working Group on multi-jurisdictional merger control. The group's activities have been in three sub-groups:

— notification and procedures,

— investigation techniques,

— analytical framework.

5.1.1 The Commission takes part in the work of all three sub-groups. The basic aim is to improve mutual understanding between different jurisdictions so as to make merger control activities more effective.

5.1.2 More generally, the ICN acts as a virtual network between various national competition authorities, with a view to facilitating international cooperation and making proposals to reduce regulatory costs and encourage procedural harmonisation and real convergence.

([1]) OJ C 117 of 30.4.2004
([2]) Council Regulation 139/2004, of 20.1.2004

5.1.3 The Second ICN Conference held in Merida, Mexico in June 2003 highlighted the need to adopt clear and easily accessible language in the area of competition rules and also stressed the strategic nature of activities promoting competition in the field of regulated sectors, with a view to reducing regulatory costs and overcoming obstacles to a mutual understanding of merger policy between jurisdictions.

6. **State aid**

6.1 The control of state aid focuses on the effects on competition of aid measures granted by Member States to undertakings. *Objective*: to ensure that government interventions do not interfere with the smooth functioning of the internal market, to foster competition and competitive markets and to enhance structural reforms. Particular attention is given to ensuring that the beneficial effects of liberalisation are not undermined by state aid measures. *Stockholm European Council*: Member States are to reduce the general level of state aid and redirect it towards horizontal objectives of Community interest (strengthening of economic and social cohesion, employment, environmental protection, and promotion of SME R&D). The Commission considers the recovery of unlawful aid granted by Member States a priority.

6.1.1 In this context, the failure of a number of Member States to open up their public purchasing to bidders from other Member States is highly regrettable. Public procurement in the EU totals over EUR 1,500 billion annually and certain Member States' practice of favouring 'national champions' harms competition and adds to the tax burden on consumers.

6.2 *State aid for rescuing and restructuring firms in difficulty*: The relevant guidelines, which expired in October 2004, stated that aid may be regarded as compatible only under certain strict conditions. These guidelines have been reviewed, with a special focus on the following issues:

— ensuring that rescue aid is limited to reversible, temporary, short-term financial support which is granted only for so long as is necessary to put a comprehensive restructuring plan into effect;

— focusing state aid control on large enterprises that trade across the EU;

— reinforcing the principle, in particular in the case of large enterprises, that the aid recipient is obliged to finance a large part of the restructuring cost without any state aid;

— applying the 'one time, last time' principle.

6.3 *Multisectoral Framework for large investment projects:* strict rules in sectors with structural difficulties. A list of such sectors was to have been established by the end of 2003. Due to methodological and technical difficulties, the Commission has decided to postpone the adoption of the list and to extend the existing transitional rules for large investment projects in 'sensitive' sectors until December 2006.

6.4 *R&D aid for SMEs*: aid for research and development can contribute to economic growth, strengthening competitiveness and boosting employment. For SMEs, this is particularly important.

6.5 *Environmental aid, research and development aid, training aid, fiscal aid* In the latter field, special attention has been given to alternative taxation methods, such as the cost-plus method (taxable income calculated on a flat-rate basis as a percentage of the amount of operating expenditure and expenses). In the field of sectoral aid (see in particular the application of the temporary defensive mechanism (TDM)), the following sectors have been addressed: steel, telecommunications, coal, rail transport, combined transport, road transport, maritime transport and air transport.

6.6 *Agriculture:* on 23 December 2003, the Commission adopted a new regulation introducing a block exemption regime for certain categories of state aid, meaning that Member States no longer need to notify them in advance to the Commission for approval. The new regulation, which will apply until the end of 2006, concerns state aid granted to SMEs in the agricultural sector. In view of the definition of an SME (no more than 250 employees, a turnover of no more than EUR 40 million or a balance-sheet total of no more than EUR 27 million), the provisions cover almost all agricultural sector enterprises. Lastly, the Commission is introducing a *new transparency standard*: a summary of all exempted state aid measures, by Member State, will be published on the Internet five days before the aid is first paid out, so as to ensure all interested parties have all the necessary information.

7. **General assessment**

7.1 Having summed up and offered some comments on the Commission's XXXIIIrd report on competition policy in 2003, the Committee will now make a number of general observations on the report as a whole and in particular on its most significant, forward-looking aspects.

7.2 *Relationship between competition policy and economic growth policy*

7.2.1 The introduction of new procedures for applying antitrust rules, the review of the Merger Regulation and the new organisational set-up in the Commission have made the European Union's competition policy more efficient and more open to a positive relationship with companies and consumers.

7.2.2 Competition policy has enabled the EU to make considerable steps forward in the liberalisation process, by restoring entire economic sectors to the logic and dynamic of the market and thus making a practical contribution to the creation of a single European market. Competition policy is therefore essential and must always be allowed full autonomy.

7.2.3 Working alone, it cannot however meet the particularly acute need throughout the EU for an intense upturn in growth and for a sustainable economic development policy based on innovation and social dialogue. Structural changes in production and world trade, starting with those generated by the new technological system, require the Commission to launch and coordinate other economic policy instruments. The goal is to safeguard and revive the competitiveness of the European economy and to bolster economic and social cohesion, employment and environmental protection while also promoting major, weighty research and development programmes. This is the thrust of the Commission's communication on *Fostering structural change: an industrial policy for an enlarged Europe* and the relevant EESC opinion ([1]). The Lisbon agenda outlines the way ahead. Its implementation must however be facilitated and speeded up at both general and sectoral levels.

7.2.3.1 At sectoral level, in confirmation of the points it made in its opinion of 30 June 2004 on *LeaderSHIP 2015 — Defining the Future of the European Shipbuilding and Repair Industry — Competitiveness through Excellence* ([2]), the EESC would reiterate the need to push forward with the new fully integrated approach defined by the Competitiveness Council of November 2003 with a view to strengthening industrial competition and encouraging all sectors of research, development and innovation.

7.3 *State aid and services of general interest*

7.3.1 The reform process designed to streamline and simplify procedures for the control of state aid has made major progress, following the course set by the Stockholm European Council towards reducing the level of state aid and redirecting it towards horizontal objectives of Community interest, including the cohesion objectives. Examples of this are a number of measures adopted by the Commission, such as extending to a degree the scope of aid to research and development; producing guidelines on technology transfer agreements, on restructuring companies in difficulty, and on aid for training and for environmental protection; and establishing multisectoral rules for major investment projects.

7.3.2 With its judgment on the Altmark case in July 2003, the Court of Justice confirmed that compensation to companies responsible for providing services of general interest will be excluded from the definition of state aid, subject to a few conditions. There are still some unresolved issues, however, relating in particular to establishing an optimal link between state aid and services of general interest (SGI). The nature of the conditions imposed by the Court demands an improvement in legal certainty, particularly in the area of assessing costs, defining financing for services ([1]) and specifying more clearly the public service obligations eligible for compensation. Meanwhile, the Green Paper on services of general interest (SGI), published in May 2003, had already acknowledged the need to assess whether the principles governing SGI should be further consolidated within a general Community framework, and to define optimal rules for the services and measures, in order to increase legal certainty for all operators.

7.3.3 If they are not correctly defined and financed, universal service obligations could cause the companies responsible to suffer increasing losses, owing to the potential entry of competitors into the most profitable areas of their activity.

7.3.4 The EESC would therefore stress the need, already highlighted in its opinion ([3]) on the Commission's Green Paper, to adopt a clear legal text on SGI in order to secure effective and fair access for all users to high quality services that meet their requirements. Furthermore, it recommends instigating as broad as possible a dialogue with the social partners and NGOs, particularly regarding the reorganisation and functioning of social services.

7.4 *Liberal professions*

7.4.1 The in-depth analyses carried out by the Commission on the regulatory systems for professional services in the Member States have proved very useful, as they have reinforced the message on the need to carefully review the restrictive regulations in this field and to make the major cultural and knowledge-related resources existing in the professional world more productive and competitive. This clearly brings major benefits, not just for the professionals themselves, but also for firms and consumers.

([1]) OJ C 157 of 28.6.2005.
([2]) OJ C 302 of 7.12.2004
([3]) OJ C 80 of 30.3.2004

7.4.2 The principle repeated several times by the Court of Justice is now generally accepted, namely, that suppliers of professional services must also respect competition rules. While it is absolutely true that economic criteria cannot be the only parameter by which professional services are assessed, as they are not simply repetitive technical applications but rather services that apply knowledge to a problem, it is also true that they are an economic activity which, when carried out with respect for competition rules, generate greater welfare and can make an important contribution to the Lisbon agenda.

7.4.2.1 The content of the Commission Communication on *Competition in Professional Services* ([1]) is interesting in this respect. This report in fact underscores the important role the professional services can play in improving the competitiveness of the European economy, inasmuch as they are essential inputs for companies and families. At the same time, it uses empirical research to argue the negative effects that excessive or outdated regulations, such as those regarding pricing, advertising, entry requirements, exclusive rights and business structure, can and do have on consumers.

7.4.3 The priority is therefore to implement and accelerate the reform process. To this end, the EESC urges the Commission to stand by its commitment to publish a new report on 'progress in eliminating restrictive and unjustified rules' in 2005. In this context, the Commission has also committed itself to looking more closely at the link between the level of regulation, economic results (prices and quality) and consumer satisfaction.

7.4.4 Meanwhile, the EESC would reiterate the importance of the Court of Justice ruling of 9 October 2003 on the Consorzio Industria Fiammiferi case, which allows the national authorities to 'disapply' national rules obliging companies to engage in conduct contrary to Article 81.

7.4.5 Lastly, efforts must be made to promote greater and more informed involvement in the reform process on the part of the sectors concerned.

7.5 *Plurality of information and competition law*

7.5.1 In its XXXIIIrd report on competition policy, the Commission states that maintaining and developing media pluralism and the freedom to provide and receive information are fundamental objectives of the European Union as values crucial to the democratic process. It also states that responsibility for the control of media concentration rests primarily with the Member States. The application of competition policy instruments in the media sector, it adds, is limited to addressing the problems raised by the creation or strengthening of dominant positions in the respective markets and the control of foreclosure of competitors from those markets. In the EESC's opinion, the distinction between the EU's tasks and those of national governments is somewhat vague, and also leaves a number of important issues unresolved:

— It should be noted that in the various Member States there are differing regulations and approaches requiring harmonisation: the Commission began the process in 1989 and then continued in 1997 with the Television without Frontiers directive, whose objectives were not only economic efficiency but also respect for cultural diversity, protection of minors, right of reply, etc.

— A distinction must be drawn in the media field between general antitrust rules and rules specifically designed to defend the pluralism of information. Operational competition rules are a basic condition for promoting pluralism, but not enough in themselves. Unlike a competitive system in which the market power of each company must face up to the initiative and activities of competing companies, the promotion and defence of pluralism demands the explicit recognition of the public's right to have effective access to independent sources of information and to alternative and potentially differing information, a right that should be protected at all levels.

— Lastly, the process of the gradual convergence between telecommunications, IT, radio, television and publishing makes it difficult to pinpoint the structures of the various markets. The danger of failing to properly understand this process is that the competition rules will be diminished and the principle of pluralism weakened.

7.5.2 The new European Constitution will significantly expand the Commission's brief. The EESC is convinced that the new legal framework will inject additional vigour into the Commission's role in guiding and/or intervening directly to defend and develop the freedom and pluralism of information.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([1]) COM(2004) 83 final of 9.2.2004

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on international rail passengers' rights and obligations

(COM(2004) 143 final — 2004/0049 (COD))

(2005/C 221/02)

On 28 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was Mr Chagas.

At its 414th plenary session (meeting of 9 February 2005), the European Economic and Social Committee adopted the following opinion by 119 votes to one with four abstentions

1. **Introduction**

1.1 The current proposal for a Regulation of the European Parliament and of the Council on international rail passengers' rights and obligations (hereinafter 'Quality Directive on Passenger Transport') is part of what is known as the **third railway package**, which the Commission adopted on 3 March 2004. The other elements are:

— Amending Directive 91/440/EEC on the development of the Community's railways (COM(2004) 139 final);

— Proposal for a Directive on the certification of train crews (COM(2004) 142 final);

— Proposal for a Regulation on compensation in cases of non-compliance with contractual quality requirements for rail freight services (COM(2004) 144 final);

and

— Communication from the Commission on further integration of the European rail system (COM(2004) 140);

— Commission Staff Working Paper on gradually opening up the market for international passenger services by rail (SEC(2004) 236).

1.2 The **First Railway Package** (also known as the Infrastructure Package) entered into force on 15 March 2001 and was required to be transposed into national law by 15 March 2003. It contains the following elements:

— Amendment of Directive 91/440/EEC: among other things, free market access for international rail freight traffic on the Trans-European Rail Freight Network by 15 March 2003 and total liberalisation of international rail freight traffic by 15 March 2008 ([1]);

— Extension of the scope of a European Rail Operators' Licence (Amendment of Directive 95/18/EC) ([2]);

— Harmonisation of the provisions for the allocation of railway infrastructure capacity and the charging of infrastructure fees and safety certification (replaces Directive 95/19/EC) ([3]).

1.3 In October 2003, the European Commission took nine Member States to the European Court of Justice for failure to notify the transposition of the First Railway Package into national law. In May 2004, five countries still had yet to prove notification, and two Member States had only partially implemented the provisions in national law.

([1]) Directive 2001/12/EC – OJ L 75, 15.3.2001, p. 1 – EESC Opinion – OJ C 209, 22.7.1999, p. 22.

([2]) Directive 2001/13/EC – OJ L 75, 15.3.2001, p. 26 – EESC Opinion – OJ C 209, 22.7.1999, p. 22.

([3]) Directive 2001/14/EC – OJ L 75, 15.3.2001, p. 29 – EESC Opinion – OJ C 209, 22.7.1999, p. 22.

1.4 The **Second Railway Package** was published in the Official Journal of the European Communities on 30 April 2004, and must be transposed into national law by 30 April 2006. It contains the following elements:

— Amendment of Directive 91/440/EEC: Bringing forward free market access for international rail freight traffic to 1 January 2006 and liberalisation of domestic rail freight traffic including cabotage from 1 January 2007 ([1]);

— Directive on safety on the Community's railways ([2]);

— Regulation establishing a European Railway Agency ([3]);

— Amendment of the Directives on the interoperability of the high-speed rail system (Directive 96/48/EC) and of the conventional rail system (Directive 2001/16/EC) ([4]).

1.5 The first and second railway packages created the legal basis for an internal market in rail freight transport. The measures cover market access, licensing and safety certification of rail operators, access to infrastructure and the calculation of access charges, the creation of a legal framework for railway safety, and measures to ensure technical interoperability of the rail system.

1.6 This legal framework, put in place by the first and second packages, requires, as the EESC stated in its opinion on the second railway package ([5]), a complete restructuring of the sector and the creation of new authorities and competences.

1.7 In the current proposal, the Commission suggests passing legislation to afford similar protection for international rail passengers to that already enjoyed by air travellers, whose rights in the event of overbooking and delays are better protected.

2. **The Commission proposal**

2.1 *Liability and compensation*

2.1.1 The draft regulation governs liability of rail operators in the event of death or injury of passengers or of loss of, or damage to, their luggage.

2.1.2 Minimum compensation payments are set for delays (Annex III); these payments do not affect the passenger's right to transport.

Annex III

Type of service	Journey time	50% compensation in the event of	100 % compensation in the event of
International journeys in whole or in part by high-speed scheduled rail service	Up to two hours	Delays of between 30 and 60 minutes	Delays of more than 60 minutes
	Over two hours	Delays of between 60 and 120 minutes	Delays of more than 120 minutes
International journeys by scheduled trains other than high-speed trains	Up to four hours	Delays of between 60 and 120 minutes	Delays of more than 120 minutes
	Over four hours	Delays of between 120 and 240 minutes	Delays of more than 240 minutes

2.1.3 The draft regulation comprehensively governs the rights of passengers who miss their connections or whose trains are cancelled as well as the handling of customers in the event of delays or missed connections.

2.2 *Availability of information and sale of tickets*

2.2.1 Annex I governs the minimum information to be provided by rail operators before, during and after the journey. Annex II sets out the minimum information to be provided on the ticket.

2.2.2 Rail operators must sell tickets and/or through tickets for hub stations and the surrounding areas. Several rail operators must work together for this purpose and sign contracts in order to provide for the sale of through tickets. These tickets must be offered for sale at ticket counters, ticket machines, by telephone or on the Internet. If the ticket counters are closed or the machines are out of order, international tickets must be available on the train. System vendors must be open to all rail operators for the provision of information and the sale of tickets.

2.2.3 Rail operators must inform the public about plans to suspend international services.

([1]) Directive 2004/51/EC – OJ L 164, 30.4.2004, p. 164 – EESC Opinion – OJ C 61, 14.3.2003, p. 131.
([2]) Directive 2004/49/EC – OJ L 164, 30.4.2004, p. 44 – EESC Opinion – OJ C 61, 14.3.2003, p. 131.
([3]) Directive 2004/881/EC – OJ L 164, 30.4.2004, p. 1 – EESC Opinion – OJ C 61, 14.3.2003, p. 131.
([4]) Directive 2004/50/EC – OJ L 164, 30.4.2004, p. 114 – EESC Opinion – OJ C 61, 14.3.2003, p. 131.
([5]) OJ C 61, 14.3.2003, p. 131.

2.3 *People with reduced mobility*

2.3.1 The proposed regulation governs assistance for people with reduced mobility at the station and on the train, as well as when embarking, disembarking or changing trains. The need for assistance must be notified 24 hours in advance.

2.4 *Service quality standards and complaints procedures*

2.4.1 Rail operators are required to set service quality standards (defined in Annex IV) and to put a quality management system in place. Quality performance must be published in the annual report.

2.4.2 A complaints procedure is to be set up, according to which a reply must be sent to the customer in the language in which the complaint was made. The complaint may be submitted in any language of any country through which the international train passes. English, French and German are in any case permissible. This also applies to complaints made in person at ticket counters.

3. **Assessment of the proposal**

3.1 *Basic observations*

3.1.1 The Commission's proposal deals with two areas at once. The proposals for operators' liability and compensation in the case of delays, cancellations, injury or damage to property, and assistance to persons with limited mobility have broadly the same scope as the Regulation on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights [1]. This proposal deals with the rights of passengers in a second transport sector, i.e. the railways.

3.1.2 The second area covers a separate range of matters. This requires operators to cooperate to ensure that passengers can obtain information about timetables and fares and buy tickets at a one-stop shop in a competitive system. This covers both connections between hubs, and the stations in the area surrounding the nearest hub station. This proposal is closely connected with the proposal to amend Directive 91/440/EEC and with the liberalisation of international passenger transport.

[1] Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91.

3.1.3 The standards for timetable and fares information and with a few exemptions (e.g. Thalys, Eurostar) for the issue of tickets are fulfilled under the current system, in which international transport of passengers by rail is carried out under cooperation agreements between rail operators or by international groups. In the frame of a system of competing undertakings these provisions need to be maintained and improved by regulation or legislation.

3.2 *Scope*

3.2.1 The proposal applies to the international transport of passengers by rail. However, the provisions also apply to connections from hubs to stations in the surrounding area.

3.2.2 The EESC points out that connecting services may be subject to public service contracts.

3.2.3 However, the scope of the regulation is limited by its definition of 'railway undertaking' (Article 2.1). This includes only undertakings whose principal business is to transport passengers. This could be seen to imply that railway undertakings that also carry freight are excluded from the provisions of the regulation. This is not acceptable.

3.3 *Liability and compensation*

3.3.1 The EESC welcomes the principle of introducing European legislation on compensation of passengers when services are not provided satisfactorily or at all, and on the liability of rail operators.

3.3.2 However, it is important to ensure that binding legislation treats the various competing transport operators equally.

3.3.3 It is conspicuous that compensation for international rail passengers becomes payable earlier than that for air passengers, despite the fact that land-bound rail traffic often involves longer journey times and has more potential for disruption. For example, fare refunds are payable to air passengers only after delays of five hours.

3.3.4 In the event that a train is delayed, free meals and refreshments must be offered to passengers in a reasonable relation to the waiting time. In the case of air transport, the threshold is two hours or more.

3.3.5 In the case of cancelled flights, compensation need not be paid where the cancellation takes place due to 'extraordinary circumstances.' This basis for exemption from liability does not exist in the case of transport of passengers by rail.

3.3.6 Similarly, the regulation on air travel does not provide for compensation for consequential damages arising as a result of delays or cancellations, whereas the regulation on rail travel does so. Furthermore, the proposed regulation does not set an upper limit for consequential damages.

3.3.7 The maximum limit for liability is set at different levels for hand luggage and other luggage: EUR 1 800 for hand luggage and EUR 1 300 for other luggage. It appears from the explanatory memorandum that the Commission has drawn on different but comparable agreements (CIV for the rail sector and the Montreal Convention for the air sector). From the passenger's point of view, this difference is incomprehensible.

3.3.8 The proposed regulation contains varying provisions for liability of the operator to the customer depending on whether or not the operator was at fault. Thus, the operator is responsible for loss or damage to a passenger's hand luggage only if the operator is at fault. In other cases, the operator is liable whether or not it is at fault.

3.3.9 The operator is not liable for delays when these were caused by exceptional weather conditions, natural disasters, acts of war or terrorism. The operator is liable for delays due to any other cause, whether or not it was at fault.

3.3.10 As a general principle, the EESC is in favour of liability regardless of fault in the event of delay in any transport sector. This is not a matter of compensation for damages in the narrowest sense, but rather compensation for services that were not provided. To the consumer/customer, it does not matter whether the operator is at fault. The proposed limitations are appropriate.

3.3.11 It is not clear from the proposed regulation that a passenger can cancel his journey in the event of a delay and receive a full refund of his fare. Particularly in the case of business trips, a delay can make the journey pointless.

3.4 *Assistance to persons with limited mobility and other passengers*

3.4.1 The EESC welcomes the provisions for assistance to people with limited mobility.

3.4.2 Rail operators should provide accessible information to all passengers — including people with reduced mobility as defined in Article 2, paragraph 21; this could be done by locating windows and information stands at an appropriate height and by preparing text in bigger fonts and in an easy-to-read format.

3.5 *Information to passengers and on tickets*

3.5.1 The EESC welcomes the provisions on passenger information before, during and after the journey (Annex I). In particular, lack of information before and during the journey in the event of a delay regularly causes considerable annoyance to customers.

3.5.2 With regard to minimum information on tickets (Annex II), it should be stated whether and when the ticket can be surrendered and the fare refunded. Because of wide variations in reservation systems, this is often unclear to the passenger.

3.5.3 The Regulation provides (Articles 3, 5 and 6):

— that rail operators and/or tour operators must provide information about journey times, fares, carriage of bicycles, etc. for all services, including those offered by other operators, in all sales systems (ticket counters, telephone, Internet or other systems that may become available in the future);

— that operators must work together to sell through tickets to customers through all sales systems.

3.5.4 Fundamentally, the EESC considers it desirable that passengers should be offered one-stop-shop booking and information systems for all rail transport and associated services.

3.5.5 However, it draws attention to the peculiarities of rail travel:

— the dependency on the network and the interdependency of international long-distance, domestic long-distance and local services, including public service routes that are subject to other contractual obligations;

— the advantages of short-term bookings (spontaneous journeys), the ability to board along the route, and, in many cases, the absence of a requirement to reserve a seat;

— tickets that are transferable between persons.

3.5.6 A directly applicable regulation cannot make appropriate provision for the complexity that arises from the connection between international passenger rail services and regional services in a network that includes the integration of competing scheduled operators. The number of railway stations affected (hubs and stations in the area surrounding them) is, for example, considerable.

3.5.7 The Committee underlines that for international rail passenger services, these standards are presently fulfilled to a large extent. In a system of competing undertakings however, these provisions need to be maintained and improved by adequate legislation.

3.6 *Effects of the regulation on employees*

3.6.1 Article 21 of the proposed regulation states that the railway undertaking shall be liable for its staff. Article 22, on the other hand, mentions the possibility of aggregate claims, and includes claims against staff. It must be made absolutely clear that railway staff are not exposed to liability claims by passengers or other third parties but that the employer remains responsible.

3.6.2 High compensation for delays shall not, as a consequence, lead to rail operators to accept higher risks on the safety level in order to avoid compensation claims. Also, it shall be excluded that railway undertakings put excessive pressure on their employees with the risk to neglect working, driving and rest time. Furthermore, it is necessary to ensure that sufficient, well-trained staff are available to fulfil the quality requirements.

3.6.3 Annex IV on minimum service quality standards must therefore cover the skills of the relevant staff. This applies not only to train crews, but also to station staff and staff who process complaints.

Brussels, 9 February 2005.

4. **Conclusions**

4.1 The EESC welcomes the proposal for a Regulation on international rail passengers' rights and obligations. This extends consumer protection provisions that currently apply only to air travel to another mode of transport.

4.2 However, the EESC is against unequal treatment of competing modes of transport. The provisions that apply to the railway sector must not be stricter than those for air travel.

4.3 The EESC sees room for improvement in the regulation with regard to individual provisions for liability for consequential damages, the setting of upper limits for liability, and to exclusions in the event of train cancellations.

4.4 Fundamentally the EESC would be in favour of a refund of fare in the event of a service not being provided or being provided inadequately, whether or not the operator was at fault, as long as this applies to all modes of transport.

4.5 The EESC supports the concept of one-stop-shop information and booking systems that guarantee good service quality for passengers. However, it has reservations about this being dealt with in the same regulation on compensation and liability.

4.6 The EESC points out that establishing one-stop-shop information and booking systems in an interconnected system with network providers in international, national, regional and public service transport, with the added complication of competing scheduled operators, is very complex, particularly if this system is to be available through all sales systems.

4.7 It points out that the presentation of legislation on passenger information and the issue of tickets for the international transport of passengers by rail should be considered in conjunction with the amendment of Directive 91/440/EEC on the liberalisation of international passenger transport by rail.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services

(COM(2004) 144 final — 2004/0050 (COD))

(2005/C 221/03)

On 28 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was Mr Chagas.

At its 414th plenary session (meeting of 9 February 2005) the Committee adopted the following opinion by 130 votes with 2 abstentions:

1. **Introduction**

1.1 The present proposal forms part of the **third railway package,** which was adopted by the European Commission on 3 March 2004. The other components are:

— Amendment of Directive 91/440/EEC: liberalisation of international rail-passenger transport (COM(2004) 139 final).

— Proposal for a Regulation of the European Parliament and of the Council on international rail passengers' rights and obligations (COM(2004) 143 final).

— Proposal for a Regulation on compensation and quality requirements for rail-freight services (COM(2004) 144 final),

and

— Commission Communication on further integration of the European rail system (COM(2004) 140 final).

— Commission staff working paper on gradually opening up the market for international passenger services by rail (SEC(2004) 236).

1.2 The **first railway package** (also called the infrastructure package) came into force on 15 March 2001 and had to be transposed into national legislation by 15 March 2003. It comprises the following components:

— Amendment of Directive 91/440/EEC, including free market access for international rail freight on the trans-European rail freight network by 15 March 2003 and liberalisation of all international rail freight by 15 March 2008 ([1]).

— Extension of the scope of the Directive on a European licence for railway undertakings (amendment of Directive 95/18/EC) ([2]).

— Harmonisation of the provisions governing the allocation of railway-infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (replaces Directive 95/19/EC) ([3]).

1.3 In October 2003 the European Commission took nine Member States to the European Court of Justice for failing to notify the transposition of the first railway package into national law. By May 2004 five countries' notification had still not been received and two Member States had transposed only some of the provisions into national law.

([1]) Directive 2001/12/EC – OJ L 75 of 15.3.2001, p. 1 – EESC opinion – OJ C 209 of 22.7.1999, p. 22

([2]) Directive 2001/13/EC – OJ L 75 of 15.3.2001, p. 26 – EESC opinion – OJ C 209 of 22.7.1999, p. 22

([3]) Directive 2001/14/EC – OJ L 75 of 15.3.2001, p. 29 – EESC opinion – OJ C 209 of 22.7.1999, p. 22

1.4 The **second railway package** was published in the Official Journal of the European Community on 30 April 2004 and has to be transposed into national law by 30 April 2006. It comprises the following components:

— Amendment of Directive 91/440/EC: bringing forward free market access for international rail freight to 1 January 2006 and liberalisation of national rail freight, including cabotage, from 1 January 2007 ([1]).

— Directive on railway safety in the Community ([2]).

— Regulation establishing a European Railway Agency ([3]).

— Amendment of the Directives on the interoperability of the high-speed rail system (96/48/EC) and the conventional rail system (2001/16/EC) ([4]).

1.5 The first and second railway packages provided the legal basis for establishing a single rail-freight market. The measures encompass market access, the licensing and safety certification of railway undertakings, access to infrastructure and the calculation of charges for its use, the creation of a legal framework for rail safety, and measures for ensuring the technical interoperability of the rail system.

1.6 This proposal adds to the legal framework already in place to open up the market through measures to improve the quality of freight transport.

2. **The Commission proposal**

2.1 The proposal for a regulation on quality in freight transport is intended to improve rail freight transport by means of a contractual agreement on compensation between railway undertakings and freight customers. The Commission considers that the main cause for the modest share of railways in the increase in freight transport levels and its declining market share compared with other modes is the lack of quality and reliability of rail freight transport.

2.2 The Commission expects that the application of the compensation scheme will provide an incentive to railway undertakings to enhance the efficiency of rail freight services. Its premise is that over time competition will exert a strong pressure to improve quality, but, in the Commission's view, a real opening-up of the European rail freight market is not happening quickly enough. New entrant railway undertakings account for only 3 to 4 % of the market, and, in several Member States, there are no competitors.

2.3 The proposed regulation obliges railway undertakings and customers to stipulate quality requirements in the transport contracts and, in the case of non-compliance, to make compensation payments. The contractual parties are obliged to agree on at least the following quality requirements:

— times of hand-over of goods, wagons or trains,

— arrival time and compensation for delays,

— compensation in the event of losses or damage of goods,

— compensation in the event of cancellation of a train by the railway undertaking or the freight customer,

— a quality monitoring system.

2.4 The proposed regulation stipulates maximum and minimum compensation levels in the event of loss, damage, delay, lack of information about delays, and loss of or damage to goods due to delay. In the case of damage, for example, it stipulates an amount of maximum €75 per kilogramme of gross mass damaged. In the case of delays of block trains, compensation is fixed at no less than 5 % and no more than 25 % of the transport price. In the case of lack of information about delays, compensation is at least 5 % of the transport price.

2.5 The contractual parties are obliged to stipulate compensations for a train cancellation by the railway undertaking or the freight customer. They may agree compensation in the case of a declaration of value of the goods transported or in the case of a declaration of interest in delivery.

([1]) Directive 2004/51/EC – OJ L 164 of 30.4.2004, p. 164 – EESC opinion – OJ C 61 of 14.3.2003, p. 131
([2]) Directive 2004/49/EC – OJ L 164 of 30.4.2004, p. 44 – EESC opinion – OJ C 61 of 14.3.2003, p. 131
([3]) Regulation (EC) No 881/2004 – OJ L 164 of 30.4.2004, p. 1 – EESC opinion – OJ C 61 of 14.3.2003, p. 131
([4]) Directive 2004/50/EC – OJ L 164 of 30.4.2004, p. 114 – EESC opinion – OJ C 61 of 14.3.2003, p. 131

2.6 Liability is excluded in the case of fault of one of the contractual parties, fault or any other act of a third person, force majeure or circumstances that could not be avoided and whose consequences could not be prevented. If compensation claim arises due to the fault of the infrastructure manager, the railway undertaking pays and claims the payment back from the infrastructure manager.

2.7 If several railway undertakings are involved, all the undertakings are 'joint and severally liable' regardless of the undertaking under which the delay or damage occurred.

3. **Remarks on the Commission proposal**

3.1 In order to promote a sustainable transport system and secure a balance between transport modes, as set out in the White Paper on European Transport Policy for 2010, the Community has set itself an objective of increasing the share of freight transport by rail. Improving the quality of service in rail freight transport is one of many approaches to achieving that objective and is in principle to be welcomed.

3.2 The Commission proposes a system of incentives under which the desire to avoid compensation payments is supposed to boost quality and, in particular, improve punctuality. Usually, operators' first reaction to increased financial risk from possible compensation payments is to raise prices.

3.3 The question arises as to whether the Commission's proposed approach is appropriate.

3.4 The scope covers both international and national transport. The Commission itself writes in its explanatory memorandum to the proposed regulation that quality contracts are already in existence mainly in national transport, and less so in international transport. Elsewhere the Commission notes that problems chiefly occur if several railway undertakings are involved, which is the case primarily in international transport.

3.5 The question is whether, given intrusion into the contractual arrangements of commercial partners (this is not a question of consumer protection) a more restricted scope would be more appropriate for international freight transport.

3.6 Consideration should also be given to what positive incentives are available instead of established compensation payments via an EU regulation which would be unique for the railway sector and additional to the already existing international Convention COTIF (CIM). For example, Article 11 of Directive 2001/14/EC provides for bonuses in infrastructure charges if an undertaking takes steps to help minimise disruption and improve the performance of the system.

3.7 In promoting rail freight transport, it is vital to avoid discriminatory treatment of the different competing transport modes.

3.8 This raises the question of what comparable Community provisions are in place for air freight transport and road freight transport. International agreements on compensation for damage or loss provide for substantially lower rates (the Montreal Convention on air transport for one third of the maximum amount provided for in the regulation, the Convention on the Contract for the International Carriage of Goods by Road [CMR] for one sixth of the maximum amount).

3.9 The relationship between the quality monitoring system to be agreed upon by the contractual parties and the technical specification for interoperability (TSI) for freight telematic applications remains unclear. Europe-wide real-time electronic monitoring of freight movements by rail is covered in the TSI for freight telematics applications. The harmonised technical specifications and communication conditions are defined in this provision. However, its application and implementation still require substantial investment and will take many years.

3.10 Under the proposal, a railway undertaking can claim a refund of compensation payments from the infrastructure manager if the latter has been the cause of delay.

3.11 Here again, attempts to circumvent this are likely by raising the route price (risk supplements) and incorporating margins for delay in scheduling. Given limited infrastructure capacities, this would not be a desirable response. It has already been seen in the air transport sector since the entry into force of the directive on passenger compensation. The calculation of risk will be considerably complicated for infrastructure managers as they do not know, and cannot influence, the value of the flow of goods and the resultant compensation.

3.12 It should be borne in mind that the infrastructure in the new Member States in central and eastern Europe is in a poorer condition, requiring substantial investment, and that the compensation obligations in the regulation could cause considerable difficulties.

3.13 The proposal involves considerable effort in determining who is responsible for what, and in compensation claims by the railway undertaking against the infrastructure manager. Allocating responsibility will also be onerous if several railway undertakings are involved.

3.14 The perspective of having to pay high compensations shall not, as a consequence, lead the railway undertakings to compromise safety in order to respect delivery terms. Also, it shall be excluded that railway undertakings put excessive pressure on their employees with the risk to neglect working, driving and rest time.

3.15 In its opinion on the second railway package, the EESC has already pointed out that the social conditions in road transport place rail freight transport at a competitive disadvantage. The consequence of that cannot be to bring working conditions in rail transport into line with those of the roads and to encourage railway undertakings to flout the rules and exert pressure on the workforce.

4. **Conclusions**

4.1 The EESC welcomes in principle measures to improve the quality of rail freight transport.

4.2 Positive incentives would be preferable to strict compensation arrangements, leading to attempts to circumvent the rules and spawning a complicated refund system. This applies particularly to the role of the infrastructure manager.

4.3 Measures to improve the quality of rail freight transport must not discriminate against other transport modes.

4.4 The EESC asks the Commission to examine the impact of the measures on undertakings and infrastructure managers in the new Member States.

4.5 The EESC insists that measures to improve freight transport quality must not result in undertakings trying to circumvent the rules at the expense of safety and working conditions.

Brussels, 9 February 2005.

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

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the White Paper on services of general interest

(COM(2004) 374 final)

(2005/C 221/04)

On 13 May 2004, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. (rapporteur: Mr Hencks — co-rapporteur: Mr Hernández Bataller).

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 131 votes to 5, with 2 abstentions:

1. **Introduction**

1.1 Services of general interest (SGI) today form an area of society that is closely linked to European integration.

1.2 Services of general economic interest (SGEI) are recognised by the current Treaties as being among the shared values of the Union and contributing to its social and territorial cohesion (Article 16); access to SGEI and the rights relating to the specific components of services of general interest (social security and social assistance, health protection, environmental protection, etc.) are laid down in the Charter of Fundamental Rights (Title IV, Articles II-34 to II-36).

1.3 Not only are SGI central to competitiveness and an important element for contributing to the achievement of the Lisbon objectives, they are also fundamental elements of the European social model. They help to guarantee basic human rights, contribute to the knowledge-based economy and to social, economic and territorial cohesion and form elements of sustainable development.

1.4 Although the EESC's request to have promotion of services of general interest included as an objective in Article 3 of the Constitutional Treaty has not been met, a certain step forward was made with regard to SGI in the finalised Constitutional Treaty: under Article III-122 the EU can legislate on services of general economic interest in a horizontal manner concerning the principles and conditions relating to the provision of such services. The Constitutional Treaty also recognises the principle of administrative freedom for local authorities and raises to the level of a constitutional principle the possibility for local authorities to provide services of general economic interest themselves, thereby giving effect to the subsidiarity principle as regards the respective competences of the Union and the Member States in relation to services of general economic interest.

1.5 Nevertheless, in substance secondary legislation continues to be characterised by a general imbalance between, on the one hand, competition law, which is detailed EU legislation and takes direct effect, and, on the other hand, the general interest objectives that fall under exceptions to competition law.

1.6 The European Union still has difficulty in overcoming the contradictions between building a market based solely on competition and the need to ensure a process of public control that economic mechanisms alone will be unable to provide. Services of general interest are not techniques, or instruments, but embody human rights, social links, inclusion and integration.

1.7 Furthermore, we should not ignore the fact that an attitude of incomprehension, criticism and rejection is emerging among Europe's citizens towards policies which seem to aim at achieving a European integration that appears more and more irrelevant to their concerns, that is exacerbating the social divide, endangering social cohesion and jeopardising the social model.

1.8 The European Union must succeed in delivering a balanced combination of market mechanisms and general service missions in areas in which such complementarity is compatible with the objectives of services of general interest and can offer added value to the user or consumer. This means that, subject to the conditions laid down in Article 86(2) of the EC Treaty, the effective performance of a general interest task prevails, in cases of tension, over the application of competition rules, in accordance with EU case law.

1.9 Services of general interest call for a political will to control the management of collective interests and to meet needs and fundamental rights in the context of a European model of society, a model which offers appropriate social protection to everyone, whatever their age or social status or the region they live in, and also ensures good-quality, affordable and easy access to essential goods such as food, housing, water, travel, communication, etc. Services of general interest are clearly, therefore, part of the social market economy, which should not be provided simply by the interplay of competitive forces. In the absence of adequate public intervention a two-speed Union will develop that will accentuate disparities in development, inequalities and social exclusion.

1.10 In the near future many Europeans will be called upon to express their opinion in a referendum on the ratification of the Constitutional Treaty. Without public support there will be no political Europe. And there will be no public support if the Union is unable to provide guarantees for the protection and development of the European model of society and the European social model.

1.11 In this context the White Paper on services of general interest, insofar as it establishes a basis for ensuring high-quality, accessible and affordable services of general interest, is one of a number of important steps in promoting Europe to its citizens and preventing a 'No' vote from disrupting the momentum of European integration.

1.12 The debate launched by the White Paper and the results of that debate are inextricably linked with the debate over public-private partnerships, the services market, especially social services, state aid, the report being prepared on the water sector, the review of the Lisbon strategy and the assessment reports.

2. **White Paper on services of general interest**

2.1 The White Paper adopted by the European Commission on 12 May 2004 provides an overview of the important European debate following on from the publication of the Green Paper in 2003 and the many contributions it gave rise to, in particular from the European institutions and civil society. It proposes strategic orientations for the years ahead.

2.2 The debate on the Green Paper has revealed differences of views and perspectives. Nevertheless, a consensus has emerged on the need to ensure a harmonious combination between market mechanisms and public service missions.

2.3 While the provision of services of general interest can be organised in cooperation with the private sector or be entrusted to private or public sector commercial or non-commercial firms, the definition of public service obligations and missions remains a task for the public authorities at the appropriate level. The relevant public authorities are also responsible for market regulation and for ensuring that public or private sector operators accomplish the public service missions entrusted to them.

2.4 *The Commission's approach is based on nine principles:*

2.4.1 Enabling public authorities to operate close to the citizens: services of general interest should be organised and regulated as closely as possible to the citizens and the principle of subsidiarity must be strictly respected.

2.4.2 Achieving public service objectives within competitive open markets: the Commission remains of the view that the objectives of an open and competitive internal market and of developing high-quality, accessible and affordable services of general interest are compatible. Under the EC Treaty and subject to the conditions set out in Article 86(2), the effective performance of a general interest task prevails, in case of tension, over the application of Treaty rules.

2.4.3 Ensuring cohesion and universal access: the access of all citizens and enterprises to affordable high-quality services of general interest throughout the territory of the Member States is essential for the promotion of social and territorial cohesion in the European Union. In this context, universal service is a key concept the Community has developed in order to ensure effective accessibility of essential services.

2.4.4 Maintaining a high level of quality, security and safety: furthermore, the security of service provision, and in particular the security of supply, constitutes an essential requirement which needs to be reflected when defining public service missions. The conditions under which services are supplied also have to provide operators with sufficient incentives to maintain adequate levels of long-term investment.

2.4.5 Ensuring consumer and user rights: these include in particular the access to services, including to cross-border services, throughout the territory of the Union and for all groups of the population, affordability of services, including special schemes for persons with low incomes, physical safety, security and reliability, continuity, high quality, choice, transparency and access to information from providers and regulators. The implementation of these principles generally requires the existence of independent regulators with clearly defined powers and duties. These include powers of sanction (means to monitor the transposition and enforcement of universal service provisions) and should include provisions for the representation and active participation of consumers and users in the definition and the evaluation of services, the availability of appropriate redress and compensation mechanisms and the existence of an evolutionary clause allowing requirements to be adapted in accordance with changing user and consumer needs and concerns, and with changes in the economic and technological environment.

2.4.6 Monitoring and evaluating performance: in line with the prevailing view expressed in the public consultation, the Commission considers that any evaluation should be multidimensional and cover all relevant legal, economic, social and environmental aspects.

2.4.7 Respecting the diversity of services and situations: any Community policy in the area of services of general interest must take due account of the diversity that characterises different services of general interest and the situations in which they are provided. However, this does not mean that it is not necessary to ensure the consistency of the Community's approach across different sectors or that the development of common concepts that can be applied in several sectors cannot be useful.

2.4.8 Increasing transparency: this principle should apply to all aspects of the delivery process and cover the definition of public service missions, the organisation, financing and regulation of services, as well as their production and evaluation, including complaint-handling mechanisms.

2.4.9 Providing legal security: the Commission is aware that the application of Community law to services of general interest might raise complex issues. It will therefore make a continuous effort to improve legal certainty regarding the application of Community law to the provision of services of general interest, without prejudice to the case law of the European Court of Justice and the Court of First Instance.

2.5 *Based on these principles the White Paper proposes eight new orientations:*

2.5.1 Respecting diversity in a coherent framework: the Commission will re-examine the feasibility of and the need for a framework law for services of general interest on the entry into force of the Constitutional Treaty; it will launch a review of the situation of services of general interest and submit a report before the end of 2005.

2.5.2 Clarifying and simplifying the legal framework for the compensation of public service obligations: the Commission will adopt a Decision on the application of Article 86 of the Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest by July 2005; it will adopt a Community framework for state aid in the form of public service compensation by July 2005; it will adopt an amendment of Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings by July 2005; it will further clarify under which conditions public service compensations may constitute state aid within the meaning of Article 87(1) by July 2005.

2.5.3 Providing a clear and transparent framework for the selection of undertakings entrusted with a service of general interest: the Commission will conduct a public consultation on the Green Paper on the procurement aspects of public-private partnerships; where appropriate, it will submit proposals on the basis of the results of the public consultation.

2.5.4 Recognising fully the general interest in social and health services: the Commission will submit a Communication on social and health services of general interest in the course of 2005; it will facilitate cooperation among Member States on health services and medical care in order to contribute to ensuring a high level of health protection throughout the Union.

2.5.5 Assessing the results and evaluating performance: the Commission submitted its first horizontal evaluation on services of general interest on the basis of its evaluation methodology in 2004; it will review its evaluation mechanisms in 2006.

2.5.6 Reviewing sectoral policies: the Commission will encourage the cooperation of national regulatory authorities on the basis of networks of regulators; it will take into account the results of the public consultation on the Green Paper in the reviews already foreseen for the different sectors: the review of the scope of universal service in electronic communications by July 2005; the review of the electronic communications package by July 2006; the review of the postal services directive by the end of 2006; the review of the internal markets for electricity and gas by 1 January 2006; the review of the 'Television without frontiers' directive at the beginning of 2005; the assessment of the water sector is ongoing.

2.5.7 Reflecting our internal policies in our international trade policy: the Commission will continue to ensure that the positions taken by the Community in international trade negotiations are fully consistent with the EU's internal regulatory framework regarding services of general interest.

2.5.8 Promoting services of general interest in development cooperation: the Commission will assist developing countries in creating a sound regulatory and institutional framework as a key prerequisite for the promotion of investment in and access to finance for basic services of general interest.

3. **General comments**

3.1 The EESC welcomes the publication of the White Paper. It notes the nine principles and eight new orientations proposed in the White Paper for reinforcing the existence of services of general interest. It regrets, however, that its repeated requests in recent years [1] for a framework directive or a framework law to guarantee the existence of SGI, the Member States' freedom to define, organise and choose management methods for SGI, the long-term financing and performance evaluation of SGI, consumers' rights etc. have not yet been taken up, even if the Commission has undertaken to produce a report on this matter by the end of 2005.

3.2 The EESC welcomes in particular the fact that the White Paper sets out a precise timetable of proposals and measures which the European Commission intends to take in order to apply these principles and orientations over the coming years.

3.3 The EESC will follow closely the implementation of these commitments and is prepared to contribute towards ensuring their effectiveness.

4. **Specific comments**

4.1 The first principle — enabling public authorities to operate close to the citizens — implies that services of general interest are organised and regulated as closely as possible to the citizens and that 'the principle of subsidiarity must be strictly respected'. However, footnote 30 refers to the draft regulation on local inland transport, which 'would require Member States to use public service concessions' and thus systematic invitations to tender. There can be no subsidiarity unless each authority is free to choose how it manages the services of general interest within its responsibility.

4.2 The third principle — ensuring cohesion and universal access — led the Commission to stress, 'universal service is a key concept the Community has developed in order to ensure effective accessibility of essential services'. This means allowing 'requirements to be adapted in accordance with changing user and consumer needs and concerns, and with changes in the economic and technological environment'. In line with this thinking and as part of the e-Europe plan, which recommends general broadband use for electronic communications, the EESC would point out that 20 % of the population of the EU of Fifteen are currently denied access to such services. Now, broadband is a service of general interest that improves living conditions by reducing distances and facilitating access to health care, education and public services, both for geographically isolates citizens and for the worst-off. It therefore follows that unless universal telecommunications service at an affordable price is extended to broadband and mobile telephony, the European Union's delay in setting up and using the new information and communication technologies and the technologies of a knowledge society will grow, while the digital divide will become more pronounced, particularly in the new Member States.

4.3 The sixth principle — monitoring and evaluating performance — is also in line with the focus of the EESC, and of many other actors, on developing a progressive evaluation of the performance of services of general interest in order to improve their effectiveness, make access to them more equal and help them adapt to the changing needs of consumers, citizens and society, as well as to changes in rules. The White Paper rightly emphasises that evaluation must be 'multi-dimensional and cover all relevant legal, economic, social and environmental aspects'; the EESC would like evaluation to include employment issues. The EESC stresses that the role of the European Union is to establish a common methodology and common criteria, in particular with regard to quality, and to stimulate a process of objective and independent evaluation, which must be conducted in accordance with the principle of subsidiarity. In the EESC's view, the White Paper's proposals to review sectoral policies (see point 2.5.6) must be accompanied by reports assessing the effects of previous measures. Given that it brings together all the interested parties, the EESC reiterates its proposal to help steer the evaluation. In this context, the EESC will examine the possibility of setting up a permanent study group on SGI.

4.4 The seventh principle — respecting diversity of services and situations — 'does not mean, however, that it is not necessary to ensure the consistency of the Community's approach across different sectors or that the development of common concepts that can be applied in several sectors cannot be useful'. Under the proposed orientation the Commission will re-examine the feasibility of and the need for a framework law for services of general interest on the entry into force of the Constitutional Treaty and submit a report before the end of 2005. The White Paper does not therefore take up the call by the EESC and many other European actors for a framework directive (see the EESC opinion on the Green Paper on Services of General Interest — OJ C 80 of 30 March 2004). However, there is a clear need to consolidate SGI as a whole, including social and health services of general interest, bearing in mind their specific features, as far as they relate to competition law, financing, the implementation of the subsidiarity principle and their role in European integration.

[1] EESC opinions on *Services of general interest*, OJ C 241 of 7.10.2002, and on the *Green Paper on Services of General Interest*, OJ C 80 of 30.3.2004.

4.5 The ninth principle — providing legal certainty — will lead the Commission to 'make a continuous effort', without prejudice to the case law of the European Court of Justice and the Court of First Instance. This principle gives rise to two proposed orientations:

4.5.1 'to clarify and simplify the legal framework for the compensation of public service obligations by July 2005', which should help to ensure the security of long-term financing both for the investment needed to provide continuity and sustainability of services as well as for compensation of public service or universal service obligations, without infringing the principles of transparency, non-discrimination and proportionality; to recognise that this compensation may take very different forms and that these forms must be able to adapt to objectives: public subsidies, internal adjustments enabling costs to be financed from profits on commercial activities, whether or not accompanied by exclusive rights, a compensation fund among operators, tax or other exemptions, public-private partnerships, aid for the provision of services to users, etc.

4.5.2 'providing a clear and transparent framework for the selection of undertakings entrusted with a service of general interest', based on a public consultation on the Green Paper on public-private partnerships. For the EESC this means recognising that there needs to be scope for diversity in the way services of general interest are managed and freedom of choice for each authority concerned: either direct operation of the SGI by the public authority itself (as a public service or a public corporation), or the handing-over of management tasks to a public undertaking or a joint undertaking over which the public authority exercises a degree of supervision equivalent to that over its own departments or operating in the non-profit, social, cooperative or associative economy, or delegation to an undertaking for a fixed period (concession with a prior competition), without forgetting the possibility of reversibility from one form of management to another.

Brussels, 9 February 2005.

5. **Conclusions**

5.1 The White Paper on services of general interest marks a step forward in the consideration of these services in the Union. It represents a solid basis on which to develop the conceptual elements of a European policy on services of general interest capable of enabling European enterprises and all of Europe's citizens to benefit from accessible, affordable and effective public services using leading technologies.

5.2 Services of general interest are not only central to economic competitiveness but also a key element in the social and environmental fields. They are a major asset in the three-pronged approach of the Lisbon Strategy (economic, social and environmental aspects) and are vital to making the EU the most competitive and dynamic knowledge-based society, founded on sustainable economic growth, the provision of more and better jobs, and improved social cohesion. Services of general interest, bearing in mind their specific features, transcend the single market and are an essential prerequisite for the economic and social well-being of individuals and enterprises.

5.3 The task facing the European Union is to achieve a balanced combination of market mechanisms and public service missions in areas in which such complementarity is compatible with the objectives of services of general interest and can offer added value in terms of improvements in the quality of life of Europe's citizens, bearing in mind economic growth, job creation and sustainable well-being.

5.4 'The rights of citizens to benefit from services of general interest that are accessible, affordable and efficient must be safeguarded and affirmed in the name of solidarity and economic and social cohesion, which are recognised as basic principles of the Treaty. Any liberalisation of services of general interest decided by a Member State must be carried out while respecting the above-mentioned criteria. Consequently, there is a need to establish a body of universal principles for different services that are delivered in different ways from one Member State to another, while fully respecting the principle of subsidiarity.'

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on The use of geothermal energy

(2005/C 221/05)

On 1 July 2004, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on the use of geothermal energy.

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 17 January 2005. The rapporteur was **Mr Wolf**.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February 2005), the Committee adopted the following opinion by 132 votes, with 2 abstentions:

This opinion supplements earlier Committee opinions on energy and research policy. It describes the development and use of geothermal energy, as an energy source which, given the extent of reserves, meets the criterion of sustainability, does not contribute to global warming through CO_2 emissions, and can therefore be considered as a renewable energy source. The opinion includes a brief overview and evaluation, set in the context of the global energy issue, of current development and use of geothermal energy, its potential, and the problems connected with launching it commercially.

Table of contents:

1. The energy issue

1.1 Usable energy ([1]) is the mainstay of our contemporary way of life and culture. Its ready availability opened the door to our present-day standard of living. Unprecedented strides have been made in the major and emerging industrialised countries in terms of life expectancy, food supply, overall prosperity and personal freedom. Insufficient energy supply would severely jeopardise these achievements.

1.2 The need for a secure, inexpensive, environmentally sound and sustainable supply of usable energy is at the heart of the Lisbon, Gothenburg and Barcelona European Council decisions. EU energy policy is thus pursuing three closely related and equally important objectives, namely to safeguard and enhance (1) competitiveness, (2) security of supply and (3) the environment — all of them linked by the common thread of sustainable development.

1.3 In several opinions ([2]), the Committee has noted that supplying and using energy puts a strain on the environment, presents risks, depletes resources and involves the problem of external dependence and imponderables, as in the case of current crude oil prices. The Committee has also pointed out that the most important measure for reducing the risks associated with the security of energy supply, economic crises, and other risks is to ensure the most diverse and balanced possible use of all types and forms of energy, including all efforts to conserve energy and use it rationally.

1.4 In technical terms, however, none of the potential future energy supply options and technologies is perfect. None is wholly free of damaging environmental impacts. None is sufficient to cover all needs, and it is difficult to adequately gauge their long-term potential. Moreover, current trends and the rising costs of both conventional and alternative energy sources clearly indicate that future energy supply costs are unlikely to be as advantageous as current costs of using fossil fuels ([3]), such as crude oil, coal, and natural gas.

([1]) Energy is not actually consumed, but merely converted and, in the process, used. This happens through conversion processes such as coal combustion, the conversion of wind energy into electricity, and nuclear fission (conservation of energy; E = mc2). However, the terms 'energy supply', 'energy production' and 'energy consumption' are also used.

([2]) *Promoting renewable energy: Means of action and financing instruments; Proposal for a Directive of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market; Draft proposal for a Council Directive (Euratom) setting out basic obligations and general principles on the safety of nuclear installations and Draft proposal for a Council Directive (Euratom) on the management of spent nuclear fuel and radioactive waste; The issues involved in using nuclear power in electricity generation; Fusion energy.*

([3]) Future use of which will have to be increasingly restricted in view of both the limited reserves of such fuels and also the need to reduce CO_2 emissions (Kyoto Protocol).

1.5 Nor, therefore, can a forward-looking, responsible European energy policy bank on being able to secure an adequate energy supply along the lines of the objectives set out above by using only a small number of energy sources.

1.6 Thus, no secure, long-term, environmentally sound and economically viable energy supply exists — either in Europe or elsewhere in the world [1]. The key to potential solutions can lie only in further intensive research and development, which should include setting up pilot plants and evaluating them from both a technical and an economic perspective, gradually working towards commercial launches of new energy sources.

1.7 The Committee has also made the point that, given the slow pace of change in the energy industry, the fact that climate (greenhouse) gas emissions are a global, not a regional issue, and the expectation that the problem will further worsen, particularly in the second half of the century, the approach to the energy issue should be more global in scale and cover a substantially longer time period.

1.8 The problems of finite resources and emissions are compounded by the forecast two- or even three-fold increase in global energy requirements by 2060 as a result of population growth and the need for less developed countries to catch up. On the basis of current knowledge, increased efficiency and energy savings alone will not be enough to offset these very substantial additional requirements.

1.9 Any strategy [2] and prospects for development must therefore look beyond the timeframe of 2060.

1.10 As the Committee has also noted, public perceptions and open debate in this area reflect a broad range of opinions that veer between over- and underestimating the risks and opportunities involved.

1.11 There is therefore still no sufficiently consistent global energy policy. An additional problem is the fact that the EU needs to compete on a level playing field in the global economy.

1.12 Even within the EU Member States, there are considerable differences of approach to the energy issue. However, both at national and European levels, there is broad consensus as to the need to continue developing all possible energy sources (with the exception, in some Member States, of nuclear energy). To this end, numerous R&D programmes and other support programmes, some of which are funded from multiple sources, have been launched both by individual Member States and at European level.

1.13 One of the EU's main objectives in this field is to achieve a significant medium- to long-term increase in the use of renewable energy sources, which can also help protect the climate. In this context, geothermal energy can make a significant contribution.

2. **Geothermal energy**

2.1 Technologies for tapping into and using thermal energy flows from the earth's interior, which is very hot, to the surface, are referred to as geothermal energy production. Water (in liquid form or as steam) is used as the heat carrier.

2.1.1 However, the density of such thermal energy flows is very low, and temperatures rise only slowly as distance below the earth's surface increases, at an average rate of around 3°C per 100 m. Geological zones in which the temperature gradient is steeper are referred to as geothermal anomalies.

2.1.2 The heat balance of geological layers close to the earth's surface can also be affected by solar radiation; however, in the following paragraphs this energy is included in the category of geothermal energy.

2.2 There are **two options** for using geothermal energy.

2.2.1 The **first** of these is using **geothermal energy for heating purposes**. Currently, about 40 % of the total energy supply in the EU is used for heating purposes; this generally requires relatively low (water) temperatures (e.g. as low as < 100° C).

[1] The overall problem has been foreshadowed by previous oil crises (e.g. in 1973 and 1979), current increases in oil prices, and the current controversy – centred on the trade-off between economy and environment – about the allocation of emissions certificates.

[2] However, see 2.2.1.2 and 2.2.2.2.

2.2.1.1 For heating purposes alone, so-called **geothermal probes** are used among other things. (These involve a coaxial tube, the lower end of which is sealed, and through which water flows down to a depth of 2.5-3 km, then up and out again, thereby absorbing useable heat of up to approximately 500 kWth.

2.2.1.2 One option for tapping energy very close to the earth's surface is to use **geothermal pumps** ('reverse cycle chillers') to heat buildings (from around 2 kWth to 2 MWth); these also require a refrigerant ([1]). There are several types, tapping energy from depths of as little as 1 metre up to several hundred metres, depending on which technology is used.

2.2.2 The **second option** is to **generate electrical energy**. This requires higher (water) temperatures (e.g. > 120° C): usually, there are two boreholes, some distance apart; the water to be heated is fed underground through one borehole and flows out from the other. A greater amount of heat — 5 to 30 MWth — can be achieved in this way.

2.2.2.1 However, even these (water) temperatures are still insufficient to achieve the requisite thermodynamic efficiency (to transform heat energy to electricity), and in view of the temperatures required to reach boiling point within the turbine circuit.

2.2.2.2 For this reason, substances with a lower boiling point than water such as perfluorpentane (C_5F_{12}) are used for preference as the working fluid in turbine circuits. Special turbine circuits such as the Organic Rankine Cycle (ORC process) or the Kalina process are being developed for that purpose.

2.2.3 One particularly advantageous arrangement is to **combine both applications** (heat and electricity) and to use the residual heat arising during or in connection with electricity generation for heating purposes, thus providing heat and power at the same time.

2.3 However, in order to supply energy which is technically useable for electricity generation in particular, geothermal reservoirs have to be located sufficiently deep, usually several kilometres below the earth's surface, requiring costly deep drilling.

2.3.1 At the same time, the costs of tapping and using such reservoirs increase significantly with depth, and therefore, depending on how the energy is to be used, a balance must be struck between bore depth, efficiency and heat output.

2.4 For this reason, earlier stages of the search for useable heat reservoirs concentrated on geological areas with geothermal anomalies.

2.4.1 High geothermal gradient anomalies (so-called high-enthalpy ([2]) reservoirs) are mostly located in areas of intensive volcanic activity (Iceland, Italy, Greece, Turkey). The therapeutic properties of thermal water heated by high-enthalpy reservoirs have been known since ancient times, and they were first used to generate electricity about one hundred years ago (Larderello, Italy, 1904).

2.4.2 By contrast, low geothermal gradient anomalies (so-called low-enthalpy reservoirs), i.e. areas in which the temperature gradient is only slightly higher than usual, are located in areas of intensive tectonic activity (Rhine Graben, Tirennian Sea, Aegean Sea, etc.), and more generally in sedimentary aquifers (Pannonian Basin in Hungary and Romania, North German — Polish Basin).

2.5 Due to the limited number of areas with geothermal anomalies, since the mid-1980s efforts have increasingly concentrated on tapping the heat stored in 'normal' geological formations, in order to cope with the rising demand for energy and to be able to match the supply of heat or power more closely to demand in the surrounding areas.

2.5.1 As a result, geothermal reservoirs in areas without geothermal anomalies began being used for energy production in the 1990s, mainly in German-speaking countries. Electricity generation only began in Altheim and Bad Blumau (Austria) and in Neustadt-Glewe (Germany) during the last 4 years.

2.5.2 As this takes place at depths of at least 2½ km, but preferably 4-5 km or more, deep drilling is necessary.

([1]) In future e.g. CO_2 could be used.

([2]) Enthalpy, which is a term used in thermodynamics, is useable energy content (internal energy plus expansion energy).

2.6 Technologies for producing geothermal energy have the following advantages:

— unlike wind or solar energy, geothermal energy does not depend on the weather, time of day, or season, enabling it to contribute to all-important baseload capacity;

— pre-existing heat only needs to be brought from the reservoir at a depth of several kilometres to the surface, eliminating the processes involved in primary heat production (such as combustion or nuclear processes) and the concomitant economic and environmental costs involved;

— thermal reservoirs are an almost inexhaustible and renewable source of heat, which could in theory make a substantial contribution to energy production.

2.7 However, they also have the following disadvantages:

— the temperatures are too low to achieve a satisfactory level of thermodynamic efficiency for electricity generation;

— to ensure that heat exchange takes place and that the reheating capacity of the underground reservoir is not exceeded, very large volumes need to be tapped and used so that, at high heat extraction rates, the reservoir does not display signs of exhaustion that could force it to be abandoned earlier than planned;

— when reservoirs are used, it is essential to prevent any potential impact from or release of environmentally harmful and/or corrosive substances (such as CO_2, CH_4, H_2S and salts) and to keep equipment corrosion in check;

— the costs and economic imponderables (such as prospecting risks and the possibility of exhaustion) associated with tapping and using geothermal reservoirs are still relatively high.

3. **Current situation**

3.1 Basically, there are three technologies, with variations, for tapping and using deep geothermal energy; these usually require at least two boreholes (a doublet) [1]:

— hydrothermal reservoirs are used as a source of underground, non-artesian (i.e. not pressurised) water, which is brought to the surface, and up till now has generally been used for heating. At present, this technique is being extended to electricity generation using water at higher temperatures. The medium for heat transfer is the underground water from the reservoir;

— the hot dry rock (HDR) process involves deep boreholes being sunk into suitable geological formations and extensive stimulation. Surface water is injected underground and used to extract stored heat by cooling the heat exchange surfaces, which are artificially created by stimulation of deep layers of rock;

— pressurised hot water reservoirs, with a water/steam mixture at temperatures of up to 250°C or more (however, such high temperatures are of rare occurrence) which can be used to generate electricity or for heating.

In addition, ground-level technologies [2] are being developed to improve heat exchange and efficiency.

3.2 In the EU, geothermal capacity for generating electricity, most of which is located in Italy, and which generally uses geothermal anomalies, is currently about 1 GWel, or about 2 % of total EU electricity generating capacity. Geothermal capacity for direct heating is about 4 GWth, but is forecast to rise to 8 GWth or more by 2010.

3.3 Therefore, neither form of geothermal energy use has yet made a substantial contribution to EU energy supply, and they represent a negligible proportion even of renewable energy use.

3.4 However, thanks to support from both Member States and the EU, use of geothermal energy has increased substantially over the last few years. Provided the heat output ranges from just a few to several tens of MWth geothermal energy still makes a contribution to decentralised energy supply.

3.5 In the view of the Committee, this development is positive and well worth supporting. In many such cases, pilot plants are needed in which various methods can be tested and developed.

3.6 Comparing the costs per 1 KWel of electricity generated from various renewable sources, geothermal energy (even if heat and power generation can be combined) currently costs about twice as much to use as wind energy, and half as much as solar energy.

[1] However, see 2.2.1.1 on sealed geothermal probes and 2.2.1.2 on geothermal heat pumps.

[2] See 2.2.2.2 on turbine circuits.

3.6.1 However (see above) geothermal energy supplies can be largely matched to demand. This advantage will become increasingly significant as renewable energy takes a larger share of the energy market: using the fluctuating output from wind and solar energy will increasingly require technologies for buffering and regulating energy, and it is likely that energy-consuming and costly storage media such as hydrogen will be needed.

4. **Future development and recommendations**

4.1 Provided that it is no longer restricted to geothermically anomalous areas (see also points 2.4 and 2.5), geothermal energy has the potential to make a significant contribution to environmentally sound and sustainable energy supplies (see also point 4.13).

4.2 In order to use and develop this potential for economically viable electricity generation, boreholes need to be sunk to a depth of at least 4 or 5 km, to reach rock layers in which temperatures are at the threshold of about 150° C. In addition, rock at this level needs to be treated (stimulated) so as to enable a sufficient quantity of water to circulate and sufficient heat exchange to take place between the hot rock and the water which is naturally present or pumped through.

4.2.1 However (see also point 2.2.1.1), lesser bore depths of e.g. 2-3 km are sufficient if the energy is to be used solely for heating purposes.

4.3 Appropriate technological solutions are already being developed and tested at several locations in Europe (e.g. Soultz-sous-Forêts, Gross Schönebeck) with varying geological formations. The development of geothermal technologies which are as independent as possible of location and are therefore suitable for export offers the main scope for progress, but this still requires considerable R&D work.

4.4 On the one hand, development of the various technologies which already exist in a rudimentary form needs to continue in order to make them viable, at the same time as checking compliance with the previously mentioned criteria for sustainable use of geothermal energy.

4.4.1 One particularly important question is whether the hydraulic and thermodynamic criteria for adequate sustainability of a stimulated reservoir can actually be met.

4.5 On the other hand, the individual stages of the process need to be gradually improved and made more efficient in order to bring costs down to a competitive level (see below). At the same time, research and development (see point 1.6), as well as work on preparing the market are needed, in order to bring down production-related costs.

4.6 In the medium term, making geothermal energy competitive means enabling it to compete with wind energy in terms of costs. There is a high probability of this happening, given that the disadvantages of wind energy are becoming increasingly apparent: wide fluctuations in output result in major additional costs and emissions from other sources, wind farms can be unsightly, and the noise can disturb people living in the vicinity; in addition, they increasingly require repair and maintenance. The costs borne by consumers or the public purse must also be included in any overall assessment.

4.7 In the long term, given that prices of crude oil and natural gas are likely to continue rising, and reserves may possibly begin running out, general competitiveness will become an issue for geothermal energy. The question to be answered is when, if ever — taking into account external costs of all energy production technologies — geothermal energy will achieve long-term competitiveness, without any form of subsidy or market-distorting preferential treatment.

4.8 In the meantime, the following measures are needed [1]:

— effective R&D programmes at national and European levels to bring scientific and technological development in the field to the point where technologies and individual stages of the various processes can be developed and tested at an adequate number of test sites,

— legislation to promote private investment (e.g. laws on the sale of electricity to the grid, heating and air-conditioning systems) designed to provide initial, tapered support for commercial launches so as to make energy sales during the launch stage attractive for a limited period, not least in order to test, enhance and evaluate economic potential. In particular, this also applies to contractual arrangements between energy supply companies and consumers,

— action to offset the risks associated with prospecting and tapping geothermal reservoirs, e.g. in sinking boreholes and locating viable sources.

4.9 The Committee is pleased to note that considerable progress has already been made in this field. It fully endorses the Commission's existing and planned R&D projects, and also its intention to again substantially increase its activity in this area in its next R&D framework programme. It also endorses the relevant R&D programmes of Member States and their efforts, by adopting appropriate support measures, to facilitate and encourage the commercial launch of geothermal energy on a trial basis.

---

[1] See: *Promoting renewable energy: Means of action and financing instruments*

4.10 In this connection, the Committee reiterates its earlier recommendation that the opportunities offered by the European Research Area should be utilised through a comprehensive, transparent and coordinated energy research strategy, supported by all the players involved. This strategy should be made a key element of the seventh R&D framework programme and the Euratom programme.

4.11 This strategy should give appropriate emphasis to the R&D measures which are required to develop geothermal energy, until it becomes possible, in the context of a changing energy market, to provide a more accurate estimate and evaluation of the long-term costs and the achievable potential of such technology.

4.12 The Committee also recommends that all geothermal energy R&D programmes, i.e. including those which until now have been solely supported at a national level, be integrated as far as possible into a European energy research programme, to operate on the basis of open coordination. This would have the benefit of promoting European cooperation in the field.

4.13 In this context, the Committee sees the participation of new Member States in the EU R&D framework programme as an opportunity. Demonstration plants and pilot plants should be set up in these countries also, in the course of the forthcoming renewal of their existing energy systems.

4.14 In addition, the Committee recommends that the Commission sufficiently harmonise the effective measures taken within the EU to promote commercial launches (e.g. legislation on the sale of electricity to the grid) to enable EU-wide competition, at least in regard to actual geothermal technology, to take place on a level playing field.

4.15 Given that geothermal energy lends itself particularly well to combined heat and power generation, the Committee also recommends that the Commission look into suitable heating networks and use of geothermal heat.

5. **Summary**

5.1 Technologies for tapping into thermal energy flows from the earth's interior, which is very hot, to the surface, are referred to as geothermal energy production.

5.2 This energy is mainly used for heating purposes, but it can also be used to generate electricity, or combined heat and electricity.

5.3 Geothermal energy is already being used in areas with geothermal anomalies, but it still represents an insignificant proportion of overall energy supply.

5.4 Technologies which allow areas without geothermal anomalies to be tapped offer the potential for geothermal energy to make a significant contribution to sustainable energy supply, and to base-load supply in particular. However, they require boreholes to be sunk to depths of about 4–5 kilometres, together with additional 'stimulation'.

5.5 However, there is also considerable potential for development in the use of heat pumps to tap geothermal energy close to the surface for the purposes of heating and air-conditioning.

5.6 The potential to contribute to baseload capacity distinguishes geothermal energy from sources with fluctuating output (e.g. wind and solar energy), which are becoming increasingly dependent on technologies for regulating, buffering and storing energy and which are meeting public opposition due to the amount of land they require and their aesthetic impact on the countryside.

5.7 The Committee reiterates its recommendation that the opportunities offered by the European Research Area be utilised through a comprehensive energy research strategy.

5.8 This strategy should include R&D measures which are needed to develop geothermal energy, continuing and, as appropriate, building on existing programmes.

5.9 The Committee recommends that all geothermal energy R&D programmes, which until now have been solely supported at a national level, be integrated into such a European energy research programme and the measures which it comprises, to operate on the basis of open coordination.

5.10 The Committee recommends initial, tapered incentives and legislation in all Member States (e.g. a law on the sale of electricity to the grid) for commercial launches and private investment, in order to make the production and sale of temporarily subsidised energy more attractive and thus also to help test, enhance and evaluate the economic potential of this energy form.

5.11 The Committee recommends that such support measures should be sufficiently harmonised within the EU to ensure that EU-wide competition in regard to geothermal technology takes place on a level playing field.

Brussels, 9 February 2005

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and the Council on the implementation of the deployment and commercial operating phases of the European programme of satellite radionavigation

(COM(2004) 477 final — 2004/0156 (COD))

(2005/C 221/06)

On 16 November 2004, the Council decided to consult the European Economic and Social Committee, under Article 156 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was Mr Rannocchiari.

At its 414th plenary session, held on 9 and 10 February 2005 (meeting of 9 February) the European Economic and Social Committee adopted the following opinion by 134 votes with 3 abstentions:

1. **Introduction**

1.1 Recognising its fundamental strategic importance for a competitive European system, the EESC has followed developments in the Galileo programme for satellite radionavigation and positioning infrastructure since its inception. Galileo's significance lies in its innovational impact on associated aspects of the economy, employment and the social dimension, as well as the enhanced quality of life for civil society that Galileo can ensure ([1]). Furthermore, the EESC has been aware of the need to involve the private sector in the development and use of the system since the very foundation of the Galileo Joint Undertaking ([2]), thereby ensuring sustained support throughout the development and deployment phases ([3]).

1.2 In its most recent opinion ([4]) on the subject, the EESC emphasised that 'The Galileo programme finally entered the actual starting phase following the agreement on 26 May 2003 in the Council of the European Space Agency (ESA) on the respective financial contributions of the ESA Member States.' It also reaffirmed that 'The Galileo programme represents a major challenge for the European Union, its independence, its technological and scientific capacity, its economy and, primarily, its space and telecommunications industries.'

2. **Current state of play and anticipated developments**

2.1 It should be remembered that the Galileo Programme has four phases:

— A **definition phase** from 1999 to 2001, during which the architecture of the system was designed and the five services listed below were defined. This phase was primarily funded by the 5th RTD Framework programme 1998-2002.

— A **development and validation phase**, which runs from 2002 to 2005 and covers the development of the satellites and the system's ground components, as well as validation in orbit. EU/ESA funding amounted to EUR 1.2 billion, over and above the EUR 100 million contributed by the 6th RTD Framework Programme 2002-2006.

— A **deployment phase** covering 2006 and 2007 will involve the building and launching of satellites — the first two satellites are due to be launched towards the end of 2005 — and the establishment of the entire ground-based component. Overall funding is estimated at EUR 2.1 billion, one-third of which (i.e. EUR 700 million) will come from the Community budget. The remaining two-thirds (i.e. EUR 1.4 billion) of the cost will be borne by the consortium to be selected.

— The **commercial operating phase** is scheduled to begin in 2008. Estimated annual management and maintenance costs amounting to approximately EUR 220 million are to be borne entirely by the private sector, except for an exceptional total Community contribution of EUR 500 million to cover the first years of this phase, in accordance with decisions to be taken under the new Community financial perspectives for 2007-2013.

([1]) OJ C 311 17/11/2001 p. 19.

([2]) Galileo Joint Undertaking, set up under Article 171 of the EC Treaty by Council Regulation EC 876/2002 of 21 May 2002. It ensures the implementation of the development phase of the Galileo Programme and provides for the management of the deployment and operative phases. Its headquarters are in Brussels. Its founding members are the European Community, represented by the Commission, and the European Space Agency.

([3]) OJ C 48, 21/02/2002 p. 42

([4]) EESC opinion on the Communication from the Commission to the European Parliament and the Council - Progress report on the GALILEO research programme as at the beginning of 2004. OJ C 302 of 7 December 2004

2.2 At the end of the definition phase in May 2002, the Galileo Joint Undertaking was established for a four-year period 'to ensure the unity of the administration and financial control of the project for the research, development and demonstration of the Galileo Programme and to this end mobilise the funds assigned to that programme'.

2.3 Furthermore, Council Regulation 1321/2004 ([1]), which establishes the **GNSS (Global Navigation Satellite System) Supervisory Authority** and the Council Joint Action 2004/552/CFSP ([2]), both of 12 July 2004, set up the operational structures of the system to ensure the management of the public interests inherent to the programmes and the security and protection of the Galileo system.

2.4 At international level, the **European Union** and the **United States of America** signed an extremely important agreement on Galileo and GPS ([3]) on 26 June 2004, following negotiations that lasted four years. The agreement concerns the promotion, supply and use of the two satellite navigation and positioning systems' services and the full compatibility and interoperability of related applications. The two systems will operate side by side without signal interference. This will enable Galileo to become the world standard for open signals in the civilian and commercial use of global navigation satellite systems (GNSS). GPS is operated by the military. In addition, it will also become accessible and 'attractive' to current GPS users through a single receiver.

2.5 Also at international level, a cooperation agreement was signed with **Israel** on 13 July 2004. This followed an agreement that had been signed with **China** on 30 October 2003. Negotiations to obtain interoperability with the **Russian system GLONASS** ([4]) have been ongoing for some time. These negotiations have already reached an advanced stage, especially for the acquisition of frequencies and the use of Russian launch vehicles. Whilst cooperation agreements with the Russian Federation itself, Ukraine and India are at an advanced stage of negotiation, contacts with Australia, Brazil, Mexico and South Korea have been initiated. Switzerland, Norway, and Canada are also looking into the possibility of participating financially.

2.6 In the **Mediterranean basin**, an action plan was launched by the Euro-Mediterranean Conference of Foreign Ministers in Valencia in April 2002. The action plan included Mediterranean cooperation in satellite radionavigation and positioning. More recently, in Cairo, the Galileo Joint Undertaking launched the **Euro-Med GNSS** project for demonstration, training and coordination of the GNSS regional plan, to monitor, in cooperation with its Mediterranean partners, the impact of **EGNOS** ([5]), a geostationary satellite and Galileo's precursor.

2.7 Once fully operational, the Galileo system will provide **five types of service**:

— an open service that is suitable for mass-market applications for the general public and services of general interest;

— a commercial service that will ensure the development of professional applications, with increased navigation performance and added value data, compared with the open service, with particular reference to a guarantee for the service;

— a high-level performance Safety of Life service for situations where human life is at stake such as maritime and aviation navigation;

— a search and rescue service to make decisive improvements to existing humanitarian search and rescue systems;

— a Public Regulated Service (PRS) in encrypted form. It will be resistant to radio jamming and interference. It will be restricted mainly to public institutions involved in civil protection, national security, peacekeeping missions and law enforcement, where maximum levels of protection are required ([6]).

2.8 Given Galileo's operational features, civil management and predominantly commercial and professional applications, the Commission considers that its potential market by 2010, could stand at 3 billion receivers, with an annual return of investment of up to EUR 250 billion and the creation of new businesses and highly-skilled jobs in the hundreds of thousands, including approximately 150 000 in Europe.

([1]) Council Regulation on the establishment of structures for the management of the European satellite radionavigation programmes (OJ L 246, of 20 July 2004)

([2]) See OJ L 246, of 20 July 2004

([3]) US GPS: United States Global Positioning System, operated by the military

([4]) GLONASS: GLOBAL NAVIGATION SATELLITE SYSTEM.

([5]) EGNOS: European Geostationary Navigation Overlay Service: system based on the correction of the GPS signal via a network of ground stations and geostationary stations. It was launched in 1996 and operated as Galileo's precursor. EGNOS is to be integrated with the latter under the terms of the joint concession scheme..

([6]) See Concession for the deployment and operation phases of the Galileo programme 2003/S 200-179789, published on 17 October 2003

2.9 The Galileo Joint Undertaking completed the **competitive negotiating phase** in September 2004. It received the two final tenders of two consortia that had applied for the concession contract (Eurely ([1]) and Inavsat ([2])). The final selection was based on the following three criteria: business and financial capabilities; technical capabilities; and legal and technical aspects.

2.10 In accordance with its terms of reference, once the Joint Undertaking had presented a report on the tendering process to the Commission and the Commission had adopted a Communication to the European Parliament and the Council ([3]) on moving to the deployment and operational phase, it will be able to obtain the '**the necessary political directives on the public funding of the next phases of the programme and the public service tasks,** in particular the definition of the services'. As a consequence, it will be able to present a bid for signature by the Supervisory Authority, which is, in fact, the implementing authority under Regulation EC 1321/2004.

2.11 The Committee is concerned that the above-cited procedures could prove too complex, with overlapping and duplicated control measures, which are neither facilitating nor clear.

2.12 Furthermore, the Proposal for a Regulation under consideration provides that the **Supervisory Authority**, which it defines as a Community agency to manage the public interests of the satellite radionavigation programmes covered by EC Regulation 1321/2004, will not be set up until 2005.

3. **The European Commission proposal**

3.1 The proposal under consideration satisfies the need to provide a specific legal instrument to ensure an independent budget line that will permit more efficient management and monitoring of the deployment and operation phases of Galileo, from a financial point of view and also vis-à-vis the concession holder.

3.2 The Proposal for a Regulation under consideration aims to define the modalities of the financial contribution of the Community for the implementation of the deployment and commercial operating phases. It focuses on:

3.2.1 the need for the Community to guarantee a coherent budgetary framework for the funds generated by the Community itself and the concession holder:

— through the provision of Galileo services;

— through licences and intellectual property rights on system components granted to it free-of-charge by the Supervisory Authority;

— through long term loans granted by the EIB.

3.2.2 An appropriate institutional management and monitoring framework for the Supervisory Authority.

4. **General comments**

4.1 The EESC believes that immediate steps should be taken to provide greater detail concerning the technical aspects of delivering the various services. This will ensure open standards that will provide access for other service providers and innovative services. Artificial barriers and exorbitant levies would thereby be avoided for newcomers, especially small-scale users.

4.2 With regard to the **coherence of the budgetary framework**, the EESC hopes that new financial perspectives for the Community budget will be adopted as soon as possible. Furthermore, it supports the Commission's request for a specific budget line of EUR 1 billion for the Galileo programme, which would be independent of other budget lines. The Committee also recommends that the sum should be raised to ensure the development and integration of EGNOS into the Galileo programme. The EESC considers that research activities on GNSS satellite radiopositioning should also be included in, and resourced by, the 7th RTD Framework Programme.

4.3 The EESC also believes that clarification is required as to how any future public funding by third country institutions that have already expressed an interest in contributing financially to Galileo will be included in the financial framework.

4.4 The EESC is aware that the budgetary framework foresees advantages for the concession holder due to its role as service provider and user of licences and free IPRs ([4]). The EESC is compelled to express its concern that the concession holder may acquire a dominant position or a monopoly, which could distort competition or inhibit the free market.

([1]) EURELY: Consortium founded by ALCATEL, FINMECCANICA and VINCI

([2]) INAVSAT : founded by EADS Space, Inmarsat Ventures and the Thales Group.

([3]) COM(2004) 636 final adopted 6 October 2004

([4]) IPR: intellectual property rights.

4.5 With regard to the **appropriateness of the institutional framework for the management and control**, which has been 'externalised' to a European agency (the European Supervisory Authority of the global system for satellite radionavigation), the Committee would emphasise the following points.

4.5.1 The European Space Agency is not represented on the **Administrative Board of the European GNSS Authority**. However it is a member of the current Administrative Board of the Joint Undertaking.

4.5.2 The **managerial and supervisory responsibilities** of the Joint Undertaking are to be transferred to the European GNSS Authority, which administers Galileo funds, acts as the contracting authority for the concession contract, monitors compliance with contractual obligations, grants the concession holder the right to use the assets for the duration of the contract, manages the agreement with the EGNOS operator, coordinates the Member States' initiatives regarding the frequencies required to ensure that the system functions, guarantees component certification compliance and enforces compliance with security obligations, including those that derive from Joint Action 2004/552/CFSP.

4.5.3 The EESC cannot conceal its concern regarding the extremely delicate transfer of authority from the **Joint Undertaking**, due to be dissolved in May 2006, and the new **European GNSS Supervisory Authority**, which should become operative in mid-2005.

4.5.4 The Committee therefore recommends that the Commission and the Council should follow closely the 'cohabitation' and transitional phase from Joint Undertaking to Supervisory Authority.

4.5.5 The provisions of **Joint Action 2004/552/CFSP** and the Regulation establishing the European GNSS Supervisory authority, which foresees a **System Safety and Security Committee**, will regulate all matters relating to Galileo's internal security.

The EESC believes that relations between the Galileo system and other existing European initiatives such as Global Monitoring for Environment and Security (GMES) and COSPAS-SARSAT [1] search and rescue system, justice and home affairs networks and GRID multimedia networks should be strengthened forthwith.

4.5.6 The EESC reiterates [2] that it is essential that security concerns and **privacy and personal data protection** issues should be dealt with jointly, **through consultation with the European Fundamental Rights Agency** [3] **wherever possible, or by setting up an appropriate consultative body**. It would not appear sufficient to rely upon the provisions of Regulation EC 45/2001 referred to in Article 19 of the regulation establishing the European GNSS Supervisory Authority. The EESC considers that explicit guarantees for privacy and personal data protection are no less important than security considerations if the success of Galileo is to be secured through the full support of civil society.

4.5.7 Bearing in mind the need to involve civil society, the EESC notes that an initiative as important for Europe as the Galileo Programme remains virtually unknown to most European citizens. For this reason, the EESC hopes that the European institutions, in coordination with national governments, will launch an information and awareness-raising campaign that will not only raise European citizens' awareness and appreciation of this excellent research product of European industry but will also reassure them that their privacy is being safeguarded.

5. **Specific comments**

5.1 In view of the foregoing, the EESC recommends that the following points should be added to Recitals in the Proposal for a Regulation:

5.1.1 **New Recital 3(a)**: 'In view of the impact that the programme may have on the lives of European citizens, the Commission will take steps to ensure that the European Fundamental Rights Agency, or an alternative *ad hoc* consultative body, be entrusted with privacy and personal data protection in the implementation of Galileo services. This will ensure transparent development, and constant dialogue with potential users and civil society'.

[1] COSPAS (Russian acronym for 'Cosmicheskaya Sistyema Poiska Avariynich Sudov,' or Satellite search system for vessels -SARSAT: Search And Rescue Satellite Aided Tracking: an international satellite search and rescue system with humanitarian objectives. Between 1982 and 2003 the system was responsible for rescuing more than 15,000 people worldwide.

[2] See EESC opinion on the Proposal for a Council Regulation on the establishment of the Galileo Joint Undertaking, Point 3.5. OJ C 48 of 21 February 2002

[3] See COM(2004) 693 of 25/10/04, a Communication from the Commission that recommends the establishment of the agency in 2005, and proposes that it be entrusted with protecting individuals in matters pertaining to the processing of personal data.

5.1.2 **Add to Recital 12**: ', to secure further Community resources on the same budget line for developing and integrating EGNOS into Galileo, and to provide adequate attention and resources within the 7th RTD Framework programme for satellite radionavigation and its integration with existing networks.'

5.1.3 **New Recital 13(a)**: 'The Commission and the Council shall ensure that the transition from the Galileo Joint Undertaking to the new European GNSS Supervisory Authority shall be implemented under conditions of absolute transparency to avoid possible duplication, operational delays or, worse still, market restrictions.'

5.1.4 **New Recital 14(a)**: 'The Commission shall ensure that any financial contributions from third country institutions to the funds of the European GNSS Supervisory Authority reflect mutual interests and existing balances through appropriate agreements to be submitted to the Council and the European Parliament.'

6. **Conclusions**

6.1 The EESC reaffirms its **full support for the Galileo programme** and argues forcefully in favour of accelerating the two final development phases so as to ensure that it is fully operational in all respects by 2008.

6.2 The EESC urges the Commission to undertake an ex ante assessment of the added value for the concession holder, arising from the provision of services and intellectual property rights, and to disseminate clear and precise information based on the assessment's results.

6.3 The EESC considers that vital progress has been made towards setting up **global infrastructure**, in particular the EU-US cooperation agreement ensuring full compatibility and interoperability between existing global satellite radionavigation and positioning systems.

6.4 The EESC stresses the importance of international cooperation with China and Israel and believes that no effort should be spared in concluding mutual interest agreements with Switzerland, Norway, the Russian Federation, Ukraine, India, Australia, Mexico, Brazil and South Korea. The Committee considers the Mediterranean basin to be a privileged area, in so far as it is already able to benefit from EGNOS services. Furthermore, it is of strategic importance for peace, stability and sustainable development in Europe.

6.5 In this regard, the EESC is convinced that extending accessibility to third countries constitutes a vital contribution to the external dimension of European Union policy.

6.6 The EESC hopes that the European Commission will be provided with a dedicated budget line for an information and awareness-raising campaign that will not only raise European citizens' awareness and appreciation of this excellent research product of European industry but will also reassure them that their privacy is being safeguarded.

6.7 Finally, the EESC hopes that its comments regarding certain recitals will be accepted (protection of privacy, increased financial resources, transitional phase and contribution of third countries) as defined above. The proposals aim to contribute to the clarity and transparency of the initiative and to ensure that it is allocated sufficient resources. Consequently, they are in the interest of the European institutions as well as civil society.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council establishing an infrastructure for spatial information in the Community (INSPIRE)

(COM(2004) 516 final — 2004/0175 (COD))

(2005/C 221/07)

On 13 September 2004, the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 January 2005. The rapporteur was Mr Retureau.

At its 414th plenary session on 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 140 votes with two abstentions:

1. Summary of the Committee's opinion

1.1 The Committee considers the proposed establishment of an infrastructure for spatial information in the Community (INSPIRE) to be appropriate, desirable and in accordance with the principle of proportionality. This infrastructure will coordinate and make interoperable and accessible all spatial data collected at national level by the Member States in order to document more effectively, on a scientific basis, environment-related decisions and their follow-up, as well as reports required under certain directives. The Committee believes that the legal basis (Art. 175 TEC) is appropriate.

1.2 This initiative is likely to reduce duplication, omission and inefficiency and to make the collection and processing of data more coordinated and targeted. A Community-wide action plan is necessary; this will lead to greater efficiency in the use of data by the administrations and services concerned, and in the use of data by public and private operators in various forms, including value added services (specialist maps or databases, etc.).

1.3 The proposed directive creates the legal and technical framework necessary to realise this aim. It establishes a technical committee and makes it mandatory for Member States to give access to their geographical data. The system will be monitored by the Commission and regular reports are to be submitted.

1.4 The Committee therefore approves the proposal submitted for its opinion, as it unquestionably represents added value for the Community by providing a harmonised framework and promoting vital progress in terms of the quality and nature of the spatial data collected, thereby underpinning environmental policy, and possibly other national and European policies, and assisting in the decision-making process.

1.5 The Committee stresses the need to use open file protocols and formats or universal standards that are readable with free software; it also emphasises the need to ensure that the referenced information available through INSPIRE is placed in the public domain, as this is scientific data which is vital for environmental policy as well as for students and researchers. Lastly, the Committee stresses that the process should be undertaken without breaching the confidentiality of certain data, irrespective of whether they concern personal privacy, general interest or security matters.

2. The Commission's proposal

2.1 The legal basis is Article 175(1) TEC. This article — by referring to Article 174 — makes it possible to propose measures in the field of the environment and health protection on the basis of technical and scientific data.

2.2 Natural phenomena, similarly to phenomena caused by human activity, have an impact on the quality of the environment and on our health; this justifies a Community-wide information and coordination campaign that will take into account the principles of proportionality and subsidiarity, as well as the precautionary principle.

2.3 A framework directive is proposed to allow broad scope for subsidiarity so that the provisions can be tailored to the diversity of the Member States and the regions.

2.4 The metadata will primarily be derived from national public sources, but this does not exclude the possibility of other sources being used. A Community geo-portal will give electronic access to national databases.

2.4.1 It is not mandatory for Member States to collect the data mentioned in the appendices. The INSPIRE initiative complements other initiatives, such as GMES or GALILEO, which can be used to gather specific or additional data.

2.4.2 The horizontal nature of INSPIRE is of key importance; it cuts across a variety of sectors, which makes it possible to identify and cover any omissions.

2.4.3 Environmental legislation stipulates the nature, quality and notification of the data relevant for each of the sector-specific texts (e.g. directive on water quality).

2.4.4 Data sharing, which enables the identification of omissions and difficulties encountered by Member States, should make it possible gradually to find solutions.

2.5 The aim is to collect and coordinate the spatial (geographical) data detailed, for example, in Annexes I, II and III, and to ensure the interoperability of the various national systems for the collection and processing of this data thus making them available to decision-makers, administrative services, research organisations and more generally to interested members of the public.

2.6 The harmonised data are input into networks by the Member States. These easily accessible data and diverse services will serve as a technical and scientific basis for European, national or international policies in a broad range of areas.

2.7 By sharing and combining the information and knowledge acquired from various countries and sectors, it will be possible to avoid duplication and ensure that all Community policies take environmental considerations into account.

2.8 The European Environment Agency must actively contribute to the implementation of the directive. A comitology procedure is planned for the technical management of INSPIRE. The Commission will apply the implementing powers conferred on it by the Council Decision of 22 June 1998.

3. **General comments**

3.1 The Committee approves and supports the draft directive establishing an infrastructure for geographical data in the Community.

3.2 In synergy with other information sources, INSPIRE will support the decision-making process in environmental and health policies as well as in numerous other areas.

3.3 The Committee believes that the fact that the benefits outweigh the costs is a key advantage of the project; it will make it possible to avoid duplication and fine-tune Community policies, as well as providing information for the public.

3.4 For the Committee, the Community infrastructure and the information and services to which it provides access should be part of the public domain, as they primarily consist of scientific data and knowledge bases, the use of which is in the general interest (prevention of natural or industrial hazards, health, etc.). Too restrictive rights of use for data sets and services must not become an obstacle.

3.5 Nonetheless, public-private partnerships are possible, as is the use of data by private organisations or bodies for the purpose of providing added value services or creating specialised geographical databases for commercial use.

3.6 The interoperability of data sets and services is absolutely essential for the success of the INSPIRE infrastructure; the Committee supports the proposal to draw up rules for its implementation in cooperation with both service providers and users, and with the standardisation bodies.

3.7 The Committee believes that the protocols and formats for files created at national and Community level should be open or freely usable, and that the data should be readable for all internet access software to ensure that everyone has equal access to and use of the data, regardless of the software or equipment used.

3.8 Lastly, the Committee once again voices its concerns regarding the protection of personal data and of privacy. This protection should come on top of the need to protect key national interests and public security imperatives regarding the nature or sensitivity of freely available data.

4. **Specific comments**

4.1 The Committee would also like to receive a copy of the periodic reports provided for under the draft directive.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Flood risk management — Flood prevention, protection and mitigation

(COM(2004) 472 final)

(2005/C 221/08)

On 12 July 2004, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Agriculture, Rural Development and the Environment, which was responsible for the Committee's work on the subject, adopted its opinion on 13 January 2005. The rapporteur was Ms Sanchez Miguel.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February 2005), the European Economic and Social Committee adopted the following opinion by 132 votes with no votes against and two abstentions.

1. **Introduction**

1.1 The adoption of the Water Framework Directive ([1]) (WFD) can be said to have brought about a significant shift in EU water policy, not only because it introduced a harmonised approach to the various situations facing our continental and marine waters, but also because it established an effective method of assessing the quality of these waters and put in place a centralised organisational system that makes it easier to tackle each river basin in a uniform manner, regardless of the various competences which exist for each stretch of the river basin. Furthermore, the Commission has continued to supplement and develop the WFD by means of legislative ([2]) and other provisions ([3]), to ensure that EU water policy works to protect our rivers and seas.

1.2 Incomprehensibly, however, the WFD omitted some aspects that are extremely important for the quality of our river basins, including the issue of flooding. Although there is nothing unnatural about the phenomenon of flooding, its effects are in some cases considerably amplified by human activity. Many of the disastrous effects of flooding could be mitigated by means of an appropriate policy on the use and protection of rivers and riverbanks. In particular, this would require the construction of water-related infrastructure to take real — not just formal — account of the environmental impact in order to avoid changing natural dynamics and to remain in the interests of a sensible use of water resources.

1.3 Flood risks are increasing in the EU for two main reasons: firstly, the effects of climate change, which could lead to more frequent torrential rains and higher sea levels as a consequence of the warming of the atmosphere. The second factor is the impact of human activity, such as construction work in rivers and projects to divert and channel the course of rivers, and the construction of ports without adopting measures to assess and correct their environmental impact. Another human factor is the increased desertification of our continent, which has suffered from the wide-scale felling of trees, fires and other activities that go against nature. In short, flood risks are increasing as a consequence of unsustainable activity. Adopting sustainable models of economic, social and environmental development can therefore minimise these risks.

1.3.1 The flooding of land used for industry, intensive farming and livestock-breeding, and also of built-up areas, results in the spread of substances and products which under normal conditions do not threaten water quality but, as a consequence of flooding, become dangerous contaminants, with potential effects for public health and the ecosystems concerned.

1.4 The EESC would point out that between 1998 and 2002 Europe suffered over 100 major floods including the catastrophic floods along the Danube and Elbe rivers in 2002. Since 1998 floods have caused some 700 fatalities, the displacement of about half a million people and some EUR 25 billion in insured economic losses ([4]).

([1]) OJ L 327 of 22.12.2000, p. 72.

([2]) EESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on the protection of groundwater against pollution (COM(2003)550 final) – OJ C 112 of 30 April 2004, pp. 40–43.

([3]) European Parliament and Council Decision establishing the list of priority substances in the field of water policy, COM(2000) 47 final. Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: Pricing policies for enhancing the sustainability of water resources, COM(2000) 477 final. Communication from the Commission to the Council and the European Parliament: Towards a strategy to protect and conserve the marine environment, COM(2002) 539 final.

([4]) Source: COM(2004) 472 final

1.5 The Commission is aware of this state of affairs and presented the Environment Council of July 2004 with a proposal for EU action on flood protection, with a view to ensuring concerted action to improve protection against flood risks. Member States must cooperate on mapping risk areas and on implementing flood risk management plans in every river basin and in coastal areas, with the Commission facilitating the coordination of information between all States and promoting best practice in this area.

1.6 Lastly, it should be added that although this action is to be undertaken in the context of Community water policy, this issue also affects other European policies, such as those on agriculture, environment, civil protection, transport, etc. Furthermore, there is an extremely far-reaching legal problem which affects all of these policies, relating to flood plain management: the demarcation and definition of the public sphere as it applies to the protection of riverbanks and coastlines, so that they are not subject to major modifications by the authorities that are exclusively politically motivated and which affect other competences in water management and in flood risk planning. Demarcating protected areas would make it easier to take flood prevention measures.

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

2.1 The Communication's content can be divided into three headings, which are:

— flood risk management;

— what is already being done and future initiatives;

— a concerted EU action programme.

2.2 The aim of flood risk management is to reduce the likelihood and impact of floods. It is therefore proposed that the flood risk management plans incorporate the following elements:

— prevention;

— protection:

— preparedness;

— emergency response plans;

— recovery and lessons learned.

2.3 In terms of what is already being done and of future initiatives to mitigate the effects of floods, three levels of action are proposed.

2.3.1 At European level, action is geared towards using existing measures and policies for preventing and mitigating floods. In terms of research policy, the aim is to use research projects such as FLOODsite, which helps to improve integrated flood risk analysis and management methodologies. The use of the Structural Funds, in particular the European Regional Development Fund, can help to improve technological research and development in infrastructures ([1]). The IRMA project ('INTERREG Rhine-Meuse Activities') is an example of a cross-border approach to combating floods.

2.3.1.1 At European level too, it is proposed that the CAP should be used to establish flood protection areas through forestry and other agricultural activities as a means of protecting the soil. Similarly, it is intended to bring environmental policy into play under the WFD, by integrating flood risk management into integrated river basin plans. Furthermore, the Solidarity Fund, created in 2002 in the wake of the major floods in Central Europe, is to remain in place for emergencies.

2.3.2 As regards the role of the Member States, it should be pointed out that they have acted to combat the effects of floods by providing official and legal guidelines, in particular in the States that suffer most from such events. There are plans and strategies to protect against floods, and risk maps have even been drawn up in those regions that suffer most frequent flooding.

2.3.3 Thirdly, measures have been put in place for international cooperation on transboundary rivers, in Central Europe in particular, by setting up bodies to ensure a coordinated approach to river basin management.

2.4 The EU's programme for concerted action contains some features that are crucial to establishing measures to prevent and mitigate the effects of flooding. The most noteworthy are: improving coordination between authorities through the river basin and coastal area management plans, flood risk mapping as a tool for planning, and exchange of best practice.

2.4.1 For this programme to succeed, the Member States, the Commission and the other interested parties must cooperate and fulfil their tasks and obligations in the field of flood risk prevention.

([1]) An interesting example was presented to the EESC's Section for Agriculture, Rural Development and the Environment by Mr Sándor Tóth, representative of the Hungarian Department of the Environment and Water Management, on the programme of long-term flood management and regional development in the Tisza valley.

2.4.2 The estimated costs of this joint action are hard to quantify, but the qualitative benefits that minimising the effects of flooding will have for the people of Europe, their property and for the people and areas concerned far outweigh any costs.

2.5 An annex sets out guidelines for the development and implementation of flood risk management plans and flood risk maps; this is important for ensuring a uniform approach to achieving the programme's objectives.

3. **General comments**

3.1 The EESC welcomes the Commission's Communication, aimed at improving and harmonising the prevention systems in place in many Member States to mitigate the effects of flooding. Nevertheless, firstly, a more thorough assessment of the problem must be made in order to decide on suitable measures geared, in particular, towards the most effective preventive actions which would prevent much of the damage caused by flooding. Secondly, some basic concepts not mentioned in the proposal must be defined, so that agreement can be reached on the measures proposed for management plans and risk maps, in the most harmonised manner possible.

3.2 Floods are natural phenomena associated with the normal functioning of river and coastal systems and operate on a geological timescale that is far greater than the timescale normally used for example in managing economic planning or land-use planning, etc. The 'recurrence interval' therefore means that:

— when flooding takes place, be it in 100 or 500 years' time, the river will flood a given area;

— these floods will definitely recur;

— they can recur at any time.

Concepts used in hydrological planning include:

— The riverbed or natural course of a continuous or non-continuous flow is the land covered by water under maximum normal rises in level.

— Flood plains are areas demarcated by the theoretical levels that waters would reach during flooding, the statistical recurrence interval for which could be 100 or 500 years. This does not affect the ownership of the land (public or private), but the competent authority can set limits on usage in order to ensure the safety of persons and property.

— The normal features of flood areas generally include wetlands, alluvial forests, other types of flood plain, debris cones caused by torrential floods in mountainous areas, lagoon marshes and several features (many of these associated with ecologically valuable ecosystems) indicating the limits of floods, which, as already stated, are events associated with the normal functioning of river and coastal systems.

3.3 The seriousness of a flood depends on the occupation and use of flood areas by human beings for activities that affect the normal functioning of these water systems, substantially altering the river and coastal environment. Such activity increases the risk of abnormal conditions that are extremely harmful to human beings and property. The EESC considers that the following factors should be seen as increasing the severity and scale of flooding:

— inappropriate land-use planning, in some cases over a prolonged period, as a result of ignoring scientific and technical information, which would be unacceptable today;

— ill-judged flood risk management (straightening of rivers, channelling of flood waters, construction of reservoirs and dams, cutting off flood detention basins by building dykes close to rivers), measures that have often proved to be inadequate or, taking a wider view, sometimes even counter-productive, particularly downriver.

3.4 The increasing flood risk as a consequence of changing natural factors, in particular climate change, requires a great deal of research to determine how these changes can affect river and coastal dynamics and hence flood-prone areas and recurrence intervals, amongst other variables.

3.5 The increasing risk as a consequence of human factors, such as land use in these areas and the number of people located there, can and must be corrected by including active planning policies geared to achieving the SUSTAINABLE use of flood areas and to minimising risks.

4. **Specific comments**

4.1 The EESC agrees that flood risk management aims to reduce the likelihood and/or impact of floods, normally through a process involving the aims of prevention, protection, information, etc., as pointed out by the Commission. Nevertheless, it is worth classifying the actions and measures that can be adopted and the criteria for making the right choice in each case. The following preventive measures might be used:

— Natural flood protection measures, e.g. improving or restoring natural drainage by reducing soil compaction or restoring forests in mountainous areas; recovery of (former) naturally occurring flood detention areas; slowing down the flow and propagation rate of the flood wave by reversing measures to straighten rivers; improved drainage of rainwater in residential areas.

— Actions that alter a flood area's susceptibility to incur damage, such as early warning systems, land-use planning and restricting use in flood areas, etc.

— Actions to prevent flooding (hydrological or hydraulic measures): these may be structural (flood control reservoirs, channelling, dykes, etc.) or non-structural (restrictions on urban use, programmes to safeguard property, etc.).

4.2 The EESC suggests to the Commission that management plans be based on the following principles and non-structural measures:

— Returning river and coastal water systems to their natural state, promoting the recovery of natural spaces and the natural self-regulating functions of basins (reforestation in affected mountainous areas, the protection of wetlands and associated ecosystems, monitoring erosion and sedimentation in water courses, programmes for finding alternative uses for and recovering high risk land, etc.).

— The principle of achieving sustainable development in flood areas, by:

i. estimating the exploitable economic potential of land use in these areas which is compatible with natural flood activity;

ii. planning the transition to these models in the various areas of planning, in particular land-use planning.

It is in this context that the principle of *long-term strategic planning* should be brought to bear, i.e. not simply a question of taking account of the forecast changes, as set out in the Commission Communication, but essentially of correcting them, in cases where it is reasonable to assume that the current level of risk will remain the same or increase.

4.3 Appropriate guidelines and criteria should be drawn up for selecting suitable measures to improve flood protection:

— improved flood protection must not lead to deterioration of the hydrological situation elsewhere (e.g. due to increased run-off, higher water levels or faster flood waves downriver);

— as far as possible and in keeping with the principle of sustainable development, preference is to be given not to constructing technical protection systems but to action to restore river basins, and to natural measures that contain flood water more within a specific area without causing damage (allowing it to spread rather than rise);

— wherever possible, preference is to be given to measures which can offer synergies with other sustainable development objectives (e.g. the objectives of the Water Framework Directive concerning water and ground water quality and the objectives of European nature conservation directives).

4.4 Experience with flood risk management in various parts of the world, in particular since the 1970s, has demonstrated that the main difficulties in implementing preventive measures are not technical and cannot be resolved by risk or danger maps alone. In the USA, for example, the Army Corps of Engineers has produced more than 20 000 risk maps, but very few local authorities make use of them and, when they do, they opt for one type of structural action (such as channelling, dams and dykes) which has frequently failed to adequately control floods and prevent a great deal of avoidable damage because the authorities and the public at large have been lulled into a false sense of security.

4.5 It should be stressed that in the EU, such measures — basically the construction of dams and channels, which are of limited use — are precisely those financed by the Structural Funds, (ERDF and the Cohesion Funds). Preventive measures, structural or otherwise, are generally less well funded. The EESC therefore considers it necessary to assess the need to establish a specific funding line for this Action Programme or, failing this, drawing up guidelines for the inclusion of actions in other Commission-funded programmes.

4.6 At all events, structural measures such as these are not sufficient to prevent floods or to protect flood areas. They only make sense as part of a broader approach in which land-use planning, transport planning (roads, rail, etc.), maintenance of flood drainage channels and the protection of the areas and ecosystems that regulate natural run-off are also taken into account. It would thus be appropriate in future to make the guidelines in the Communication's annex more precise, and to include methodological principles or good practice for drawing up these plans.

4.7 Incorporating flood management plans into the management plans of the Water Framework Directive is crucial to ensuring that the necessary planning is undertaken for action over the entire length of the river basin and that the measures and actions undertaken by the competent authorities at the various levels (local, State, cross-border, etc.) are compatible and properly coordinated. Criteria and formulae must be established to ensure the proper integration of these two planning frameworks, which are compatible but different, by means of a Directive facilitating this. These elements should be dealt with in greater detail in the proposed further development of the appended guidelines.

4.8 Incorporating flood management into the WFD essentially requires:

— a definition of flooding as a phenomenon associated with the normal functioning of river and coastal systems, which can, exceptionally and periodically, affect water quality and ecosystems;

— a definition of 'flood zone' that is closely linked to the territorial aspect of WFD's scope (land use, potential contamination, ecosystems linked to water quality, etc.);

— a definition of flood risk linked to the risks and damage to the bodies of water covered by the WFD;

— specific risk management that addresses water management exactly as set out in the WFD (use of water in the river basin, cost recovery, action plans, establishing protected areas).

4.9 The most important aspects of flood risk management linked to WFD-based planning are:

1) Risk definition and management:
   — hydrological risks, water quality and ecosystems
   — associated geological risks, landslides, avalanches
   — management and renovation of public inland waterways and coastal waters
   — ecological criteria for flood management
   — town planning criteria.
2) Warnings and emergencies:
   — geographical zoning
   — hydrological information systems and an emergency prevention system
   — civil protection
   — a legislative framework in each Member State to regulate the above aspects
   — civic education
   — coordination between the authorities concerned.
3) Other aspects:
   — multidisciplinary research and coordination
   — risk cover insurance
   — sound construction of infrastructure.

5. **Conclusions**

5.1 The EESC is of the view that any action to prevent, protect against or mitigate flooding must incorporate the methodology and instruments created by the WFD, in particular the river basin plan, which makes it possible to regulate all activities relating to the management of inland waterways and the connected coastal areas. To this end, the EESC believes it necessary to incorporate the content of the Communication and the comments made here into a Community Directive that would help bring risk management plans into line with the characteristics of each basin plan, thereby adapting to the particular conditions of our rivers and coastlines.

5.2 To ensure that these aspects are properly incorporated, there must be:

— a clear definition of the basic concepts that will underpin action, especially those referred to in point 4.7 of the opinion;

— a thorough assessment of the current situation in every river basin and coastal area in Europe, especially in areas deemed to be high-risk as a result of climate change and human activity;

— emphasis on actions to prevent the harmful effects of flooding, building on and including all measures aimed at the population, by means of appropriate education and information.

5.3 Risk management plans and risk mapping, as set out in the annexes to the proposed communication, must be extended, so as to establish and clarify a classification of action and measures, taking into account those with the highest priority and that are most appropriate to the financing obtained, as well as the criteria to be met in order to reduce costs and increase the benefits to people and property. The most important aim is to reconcile the natural functioning of inland waterway and coastal systems with human activity, in short, to achieve integrated and sustainable activity in flood areas.

5.4 Lastly, the EESC considers that the most significant aspects of flood risk management, which concern planning under the WFD, are the definitions of risk, warnings and emergencies for times when these phenomena occur. Moreover, it is important not to lose sight of other Community measures for multidisciplinary research and cooperation, aimed specifically at mitigating the damage caused by flooding, for putting in place insurance to cover damage and minimise the economic loss suffered by the victims and, above all, for vigilance and control over the safety of infrastructure projects in the inland waterway and coastal systems.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation on the financing of the Common Agricultural Policy

(COM(2004) 489 final — 2004/0164 (CNS))

(2005/C 221/09)

On 29 October 2004, the Council decided to consult the European Economic and Social Committee, under Article 37(2) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 January 2005. The rapporteur was Mr Kienle.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February 2005), the European Economic and Social Committee adopted the following opinion by 133 votes with 6 abstentions:

1. **Introduction**

1 January 2005 saw the launch of the far-reaching agricultural reform. At the heart of this reform is the decoupling of production subsidies and a stronger emphasis on rural development. The financial basis of the Common Agricultural Policy is the October 2002 decision by heads of state or government laying down a ceiling for agricultural expenditure under the first pillar, which is to be capped at actual 2006 levels for the EU-25 expenditure until 2013. This decision on agriculture is an accepted part of the EU's financial perspective for 2007-2013 which covers overall EU funding. Thus, expenditure on the Common Agricultural Policy including rural development (for the EU-27) is set to run at EUR 57.18 billion in 2007, and will increase by 1.1 % by 2013 (at 2004 prices).

However, contrary to what the title might suggest, the Commission proposal under review is not so much concerned with the sources and use of funding for the Common Agricultural Policy as with the budgetary implementation of support for agriculture and rural development.

2. **Gist of the Commission document**

The proposal under review is intended by the European Commission to serve as a budgetary basis for the Common Agricultural Policy, including the EU's rural development policy, in the period 2007-2013, and to regulate its financing through a single legal act. It should be seen in conjunction with the proposal for a Regulation on support for rural development. The Commission's aim is to simplify and secure greater efficiency. To this end, it proposes a tighter monitoring, assessment and reporting system.

2.1 *Funds for financing expenditure*

2.1.1 Current situation: The European Agricultural Guidance and Guarantee Fund (EAGGF)

The European Agricultural Guidance and Guarantee Fund (EAGGF), which currently finances the Common Agricultural Policy, consists of a Guidance Section and a Guarantee Section.

The Guarantee Section is used to finance the common organisation of agricultural markets (direct payments, export refunds, intervention buying-in), certain types of expenditure in the veterinary and phytosanitary sectors, and measures to evaluate and provide information on the Common Agricultural Policy. The Guarantee Section also comprehensively finances certain measures for rural development (agro-environmental measures, compensatory allowances for less-favoured areas, afforestation, early retirement) and investments in regions that do not have Objective 1 status.

The Guidance Section finances other investment expenditure on rural development not covered by the Guarantee Section of the EAGGF, i.e. measures in regions with Objective 1 status and the Leader+ initiative.

2.1.2 Basic features of the future Common Agricultural Policy funds

The structure of the new funds is to be on the same lines as the EAGGF. They are to be administered by a committee comprising representatives of the Member States and the Commission (Article 41, Committee on the funds). All measures financed by the new funds are to become subject to an accounts clearance procedure, whereas at present this requirement only applies to measures financed by the Guarantee Section. At present, measures financed by the Guidance Section are monitored through the multi-annual support programmes (as per Regulation EC 1260/1999 on the Structural Funds).

2.1.3 The new European Agricultural Guarantee Fund (EAGF)

The EAGF resembles the existing Guarantee Section of the Common Agricultural Fund (EAGGF) and is intended to continue financing, inter alia, intervention measures, export refunds, direct payments, information activities, and promotion of agricultural products, as at present. Support measures for rural development will no longer be financed by the EAGF; instead, they would be covered by the EAFRD.

2.1.4 The new European Agricultural Fund for Rural Development (EAFRD)

The new EAFRD is to be used for all future financing of rural development measures, in order to simplify financing of the second pillar. The EAFRD is to combine funds from the EAGGF Guidance Section and funds for rural development from the EAGGF Guarantee Section. Including modulation resources from the first pillar arising from reductions under Article 10 of Regulation (EC) 1782/2003, the 2013 budget for rural development will, as the European Commission sees it, amount to a total of EUR 14.2 billion (for the EU 27, at 2004 prices).

2.2 *Payment and checking procedures*

2.2.1 Paying agencies

According to the Commission's proposal, these procedures are to be dealt with by the paying agencies set up by Member States, as at present. Paying agencies are approved departments or bodies of the Member States with responsibility for checking the eligibility of requests, recording payments made, and preparing the requisite documentation for the Commission.

2.2.2 Payments to Member States and commitment of funds

EAGF payments are to be made monthly, EAFRD payments quarterly. Under the draft regulation, EAFRD funds will be committed separately for each programme over a period of several years, split into annual instalments. After this period, funds will be automatically decommitted, under the N+2 rule, which states that the funds allocated to a programme must be spent by the end of the second year after allocation, where N is the year of allocation.

2.2.3 Communication with the Commission

Member States are to submit declarations of expenditure to the Commission and annual accounts at the end of the budget year, together with a document certifying that the accounts submitted are complete, accurate and true. An additional requirement envisaged under the proposal is for a statement of assurance from the person in charge of the paying agency. For EAFRD expenditure, the Commission proposes that the paying agency should also submit separate annual accounts for each programme, split into annual instalments.

2.2.4 Clearance of accounts, conformity clearance and the financial report

The draft regulation envisages that the Commission will close the accounts of the paying agencies prior to 30 April. The clearance decision will cover the completeness, accuracy and veracity of the accounts submitted. In line with current procedures, the Commission is to assess whether any expenditure should be excluded from Community financing (conformity clearance). One change is that the period for making a financial correction has been extended from 24 months to 36 months. Also, the Commission's financial report on administration of the funds is to be submitted to the European Parliament and the Council by 1 September (instead of 1 July as at present).

3. **General comments**

3.1 *The public must be able to accept and readily understand support*

The EESC is aware that funding for the Common Agricultural Policy accounts for a significant share of the EU's total budget, albeit that share is, in relative terms, diminishing over time. The EESC feels that it is all the more essential that therefore the public should be able to readily understand and accept support for agriculture and rural development. In the view of the EESC, two conditions must be met for this to happen:

— payments must reach final beneficiaries with as few deductions as possible; and

— abuse should be prevented through effective monitoring.

3.2 *Innovative approaches for simpler operations*

The EESC acknowledges that the draft regulation contains a range of genuinely innovative approaches for better and simpler budgetary operations. The EESC believes that creating two funds with a clear division of tasks is the right way of achieving this objective. The regulation is a significant step forward in terms of simplification. Financing of the Common Agricultural Policy is regulated on a single legal basis, and the two monitoring systems currently operating are replaced by a single system. The various financial management systems for rural development measures are unified, but a second system remains for EAGF measures. The draft regulation on support for rural development replaces the five programming systems with a single system and reduces the number of programmes. The EESC endorses these simplifications, which will particularly benefit the Brussels administration.

3.3 *Simplification must have a perceptible impact on beneficiaries*

However, the EESC is of the view that simplification must have a perceptible impact at all levels, benefiting the EU, Member States and final beneficiaries. The EESC considers that it is particularly important for simplification of bureaucratic procedures to have an impact at the end of the administrative chain, for farmers. At present European farmers have to deal with a considerable amount of red tape, which is frequently accompanied by late payment of subsidies. SAPARD — the Special Accession Programme for Agriculture and Rural Development — was an extreme example of this, in a case that was also recently criticised by the European Court of Justice. However, there is only a very small risk of not being able to recover payments which have been mistakenly made to farmers. The EESC therefore feels that urgent steps should be taken to ensure that support for final beneficiaries is prompt and as straightforward as possible.

3.4 *Red tape can be cut*

Although the goal of simplification is being adequately achieved from the Commission's perspective, the same cannot be said for Member States. Some parts of the regulation even run counter to the objective of simplification, and increase the administrative burden. The EESC laments the fact that, because of differing procedures for payment and committing funds, paying agencies still have to run two separate financial management systems. In order to keep the effort involved to a minimum, it is essential that these two systems be as streamlined as possible. In view of this, further changes are needed, not least to the regulation on support for rural development. The requirement for extra documentation is an additional administrative burden for Member States.

3.5 *More demands on Member States*

In view of the longer period for charging expenditure, tighter deadlines and provisions for the recovery of funds by the Commission, the Commission's proposal would mean more shared financial responsibility for Member States. In principle, the EESC welcomes the fact that the rules on the recovery of funds, do not place liability for disbursed support on the EU alone, but also on the Member States. For funds to be used more efficiently and transparently, there must be scope for recovering funds which have been mistakenly paid out, even after a relatively long period. In view of objections by many Member States to greater shared responsibility, the EESC will be observing very closely whether these Member States lose interest in the programmes, at the expense of potential final beneficiaries. The tighter expiry deadline for payments is also intended to encourage more discipline on the part of Member States. While the EESC agrees that there should be limits to payments, it feels that the deadlines stipulated are excessively tight, and asks the Commission to reconsider them.

3.6 *Indirect support should remain the exception*

The EESC is concerned that increased technical support will divert resources from the actual purpose of the funds, which is to support agriculture and rural development. This kind of indirect support, i.e. support of institutions and structures which are responsible for providing actual support, should be kept within tight limits, and should only be permitted when strictly necessary. In this context, the EESC is particularly critical of Community support for administrative and monitoring capacity building in Member States, which is undeniably the responsibility of Member States themselves. The EESC suggests that this extension of technical support should only be offered in a few exceptional cases and for a limited period. The EESC feels that a report should be issued by the Commission in these cases, to ensure strict monitoring of such support.

4. **Specific comments**

4.1 *German names for the European Agricultural Fund for Rural Development (EAFRD)*

In the German-language version of the regulation on support for rural development, the new European Agricultural Fund for Rural Development (EAFRD) — in German *Europäischer Fonds für Landwirtschaft und Landentwicklung (EFLL)* — is referred to as the *Europäischer Landwirtschaftsfonds für die Entwicklung des ländlichen Raums (ELER)*. The EESC asks that the regulation texts should avoid any discrepancy and use the same name for the same fund.

4.2 *Administrative burden*

4.2.1 Extension of the certification procedure (Article 7)

An increased administrative burden would arise from the extension of the certification procedure to monitoring systems (Article 7). Currently, certification bodies examine the completeness, accuracy and veracity of the annual accounts submitted to the Commission, but under the proposed regulation they would have responsibility for 'certification of the management, monitoring and control systems'. The EESC would like an explanation of why such certification is necessary. The aim should be for certification bodies to concentrate uniformly on certifying payments made by paying agencies.

4.2.2 Annual accounts (Article 8)

Annual accounts will have to be drawn up for payments from the new EAFRD but the system of financing (commitment of funds, prefinancing payments, intermediate payments, payments of balance) will be based on the total duration of the programme. The EESC is concerned that paying agencies will have to report expenditure both in annual accounts and in financial statements for programmes as a whole, which would result in increased effort. The annual accounts must be accepted in each case.

In addition, paying agencies will have to submit separate annual accounts for expenditure under individual EAFRD programmes. Certification bodies, which until now have submitted reports with annual accounts, will in turn have to prepare separate annual reports for these separate accounts. The EESC regrets that the Commission has not achieved more simplification, but feels that the effort involved is acceptable.

4.2.3 Additional documentation (Article 8)

In addition to the annual accounts, a statement of assurance will have to be submitted by the person in charge of the paying agency. The EESC does not feel that this is necessary. The arrangements for paying agencies and certification bodies already provide for monitoring procedures. In the view of the EESC it would also suffice for the person in charge of the paying agency to confirm the veracity of information.

4.3 *Financing*

4.3.1 Additional financing of technical assistance (Article 5)

Financing of technical assistance is to be extended to analysis, management, monitoring and implementation of the Common Agricultural Policy, as well as to measures for the development of control systems and technical and administrative assistance. The proposal also introduces financing of executive agencies set up in accordance with Council Regulation (EC) No. 58/2003 and financing of measures promoting cooperation and exchanging experience at Community level, undertaken in the context of rural development, including networking of the parties concerned. This expenditure is to be administered in a centralised manner. The EESC is extremely critical of proposals for Community support of the administrative functions of Member States.

However, it is appropriate that the Commission should be responsible for the promotion of networking.

4.3.2 Recovery of payments (Articles 32, 33, 35)

In the case of non-recovery, the proposal envisages that a greater share of the financial consequences should be borne by Member States. The Commission would be able to charge the sums to be recovered to the Member State, if the Member State had not initiated all the appropriate administrative or judicial procedures for recovery purposes (for the EAGF: within one year of the primary administrative or judicial finding). At present, this is not possible. If recovery has not taken place within four years, or within six years where recovery action has been taken in the national courts, 50 % of the financial consequences of non-recovery would be borne by the Member State concerned. At present, all of the financial consequences are borne by the Community budget. The EESC broadly welcomes the fact that responsibility for payments will not be borne by the Commission alone but will be shared with Member States. This could induce Member States to exercise greater care in devising their support and monitoring structures. A greater share in financial responsibility must not be allowed to put Member States off participation in programmes. Given that procedures can last for over four or six years, the EESC proposes reconsidering timeframes and percentage rates for Member State involvement.

4.3.3 Limiting prefinancing payments to 7 % (Article 25)

Article 25 sets the prefinancing amount, paid by the Commission after adoption of a rural development programme to the paying agency designated by the Member State, at 7 % of the EAFRD contribution. In the view of the EESC, this is an acceptable limit, as similar restrictions already apply, and as it would not have any adverse consequences for the liquidity of paying agencies.

4.4 *Expiry of payments (Article 16)*

Article 16 sets 15 October of the relevant budget year as a cut-off date for late payments by Member States. However, sometimes back payments have to be made (e.g. court judgements). In particular, administrative authorities will need more time to adjust to the new system of (decoupled) production subsidies. The EESC therefore feels that 15 October is not an appropriate cut-off date.

4.5 *Period for refusing financing (Article 31)*

Article 31 (conformity clearance) allows the Commission to refuse financing under certain circumstances (infringement of Community rules, failure to reach agreement with the relevant Member State). This does not apply to expenditure incurred more than thirty six months before the Commission notified the Member State in writing of its inspection findings. At present, the limitation period is 24 months. This change further helps the Commission to avoid payments that do not conform to Community law. However, the EESC feels that a certain degree of time pressure for checking such conformity — as exists under the current rules — is useful. In addition, prompt intervention by the EU serves a preventive purpose and maintains discipline among Member States.

4.6 *Reduction of payments by the Commission (Article 17)*

Article 17 gives the Commission the option of reducing or suspending monthly payments. In addition to recovering or refusing payments in the context of clearing accounts, the Commission would also have the option of cutting payments at short notice in the event of clearly improper use of Community funds. The EESC is in favour of laying down a legal basis for such an approach, which is already current practice.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation amending Regulations (EEC) No 2759/75, (EEC) No 2771/75, (EEC) No 2777/75, (EC) No 1254/1999, (EC) No 1255/1999 and (EC) No 2529/2001 as regards exceptional market support measures

(COM(2004) 712 final — 2004/0254 (CNS))

(2005/C 221/10)

On 3 December 2004 the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 January 2005. The rapporteur was Mr Leif E. Nielsen.

At its 414th plenary session held on 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 135 votes with 6 abstentions:

1. **Background**

1.1 The outbreak of such serious infectious diseases as Bovine Spongiform Encephalopathy (BSE), Foot and Mouth Disease (FMD), Classical Swine Fever (CSF) and Newcastle Disease (ND) among domestic livestock has resulted in repeated crises on the markets for animal products in the EU. When there is an outbreak of such epizootic diseases, among the measures taken are the slaughtering of animals and restrictions on trade, with the aim of preventing the outbreak from spreading further. As a general rule the costs involved in eradicating epizootic diseases are financed by the Veterinary Fund, with 50 % of the funds coming from the Member States.

1.2 In addition, there is a strain on the markets in the products concerned, not least as a result of sales bans and restricted areas being introduced. The rules for the markets in pigmeat, eggs, poultrymeat, beef and veal, milk and milk products, and sheepmeat and goatmeat therefore include facilities for introducing measures to support the market in such situations. Before such exceptional measures are applied, it is a precondition that the Member States concerned have introduced the veterinary measures necessary to stamp out epizootic diseases. Moreover, measures to relieve the market situation are only introduced for the time that support for the market concerned is strictly necessary.

1.3 The exceptional measures concerned, which are taken by the Commission using the management committee procedure, were originally implemented with full Community financing, as was the case for CSF at the end of the 1980s and the beginning of the 1990s. In 1992, national co-financing was used for the first time in connection with CSF. Because it was not clear what the rate should be, in 1994 the Commission introduced provisions that clearly specified a figure of 70 % financing by the Community for a maximum number of animals. Later on, the same rate was applied in the beef and veal sector when combating BSE and FMD. Since 2001, the national co-financing rate has been 50 % since the requirement from the European Court of Auditors that there should be parallelism between co-financing under the Veterinary Fund and the co-financing of market measures.

1.4 Following a request from Germany, the Court of Justice ruled in 2003 that Commission had no authority to set a national co-financing rate of 30 % in a case involving the rules on the buying-up of beef in connection with BSE [1]. The Commission therefore has no authority to continue the practice hitherto and so it is proposed that in future a national co-financing rate of 50 % should be specified in the market organisations for pigmeat, eggs, poultrymeat, beef and veal, milk and for sheepmeat and goatmeat regarding both internal market measures and sales on non-EU markets.

2. **General comments**

2.1 It is regrettable that since 1992 the Commission and the Member States have not respected the hitherto applicable general principle of full Community financing for measures forming part of the so-called 'first pillar' of the Common Agricultural Policy, including measures implemented within the framework of the common market organisations. It is in the nature of things that by adopting the current proposal the Council may deviate from this principle, which it adopted itself. But because of the ruling of the Court of Justice in this matter, the Commission cannot deviate from Council decisions without express authorisation, even if it does so with the co-operation of the Member States in the relevant management committees.

[1] Judgment of 30.9.2003 in case C-239/01, Collection of Decisions 2003 p. I-10333

2.2 Depending on the extent and duration of epizootic diseases, the measures taken may result in considerable costs being incurred, which to a very large extent must be covered by public funds. The question of allocating costs between the EU and the Member States is closely linked with that of financial solidarity between the Member States. In cases of national co-financing some Member States might be more willing and able to cover such expenditure than others. Some Member States might pass the costs on directly or indirectly to businesses, which, as became clear during the BSE crisis, may lead to considerable distortions of competition.

2.3 According to the Commission the Member States will make a bigger effort to combat and prevent livestock diseases, if there is national co-financing. Although the EESC can understand this argument, it cannot be ruled out that sometimes demand will delay decisions or make their adoption more difficult, thus hindering the implementation of effective countermeasures.

2.4 The EESC can also understand the Commission's argument that the proposal will imply a continuation of the practice that has been followed since 1992 and ensure parallelism between veterinary fund and market organisation measures.

2.5 However, the EESC feels that expenditure on exceptional measures in connection with the market organisations as originally laid down by the Council is based on joint responsibility and financial solidarity. In the EESC's view, any violation of this principle would create a risk of the Member States adopting different approaches to the fight against epizootic diseases, which, despite effective monitoring and preventive measures, can break out by chance and without warning. The consequences for the market would also affect other Member States. Moreover, there is a risk that national co-financing here will have a knock-on effect on other areas, bringing with it the danger of further re-nationalisation of the Common Agricultural Policy.

2.6 If, despite this, there is still support for the Commission proposal, it would be administratively burdensome — and essentially unjustified — if the financial contribution under this rule was dealt with under the Treaty's provisions regarding state aids. The Commission's proposal for exemption from the notification procedure should therefore have applied from the outset.

3. **Conclusion**

3.1 The EESC wishes to maintain the principle of full Community solidarity for exceptional measures under the rules applying to market organisations, and therefore rejects the Commission's proposal for 50 % co-financing by the Member States.

Brussels, 9 February 2005.

The president

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on Beijing +10: Review of progress achieved in the field of gender equality in Europe and in developing countries

(2005/C 221/11)

At its plenary session of 16 December 2004, the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an own-initiative opinion on Beijing +10: Review of progress achieved in the field of gender equality in Europe and in developing countries.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 January 2005. The rapporteur was **Ms Florio**.

At its 414th plenary session held on 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 135 votes to 1, with 6 abstentions:

1. Introduction

1.1 The 49th Session of the United Nations Commission on the Status of Women (CSW), to be held from 28 February to 11 March 2005, will be concerned with reviewing the application of the Platform for Action and the Beijing Declaration, which were approved at the 4th World Conference on Women (Beijing, 1995), and of the outcome documents approved at the 23rd Special Session of the General Assembly entitled 'Women 2000: gender equality, development and peace for the twenty-first century' (New York, 2000), which initiated a preliminary evaluation of progress made and obstacles faced in efforts to achieve gender equality.

1.2 At the 23rd Special Session, the General Assembly adopted a resolution of 'Further actions and initiatives to implement the Beijing Declaration and the Platform for Action' and a political declaration in which the Member States agreed to meet again 10 years after adoption of the platform to assess progress and consider new initiatives.

1.3 As provided for in the CSW multiannual programme, the work of the 49th Session will focus on progress made in the 12 areas defined in the Platform for Action and on identifying current challenges and new strategies for furthering the *empowerment* of women and children. In order to promote dialogue on this occasion the Assembly will allow broader participation of delegations from the Member States, civil society and international organisations.

1.4 The commitment of the United Nations has been crucial in putting the problem of gender equality on the international agenda. The First World Conference on Women was held in **1975**, when the Decade for Women was declared (**Mexico City**). At the Second Conference ('Mid-point of the Decade', held in **Copenhagen in 1980**), governments (57 initially) began signing the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW, 1979), which is one of the milestones on the long road towards gender equality. The Third Conference (**Nairobi, 1985**) approved the Plan of Action 'Forward-looking Strategies for the Advancement of Women', in which governments and international organisations proclaimed the objective of gender equality.

1.5 A further step in the process of recognising women's issues and the role of women was **UN Security Council Resolution 1325** (2000) on Women, Peace and Security (which recognised that war has a different impact on women and reaffirmed the need to strengthen women's role in decision-making processes relating to conflict prevention and resolution). More generally speaking, the advancement of women has been taken into account for more than ten years in the conclusions of all the major conferences and international meetings sponsored by the United Nations. ([1])

1.6 Another important point was the United Nations Millennium Summit, held in September 2000, in which the Member States fixed eight clear and measurable objectives (*Millennium Development Goals*) to significantly reduce poverty, hunger, disease and environmental degradation by 2015. The Millennium Declaration was also a result of the need to draw up a

([1]) Conference on Environment and Development (Rio de Janeiro, 1992), World Conference on Human Rights (Vienna, 1993), Special Session of the UN General Assembly on HIV/AIDS (New York, 2001), International Conference on Population and Development (Cairo, 1994), World Summit for Social Development (Copenhagen, 1995), World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001), International Conference on Financing for Development (Monterrey, 2002), Second World Assembly on Ageing (Madrid, 2002) and the World Summit on Sustainable Development (Johannesburg, 2002), World Summit on the Information Society (Geneva, 2003 and Tunisia, 2005).

coherent list of priorities from those identified over the past ten years at the various conferences and summits held at international level. One third of the objectives have to do with promoting gender equality and empowerment of women, and are closely linked to education and training; one fifth concern reproductive health. However, gender issues cut across all eight goals.

2. **General comments**

2.1 Although the United Nations system has established an important legal framework for achieving gender equality, the practical application of principles within countries, and their trade and development policies, sometimes fall short of intentions on paper. Full achievement of civil, economic, social and political rights for women is in practice often threatened by macroeconomic policies and trade agreements based on neoliberalist principles that do not take any account of gender issues.

2.2 Furthermore, the complex international situation is certainly not a favourable environment for improving the situation of women, and there is a risk that gains made over previous years will be steadily eroded.

2.3 Current conflicts are further weakening and exacerbating the status of women.

2.4 Domestic violence is still a reality throughout the world and affects women of all ages, social classes and religions.

2.5 It is therefore important to reaffirm gender equality and the defence of women's rights as a priority objective and means of achieving equitable development, better wealth redistribution, sustainable economic growth and strengthening of systems to protect the weaker sectors of the population.

3. **Role of the Economic and Social Committee**

3.1 It is important for the Economic and Social Committee to be involved, by drawing up a document of its own, in assessing the progress made by the European Union in relation to gender equality.

3.2 It should be noted here that the Committee has always taken a keen interest in activities aimed at improving women's status, both through its many opinions and by promoting various initiatives itself. With specific reference to the Fourth Conference on Women (Beijing, 1995) and its follow-up (Beijing +5) in particular, the Committee contributed two opinions (EXT/131 and REX/033), in which it highlighted, for example, the importance of a Committee delegation attending United Nations meetings.

3.3 In addition, in the context of cooperation with the European institutions — notably the Council, the European Parliament and the Commission — the Committee has taken on an important role in monitoring the numerous European Union initiatives to ensure gender equality, which represent an attempt over the past few years to meet the challenges and overcome the obstacles identified at Beijing.

3.4 In this sense we believe that — by reviewing progress made and obstacles encountered since the Fourth Conference — the Committee could make a valuable contribution to ensuring that women's issues are *systematically* taken into account in an ever larger number of spheres of European policy and society.

3.5 Moreover, given that the European Union will have to take on a leading role at international level, with the heavy responsibilities this implies, we intend in this opinion to set out possible EU contributions to improving the living conditions and advancement of women throughout the world on the basis of its cooperation and trade and development policies.

4. **The European Union**

4.1 The issue of gender equality in the European Union, already present in the Treaty, was further codified with the Amsterdam Treaty, in which a 'two-pronged approach' was adopted that combined gender mainstreaming in all Community policies with the introduction of specific measures to improve the position of women. However, the question of equal opportunities for men and women had already been incorporated into the Community's economic and social cohesion policy and was a key objective of the Structural Funds as far back as 1994.

4.2 The EU has adopted an integrated approach, distinguishing between legislative and financial instruments and using the open method of coordination in social policies. The most recently adopted instruments for achieving gender equality within the EU include the Framework Strategy on Gender Equality (2001-2005), together with the annual gender equality work programmes and the Structural Funds.

4.3 The Framework Strategy on Gender Equality (2001-2005) is designed to coordinate activities and programmes that were first developed on a sectoral basis, reflecting the two-pronged approach of Amsterdam, in order to improve coherence, e.g. by developing reliable indicators and a system for monitoring, evaluating and publicising the results achieved.

4.4 The strategy identifies five broad areas of action/objectives, which are interlinked, for promoting gender equality: the economy (linked to the employment strategy and the Structural Funds, as well as the application of mainstreaming in all policy areas that have an impact on the position of women in the economy); participation and representation (linked to decision-making processes); social rights (linked to living conditions and disparities inherent in social protection systems); civil life (linked to basic human rights and freedoms, with particular emphasis on violence and sexual trafficking); changes in roles and stereotypes (linked to culture and the mass media).

4.5 Gender equality policies have also been stepped up using the Structural Funds. Provisions for the period 2000-2006 are based on a careful and critical analysis of measures to promote equal opportunities and of their weaknesses, and they incorporate the two-pronged approach laid down in the Amsterdam Treaty. In addition, the Structural Funds, and in particular the European Social Fund, have always been regarded as the main instrument of the European Employment Strategy. Under the new Employment Guidelines, adopted in July 2003, gender equality is a horizontal issue spanning all the objectives, and is also the subject of a specific guideline.

4.6 Considerable progress has been made within the European Social Fund, in relation mainly to employment and training policies. Efforts in this area have focused above all on improving women's access to, and their participation and position in, the labour market (Axis E) and on ways of reconciling work and family life. There is already an encouraging track record of successes in this sphere. Thus the ESF has taken on board the quantitative objectives set by the European Council in Lisbon (2000), namely that female employment should increase from 51 % (2000) to 60 % by 2010, and by the Barcelona Council (2002), according to which pre-school education should be available to 90 % of children between the age of three and the mandatory school age and to at least 33 % of children under the age of three.

4.7 However, measures to improve the quality of work and career prospects, encourage women entrepreneurs, narrow the wage gap and promote women's position in the new technology sector are only patchy. As regards the work/life balance some projects exist to improve childcare structures, but very few explicitly in relation to caring for elderly people or family dependants.

4.8 The gender dimension is still very modest in the other funds, especially those relating to agriculture and fisheries, sectors in which women are traditionally underrepresented, even though they play an active role in those sectors' development. Thus there remain profound inequalities in such areas and women's contribution to society is still undervalued, including in relation to improving environmental protection.

4.9 EU policies are backed up by various specific funding programmes and initiatives e.g. NOW (employment) for the labour market, STOP to promote cooperation to combat trafficking in women and children, DAPHNE to improve information and protection for victims of violence, and Women and Science (Research and Development Framework Programme) in the new technologies sector. The Framework Strategy is also intended to strengthen gender mainstreaming in various Community initiatives, such as Equal, Interreg, Urban, Leader as well as Leonardo, Socrates, Youth and Culture in the culture sector.

4.10 The Commission's report on equality between men and women (COM(2004) 115) notes that a fairly sophisticated EU legislative framework already exists in this area [1], backed by extensive case law. A proposal is also being drawn up for a single directive on implementing the principle of equal treatment between women and men in the access to and supply of goods and services, which should consolidate and standardise the relevant existing legislation.

4.11 At their recent meeting during the Dutch presidency, the European Ministers for Employment and Social Affairs concurred, noting with respect to drawing up the single directive on equal treatment that the areas in which action was required above all were wage parity, equal access to jobs, equal treatment under social protection systems, training and career possibilities, and burden of proof in cases of gender discrimination.

[1] Directives on equal treatment for men and women with regards to: equal pay (75/117/EEC); access to employment, vocational training and promotion, and working conditions (Council Directive 2002/73/EC amending Directive 76/2007/EEC); social security (79/7/EEC); legal and occupational social security schemes (86/378/EEC), and self-employed workers (86/613/EEC); as well as the Directives on the health and safety at work of pregnant workers and workers who are breastfeeding (92/85/EEC), the organisation of working time (93/104/EC), parental leave (96/34/EC), the burden of proof in cases of discrimination based on sex (97/80/EC), and part-time work (97/81/EC).

4.12 The proposal for a Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2003/0265 (CNS)) has also been examined by the EESC [1], which has identified certain major shortcomings that must be rectified without delay.

4.13 In addition, following adoption of the Beijing Platform for Action and in the wake of the Lisbon Council, more statistics on gender have been produced in the last few years, partly owing to the introduction of new indicators (e.g. on decision-making processes, the labour market or domestic violence) that allow problems to be effectively analysed and the impact of policies and measures to be monitored. Thus progress is already evident in relation to statistics even though much remains to be done if there is to be serious monitoring of the various spheres. The exact extent of progress made can only be ascertained if it is possible to examine and analyse quantitatively and qualitatively the phenomena and processes taking place.

4.14 On the other hand, gender budgets — i.e. application of gender mainstreaming to the budget procedure — are still virtually unknown at European level and in the Member States. Introducing the gender dimension at every level of budget planning is an acknowledgement that administrators' decisions are not neutral but have different impacts on men and women; in this sense *gender budgeting* is also an instrument for evaluating the impact of policies, funding and taxation on men and women.

4.15 Unfortunately, although Community policies to support women have been stepped up, there is still a need for positive action and a supreme effort by the Member States to ensure that objectives are actually achieved, as they hold the chief responsibility for implementing these policies.

4.16 Although the female unemployment rate has fallen to 55.6 % in Europe, the goal set by the Lisbon Council still seems distant in several countries. Women have swelled the ranks of the weakest category of workers, those in precarious employment, who often have no system of social protection. In many countries, wage discrimination between men and women persists or is worsening, and both vertical and horizontal segregation is still a lamentable reality. As already noted, even in relation to the work/life balance, measures appear to be focused exclusively on childcare; virtually nothing is being done to support care for other family members, and only a few countries have introduced measures to encourage parental leave for working fathers.

4.17 Considerable disparities also exist with regard to *decision-making*. Just consider that at EU level, the college of Commissioners of the European Commission comprises 22 men and seven women (only 24 % of the total), while Parliament has 510 men and 222 women (only 30 % of the total). Nor is the situation improving at national level: the average percentage of women in national parliaments is not even 25 %, whereas in governments it barely exceeds 20 %. [2] Women are also underrepresented in the EESC: of a total of 317 members only 79 (25 %) are women.

5. **The European Union and third countries: international cooperation and trade for the advancement of women**

5.1 The problem of equal opportunities for men and women has now also been fully taken into account in European Union cooperation and development policies: Commission Communication COM(95) 423 (18 September 1995), followed by the Council Resolution on integrating gender issues in development cooperation (20 December 1995) formed the basis for adopting an initial regulation in 1998 (Council Regulation (EC) No. 2836/98 of 22 December 1998), which has now been renewed for the period 2004-2006. The new text (No. 806/2004) strengthens the objectives — support for mainstreaming and adoption of specific measures to promote equal opportunities as an essential contribution to reducing world poverty — and identifies as priorities the monitoring of resources and services for women, especially with respect to education, employment and participation in decision-making processes. Support for public and private measures to promote gender equality is also emphasised.

5.2 The Programme of Action for the mainstreaming of gender equality in Community Development Cooperation (2001-2006) [3] is intended to help bridge the gap between stated principles and practice on the basis of a concrete strategy and definition of priority areas: support for macro-economic policies to reduce poverty and social development programmes in health and education; food safety and sustainable rural development; transport; institutional *capacity building* and *good governance*; trade and development, cooperation and regional integration; support for gender mainstreaming in all projects and programmes, both at regional and national level; and provision of instruments and appropriate training in gender equality issues for European Commission staff.

[1] See Opinion …

[2] European Commission data, Employment and Social Affairs DG, data as at 29/9/2004

[3] COM(2001) 295 final

5.3 The Programming Document for 2005 and 2006 *Promoting gender equality in development cooperation* identifies the following priority areas for action: promoting positive attitudes and behaviour among adolescents to combat violence against girls and women; and the need for training and methodological support for key stakeholders in partner countries.

5.4 The European Commission supports action and projects to improve gender equality through bilateral and regional cooperation with the western Balkans, eastern Europe and Central Asia, the Mediterranean, Africa, the Caribbean and the countries of the Pacific and Latin America. Other financial support is allocated on a thematic, rather than geographical, basis.

5.5 The Cotonou Agreement, signed on 23 June 2000 with the ACP (African-Caribbean-Pacific) countries, also marks an important point in the development of EU relations with third countries. This agreement — which demonstrates the link existing between politics, trade and development — introduces a social dimension, including by promoting full participation of non-government stakeholders, including civil society, in development strategies. Gender equality is also established as one of the cross-cutting issues of the agreement, and must therefore be systematically taken into account (Articles 8 and 31). A very positive development is that non-government stakeholders will now participate in the different phases of programming national strategic documents and we hope that particular attention will be paid here to including women's organisations.

The agreement also gives the Committee an explicit mandate to advise economic and social interest groups, thus formalising its role of preferred interlocutor.

5.6 Achieving full inclusion and active involvement of women in development policies will certainly be a difficult and long-drawn-out process, but we believe it is important that all the European institutions maintain a high level of interest so that what has been set out on paper is translated into concrete measures.

5.7 From this perspective we think it is important for Community economic and social cohesion policies to be put forward as a model that can be exported to the rest of the world and for the EU to promote and apply the principles of social cohesion at international level through its relations with third countries.

5.8 One useful approach could certainly be to include specific clauses in trade and cooperation agreements, or even to adopt positive actions for those countries that respect women's rights.

5.9 Although trade liberalisation has certainly boosted female employment in developing countries, it is also often consigned women to the category of workers in precarious employment, less-skilled, less well-paid and without any system of social protection. In addition, trade liberalisation is often accompanied by structural reforms proposed or imposed by international organisations, which in the absence of adequate social protection mechanisms place a particularly heavy burden on the weaker sectors of the population — where women are often in the majority.

5.10 These policies, especially trade policy, nevertheless still seem to take little account of gender questions. Given that they are by no means neutral and that, on the contrary, they often have a negative impact on women in particular, and that the economic development of a country cannot neglect the issue of social equality, it would be useful if (1) such policies were negotiated taking gender mainstreaming into consideration, and (2) systems were introduced for monitoring their effects at macro- and micro-economic level.

6. **Conclusions and work proposals**

The effective cooperation now built-up by the European institutions has yielded significant results in terms of framing active policies to help women and of specific programmes and projects that have promoted women's participation in the labour market, defence of their rights and improvement of their living conditions. The EESC notes that there remain many areas where action should be taken:

— The participation of women in decision-making processes and their representation is still too low, both in the European institutions and in the majority of Member States at national, regional and local level; it should be encouraged in all instances, and a quota system should also be considered.

— Training measures to promote gender mainstreaming should be introduced both in the institutions and in the Member States, at all levels from decision-making to policy and strategy implementation.

— Targeted studies and gender assessments, statistics, and specific indicators are essential for identifying issues, improving intervention strategies and policies, and for effectively evaluating their impact; it is necessary to continue producing de-aggregated data and defining new indicators.

— Resources earmarked for positive action in favour of women in all EU funds and financing instruments, and in the Member States, should be carefully quantified, above all by encouraging and promoting *gender budgeting*.

— The most important basic condition is, however, to ensure equal rights of access to education and training for women, as called for in Goal 3 of the Millennium Development Goals.

— With regard to the Structural Funds, measures to help women in the agricultural (EAGGF) and fisheries (FIFG) sectors should be stepped up and linked to environmental protection, another area in which Community gender-linked policies are rather weak.

— New impetus should be given to policies to encourage female entrepreneurship and increase the presence of women in the new technologies sector.

— Training activities in the knowledge-based society sector should be stepped up in order to ensure that this does not become a further area of discrimination and exclusion for women, who in fact have much to contribute towards achieving the Lisbon Strategy objectives.

— More generally, further measures are needed in the labour market to combat vertical and horizontal segregation and to remove all obstacles preventing the achievement of true equality; Member States must identify specific, quantifiable targets and objectives with the agreement of the social partners. In relation to wage discrimination in particular, the Member States must start applying a multi-faceted approach, as provided for in the Council guidelines for the employment policies of the Member States [1], which includes education and training, job classifications and pay systems and cultural stereotypes as basic dimensions of the problem.

— In measures designed to reconcile work and family life more attention must be paid to providing care for elderly relatives, partly in view of the ageing of the population, without diminishing childcare provision.

— In order to promote equal opportunities between men and women, investment in public services should be encouraged and improved, especially in school and university education, healthcare and welfare services.

— Immigration and asylum policies and policies to promote the integration of migrant women, as well as measures to help women who have been victims of conflict, discrimination and violence in their country of origin, should be stepped up, also within the Member States.

— Efforts should be made to combat the trafficking of women and children.

— As far as trade and development policies are concerned, it is necessary to build on the policy of involving society in general and the role of women in particular; women's interest groups must be fully involved in framing development policies and drawing up national strategy documents in the countries concerned; it is also particularly important to increase specific funding for women, so as to boost their economic and social position.

— The effects of trade agreements and development policies must be monitored, including at microeconomic level, by providing for specific analyses of their impact on the living conditions of the weakest social sectors, and taking gender differences into account.

— The role of the Commission and its delegations must be enhanced so that they can be influential in ensuring respect for human rights and thus also respect for women when their rights have been violated.

— Delegations should be given a specific responsibility for promoting *mainstreaming* of gender issues.

— The European Union should bring all its influence to bear in persuading as many countries as possible to ratify and implement international treaties that have a positive impact on the status of women, especially the International Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol, and in ensuring that the reservations lodged by signatory countries are withdrawn.

The Committee intends to look more closely into the state of women's rights in the EU's new Member States.

In view of the Committee's role, its brief in relation to civil society, its objectives and the experience gained through ongoing monitoring of issues relevant to gender equality, it would also be useful for it to be represented on the European Commission delegation at the 49th Session of the United Nations Commission on the Status of Women.

Brussels, 9 February 2005.

The president

of the European Economic and Social Committee

Anne-Marie SIGMUND

[1] Council Decision of 22 July 2003 on Guidelines for the employment policies of the Member States (OJ L 197/13)

Opinion of the European Economic and Social Committee on the Green Paper — Defence procurement

(COM(2004) 608 final)

(2005/C 221/12)

On 23 September 2004 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the Green paper — Defence procurement.

The European Economic and Social Committee instructed its Section for the Single Market, Production and Consumption to prepare its work on this subject.

In view of the urgent nature of the work, the EESC appointed **Mr Wilkinson** as rapporteur-general at its 414th plenary session (meeting of 9 February 2005). At this same meeting the EESC adopted the following opinion, by 96 votes with 9 abstentions:

1. **Introduction**

1.1 The Green Paper on Defence Procurement (COM(2004) 608 final) is one of the measures foreseen in the Communication 'Towards a European Union defence equipment policy' which was adopted in March 2003, and on which the Committee commented in September 2003 ([1]).

1.2 'European Defence Equipment Market (EDEM)', is in reality only a part of the internal market covering a specific sector. The Green Paper seeks to contribute towards the creation over time of an internal market for EU defence equipment that is more open and transparent, while respecting the specific nature of the sector. This should lead to a stronger and more competitive defence industry, increased cost effectiveness and support for the development of the military capabilities of the EU in the European Security and Defence Policy (ESDP) field, within the context of the Common Security and Foreign Policy (CSFP).

1.3 On 12 July 2004 the Council agreed the establishment of the European Defence Agency (EDA) which is designed 'to support the Member States (MS) in their effort to improve European defence capabilities in the field of crisis management and to sustain ESDP as it stands now and develops in the future'. This Agency has now started work. The EDA's functions ([2]) all relate to improving Europe's defence performance by promoting coherence in place of the current fragmentation.

1.4 'Defence performance' involves ensuring the availability of the capabilities needed to match the tasks envisaged, and the doctrine to undertake these tasks, in a cost effective way. This will include ensuring the maximum possible interoperability. At present the 25 MS together spend about €160 billion each year on defence, with about 20 % of this used in the equipment procurement process (including research and development, acquisition and support) ([3]).

2. **General comments**

2.1 The matters covered in this Green Paper relate to the way in which improvements may be made to the system of defence equipment procurement in the 25 Member States (MS). Significant progress will only be possible when the other elements of 'defence performance' (see paragraph 1.4 above) are clear ([4]). Of particular concern to industry is the need for very clear guidance, harmonised requirements and continuity. Nonetheless the initiative is welcomed by the Committee as it can be treated as a discrete part of the process of starting to establish a more viable ESDP in a transparent and competitive market.

2.2 The leading role foreseen by the EDA is welcomed. There will be a need for clear agreement on the respective roles of EDA and others at present involved in the defence equipment field ([5]) and EESC would expect a reduction in their separate roles as progress allows. However, the lessons learnt from the experience of OCCAR ([6]) (which handles actual project management, including the key question of contract law) should be studied before changes are made.

([1]) OJEC C10/1 of 14.1.2004

([2]) EDA has four agreed functions; defence capabilities development, armaments cooperation, the European defence technological and industrial base and defence equipment market and research and technology.

([3]) As we commented in our opinion on COM(2003) 113 final, this combined EU spending is about 40 % that of the US, yet only produces about 10 % of the operational capabilities.

([4]) For example, the Committee notes the recent (September 2004) statement by the head of the EDA that EU forces are not well adapted to the modern world and its conflicts and threats; he spoke of the need to acquire more high technology equipment.

([5]) Such as OCCAR, Western European Armemnets group (WEAG) and Letter of Intent (LoI) countries.

([6]) OCCAR is a joint organisation for armaments cooperation to which 5 MS currently belong.

2.3 We welcome the recognition that the starting points (and the procedures used) for each MS in the defence procurement process are very different and that changes are likely to be made at different speeds. We agree that it will be helpful to establish a more common basis for defence procurement and that this can be done relatively quickly given the agreement and the cooperation of all MS.

2.4 EESC agrees that there is a need to reduce fragmentation of the defence equipment market and to increase its competitiveness and transparency as prerequisites for maintaining and strengthening a viable EU defence industry and for contributing to more cost effectiveness in procuring and managing appropriate defence capabilities.

2.5 The analysis of the specific features of defence equipment markets given in paragraph 2 of the Green Paper is a good basis for consideration of the market and indicates some of the difficulties faced.

2.6 However, EESC would stress that any restructuring of defence industries must primarily be a matter for the industries concerned, taking account of market realities ([7]). A good reason for this is that most significant companies are trans national, even though their customers are national. Moreover, MS have different industrial strategies, of which the defence industries are only a part.

2.7 Industry (in the defence sector as elsewhere) has to avoid too many regulatory procedures if it is to function efficiently and to provide cost effective and economical results.

3. **Specific comments**

3.1 It is necessary to clarify exactly what parts of the defence equipment procurement process are expected to be covered by the rules agreed. As well as the acquisition of such equipment there will be research and development, maintenance, repair, modification and training aspects, which are included in the cost of 'ownership', to consider; these are normally far more costly over time than the acquisition.

3.2 *Article 296*

3.2.1 EESC agrees that exemptions to the EU rules on public procurement granted by virtue of Article 296 of the EU Treaty will continue to be needed to allow MS to derogate on the grounds of protecting their essential security interests.

3.2.2 The Commission should give an indication of the value of the equipments for which this derogation has been used over a period of, 5 years (and show it as a percentage of the total amount spent on defence equipment in the EU). They would then have a benchmark to help in measuring progress.

3.2.3 The problem is that the use of such derogation has, for some MS, become almost the rule rather than the exception and this is clearly not compatible with the single market. EESC supports the Commission's view that this should change. The challenge will be to use Article 296 in conformity with decisions in past cases ([8]) while retaining its possibility as a derogation from standard rules for public procurement. MS must be prepared to justify (legally if need be) derogations that they do make. The benefits of greater competition and greater transparency should be stressed in the discussion.

3.2.4 The list of products produced in 1958 under Article 296.2 which suggests the scope of Article 296.1 is not working and is likely to remain of no real value as a useful way of ensuring the proper use of the security derogation. Each case must continue to be treated on its merits since even basic equipment ([9]) will fall within the scope for derogations in some cases. Further, lists are not likely to keep pace with new developments.

3.2.5 There is thus no easy solution to defining which equipments and which services related to them could be covered under Article 296. As a first step there is a need to clarify the EU's existing legal framework through an 'interpretative communication' to improve understanding and to facilitate better and more consistent application.

3.2.6 As well as procurement any such communication will have implications for several other aspects; State aid and (possibly) services of general interest are among these and need to be taken into consideration.

([7]) However, because of the specific nature of defence markets and because of the need to manage payments as part of national financial arrangements, MS will inevitably play a role in facilitating the development of defence equipment.

([8]) The decisions in the 'Bremen case' (1999/763/63(OJ L 301/8 of 24 November 1999) and the 'Koninklijke Schelde Groep' (OJ L 14/56 of 21 January 2003) are examples of the current lack of clarity.

([9]) We should note that even apparently simple equipment such as clothing can involve advanced technology.

3.2.7 We believe that the 'negociated procedure' with prior notification should be suitable for the specific needs of defence equipment where the 'open' and the 'restricted' methods are not suitable. However, this view may need to be reconsidered after experience has been gained of working with the 'interpretative communication'.

3.2.8 There is a view that a communication can only be an interim measure until a specific directive (or other specific legal instrument) has been drawn up. EESC's view is that after such an 'interpretative communication' has been produced and agreed the need for a legislative instrument can be considered in the light of its effect. We would welcome early action to produce the communication.

3.2.9 There is a further possibility, not mentioned in the Green Paper, of establishing a 'code of conduct' to be used by participating MS as another means of establishing an EDEM. Since the area is one within the responsibility of MS this could be considered, presumably using EDA as a facilitator. It might be difficult to monitor and enforce such a code and the Internal market aspects would still need to be included.

3.3 *Publication of calls for tender*

3.3.1 The need to consider further the system and format for calls for tender is not convincing. If defence equipment is to be treated as just another part of the internal market in principle (although it has greater possibilities for derogations) it will presumably be dealt with in the same way as other tenders. This will entail different systems and problems, such as language, that are found elsewhere. The grounds for a centralised publication system are weak.

3.3.2 The potential problem areas are confidentiality and offset, which are more likely to arise for defence equipment than for other equipments and services, and security of supply, where it will be hard to change suppliers or contractors once a contract has been let. These are all areas where the MS concerned should be responsible, although some general guidance from the Commission may be helpful.

3.4 *Dual use*

3.4.1 It is often difficult in today's industry to classify companies as being 'defence equipment manufacturers'. Much equipment is now 'dual use' and the percentage is increasing. This is welcome from several points of view; for example, economies of scale can lead to more competitive pricing and security of supply can be easier to guarantee.

3.4.2 Also the efforts put into RTD for such equipment has a value to other (civil) purposes. It is therefore important that resources put into defence RTD is not subject to a regime that is too inflexible.

3.4.3 We remain concerned that there is much to be done to maximise the value of the coordination and focus that are needed in the defence equipment area, as we pointed out in our earlier paper on defence equipment ([10]).

3.5 *European Defence Agency (EDA)*

3.5.1 We welcome the establishment of the EDA and recognise that it can play a leading role in the field of defence equipment. We note that it is still building up the resources required to fulfil its agreed roles.

3.5.2 It will be important for EDA to ensure that EU doctrine and capabilities take NATO's role, doctrine and capabilities fully into account by maximising interoperability and by minimising any differences. It is not yet clear how EDA could add value by becoming directly involved in procurement but its expertise in the field of defence equipment should leave it in a good position to suggest how national rules can be better harmonised.

3.5.3 It will also be valuable in getting agreement to the financial aspects of equipment cooperation where necessary. A significant area of potential difficulty is sharing the costs and benefits of RTD in defence related areas and in separating the defence and the general aspects in so doing.

3.5.4 EDA should also be helpful in moving towards the approximation of national licencing systems when defence equipments are transferred between Member States. At present the national procedures are both varied and burdensome. It could also help in getting agreement to the way in which offset arrangements are handled since these will remain a feature of procurement in the future.

3.5.5 EDA may find it possible to get some agreement on national industrial policies as far as defence equipment is concerned and to define the elements that constitute 'strategic equipment' whose provision the EU would wish to be capable of providing to reduce dependence on third countries; this would be most valuable.

([10]) See paragraph 5 of the opinion refered to at footnote 1.

3.5.6 EDA may also be able to encourage MS to consider such innovative methods of acquisition as pooling, leasing and specialisation to meet capability needs.

3.5.7 Since ESDP will only become effective if the MS show the necessary strong political will to provide and to maintain the necessary capabilities to meet agreed EU tasks, EDA should also play a role in encouraging MS to do this.

4. **Conclusions**

4.1 Defence equipment is only one requirement for a viable 'defence performance'. For industry to play its part fully it will need clear guidance, harmonised requirements and continuity. It must also have primary responsibility for necessary restructuring. Industry also needs to avoid over burdensome regulatory procedures.

4.2 It must be made very clear what parts of the defence equipment procurement process will be covered by the rules agreed.

4.3 Article 296 of the Treaty will continue to be required. To ensure that progress in avoiding its too frequent use the Commission needs to establish a benchmark though examining current performance. It is not practicable to maintain any list of equipments and procedures to which Article 296 can be applied.

4.4 As a first step the Commission should produce as soon as possible an 'interpretative communication' on Article 296. Only after experience has been gained with this communication will it be possible to decide whether a legal instrument is also required.

4.5 'Dual use' equipment is increasingly common and this trend is welcome, not least because of the potential for civil use of RTD which applies to military equipment.

4.6 The important role foreseen for the European Defence Agency (EDA) is welcome; it will need to be clear what part all the agencies now involved are to play.

4.7 Among the important roles for EDA in this area are:

— Ensuring coordination with NATO requirements

— Helping to negotiate all the necessary financial aspects

— Helping to harmonise existing national procedures

— Suggesting innovative ways of providing necessary capabilities

— Encouraging the maintenance of the necessary political will.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways

(COM(2004) 139 final — 2004/0047 (COD))

(2005/C 221/13)

On 28 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was **Mr Chagas**.

At its 414th plenary session (meeting of 9 February 2005), the European Economic and Social Committee adopted the following opinion by 122 votes to 53 with 12 abstentions.

1. Introduction

1.1 The present proposal forms part of the **third railway package,** which was adopted by the European Commission on 3 March 2004. The other components are:

— Proposal for a Directive on the certification of train crews (COM(2004) 142 final);

— Proposal for a Regulation of the European Parliament and of the Council on international rail-passengers' rights and obligations (COM(2004) 143 final);

— Proposal for a Regulation on compensation and quality requirements for rail freight services (COM(2004) 144 final);

and

— Commission Communication on further integration of the European rail system (COM(2004) 140 final);

— Commission staff working paper on gradually opening up the market for international passenger services by rail (SEC(2004) 236).

1.2 The **first railway package** (also called the infrastructure package) came into force on 15 March 2001 and had to be transposed into national legislation by 15 March 2003. It comprises the following components:

— Amendment of Directive 91/440/EEC, including free market access for international rail freight on the trans-European rail freight network by 15 March 2003 and liberalisation of all international rail freight by 15 March 2008 ([1]);

— Extension of the scope of the Directive on a European licence for railway undertakings (amendment of Directive 95/18/EC) ([2]);

— Harmonisation of the provisions governing the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (replaces Directive 95/19/EC) ([3]).

1.3 In October 2003 the European Commission took nine Member States to the European Court of Justice for failing to notify the transposition of the first railway package into national law. By May 2004 five countries' notification had still not been received and two Member States had transposed only some of the provisions into national law.

([1]) Directive 2001/12/EC – OJ L 75, 15.3.2001, p. 1 – EESC opinion – OJ C 209, 22.7.1999, p. 22

([2]) Directive 2001/13/EC – OJ L 75, 15.3.2001, p. 26 – EESC opinion – OJ C 209, 22.7.1999, p. 22

([3]) Directive 2001/14/EC – OJ L 75, 15.3.2001, p. 29 – EESC opinion – OJ C 209, 22.7.1999, p. 22

1.4 The **second railway package** was published in the Official Journal of the European Community on 30 April 2004 and has to be transposed into national law by 30 April 2006. It comprises the following components:

— Amendment of Directive 91/440/EC: bringing forward free market access for international rail freight to 1 January 2006 and liberalisation of national rail freight, including cabotage, from 1 January 2007 ([4]);

— Directive on railway safety in the Community ([5]);

— Regulation establishing a European Railway Agency ([6]);

— Amendment of the Directives on the interoperability of the high-speed rail system (96/48/EC) and the conventional rail system (2001/16/EC) ([7]).

1.5 The first and second railway packages provided the legal basis for establishing a single rail freight market. The measures encompass market access, the licensing and safety certification of railway undertakings, access to infrastructure and the calculation of charges for its use, the creation of a legal framework for rail safety, and measures for ensuring the technical interoperability of the rail system.

1.6 As the EESC has already pointed out in its Opinion on the second railway package ([8]), this new legal framework makes it necessary to completely reorganise the sector and establish new authorities and competences.

1.7 In the same opinion the EESC also pointed to the need for European social rules. European social partners in the railway sector, the Community of European Railways and the European Transport Workers' Federation signed two European agreements on 17 January 2004 concerning:

1) The introduction of a European train driver's licence for train drivers on international services.

2) Agreements on certain aspects of the conditions of employment for train crews on international services.

1.8 As part of the third railway package, the Commission is proposing a directive on the certification of train crews, which would come into force in 2010 or 2015.

1.9 In submitting a further amendment to Directive 91/440/ECC, the Commission continues to pursue its aim of a gradual deregulation of the railway sector.

2. **The European Commission Proposal**

2.1 The Commission proposes to deregulate market access for international passenger services from 1 January 2010 onwards. The proposal also covers cabotage, that is to say the picking up and setting down of passengers at railway stations along the entire route. At the same time the provision on free access to the market for international groupings is to be abolished.

2.2 Each year 6 billion passengers travel by train in the EU 25, with local and regional services taking the lion's share. International passenger services account for only about 10 % of rail travel, based on tickets sold. This includes regional cross-border services, long-distance cross-border services and high-speed (cross-border) services.

2.3 The Commission recognises that opening up international passenger services, including cabotage, to competition could perhaps have a negative impact on the economic balance of public service passenger transport. It proposes to grant exemptions from free market access on routes where public service contracts are already in force under Directive (EEC) No. 1191/69, and where a deregulation of international services could upset the balance. This exemption will only be granted in cases where this is absolutely critical to maintaining the provision of public service transport, and where it has been sanctioned by the regulatory authority under Article 30 of Directive 2001/14/EC. Judicial review of the decision to grant exemption must also be possible.

2.4 The Commission is required to present a report on the implementation of the provision by 31 December 2012.

([4]) Directive 2004/51/EC – OJ L 164, 30.4.2004, p. 164 – EESC opinion – OJ C 61, 14.3.2003, p. 131
([5]) Directive 2004/49/EC – OJ L 164, 30.4.2004, p. 44 – EESC opinion – OJ C 61, 14.3.2003, p. 131
([6]) Regulation (EC) No. 881/2004 – OJ L 164, 30.4.2004, p. 1 – EESC opinion – OJ C 61, 14.3.2003, p. 131
([7]) Directive 2004/50/EC – OJ L 164, 30.4.2004, p. 114 – EESC opinion – OJ C 61, 14.3.2003, p. 131
([8]) OJ C 61, 14.3.2003, p. 131

3. **Evaluation of the Proposal**

3.1 *Prerequisites for revitalising the railway industry*

3.1.1 The proposal to deregulate international passenger services is based on the assumption that competition in international services will lead to one or more of the following consequences: higher passenger numbers, a transfer from other transport modes (in particular air transport) to rail, improved quality for customers and lower fares.

3.1.2 In its Opinion on the 2nd railway package ([9]) the EESC already pointed out the basic prerequisites for revitalising the railway system:

— funding the extension and consolidation of the railway infrastructure;

— introducing technical interoperability and providing the funds this requires;

— creating an environment for fair competition between modes of transport, and in particular:

  — ensuring that social legislation in the road transport sector is adhered to;

  — providing a fair infrastructure charging policy for all modes of transport.

3.1.3 To date the proposal for a fair infrastructure charging policy for all modes of transport, as announced in the White Paper on European Transport Policy for 2010, has not materialised.

3.1.4 The monitoring and proper application of social legislation in road transport still remains a serious problem.

3.1.5 Furthermore, a solution to the debt problems of many rail companies needs to be found. Especially in the new Member States, railway companies will be unable to compete without finding a solution for their high debts.

3.1.6 The EESC also pointed out that the introduction of new authorities, as required by the first and second railway packages (regulatory body, charging body, allocation body, notified body, safety authority, accident investigation body) would entail a realignment of the railway industry's organisational structures at short notice, and would require a number of years of practical experience before it could operate smoothly. The EESC has declared itself in favour of making rail safety a priority. This would include introducing European social legislation on the railway industry.

3.2 *Ex-post analysis of the deregulation of rail freight services*

3.2.1 The decisions concerning the deregulation of rail freight services have already been made; however the effects these decisions will have are as yet unknown.

3.2.2 The European Commission is required to submit a report by 1 January 2006, which covers the following areas ([10]):

— implementation of Directive 91/440/EC in the Member States and examination of the way in which the various bodies involved actually operate;

— market developments, in particular international trends in transport, operations and market shares of all market players (including new operators);

— effect on the entire transport industry, and in particular any shift to alternative transport carriers;

— effects on safety levels in individual Member States;

— the working conditions in the industry in individual Member States.

3.2.3 The EESC believes it is appropriate to wait for the report to be published and an understanding of the effects measures implemented so far has been gained, before any further steps towards opening the market are taken and asks the Commission to deliver the report in time.

3.3 *Ex-ante analysis of the deregulation of international rail-passenger services*

3.3.1 Prior to announcing the 3rd railway package the Commission ordered a study on the deregulation of passenger services. The declared purpose of the study was to examine various options for deregulation and to recommend one of them. These options were:

— deregulation of international services without cabotage;

— deregulation of international services with cabotage;

— deregulation of both national and international rail-passenger services.

([9]) See footnote 8.

([10]) Article 2(d) of Directive 2004/51/EC of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways.

3.3.2 The study recommended deregulation of international passenger services with cabotage ([11]).

3.3.3 The EESC regrets that a study of this kind was not used to examine important issues comprehensively. These issues relate to the effect of deregulation of passenger services:

— regional rail services as services of general interest, especially in small and medium-sized Member States;

— quality of service for customers;

— employment and working conditions in rail-passenger transport;

— rail operators in the new Central and Eastern European Member States.

3.3.4 The study includes observations on individual areas that it touched upon (such as the importance of fares and route prices). These observations were made on the basis of four case studies (Sweden, Germany, Spain, Hungary) and a simulation exercise for two routes. It also advises against deregulation of national rail-passenger services. However, the stated aim of the study was to recommend one of the three options.

3.4 *Effects of deregulation on regional and public services*

3.4.1 Through cabotage, the proposal for deregulation of international passenger services requires that markets in certain national passenger services are to some extent opened up.

3.4.2 National passenger transport is often a network transport where profits made on routes with large passenger volumes compensate for losses on lower-volume routes, thus making it possible to provide a fuller service. This is not only true of public service routes, with exclusive rights and/or subsidies, for which the Commission proposal allows exceptions, under strict conditions.

3.4.3 In small and medium-sized Member States in particular, this could lead to serious disruption to rail-passenger services, which are not contractually covered by exclusive rights.

3.4.4 In some Member States contracts on public services obligations cover not just individual routes, but the whole network. In such circumstances it will be difficult to furnish evidence of a threat to the balance of public service transport.

3.4.5 The possibility of exemptions, as proposed by the Commission, will involve complicated procedures in proving the validity of exemptions and could well lead to legal disputes.

3.4.6 In July 2000, the European Commission proposed COM(2000) 7 final, to replace Regulation (EEC) No. 1191/69 on the obligations inherent in the concept of a public service in transport, which provides the rules for exclusive rights and compensation for public passenger transport, by a new Regulation.

3.4.7 The proposal to amend Regulation (EEC) No. 1191/69 has been blocked in the Transport Council for several years. Fundamental differences between the Commission proposal and the European Parliament's position remain, and these could have considerable implications for the impact of the proposal in terms of deregulation of rail-passenger services. The Commission is planning to submit a new proposal before the end of the year.

3.4.8 This is another argument in favour of waiting until this piece of legislation has been adopted, before making any proposals to protect the balance of public service rail-passenger services in connection with deregulation.

3.5 *Effects on quality of service for customers*

3.5.1 In view of the high costs and traditionally low ticket prices, the study concludes that it is unlikely that deregulation of international passenger services will lead to further price reductions for customers.

3.5.2 Increased choice resulting from competition between rail operators on the same route, could at the same time mean that standards that have prevailed so far — one timetable, one ticket, information from one source — can no longer be guaranteed. Greater barriers to information will be created.

3.5.3 The Commission's response to this is to propose legislation, which obliges competing companies to cooperate in order to maintain the standards of information that have been guaranteed so far.

([11]) EU Rail Passenger Liberalisation: Extended impact assessment, February 2004 by Steer Davies Gleave, London.

3.5.4 The EESC will examine this proposal in a separate opinion. However, it would like to point out that obliging competing companies to cooperate for the purpose of customer information is only necessary once the passenger service market has been opened.

3.6 *Effect on Employment*

3.6.1 The Commission assumes that deregulation of international passenger services will lead to reductions in personnel in the short term, but that in the medium term employment will rise as a result of an increase in passenger numbers. It does not, for instance, take into consideration, the possible negative effects on employment resulting from the deregulation's impact on regional and public service routes. In respect of Article 1.7 of this proposed directive the effects would depend on the decision of each Member State to finance regional passenger transport.

3.6.2 The number of employees in the railway industry has halved over the past decade. Rail operators in the new Member States and Western Europe rail have announced further large staff cuts. If deregulation of international passenger services leads to rail operators in small and medium-sized EU States being displaced in national long distance services as well, positive effects on employment are not to be expected.

3.6.3 Passenger rail travel has traditionally been a mode of transport open to all sections of society. Air transport has developed from a luxury to a mode of mass transport. The positive employment effects associated with this development cannot be reproduced to that extent in international rail-passenger transport.

3.6.4 Meanwhile, high quality jobs in the former state owned airlines have been replaced by lower quality jobs in other segments of the civil aviation industry.

3.6.5 The EESC views the sharp cuts in employment in the rail industry with great concern. Job cuts such as these lead to considerable social problems in the new Member States, which suffer from high unemployment and an underdeveloped social security system. Social support measures are urgently required here. The EESC is opposed to any measures, which lead to further job cuts and to a deterioration in the quality of jobs in an industry which is already under strain.

3.7 *Effects on rail operators in the new Member States*

3.7.1 The Steer Davies Gleave study, quoted above, points out that the poor condition of infrastructure in the new Member States, the poor financial situation of rail operators and ticket prices which are usually below the long-term level of costs, represent additional obstacles to greater competition.

3.7.2 Moreover, rail operators do not have the high-quality rolling stock required to withstand competition.

3.7.3 Regional rail services play an even greater role in the new Member States than in the EU-15. If deregulation of international passenger services has a negative effect on the provision of regional services, this effect will be even stronger in the new Member States. It would hasten the decline in the railways still relatively large share of passenger transport.

4. **Conclusion**

4.1 In its previous opinions the EESC has always been in favour of revitalising the rail industry in Europe, and has pointed to essential prerequisites to achieving this:

— expanding infrastructure and removing of bottlenecks;

— establishing interoperability between railway systems;

— creating fair competition between transport modes;

— guaranteeing social provisions and rail safety.

4.2 The EESC calls on the Commission and the Member States to help ensure that these conditions are met as fast as possible.

4.3 The EESC underlines the importance of rail-passenger transport in meeting people's need for mobility and its importance as a provider of general interest services.

4.4 The EESC acknowledges the importance of a network service provider and of integrating this with other modes of public transport in the interests of public mobility. This service must not be put at risk.

4.5 The EESC believes that any decision on the deregulation of international passenger services shall be based on extensive and clear knowledge regarding the overall effects on rail-passenger transport and the impact of the measures decided on within the 1st and 2nd Railway Package.

4.6 It therefore calls on the Commission to carry out an adequate ex-ante analysis of the advantages and disadvantages which deregulating passenger services. The analysis should address the effects of deregulation on:

— regional and general interest rail transport, especially in small and medium-sized Member States;

— quality of service for customers;

— employment and working conditions in rail-passenger transport;

— rail operators in the new Member States of Central and Eastern Europe.

4.7 The EESC calls on the Commission initially to present the report on the implementation of market opening for rail freight services, as required by Directive 91/440/EEC (as amended by Directive 2004/51/EC).

4.8 The EESC points out that the proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway [COM(2000) 7 final and amended Proposal COM(2002) 107 final] are still pending in the Council. The detailed shape of this Directive could have an impact on the rules on the protection of public-service routes within the framework of the deregulation of international rail-passenger services.

4.9 Improvements to the quality of service on passenger routes enhances the attractiveness of this mode of transport, which in turn furthers the European transport policy aim of a sustainable transport system. The main responsibility here lies with the rail operators. However, the EESC is critical of measures which could lower the current standards of service quality. It would give high consideration to measures aiming to improve the quality of services.

4.10 The EESC is of the opinion that promoting better cooperation between railway companies will be the right way to improve service quality for passengers in international rail-passenger transport, especially in regional international passenger transport.

4.11 The EESC would very much welcome it if the Commission entered into a dialogue with European social partners on the impact of deregulation on rail transport, and on the quantity and quality of employment in particular.

4.12 The share of rail-passenger transport in overall passenger transport is considerably greater in the new Member States than in the EU 15. Therefore, the EESC considers it imperative that particular attention be paid to developments in rail-passenger transport in the new Member States and to the impact of opening up the market in these countries. It is in the interest of the entire Community and in line with the aims of the White Paper on Transport Policy that this large share be maintained.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

APPENDIX

to the Opinion of the European Economic and Social Committee (in accordance with Rule 54(3) of the Rules of Procedure)

The following proposals for amendments, which won more than a quarter of the votes cast, were rejected in the course of the discussions.

Point 3.1.4

Delete.

Reason

This point does not have anything to do with the deregulation of the railways. Two sectors are being mixed up in an opinion that deals with the development of the Community's railways. It cannot be said that the monitoring of social legislation in road transport is a serious problem, given the existence of various laws on driving and rest times and the working hours of drivers. All this legislation is monitored by macrograph. Moreover, August 2005 will see the introduction of a new monitoring system, the digital tachograph, which will allow for more accurate monitoring of drivers' working hours.

Results of voting

For: 58

Against: 80

Abstention: 7

Point 3.1.6

Delete the last sentence:

'This would include introducing European social legislation on the railway industry.'

Reason

Rail safety in the EU has been regulated by Directive 2004/49 EC.

Results of voting

For: 52

Against: 93

Abstention: 5

Point 3.2.3

Replace with the following:

'In the EESC's view, it would be advisable to analyse the content of this report upon publication in order to ascertain whether the proposal for a directive ought to be amended or modified.'

Reason

In effect, the current wording calls for a halt to the legislative process, which fosters a kind of legal uncertainty that is detrimental to all involved — businesses, employees and customers.

It would seem that a more positive and constructive approach would be to show a clear willingness to take the conclusions on board in order to amend or modify the proposal if necessary.

Thus, a dynamic and open process is maintained throughout.

Results of voting

For: 54

Against: 92

Abstention: 9

Points 3.4.7 and 3.4.8

Replace with the following and number the new point as 3.4.7:

'When the new proposal to amend Regulation (EEC) No. 1191/69 is submitted to the Council of Ministers and the European Parliament, the implications of the text in terms of the deregulation of rail passenger services and maintaining the balance of public service transport should be discussed.'

Reason

The current wording refers to a situation that is no longer relevant. A new text has been drawn up by the Commission and may be submitted to the Transport Council in June. It is not possible to predict what sort of reception it will be given by either the Council of Ministers or the European Parliament.

The suggested wording is in line with a more constructive approach.

Results of voting

For: 68

Against: 90

Abstention: 8

Point 3.6

Delete.

Reason

It cannot be said that the deregulation of rail transport will lead to job losses and that the new jobs created will be of poorer quality, when the deregulation of all other modes of transport has resulted in an increase in jobs. It must be stressed that rail transport is the only mode that has not been deregulated.

Results of voting

For: 66

Against: 102

Abstention: 6.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network

(COM(2004) 142 final — 2004/0048 (COD))

(2005/C 221/14)

On 28 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was **Mr Chagas**.

At its 414th plenary session (meeting of 9 February 2005) the Committee adopted the following opinion by 127 votes to 25 with 26 abstentions:

1. Introduction

1.1 The present proposal forms part of the **third railway package,** which was adopted by the European Commission on 3 March 2004. The other components are:

— amendment of Directive 91/440/EEC: liberalisation of international rail-passenger transport (COM(2004) 139 final);

— Proposal for a Regulation of the European Parliament and of the Council on international rail passengers' rights and obligations (COM(2004) 143 final);

— Proposal for a Regulation on compensation and quality requirements for rail-freight services (COM(2004) 144 final);

and

— Commission Communication on further integration of the European rail system (COM(2004) 140 final);

— Commission staff working paper on gradually opening up the market for international passenger services by rail (SEC(2004) 236).

1.2 The **first railway package** (also called the infrastructure package) came into force on 15 March 2001 and had to be transposed into national legislation by 15 March 2003. It comprises the following components:

— amendment of Directive 91/440/EEC, including free market access for international rail freight on the trans-European rail freight network by 15 March 2003 and liberalisation of all international rail freight by 15 March 2008 ([1]);

— extension of the scope of the Directive on a European licence for railway undertakings (amendment of Directive 95/18/EC) ([2]);

— harmonisation of the provisions governing the allocation of railway-infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (replaces Directive 95/19/EC) ([3]).

1.3 In October 2003 the European Commission took nine Member States to the European Court of Justice for failing to notify the transposition of the first railway package into national law. By May 2004 five countries' notification had still not been received and two Member States had transposed only some of the provisions into national law.

([1]) Directive 2001/12/EC – OJ L 75 of 15.03.2001, p. 1 – EESC opinion – OJ C 209 of 22.07.1999, p. 22

([2]) Directive 2001/13/EC – OJ L 75 of 15.03.2001, p. 26 – EESC opinion – OJ C 209 of 22.07.1999, p. 22

([3]) Directive 2001/14/EC – OJ L 75 of 15.03.2001, p. 29 – EESC opinion – OJ C 209 of 22.07.1999, p. 22

1.4 The **second railway package** was published in the Official Journal of the European Community on 30 April 2004 and has to be transposed into national law by 30 April 2006. It comprises the following components:

— amendment of Directive 91/440/EC: bringing forward free market access for international rail freight to 1 January 2006 and liberalisation of national rail freight, including cabotage, from 1 January 2007 ([1]);

— Directive on railway safety in the Community ([2]);

— Regulation establishing a European Railway Agency ([3]):

— amendment of the Directives on the interoperability of the high-speed rail system (96/48/EC) and the conventional rail system (2001/16/EC) ([4]).

1.5 The first and second railway packages provided the legal basis for establishing a single rail-freight market. The measures encompass market access, the licensing and safety certification of railway undertakings, access to infrastructure and the calculation of charges for its use, the creation of a legal framework for rail safety, and measures for ensuring the technical interoperability of the rail system.

1.6 As the EESC has already pointed out in its opinion on the second railway package ([5]), this new legal framework makes it necessary to completely re-organise the sector and establish new authorities and remits.

1.7 The **social provisions** regarding the training and working conditions of personnel carrying out safety-critical duties are inadequately addressed or not addressed at all in this framework.

1.8 The European social partners in the rail sector — the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) — signed two European agreements on 17 January 2004 on the following subjects:

1) Introduction of a European train driver's licence for drivers engaged in cross-border services;

2) Certain aspects of the working conditions of train crews engaged in cross-border services.

1.9 The present proposal partly reflects the social partners' agreement on the introduction of a European train driver's licence.

1.10 The EESC has been informed by the European Commission that the European social partners have formally applied for the agreement on working conditions (working and rest periods) to be implemented in the form of a Council Decision. This application is currently being examined by the Commission.

2. **European Commission's proposal**

2.1 The need to improve interoperability and staff management is the reason given by the Commission for its draft Directive. The aim is to make the authorisation of railway undertakings easier at the same time as maintaining a high level of safety and guaranteeing the free movement of workers.

2.2 The Commission also quotes the European social partners' objectives such as:

— to guarantee a high skills level for train crews in order to maintain and enhance safety levels; and

— to reduce the risk of social dumping.

2.3 The Commission is proposing a certification process for train drivers based on uniform minimum European standards. Train drivers working on international routes are to be certified first by 2010, followed by all other drivers working on national routes by 2015.

2.4 According to the Commission, the first step will involve around 10 000 drivers in the Community and the second around 200 000 drivers.

2.5 The Commission is also proposing a certification process for other train staff indirectly involved in driving the train. However, the draft Directive does not contain any specific provisions on this matter and in particular does not contain any provisions on the skills levels required of other train staff. Account is to be taken of the principles laid down in the Directive. The skills requirements are to be defined later by the European Railway Agency or in the Technical Specifications for Interoperability.

([1]) Directive 2004/51/EC – OJ L 164 of 30.04.2004, p. 164 – EESC opinion – OJ C 61 of 14.03.2003, p. 131
([2]) Directive 2004/49/EC – OJ L 164 of 30.04.2004, p. 44 – EESC opinion – OJ C 61 of 14.03.2003, p. 131
([3]) Regulation (EC) No 881/2004 – OJ L 164 of 30.04.2004, p. 1 – EESC opinion – OJ C 61 of 14.03.2003, p. 131
([4]) Directive 2004/50/EC – OJ L 164 of 30.04.2004, p. 114 – EESC opinion – OJ C 61 of 14.03.2003, p. 131
([5]) OJ C 61 of 14.03.2003, p. 131

2.6 The draft Directive makes provision for a two-part certification process:

1) European driving licence, which is issued by the competent authorities, is recognised throughout the Community, is the property of the train driver, and attests to compliance with basic requirements and the acquisition of basic skills;

2) harmonised complementary certificate, which is issued by the railway undertaking, remains the property of the undertaking and attests to specific knowledge relating to the undertaking or infrastructure.

2.7 The competent authorities and the railway undertakings are to keep registers indicating the respect qualifications and their renewal as well as the suspension and amendment of the licenses and the harmonised complementary certificates.

2.8 Three categories of train drivers are proposed: (A) shunting locomotives and work trains, (B) passenger trains, and (C) good trains.

2.9 The minimum age is to be 20, though this may be lowered to 18 when drivers only work nationally.

2.10 The draft contains provisions about amending and renewing licences and harmonised complementary certificates and carrying out periodic checks to ensure that holders continue to meet the conditions set, and provisions about their withdrawal and the possibilities for appealing against such decisions. It also deals with inspections and penalties.

2.11 Also contained in the proposal are provisions on access to training, examinations, and the assessment of the quality of training systems and procedures.

2.12 Annex I deals with the Community model licence and complementary certificate, while Annexes II to VII describes drivers' duties, medical/psychological examinations and professional qualifications.

2.13 The European Railway Agency is to be asked to submit a report by the end of 2010 in which it will also have to examine the possibility of introducing a smartcard.

3. **Assessment of the Commission proposal**

3.1 *Basic comments*

3.1.1 The EESC basically welcomes the proposal.

3.1.2 Train drivers and other staff performing safety-critical tasks bear enormous responsibility for the safety of traffic, staff, passengers and goods. In a liberalised rail market common provisions must ensure a high level of skills.

3.1.3 Harmonised minimum provisions also make the cross-border deployment of staff easier [1]. However, differences in Member States' operating systems and safety provisions more than anything else stand in the way of the cross-border deployment of staff and will continue to do so for many years yet. These differences plus the existence of different languages make considerable further demands on staff's skills.

3.1.4 The EESC also points out that a high level of skills and a certification process testifying to this help to ensure that the profession continues to enjoy recognition and remain attractive. This is important in a profession with unattractive working hours and less job security following the rise in temporary employment agencies. Undertakings in the road transport and inland waterway sectors are already complaining about the considerable difficulty in finding personnel. The aim of this Directive cannot be to cut down on training.

3.1.5 The traditional self-regulated railway undertakings have borne full responsibility for the training and skills levels of staff and the safe operation of services. This has led to a high level of skills and made the railways one of the safest modes of transport.

3.1.6 Care must be taken to ensure that the objective being pursued with this Directive leads to greater mobility among train drivers and discrimination-free access to training establishments and not to a situation where the quality of training as a whole deteriorates and the cost of training is passed on to the workforce.

[1] However, it should be stressed that the exchange of train drivers and crews at borders only takes a few minutes (e.g. eight minutes at the Brenner border crossing). Border stops in the freight sector are due more to other factors such as checking paperwork or inspecting rolling stock.

3.2 *Individual provisions*

3.2.1 Scope and introduction of certification

3.2.1.1 The EESC supports the gradual introduction of certification for **international and national traffic**. This will make it possible for undertakings to stagger operations.

3.2.1.2 However, the **timeframe** laid down in Article 34 (2008-2010 for cross-border traffic and 2010-2015 for drivers operating nationally) is surprising. The certification of train drivers should take place before then given that the liberalisation of international freight traffic will have been in progress since 2003/2006 and national freight traffic is to be liberalised from 2007 onwards.

3.2.1.3 The EESC also welcomes the **certification of train crews**. Staff performing safety functions play an important role in rail safety. However, the proposed definition is incomprehensible: 'Apart from the driver, any staff member present on board the locomotive or train and indirectly involved in driving the locomotive or train ….' (Article 25). It would be better to talk of train crew members who perform safety tasks. The EESC thinks that it would be preferable for the Directive to also specify the tasks to be performed by this category of staff and the skills required.

3.2.2 Categories of train drivers

3.2.2.1 Three '**driving licence categories**' are proposed — shunting locomotives and work trains; carriage of passengers; and carriage of goods (Article 4(2)). A distinction between passenger and freight traffic is not practical, and there is no substantive reason for such a distinction. The training and the actual work involved is no different. Separate certificates are to be issued to testify to knowledge of the locomotives used, but often the locomotives are the same. Two categories — based on safety requirements — are sufficient: locomotives operating on closed lines (marshalling yards, worksites) and locomotives operating on open lines (main-line train drivers).

3.2.2.2 The EESC also thinks it would be more appropriate to indicate the category on the driving licence and not on the harmonised complementary certificate.

3.2.3 Minimum age and professional experience

3.2.3.1 The draft Directive specifies a **minimum age** of 20, though a Member State may issue a licence valid only on its territory from the age of 18 (Article 8). In a number of Member States [1] the minimum age is 21. The Directive would result in a lowering of the minimum age, at least for cross-border traffic.

3.2.3.2 The EESC thinks that the minimum age should be set at 21. Cross-border traffic is more demanding and requires better qualified staff. This age requirement is also compatible with the option of being able to specify a lower age limit for national traffic.

3.2.3.3 The EESC would also welcome three years' **professional experience** as a national main-line train driver, before being engaged as a driver in international traffic. A similar provision for national traffic is already included in Article 10. In the case of railway companies who are offering international rail transport services only, the necessary experience of the drivers could be obtained in cooperation with other railway companies that offer national services.

3.2.4 Structure of the certification process

3.2.4.1 The Commission proposes a **two-part certification process**, viz. a European driving licence issued by the relevant authority and recognised throughout Europe and a harmonised certificate issued by railway undertakings. The reason given for dividing the process into two parts is that the uniform licence with smartcard that was originally planned is too complicated and costly to introduce.

3.2.4.2 The EESC agrees basically with the structure proposed by the Commission. However, the use of two documents could cause confusion. This is particularly so with **infrastructure knowledge**. A clear distinction should be made between knowledge of the operating and safety provisions applicable to a given infrastructure and knowledge of lines and localities. Whereas knowledge of the operating provisions applicable to one or several infrastructure networks should be certified on the driving licence, knowledge of lines and localities — which has to be regularly updated — would have to be certified on the harmonised complementary certificate.

3.2.4.3 The two-part certification process is possible for a transitional period. However, the ultimate aim is to issue a single document with smartcard which testifies to the holder's basic knowledge and knowledge relating to a specific undertaking, and this fact should not be lost sight of.

[1] For example, Austria, Denmark, Netherlands, Germany and Norway

3.2.5 Accreditation of examiners and training establishments

3.2.5.1 The European Railway Agency is to have the task of drawing up criteria for the accreditation of trainers, examiners and training establishments. The EESC considers this to be a practicable solution, but thinks that the Directive is unclear on a number of points. It is not clearly stated which tests are to be carried out by an accredited examiner and which skills are to be certified by the railway undertaking itself, without an accredited examiner. And it is also not clearly stated that testing knowledge of a given infrastructure's operating and safety system is to be carried out by an examiner who has been accredited by the particular Member State.

3.2.6 Professional qualifications and medical/psychological requirements

3.2.6.1 The draft Directive's annexes list train drivers' duties, the general and specific professional knowledge required and the medical/psychological requirements. In general the Commission has followed the line taken in the European social partners' agreement on the introduction of a European train driver's licence.

3.2.6.2 The EESC welcomes the Commission's decision to base itself on the professional and medical/psychological requirements laid down by the social partners. This will guarantee a high level of skills from which traffic safety will benefit. The EESC broadly thinks that the necessary qualifications and requirements for a train driver's certification should be specified within the body of the Directive.

3.2.6.3 Amendments to the annexes are to be made by the committee of Member States' representatives, which is also to be responsible for the adoption of the Technical Specifications for Interoperability (TIS). Consultation of the social partners is to be mandatory on matters relating to qualifications and occupational and health protection within the framework of the interoperability directives. Since the Directive's annexes on the certification of train crews are based on definitions of the European social partners, it is logical that these social partners should be involved in work on amending the annexes. The EESC insists on a provision to this effect in the Directive.

3.2.7 Periodic checks

3.2.7.1 Certain knowledge must be checked periodically to ensure that a licence or harmonised certificate can be kept.

3.2.7.2 With regard to the periodic medical check-ups, the Commission has followed the line taken in the European social partners' agreement.

3.2.7.3 The EESC would point to the need for psychological counselling after rail accidents involving people (which often means people committing suicide in front of trains). This has been overlooked in the Directive (Article 14 in conjunction with Annex III).

3.2.7.4 The proposal is too imprecise on the subject of the regular updating of line knowledge. It should be clearly specified that the certification of line knowledge lapses if the line has not been driven on for one year.

3.2.7.5 The Directive says nothing about the further training of train drivers at regular intervals in the field of general knowledge. This is a matter addressed in the European social partners' agreement. The EESC recommends that, in keeping with this agreement, the Directive should provide that basic aptitudes shall be developed and refreshed annually.

3.2.8 Withdrawal of licences

3.2.8.1 The Directive stipulates that train drivers are to notify the competent authorities if they no longer satisfy the conditions required to perform their duties. This is tantamount to drivers 'handing themselves in', which they cannot do. Only an accredited occupational doctor is able to take this decision and inform the undertaking. And it is the undertakings which must notify the authorities.

3.2.8.2 The Directive does not lay down the procedure for getting back a licence after it has been taken away.

4. Proposal for a Directive on the certification of train crews and the European social partners' agreement on the introduction of a European driving licence

4.1 The EESC welcomes the fact that the European social partners — the CER and ETF — have acted themselves and have already proposed a system of licensing for train drivers operating on international routes.

4.2 The advantage of the agreement is that employees in undertakings that are CER members will be required to be highly qualified quite soon and that it will not be necessary to wait until 2010. These undertakings must not be penalised vis-à-vis undertakings which do not apply the agreement.

4.3 The EESC thinks that full account must be taken of the European social partners' agreement in areas where it overlaps with the scope of the Directive.

4.4 The European social partners' agreement assumes that the train drivers concerned always have some form of national certification, and therefore does not regulate this matter. This is based on traditional railway undertakings' many years of experience in cooperating on routes.

4.5 The European train driver's licence provided for in the social partners' agreement is an additional licence which testifies to the additional knowledge needed to drive on another country's infrastructure. This is issued by the undertakings and is the property of the undertakings.

4.6 The harmonised complementary certificate proposed in the Directive tallies more or less with the European train driver's licence.

4.7 The EESC asks the Commission to examine to what extent the European train driver's licence provided for in the social partners' agreement can be recognised as being equivalent to the harmonised complementary certificate for a transitional period in order to accommodate the undertakings which have already become active on this front. The Directive should contain a provision to this effect.

4.8 The EESC thinks that undertakings which have signed up to the social partners' agreement will be disadvantaged vis-à-vis undertakings using the Directive's system of certification insofar as further training in general professional knowledge is to be provided annually under the terms of the agreement, but this provision has not been included in the draft Directive despite being crucial for maintaining skills levels.

Brussels, 9 February 2005.

5. **Conclusions**

5.1 The EESC welcomes the proposal for a Directive on the certification of train crews. It regrets that this social measure is being presented as the final link in a chain of European legislative provisions for liberalising the rail-freight sector.

5.2 Train drivers and crews have key roles to play in the field of safety. The certification of train drivers and crews must guarantee that they are highly qualified.

5.3 The EESC is concerned about the enormous time lapse between the complete opening-up of the market in rail freight and the deadlines for the introduction of certification and asks the Commission to take all possible steps in order to reduce this gap.

5.4 The EESC therefore calls on the Council and the European Parliament to remove the draft Directive for the certification of train crews from the third package and to handle it separately so as to avoid further delays. The European Parliament and the Council should adopt the Directive quickly and as a matter of priority.

5.5 In so doing, they should take full account of the EESC's opinion and the amendments proposed therein.

5.6 The EESC welcomes the European social partners' agreement on certain aspects of the working conditions of train crews engaged in cross-border services. It calls on the Commission to submit the agreement to the Council for a decision and recommends to the Council that it adopt the proposal.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

APPENDIX

to the Opinion of the European Economic and Social Committee (in accordance with Rule 54 (3) of the Rules of Procedure)

The following proposal for amendment, which won more than a quarter of the votes cast, was rejected in the course of the discussions.

Point 3.2.3.3

Delete.

Reason

The proposal for a directive makes provision for a two-part certification process:

— a European driving licence, recognised throughout the Community,

— a harmonised complementary certificate, which attests to specific knowledge relating to the undertaking or infrastructure.

The directive also lays down provisions on the amendment and renewal of driving licences and harmonised complementary certificates, and provides for periodic checks to ensure that holders continue to meet the conditions set.

The purpose of the harmonised complementary certificate is to ascertain a driver's skill and familiarity with the line(s) in question.

There is therefore no reason to introduce an additional three-year probationary period for drivers engaged in international traffic, which, as point 3.2.3.3 stands, would be on top of the two years which may be required for drivers to progress from the shunting locomotives category to the national mainline trains categories (passenger and goods trains).

This requirement, which would be tantamount to introducing a five-year probationary period, would reduce the value of the harmonised complementary certificate and conflict with the desire to facilitate cross-border interoperability. Its effect, or purpose, would be to stop the development and improvement of cross-border rail links.

Lastly, there is no need to introduce different requirements for train drivers working on national routes and those working on the international network, since the harmonised complementary certificate is, in any case, a guarantee of skill and familiarity with the network.

For these reasons, there is no basis for point 3.2.3.3 and it should be deleted.

Results of voting

For: 59

Against: 100

Abstention: 11.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation applying a scheme of generalised tariff preferences

(COM(2004) 699 final — 2004/0242 (CNS))

(2005/C 221/15)

On 10 November 2004 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 January 2005. The rapporteur was **Mr Pezzini**.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 132 votes to 1 with 3 abstentions.

1. **Introduction**

1.1 Council Regulation (EC) No. 2501/2001 of 10 December 2001 ([1]) applying a multiannual scheme of generalised tariff preferences (GSP) will expire on 31 December 2005. In July 2004, the Commission adopted guidelines ([2]) on the role of the GSP for the next ten-year period, from 1 January 2006 to 31 December 2015. It has now published its proposals ([3]) for the implementing regulation.

1.1.1 In 1994, the previous guidelines ([4]) for the ten-year period 1994-2005 and their implementing regulations introduced a number of important changes, such as tariff modulation according to product sensitivity, graduation and special incentive schemes. In 2001, a special arrangement for the Least Developed Countries (LDC), 'Everything but Arms' (EBA), was introduced for an unlimited period of time. Experience has shown that some of these measures work well in practice and should be continued while others would seem to require adjustment in the light of experience gained.

1.1.2 The Community has granted trade preferences to developing countries in the framework of its GSP since 1971. Trade policy plays a key role in the EU's relations with the rest of the world. The GSP scheme is part of that policy and must be consistent with and consolidate the objectives of development policy. To this end, it must comply with the WTO requirements and, in particular, with the GATT enabling clause of 1979. It must also be compatible with the Doha Development Agenda. A key priority is to help developing countries to benefit from globalisation, in particular by linking trade and sustainable development. In this context, it is understood that sustainable development comprises a variety of aspects, such as respect for fundamental human and labour rights, good governance and environmental protection. In addition, the fight against drugs is a shared responsibility of all countries.

1.2 The Commission has consulted widely on its guidelines for the next ten-year period since they were first published. However, because of the specialised statistics required, impact assessments have been conducted internally. The Commission will conduct an assessment of the impact on the outermost regions of the EU once the Regulation has come into force.

1.3 It is not envisaged that the changes put forward in the draft proposal would involve a significant change in the annual loss of customs revenue as compared to the present situation.

2. **The Commission's proposals**

2.1 The proposals constitute a simplification of the present system by reducing the number of arrangements from five to three; this has been achieved by the introduction of a single incentive arrangement to replace the three special incentives currently in place for the protection of labour rights, protection of the environment and combating the production and trafficking of drugs. Thus, the proposed scheme consists of:

— a general arrangement;

— a special incentive arrangement (SIA) for sustainable development; and

— a special arrangement (EBA) for the Least Developed Countries.

2.2 A further measure of simplification would be achieved by removing from the list of beneficiaries those countries that presently enjoy preferential access to the Community market under the terms of bilateral, regional or other free-trade agreements (FTA). The Community would ensure that no country would lose as a result of this measure by consolidating into the relevant FTA the benefits for any particular product that had previously received GSP treatment.

([1]) OJ L 346 of 31.12.2001
([2]) COM(2004) 461 final
([3]) COM(2004) 699 final
([4]) COM(1994) 212 final

2.3 Preferences would continue to be differentiated according to the sensitivity of products. Common Customs Tariff (CCF) duties on products designated as non-sensitive would continue to be entirely suspended, except for agricultural components. The current flat-rate reduction of 3.5 percentage points for sensitive products would be maintained.

2.4 The general arrangement would be open to all countries except those which had been classified by the World Bank during a period of three consecutive years as high-income countries and where the five largest sections of GSP-covered exports to the Community represented less than 75 % of the total GSP-covered exports from that country into the Community. Any such countries that are currently beneficiaries under the GSP system would be removed from the scheme on the entry into force of the proposed Regulation. Beneficiary countries, which also benefit from a commercial agreement with the Community, covering at least all of the preferences provided by the present scheme for that country, would also be removed from the list of eligible countries.

2.5 The SIA for sustainable development is targeted at those developing countries most in need. The additional preferences would be granted immediately (subject to the submission of an application) to developing countries that have ratified and effectively implemented all of the sixteen core conventions on human and labour rights set out in **Appendix 1** and at least seven of the conventions relating to good governance and the protection of the environment set out in **Appendix 2**. At the same time, the beneficiary countries would be required to commit to ratifying and effectively implementing those international conventions, which they had not yet ratified. A deadline of 31 December 2008 would be set for the completion of this process.

2.5.1 The conventions chosen are those with mechanisms, which can be used by the relevant international organisations to evaluate on a regular basis how effectively they have been implemented. The Commission will take these evaluations into account before deciding which of the applicant countries will be selected to benefit from the SIA. Based on the applications from the developing countries, the Commission would later produce a list of the beneficiaries under the arrangement.

2.5.2 The applications from countries wishing to benefit from the SIA would be required to be submitted within three months of the date of publication of the Regulation.

2.5.3 A further requirement is that the applicant countries should be vulnerable countries. The definition of a vulnerable country for this purpose is that the World Bank should not have classified it as a high-income country or that its GSP-covered exports to the Community should amount to less than 1 % of total GSP-covered imports to the Community.

2.6 The proposals include measures to reduce the impact on a beneficiary nation when the United Nations removes it from the list of LDCs. This would take the form of a transition period for the gradual withdrawal of that country from the EBA arrangement. At present, the country in question automatically suffers immediate loss of all the GSP advantages that it enjoyed as a LDC. The new mechanism allows for this process to take place over a transitional period.

2.7 The graduation mechanism has been retained but has been modified to make it simpler in operation. As at present, it would be applied to groups of products from countries that are competitive on the Community market and no longer need the GSP to boost their exports but the current criteria (share of preferential imports, development index and export-specialisation index) would be replaced by a single straightforward criterion: share of the Community market, expressed as a share of preferential imports. Groups of products are defined by reference to the 'sections' in the Combined Nomenclature. As only those countries that are competitive for all the products in a section would be graduated, small beneficiary countries would not be graduated solely on the basis of a few competitive products in a section.

2.7.1 Graduation would be applied to any beneficiary country in respect of products of a section when the average of Community imports from that country of products included in the section concerned exceeds 15 % of Community imports of the same products from all countries over a period of three consecutive years. For certain textile products, the threshold is reduced to 12.5 %.

2.8 Where the rate of an *ad valorem* duty reduced in accordance with the provisions of the Regulation was 1 % or less, that duty would be entirely suspended. Similarly, where a specific duty amounted to EUR 2 or less per individual amount, the duty would be entirely suspended.

2.9 The proposals include provisions for the temporary withdrawal of preferential arrangements in respect of all or of certain products of a country in certain specified circumstances. These do not represent a significant departure from the *status quo*. The Commission has indicated that these provisions are still intended for use only in exceptional circumstances.

2.9.1 When a product originating in a beneficiary country is imported on terms which cause, or threaten to cause, serious difficulties to a Community producer of like or directly competing products, normal CCF duties might be reintroduced at any time at the request of a Member State or on the Commission's initiative.

2.10 The Commission would be assisted in its task of implementing the Regulation by a Generalised Preferences Committee, composed of representatives of the Member States and chaired by the Commission. The Committee would receive reports from the Commission on the operation of the system and could examine any matter relating thereto but, in particular, it would be involved in determining such matters as the eligibility of an applicant country for access to the SIA for sustainable development, the temporary withdrawal of benefits, the re-imposition of CCF duties in cases of hardship to a Community producer and the establishment of transitional periods for the loss of EBA benefits for countries removed from the United Nations' list of LDCs.

3. **General comments**

3.1 The GSP is an important element of the EU's foreign trade policy, which has far-reaching repercussions; it exerts a considerable influence on events in the developing world, it impacts the EU budget, it affects relationships with the EU's trading partners in such organisations as the WTO and it has significant consequences for European industry, particularly manufacturing industry. It is one of the few matters that is managed at the European level in a federal rather than a non-federal manner; the Commission has exclusive competence in this area. Globalisation has enhanced the importance of GSP; the EU has utilised this regime to help developing countries benefit from the globalisation process. At the same time, it has enabled the EU to promote the practice of sustainable development by granting preferential terms of access to the European market to those countries which show respect for the fundamental principles of human rights.

3.2 When the Commission published the guidelines ([5]) that form the basis of the present proposals, the EESC issued an Opinion ([6]) commenting in detail on the issues raised. In that Opinion, it stated that simplification of the system should be a primary objective. It therefore welcomes those measures contained in the Commission's proposals that are aimed at simplifying the structure. In particular, it considers that the reduction in the number of arrangements from five to three will considerably facilitate the attaining of that objective.

3.3 The EESC also called for the number of participating nations to be reduced ([7]) and proposed, *inter alia,* the exclusion of countries that currently benefit from preferential access to the Community under the terms of an FTA, with the safeguard that any preferences from which they benefited under the current GSP system should be subsumed into the relevant bilateral agreement. It is pleased to note that this recommendation has been adopted.

3.4 The EESC expressed concern ([7]) that the bulk of Community assistance was going to the most affluent of the beneficiary nations and not to those which stood most in need. It warmly welcomes the fact that the Commission has addressed this issue but wonders whether the proposals go far enough in this direction.

3.5 The EESC recommended ([7]) that the graduation mechanism should be retained but that it should be simplified and rendered more transparent. It endorses the Commission's proposals in this area and considers that they will achieve a significant measure of improvement in both respects. In particular, the substitution of a single, clear criterion for the existing multiple criteria should both simplify the process and enhance its transparency.

3.6 The EESC urged ([7]) that the opportunity be taken to harmonise, unify and streamline all the rules and procedures of the GSP system. It is of the opinion that the present proposals go a long way towards realising this ideal.

3.7 The EESC called ([7]) for the publication of a detailed impact assessment with the Commission proposals. It is disappointed that this has not been done and would point out that conducting an assessment of the impact on the outermost regions of the EU after the event is a pointless exercise unless it is intended to modify the system in the light of this assessment, which would not satisfy the requirement that the regulations should be stable over time. A climate of uncertainty is inimical to the satisfactory operation of a GSP system.

3.8 The EESC approves the concept of incorporating the observance of human rights, protection of labour rights, protection of the environment, good governance and the curbing of drug production and trafficking within the definition of 'sustainable development'.

3.9 The EESC pointed out ([7]) that the existing special incentive arrangements have been totally ineffectual in achieving their worthwhile objectives. Only two countries have qualified for the special incentive arrangement for the protection of labour rights and none at all for the special incentive for the protection of the environment; meanwhile, twelve nations have benefited from the special arrangement to combat the production and trafficking of drugs but without having any perceptible effect on the incidence of these activities.

3.9.1 The EESC considers that the new proposals, while introducing a welcome measure of simplification into the process, are unlikely to be any more efficacious. The size of the incentive has not been increased and there is no reason to suppose that the new arrangements will provide any greater inducement for beneficiary countries to embrace the principles and practice of sustainable development. Faced with the requirement to adopt twenty-seven international conventions they may well prefer to follow their own dictates and forego the benefits on offer.

([5]) Op. cit.
([6]) EESC opinion of 25 February 2004– OJ C 110 of 30 April 2004
([7]) Ibid

3.9.2 Given the difficulty of providing a worthwhile incentive within the confines of a continually reducing tariff barrier, consideration might be given to also linking the observance of these conventions to the provision of development aid.

3.10 The EESC observes that all the conventions with which the applicant countries are required to comply are those with mechanisms that the 'relevant international organisations' can use to regularly evaluate how effective the implementation has been. The EESC would advocate that the social partners should have a role in this evaluation.

3.11 The EESC notes that the conditions for temporary withdrawal of benefits are little changed from those prevailing under the existing regime. Given that they have only been invoked in the case of one country (Myanmar), which represents an extreme example of the flouting of international conventions, their usefulness in promoting sustainable development is questionable. A sanction which is applied only in such rare circumstances can have little deterrent effect. The EESC would have preferred to see a wider application of this mechanism in order to reinforce the SIA for promoting sustainable development, which it fears is likely to fall into desuetude.

3.12 The EESC questions whether the new system would provide a more effective deterrent to fraud than that which it replaces. It would have preferred to see a more proactive approach to this issue. In particular, it would have liked to see the creation of mechanisms for closer cooperation between agencies in the EU and their counterparts in the beneficiary countries. It is difficult to avoid the conclusion that in this area the Commission has adopted a policy of *festina lente*.

3.13 The EESC welcomes the fact that the Commission has consulted widely, both in the EU and in the beneficiary countries, before formulating these proposals.

3.14 The EESC notes that the Commission would continue to be assisted in the administration of the GSP system by a General Preferences Committee, acting within the framework of the 'Regulatory Committee' procedure.

4. **Specific comments**

4.1 The EESC notes that the countries to be excluded from the general arrangement will be limited to those which have been classified by the World Bank as high-income countries and if they are not sufficiently diversified in their exports. It is of the opinion that the number of countries meeting these criteria will be limited. It has proposed ([8]) that the new guidelines should exclude, *inter alia*, countries with nuclear weapons programmes and those which operate as tax havens. It regrets that many of these nations would appear to continue to be eligible for inclusion in the list of beneficiaries.

4.2 One of the criteria for inclusion in the SIA promoting sustainable development is that a country should be a 'vulnerable country'. Article 9(2) defines this as being a country which has not been excluded from the general arrangement under the terms set out in point 4.1 above or whose GSP-covered exports to the Community represent less than 1 % of total GSP-covered imports to the Community. The ESC considers that this article should be redrafted to replace the word 'or' with 'and'; otherwise, the article will have an effect which was surely not intended.

4.3 The EESC has pointed out ([8]) that, under the existing system, the graduation point is too far removed from the updating point. It therefore welcomes the fact that, in future, graduation would take place in the year following the third consecutive year which constitutes the reference period for any given country and sector.

4.4 The EESC supports the Commission's proposal to maintain regional cumulation within the meaning of Regulation (EEC) No. 2454/93 when a product used in further manufacture in a country belonging to a regional group originates in another country of the group which does not benefit from the arrangements applying to the final product, provided that both countries benefit from regional cumulation for that group. It would point out that, in the past, these provisions have been the source of a considerable level of fraudulent manipulation.

4.5 The EESC reiterates its opinion ([8]) that the preferential rules of origin should be simplified, and the compliance burden on EU importers correspondingly reduced, by bringing them into line with the current rules of origin on non-preferential imports.

4.6 The EESC reiterates its call ([9]) for dialogue between the EU and the LDCs to improve the implementing rules for the special arrangements for LDCs in certain specific cases, especially by adapting the transition period.

4.7 The EESC welcomes the proposal to eliminate duties where preferential treatment results in an *ad valorem* duty of 1.0 % or less or a specific duty of EUR 2 or less. It considers that this will constitute an appreciable measure of simplification.

([8]) Ibid

([9]) CESE 1646/2004 - Communication from the Commission to the Council and the European Parliament - Accomplishing a sustainable agricultural model for Europe through the reformed CAP - sugar sector reform - COM(2004) 499 final

4.8 The EESC notes that the temporary withdrawal of benefits is limited to a period of three months, renewable once. The Commission may extend this period in accordance with Articles 3 and 7 of Decision 1999/468/EC, as has already been done in the case of Myanmar. The EESC would have preferred a provision whereby the temporary withdrawal of benefits, once applied, would be maintained until such time as the offending nation had removed the cause for withdrawal by remedying the breach of international conventions which had given rise to the withdrawal in the first place.

4.9 The EESC feels that the requirement for countries or territories wishing to benefit from the SIA for sustainable development to submit a request to that effect within three months of the date of entry into force of the Regulation is somewhat onerous and likely to be self-defeating by limiting the degree of uptake. There might well be a number of countries at that point in time that did not meet the criteria and therefore saw no point in submitting an application. After the expiration of the three-month deadline, such countries would then have no incentive to ratify and effectively implement the international conventions set out in appendices 1 and 2. The EESC would have considered it preferable to have left the door open for the admission of these countries at a later date provided that they had then met the criteria for inclusion.

4.10 The EESC pointed out ([10]) that the GSP system is one element of the EU's trade policy and that, as such, it must be compatible with the other elements of that policy. In order to achieve a coherent trade policy it is essential that other Directorates-General in the Commission should be involved in the process. In particular, there should be close, continuous and effective cooperation between the Directorates-General for Trade and for Enterprise.

4.11 The EESC considers it advisable that, in the case of serious market disturbances for goods covered by Annex 1 of the Treaty, the safeguard clause could also be invoked at the request of a Member State to the Commission, which would then consult the relevant management committee.

4.12 According to the Commission proposal, the special arrangement for the Least Developed Countries (LDCs) is to be incorporated into the GSP and the other arrangements (including that for sugar) are to be taken over in accordance with Regulation 416/2001. The fears of the LDCs are well-founded namely that there will be considerably more disadvantages than advantages following the reform of the EU sugar regime, with a sharp drop in prices arising from the proposed moves to open up the EU market fully to these countries as of 1 July 2009. The Committee refers in this regard to its Opinion of 15 December 2004 ([11]) on the proposed CMO/sugar reform. This called on the Commission, in line with the express wishes of the LDCs, to negotiate preferential import quotas for sugar for the period after 2009, with periodic reviews that take into account the link between the reform of the European sugar market and the development objectives of least developed countries (LDCs). The EESC is in favour of prohibiting 'swap' practices (three-way trade).

4.13 Generally speaking, the EESC believes that, for the products under consideration, the application of Article 12(1) should be clearly defined within the framework of the relevant common market organisations.

5. **Conclusions**

5.1 The EESC has advocated that the existing system should be simplified and rendered more transparent and that the opportunity should be taken to harmonise, unify and streamline all the GSP rules and procedures. It considers that the proposed scheme would be a material improvement in this respect and to this extent it endorses the Commission's proposals.

5.2 The EESC approves the fact that the number of beneficiary countries would be reduced but fears that the reduction might not be of sufficient proportions.

5.2.1 The EESC considers that the Generalised System of Preferences should be reserved for least developed countries and countries most in need, in order to ensure that they are the primary beneficiaries of the new GSP regime. The graduation threshold for textile and clothing products should therefore be lowered to 10 percent ([12]).

5.3 The EESC considers that the new SIA for promoting sustainable development will have little more impact on the behaviour of beneficiary nations than those which it replaces.

5.4 The EESC is concerned that the issue of fraud in the existing system does not appear to have been effectively addressed and considers that more could have been done in this respect.

5.5 The EESC is disappointed that detailed impact assessments on these proposals have not been published or apparently, in some cases, conducted.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([10]) Ibid

([11]) CESE 1646/2004 - Communication from the Commission to the Council and the European Parliament - Accomplishing a sustainable agricultural model for Europe through the reformed CAP - sugar sector reform - COM(2004) 499 final

([12]) Proposal for a Council Regulation COM(2004) 699 final, Article 13

APPENDIX 1

Core human and labour rights UN/ILO Conventions

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic Social and Cultural Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of All Forms of Discrimination Against Women
5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. Convention on the Prevention and Punishment of the Crime of Genocide
8. Minimum Age for Admission to Employment (No. 138)
9. Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)
10. Abolition of Forced Labour Convention (No. 105)
11. Forced Compulsory Labour Convention (No. 29)
12. Equal Remuneration of Men and Women Workers for Work of Equal Value Convention (No. 100)
13. Discrimination in Respect of Employment and Occupation Convention (No. 111)
14. Freedom of Association and Protection of the Right to Organise Convention (No. 87)
15. Application of the Principles of the Right to Organise and to Bargain Collectively Convention (No. 98)
16. International Convention on the Suppression and Punishment of the Crime of Apartheid.

APPENDIX 2

Conventions related to environment and governance principles

17. Montreal Protocol on Substances that deplete the Ozone Layer
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
19. Stockholm Convention on persistent Organic Pollutants
20. Convention on International Trade in Endangered Species
21. Convention on Biological Diversity
22. Cartagena Protocol on Biosafety
23. Kyoto Protocol to the UN Framework Convention on Climate Change
24. UN Single Convention on Narcotic Drugs (1961)
25. UN Convention on Psychotropic Substances (1971)
26. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27. Mexico UN Convention against Corruption.

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council creating a European order for payment procedure

(COM(2004) 173 final/3 — 2004/0055 COD)

(2005/C 221/16)

On 6 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

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

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pegado Liz as rapporteur-general at its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February), and adopted the following opinion with 73 votes in favour and two abstentions.

1. **Aim of the proposal**

1.1 With the proposal for a regulation creating a European judicial order for payment procedure ([1]), the Commission is pursuing a number of initiatives gradually creating and developing an area of freedom, security and justice, removing barriers and helping to make it easier to conduct civil proceedings at European level, as specifically laid down in its Action Plan adopted by the Justice and Home Affairs Council of 3 December 1998 ([2]).

1.2 This proposal fulfils one of the key goals of the Green Paper of 20 December 2002 ([3]); the other goal of creating a European procedure for small claims litigation is being dealt with separately by the Commission.

1.3 With a view to establishing a European order for payment procedure, the Commission has taken into account the comments and recommendations made by the European Parliament and the EESC respectively regarding the aforementioned Green Paper, and is now presenting a draft regulation seeking to establish a single order for payment procedure applicable throughout the European Union.

1.4 The Commission's grounds for this initiative are based on the fact that Member States' civil procedural law systems differ, resulting in high costs and the delays entailed in cross-border litigation, which can become disproportionate, particularly where proceedings for the recovery of uncontested debts are concerned.

1.5 The Commission has decided to extend the scope of the single order for payment procedure to national disputes, in order to ensure equal treatment for all and to prevent distortion of competition between economic operators, in line with the EESC's opinion on the Green Paper, whilst ensuring that the procedure is compatible with the principles of proportionality and subsidiarity.

1.6 The text makes it quite clear that the order for payment procedure is optional, as the creditor can always opt for a different, more formal procedure provided for by domestic law. This, too, is in line with the EESC's opinion.

1.7 The Commission followed the following fundamental principles when defining the procedure:

a) the procedure should be as simple as possible and based on the use of standard forms;

b) no examination of the merits of a claim;

c) presentation of documentary evidence not to be required;

([1]) COM(2004) 173 final of 19.03.04.
([2]) OJ C 19 of 23.01.99.
([3]) COM(2002) 746 final of 20.12.02, rapporteur: Mr Von Fürstenwerth (OJ C 220 of 16.9.2003).

d) adequate protection of the defendant's rights;

e) no need for appeals;

f) enforceability;

g) representation by a lawyer not to be compulsory.

1.8 The Commission also ensures mutual exchange of information concerning the courts with jurisdiction to issue European orders for payment in the different Member States; this information is to be updated regularly.

1.9 The Committee is pleased to learn that the United Kingdom and Ireland are looking into the possibility of joining the scheme, as has been the case with similar initiatives in the past. In order to ensure that the system now being proposed operates more smoothly, however, the Committee would have preferred Denmark not to completely opt out of implementing the regulation and hopes that, in future, the constraints hindering its full membership of a single European judicial area will be overcome.

1.10 The territorial scope of the proposal may cause difficulties as regards its implementation. To surmount these difficulties, account should be taken of i) the specific characteristics of certain territories, as set out in Article 299 TEC, and ii) the responsibilities that some Member States have assumed for these regions. It should therefore be pointed out that, irrespective of the actual implementation of the order procedure, appointment of the competent bodies concerned must be carried out by the relevant national authority which is to fulfil these responsibilities on behalf of the State, thereby ensuring the legitimacy of those bodies.

2. **Precedents and parallel initiatives**

2.1 For a long time, the Community institutions, including the European Parliament ([1]) and the EESC ([2]), had been producing documents expressing their desire to see the standardisation and simplification of civil procedures, in order to ensure faster, more effective implementation of justice.

2.2 Echoing these concerns, which had mainly been expressed by economic operators, professionals and consumers, the Commission, too, had long been reflecting on the best way to proceed; the progress made in the pioneering field of consumer law was particularly significant ([3]).

2.3 However, it was clearly with the *Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation* that the issue was addressed with a view to a potential legislative initiative.

([1]) See EP resolutions A2-152/86 of 13.3.1987, A3-0212/94 of 22.4.1994 and A-0355/96 of 14.11.1996

([2]) See in particular opinions on the Green Paper on consumer access to justice (rapporteur: Mr Ataíde Ferreira, OJ C 295 of 22.10.1994) and on the single market and consumer protection: oportunities and obstacles (rapporteur: Mr Ceballo Herrero, OJ C 39 of 12.2.1996).

([3]) In this connection, cf the following documents:
- Commission communication on Consumer redress (COM(84) 692 final of 12.12.1981) and supplementary communication on the same subject (COM(87) 210 final of 7.5.1987) in supplement 2/85 to the Bulletin of the European Communities
- Commission communication on A new impetus for consumer protection policy (COM(85) 314 final of 23.7.1985) in OJ C 160 of 1.7.1985
- Commission action plan of 14 February 1996 (COM(96) 13 final)
- Commission Communication on Towards greater efficiency in obtaining and enforcing judgments in the European Union (COM(97) 609 final of 22.12.1997, OJ C 33 of 31.1.98)
- Green Paper on consumer access to justice and the settlement of consumer disputes in the single market (COM(93) 576).
- Green Paper on alternative dispute resolution in civil and commercial law (COM(2002) 196 final of 19.4.2002)

2.4 This initiative is part of a series of extremely important measures which have been taken in the field of judicial cooperation in civil matters over recent years ([1]):

2.5 Regulation (EC) No. 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims ([2]) deserves special mention and is particularly relevant when considering the current Commission proposal, in that the two texts address two aspects of the same situation — the need for simpler, more effective civil law enforcement in a single area of justice.

3. **Legal instrument and basis**

3.1 In line with most of the initiatives adopted in this field, the Commission has opted to propose the adoption of a regulation, taking Articles 61(c) and 65 of the Treaty as a basis.

3.2 In its earlier opinion, the EESC firmly endorsed the adoption of a regulation, and therefore fully supports the Commission's decision.

3.3 It also fully endorses the Commission's choice of legal basis, which goes beyond a merely formal interpretation of the relevant legal concepts. This is the only way to fulfil the objective of creating a single EU judicial area.

4. **General comments**

4.1 The EESC welcomes the draft regulation, which, as has been said, has incorporated most of its comments regarding the *Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation*, and which rightly aims to implement the right enshrined in Article 47 of the EU Charter of Fundamental Rights.

([1]) These include:
- — Commission Recommendation of 12 May 1995 on payment periods in commercial transactions, and the related Commission Communication (OJ L 127 of 10.6.1995 and OJ C 144 of 10.6.1995)
- — Directive 98/27/EC of 19.5.1998 on injunctions for the protection of consumers' interests (OJ L 166 of 11.6.1998, p.51)
- — Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions (OJ L 200 of 8.8.2000)
- — Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) (OJ L 12 of 16.1.2001). EESC rapporteur: Mr Malosse (OJ C 117 of 26.4.2000)
- — Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174 of 27.6.2001). EESC rapporteur: Mr Bataller (OJ C 139 of 11.5.2001)
- — Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters (OJ C 12 of 15.1.2001)
- — Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160 of 30.6.2000). EESC rapporteur: Mr Ravoet (OJ C 75 of 15.3.2000)
- — Regulation (EC) No. 1347/2000 of 29 May 2000 on the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (OJ L 160 of 30.6.2000). EESC rapporteur: Mr Braghin (OJ C 368 of 20.12.1999)
- — Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ L 160 of 30.6.2000). EESC rapporteur: Mr Bataller (OJ C 368 of 20.12.1999)
- — Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174 of 27.6.2001). EESC rapporteur: Mr Retureau (OJ C 139 of 11.5.2001)
- — Commission Communication concerning a New Legal Framework for Payments in the Internal Market [COM(2003) 718 final of 2.12.2003]. EESC rapporteur: Mr Ravoet (OJ C 302 of 7.12.2004).

([2]) COM(2002) 159 final, OJ C 203 of 27.8.2002. EESC rapporteur: Mr Ravoet (OJ C 85 of 8.4.2003).

4.2 The EESC urges the Commission to consider the possibility of extending this proposal for a regulation to cover the European Economic Area.

4.3 The need to create a European procedure for the rapid recovery of uncontested debts is well documented in the responses of the various Member States to the aforementioned Green Paper, as is the concern to guarantee adequate defence rights for the debtors on whom the order for payment is served

4.3.1 The EESC considers, however, that the Commission proposal would be improved by the inclusion of statistics on the estimated numbers of dispute proceedings, both cross-border and national, that will be subject to the new instrument now being proposed, and also a cost/benefit analysis of the instrument's implementation — a matter on which the Commission's explanatory memorandum is silent.

4.4 In its opinion on the Green Paper, the EESC stated, in particular, that 'When formulating a European small claims procedure, the key aim will be to define suitable measures for speeding up such litigation without, at the same time, jeopardising the guarantees afforded to the parties in question under the rule of law.'

4.5 The EESC believes that, although the proposal needs to be carefully and closely revised so as to enable it to achieve its goals more effectively, it does represent a balanced response to the twin requirements of rapid debt recovery and guaranteed defence rights.

4.6 Nonetheless, the EESC points out that it is important to bear in mind that businesses must not be able to use orders for payment as a cover for irregular procedures such as, in particular, exerting pressure or the recovery of debts arising from disregard for consumer protection rules. Similarly, it is important to ensure that the procedure adopted does not encourage instances of collusion between businesses in different Member States, with uncontested orders for payment being used as a cover for transferring money of dubious and/or even criminal origin and a legal procedure thus used to launder money.

4.7 The EESC also points out that a significant number of recovery proceedings which come before the courts, even if uncontested, are related to aggressive and/or misleading advertising which promotes products by convincing the consumer that their purchase and use or consumption of a product will not entail increased costs or, if they do, will not affect the family finances.

4.8 The EESC therefore feels that the proposal only addresses one aspect of what is a much wider, more complex issue. Accordingly, it again urges the Commission to propose legislation defining the liability of suppliers in cases of household over-indebtedness incurred as a result of unfair practices on their part ([1]).

4.9 The Commission considers that it will be possible for the European order for payment procedure to co-exist alongside other identical procedures serving the same purpose and contained in Member States' national legislation.

4.9.1 The EESC, however, believes that there should only be one order for payment procedure, namely the procedure laid down and regulated by the proposal under consideration. By definition, this procedure must be deemed the most appropriate for the situations it covers, as otherwise it would lose its legitimacy. Accordingly, when this regulation is adopted, the order for payment procedures provided for in the national legislation of some Member States should cease to have effect.

([1]) See the EESC opinion and information report on household over-indebtedness (rapporteur: Mr Ataíde Ferreira, OJ C 149 of 21.6.2002).

4.9.2 The European order for payment procedure should be optional only if there is an alternative common procedure, not when the alternative would be a national order for payment procedure.

4.9.3 For these reasons, the explanatory memorandum and recital 8 of the proposal should be reworded to stipulate clearly that the European order for payment procedure is an alternative only to other common — summary or ordinary — procedures, and not to any similar national procedures.

4.10 The proposal frequently employs the term 'debtor' to refer to the person on whom the European order for payment is served. The EESC feels that this term is incorrect, as it conveys the idea that the person on whom the order is served is a debtor, whereas, until the order for payment is enforced, there is, strictly speaking, no debtor and may never be.

4.10.1 The EESC therefore believes that the term 'debtor' should be replaced with the term 'defendant' wherever it is used in the text so that the same term is used throughout.

4.11 All the time frames laid down in the proposal should be measured in days rather than weeks. The rules for calculating them and the days not counted (e.g. court recesses, public holidays, Saturdays and Sundays) should be clearly specified, for obvious reasons of legal certainty. The EESC suggests using the rules set out in Article 80 et seq. of the rules of procedure of the Court of Justice.

4.12 In procedural law, 'common procedure' and 'ordinary procedure' are two different concepts. In some Member States, the main distinction is between common procedures and special procedures. A procedure is special when the law lays down a specific procedure for specific types of litigation, and it is common in all other cases. A common procedure may be ordinary, summary or accelerated, depending on the value of the claim.

4.12.1 The proposal uses the term 'ordinary procedure' loosely, without making this distinction. Article 2(2) refers to an ordinary procedure as distinct from a summary procedure. Article 6(5), Article 8 and Article 12 use the term 'ordinary procedure/proceedings' to mean the same as common procedure.

4.12.2 Thus, the term 'ordinary procedure/proceedings' used in Article 6(5), Article 8 and Article 12 should be replaced with the term 'common procedure/proceedings'.

5. **Specific comments**

5.1 *Article 2 — European order for payment procedure*

5.1.1 The phrase 'uncontested pecuniary claims for a specific amount that have fallen due' should be replaced with 'uncontested pecuniary claims for a specified net amount that have fallen due'.

5.1.2 For a particular debt to be executable, it must be of a specified amount, which must be net, and it must have fallen due. This kind of concept is very clearly specified in the different legal systems and should be preserved here in order to ensure greater legal certainty in law enforcement.

5.2 *Article 4 — Requirements for the delivery of a European order for payment*

5.2.1 In Article 4(1), the clause '… if the requirements as set out in Articles 1, 2 and 3 are met' should be amended, as Articles 1 and 2 do not actually refer to requirements. Article 1 defines the scope of the regulation and Article 2 specifies the procedure it creates.

5.2.1.1 The EESC therefore suggests the following wording: '… if the conditions and requirements as set out in Articles 1, 2 and 3 respectively are met'.

5.2.2 Article 4(2) gives courts the opportunity to require the claimant to complete or correct the application.

5.2.2.1 In the interests of legal certainty and economy of procedure, the EESC asks the Commission to consider turning this option into an obligation, at least in cases where the application contains particularly blatant errors or omissions.

5.2.2.2 Moreover, the proposal should lay down a specific — of necessity, short — time limit for the claimant to comply with the court's request. If the claimant does not correct the application before the time limit expires, it would then be rejected without further consideration.

5.3 *Article 5 — Rejection of the application*

5.3.1 Under procedural law, generally speaking, an objection or appeal may be lodged against a decision to reject an order for payment application. However, Article 5(2) is intended to ensure that the decision cannot be contested in any way.

5.3.2 Therefore, given the way the order for payment procedure is conceived and the fact that it is optional (which means that there is nothing to prevent other judicial procedures being used), appeal is unnecessary.

5.3.3 In view of this, Article 5(2) should read: 'No objection or appeal shall lie against the rejection of an application for a European order for payment', in order to be consistent with the information given in the explanatory memorandum. (*)

5.4 *Article 6 — European payment notification*

5.4.1 According to the second sentence of Article 6(2), if the defendant's address (as stated previously, the term 'debtor' should be replaced by 'defendant') is known with certainty, methods of service without proof of receipt by the defendant are admissible.

5.4.1.1 The EESC draws the Commission's attention to the fact that the clause 'if the defendant's address is known with certainty' is too vague and could lead to situations of great legal uncertainty with harmful consequences for defendants.

(*) Translator's note: The Portuguese version of the explanatory memorandum uses the word 'recurso' (appeal), while Article 5(2) uses the word 'impugnação' (objection). The English version uses the word 'appeal' in both cases.

5.4.1.2 Some Member States have the system of an address for service: under this system, if the notification is served to the address for service by a contractual party, it is assumed to have been received, and there is therefore no need for proof of receipt. The EESC considers that the establishment of an address for service would not be sufficient to fulfil the requirement of knowing an address with certainty.

5.4.1.3 If this system — i.e. dispensing with the requirement of service with proof of receipt by the defendant — is combined with the system of seizure of goods in default of payment before the notification is actually served on the defendant, a situation could arise where the defendant only becomes aware of the order for payment at the point when it is executed and his or her goods are seized.

5.4.1.4 The EESC believes that this serious situation, which is distressing for people whose goods are seized without them having the opportunity to oppose it, is to be avoided [1]. It therefore proposes, as stressed in its opinion on the aforementioned Green Paper, that the use of methods of service without proof of receipt by the defendant should not be admissible and that the clause 'if the defendant's address is not known with certainty' should therefore be deleted from the end of Article 6(2).

5.4.2 The time limit of three weeks laid down in Article 6(3)(b) should be specified in terms of the equivalent number of days, so as to make it easier to calculate the length of time involved.

5.4.3 In the Portuguese version of the proposal and in some other versions, the nature of the time frame laid down in Article 6(5) should be clarified, e.g. in the Portuguese version the words 'de prescrição' ('of the statute of limitations') should be added after the word 'prazo'. (*)

5.4.4 In its opinion on the aforementioned Green Paper, the EESC also recommended to the Commission 'that the legal instrument should spell out the consequences of failure to provide information on appeals'.

5.4.4.1 The current proposal does not include any such provisions, and so the EESC once again urges the Commission to lay down provisions to this effect.

5.5 *Article 8 — Effects of a statement of defence*

5.5.1 The EESC does not feel that the proposal makes it clear that, once a statement of defence has been lodged, the proceedings are to continue in accordance with the rules of civil procedure of the Member States concerned without the parties having to instigate any further procedures.

5.5.2 Therefore, in Article 8(1), the words 'proceedings shall continue' should be followed by the clause 'automatically, without the need for a new procedure to be instigated'.

5.6 *Article 9 — European order for payment*

5.6.1 As stated with regard to Article 6(2), the second sentence of Article 9(2) stipulates that if the defendant's address (here too, the term 'debtor' should be replaced by 'defendant') is known with certainty, methods of service without proof of receipt by the defendant are admissible.

---

[1] Article 14 of Regulation (EC) No. 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims provides for a debtor to be served without proof of receipt by the debtor but does not consider this admissible if the debtor's address is not known with certainty. Of the various situations provided for, only those described in points c), d) and e) justify the objections raised by the EESC in this opinion and in the opinion on the relevant Green Paper.

(*) Translator's note: The Portuguese version of the explanatory memorandum uses the word 'recurso' (appeal), while Article 5(2) uses the word 'impugnação' (objection). The English version uses the word 'appeal' in both cases.

5.6.2 The EESC draws the Commission's attention to the fact that the clause 'if the defendant's address is known with certainty' is too vague and could lead to situations of great legal uncertainty with harmful consequences for the defendants.

5.6.3 For this reason, the EESC feels that exactly the same proposal as it made with regard to Article 6 applies here, in other words that the use of methods of service without proof of receipt by the defendant should not be admissible and that, therefore, the clause 'if the defendant's address is not known with certainty' should be deleted from the end of Article 9(2).

5.7 *Article 11 — Opposition to the European order for payment*

5.7.1 If the Commission accepts the EESC's suggestion that the use of methods of service without proof of receipt by the defendant should not be admissible, Article 11(4)(a)(i) should be deleted to ensure consistency.

5.7.2 The expression 'acts promptly' in the final sentence of Article 11(4) is very vague and is open to many different interpretations.

5.7.2.1 In order to ensure legal certainty, the EESC therefore proposes that the Commission specify a time limit within which the rights set forth in Article 11(4) must be exercised.

5.8 *Article 12 — Effects of the lodging of a statement of opposition*

5.8.1 As stated with regard to Article 8, the proposal does not make it clear that, once a statement of defence has been lodged, the proceedings are to continue in accordance with the rules of civil procedure of the Member States concerned without the parties having to instigate any further procedures.

5.8.2 Therefore, the words 'proceedings shall continue' should be followed by the clause 'automatically, without the need for a new procedure to be instigated'.

5.9 *Article 13 — Legal representation*

5.9.1 The EESC believes that making representation by a lawyer or another legal professional non-mandatory may be admissible when the value of the claim is sufficiently low as to make it not worth the expense of engaging experts of this kind.

5.9.2 However, unlike some Member States' laws, the proposal does not specify ceilings for application of the order for payment procedure, with the result that it could be used to recover large sums which, under the laws of certain Member States, ought to require use of an ordinary procedure if opposition is expressed.

5.9.3 In such circumstances, it is not sensible for a legal professional only to be engaged when a case is being transferred to an ordinary civil procedure. Indeed, when completing the proposed response form, a debtor is required not only to state whether or not he acknowledges the debt but also to lodge a statement of opposition relating to the claim in its entirety or, in respect of the principal claim, only to the interest or only to the costs. If a debtor completes this form, he might inadvertently weaken any defence that his lawyer might adopt, should a lawyer be involved from the beginning of the order procedure.

5.9.4 On the other hand, making representation by legal professionals non-mandatory could have a negative impact where the parties involved are very unevenly matched (consumers against professionals, large businesses against small or family businesses).

5.9.5 For these reasons, the EESC advises the Commission to consider making representation by a lawyer or another legal professional mandatory where the sums involved exceed a set amount (such as EUR 2 500).

5.10 *Article 14 — Costs*

5.10.1 The EESC believes that a paragraph 2 should be added to Article 14, worded as follows: 'There shall be no charge for the European order for payment procedure if no statement of defence or opposition is lodged.'

5.10.2 Given that the order for payment procedure is an out-of-court procedure, it is proposed that a single, initial, small fee be established, irrespective of the value of the claim.

5.10.3 If this is not thought advisable, the regulation should make it clear that Member States' national legislation transposing Directive 2003/8/EC of 27 January 2003 on access to justice in cross-border disputes is applicable in the present case (*).

5.11 *Annexes: Forms*

5.11.1 The proposed system rests on the use of the forms reproduced in annexes 1, 2 and 3 (*). The procedures will only run smoothly if the forms serve the purpose for which they are intended.

5.11.2 The EESC has well-founded doubts about the effectiveness and practicality of the forms used in cross-border disputes.

5.11.3 For example: if an Italian company which is owed money by a Polish consumer submits an application for a European order for payment to an Italian court, will the Polish consumer receive the payment notification in Italian or Polish? If it is in Italian, what guarantee is there that the consumer will understand it and be able to decide whether to make a statement of defence? If it is in Polish, who will be responsible for translating it?

5.11.4 The claimant does not merely have to tick boxes in the form; he also has to add written information. Who will be responsible for translating this? And who will certify that the translation is accurate?

(*) Translator's note: The English version already mentions the statute of limitations.
(*) Translator's note: The English version already mentions the statute of limitations.

5.11.5 Regulation 1348/2000, of 29 May 2000, on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, does not allay the concerns referred to above, due to the rather informal and unhurried nature of the European order procedure now under examination.

5.11.6 Indeed, even if the aforementioned hypothetical Polish consumer were to receive a European order for payment in his mother tongue, in which language would he reply? Who would provide a translation from Polish into Italian? Conversely, if he does not receive the notification in Polish, he could, legally speaking, refuse to accept it. Any situation of this nature, however, would create barriers that would adversely affect the swiftness of the European order for payment.

5.11.7 The EESC therefore asks the Commission to consider the most effective way of ensuring that the use of these forms in cross-border disputes does not jeopardise the swift recovery of debts or the defendant's right of defence.

5.11.8 The EESC also thinks that all the forms apart from the response forms are too complicated to be filled in by people without legal training.

5.11.9 A number of terms (statutory interest rate; % above the base rate of the ECB; order for payment; 'can be enforced against you') could be unclear to the layman. As the Commission proposes to make legal representation non-mandatory (although the EESC thinks that this should only be the case for small sums), action is needed to ensure that the users of the forms understand them and can fill them in correctly.

5.11.10 In Portugal at least, the terms 'rent' and 'hire' relate to two separate concepts (immovable property is rented, movable property is hired). In the Portuguese version of point 8.2 of the application for a European order for payment and in point 9.3 of the European payment notification, the term 'contrato de locação' should therefore be used for movable property. The terminology used in the other language versions should also be checked against the terms to be found in Member States' civil law.

5.11.11 Lastly, point 11 of the application for a European order for payment and point 12 of the European payment notification will be very difficult for the layman to complete. The EESC suggests that this matter be analysed by the court on the basis of the place of residence of the claimant and defendant.

Brussels, 9 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a European Parliament and Council recommendation on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry

(COM(2004) 341 final — 2004/0117 (COD))

(2005/C 221/17)

On 14 May 2004, the Council decided to consult the European Economic and Social Committee, under Article 157 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was Mr Pegado Liz.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 73 votes to two:

1. **Summary of the proposal for a recommendation**

1.1 With this proposal for a recommendation [1], on the content of audiovisual and information services, covering all forms of delivery, from broadcasting to the Internet, the Commission proposes to follow up the second evaluation report, of 12 December 2003, on the application of the Council Recommendation of 24 September 1998, on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. [2]

1.2 The main reasons given for the need for this additional recommendation are, firstly, the challenges posed by recent developments in technology, including the power of new computers and the fact that broadband technologies allow distribution of content such as video on 3G mobile telephones. [3] Secondly, the proliferation of illegal, harmful and undesirable content and conduct in all forms of digital broadcasting, from radio and television to the Internet, continues to be a concern for the general public and in particular parents and educationalists, the industry and law-makers.

1.3 Although the Commission has its own powers to draft recommendations in this field, which does not fall within the scope of legislative harmonisation, wherever it deems this necessary to ensuring the operation and development of the common market, it wished in this case, to involve the Council and the European Parliament directly in drafting and adopting this document.

One of the recommendation's aims is to enhance the competitiveness of the European audiovisual and information industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, and the Commission believes that the broader public debate, instigated by the European Parliament, together with the commitment of the Member States meeting within the European Council will make it easier to fulfil this aim. The Commission therefore proposes that Article 157 of the Treaty should be used as the legal basis for adopting the Recommendation.

1.4 In this Proposal for a Recommendation, the Commission hopes that the European Parliament and the Council recommend that the Member States establish the legal or other conditions fostering a climate of confidence which will promote the development of the audiovisual and information services industry.

To this end, it highlights four types of measures, with a view to:

---

[1] Doc. COM(2004) 341 final of 30.4.2004.

[2] Recommendation 98/560/EC published in OJ L 270 of 7.10.98; on this proposal, the Committee issued opinion CES 626/98 of 29 April 1998 (rapporteur: Mrs Jocelyn Barrow). In turn, the second evaluation report is contained in Doc. COM(2003) 776 final.

[3] See the Commission Communication on *Connecting Europe at high speed*: *recent developments in the sector of electronic communications* (COM(2004) 61 final) and OJ C 120 of 20.5.2005, rapporteur: Mr McDonagh; see also the Commission Communication on Mobile Broadband Services (COM(2004) 447 of 30.6.2004).

a) ensuring the right of reply across all media, including the Internet, without prejudice to the possibility of adjusting the way the right is exercised to the specific characteristics of each type of medium;

b) enabling minors to make responsible use of on-line audiovisual and information services, in particular by improving the level of awareness among parents, educators and teachers of the potential of the new services and of the means whereby they may be made safe for minors, in particular through media literacy or media education programmes;

c) facilitating identification of, and access to, quality content and services for minors, including through the provision of means of access in educational establishments and public places;

d) encouraging the industry to avoid discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media.

1.5 The Commission believes, furthermore, that the European Parliament and the Council must recommend that the various industries and parties concerned

a) adopt initiatives to provide minors with broader access to audiovisual and information services, with guarantees that programme content will be safe and monitored, while avoiding potentially harmful content, including a 'bottom-up' harmonisation through cooperation between self-regulatory and co-regulatory bodies in the Member States, and through the exchange of best practices concerning such issues as a system of common, descriptive symbols which would help viewers to assess the content of programmes;

b) and avoid and combat all and any form of discrimination and promote a diversified and realistic picture of the skills and potential of both women and men in society.

1.6 The Annex to the Proposal contains some indicative guidelines for the implementation, at national level, of measures aimed at ensuring the right of reply across all media including:

— legitimate interest, regardless of nationality;

— time spans that are consistent with the exercise of this right;

— the option to appeal to the courts.

2. **Background to the proposal**

2.1 The issue of protecting minors against harmful content and the exercise of the right to reply in television programmes appears for the first time in Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities ([4]), amended by Directive 97/36/EC of the European Parliament and Council, of 30 June 1997 ([5]) (known as the 'Television without frontiers' Directive).

2.2 Nevertheless, and as the Commission recalls, the first Community text that sought to introduce a degree of regulation into the content of audiovisual and information services was the Recommendation of 24 September 1998 which, echoing the substance of the considerations contained in the Green Paper on the *Protection of minors and human dignity in audiovisual and information services* of 16 October 1996 ([6]) and the conclusions of the Resolution on illegal and harmful content on the Internet, of 17 February 1997 ([7]), put forward a series of recommendations to the Member States, industry and the parties concerned, to foster, mainly by means of self-regulation, a climate of confidence that would promote the development of audiovisual and information services, ensuring a high level of protection of minors and of human dignity.

([4]) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 298 of 17.10.1989, p. 23.

([5]) Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 202 of 30.7.1997, p. 60.

([6]) COM(96) 483 final, on which the EESC delivered an opinion. The rapporteur was Dame Jocelyn Barrow, in OJ L 287 of 22.9.1997, p. 11.

([7]) OJ C 70 of 6.3.1997.

2.3 As regards this important text, in its opinion of 29 April 1998, ([8]) the European Economic and Social Committee drew attention to various crucial aspects relating to the principles, nature, scope and content of any regulation that seeks to ensure the effective protection of minors and human dignity in the audiovisual media. In brief, it concluded by recommending a harmonised and integrated international approach to regulation on audiovisual services. It highlighted the aspects of the use of content rating systems and filtering software, clarification on responsibility for illegal and harmful content, recommending initiatives to educate and to raise the awareness of parents, educators and teachers and called for greater cooperation and coordination between European and international organisations. The opinion also proposed that a European or preferably international framework be established for codes of conduct, guidelines and grass-roots measures to ensure the suitable protection of minors and of human dignity.

2.4 Following this initial text, several initiatives with similar concerns have been adopted at Community level, by the Council and the Commission ([9]).

([8]) Opinion in OJ C 214 of 10.7.1998. The rapporteur was Dame Jocelyn Barrow.

([9]) The most important of these are:

a) **Decision No 276/1999/EC** of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks, mainly as regards protecting children and minors (in OJ L 33 of 6.2.1999 amended by Decision 1151/2003/EC of 16 June 2003, in OJ L 162 of 1.7.2003, extending the action plan for two years).

b) the Commission Communication of 14 December 1999, on Principles and guidelines for the Community's audiovisual policy in the digital age , which states that the framework must also guarantee effective protection of society's general interests, such as the freedom of expression and right of reply, protection for authors and their works, pluralism, consumer protection, the protection of minors and of human dignity and the promotion of linguistic and cultural diversity (COM(1999) 657 final).

c) the Council Conclusions of 17 December 1999 on the protection of minors in the light of the development of digital audiovisual services , which highlight the need to adapt and complement current systems for protecting minors from harmful audiovisual content, in the light of ongoing technical, social and market developments (in OJ C 8 of 12.1.2000);

d) Directive 2000/31/EC of 8 June 2000 on electronic commerce, which contains provisions relevant to the protection of minors and human dignity, in particular Article 16(1)(e), according to which Member States and the Commission are to encourage the drawing-up of codes of conduct regarding the protection of minors and human dignity (in OJ L 178 of 17.7.2000);

e) Commission Communication: Creating a Safer Information Society by improving the Security of Information Infrastructures and Combating Computer-related Crime, which proposes an entire range of legislative and non-legislative measures to react against infringements of privacy, unauthorised access, industrial sabotage and abuse of intellectual property (COM(2000)890 final: rapporteur, Mr Dantin, and the Proposal for a Framework Decision on attacks against information systems, which succeeded it (COM(2002) 173 final of 19.4.02 and the opinion of 28.11.01, in OJ C 48 of 21.1.02: 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: rapporteur, Mr Retureau.

f) Evaluation Report to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, which describes the results regarding the recommendation's application as 'encouraging'. The report also, however, highlights the need for users to be more closely involved and for more time to be allowed for fully applying the recommendation. These points were highlighted in the Council conclusions of 23 July 2001 on the Commission's evaluation report (in OJ C 213 of 31.7.2001.

g) the Fourth Report from the Commission on the application of Directive 89/553/EEC Television without Frontiers, adopted on 6 January 2003, the annex to which, in its work programme for reviewing the directive, proposed holding a public consultation which addressed, inter alia, the problems of protection of minors and the right of reply (COM(2002) 778 final of 06.1.03. The public consultation was based on discussion papers published on the Commission website: http://europa.eu.int/comm/avpolicy/regul/review-twf2003/consult_en.htm.

h) the second evaluation report on the Council recommendation of September 1998 referred to above and adopted on 12 December 2003, which contains a critical analysis of the measures adopted by the Member States and at EU level;

i) the Commission Communication on the Future of European Regulatory Audiovisual Policy, which sets out the medium-term priorities for Community policy on regulating the sector under discussion against the backdrop of an enlarged Europe and in which, taking into account the concerns expressed in the public consultation process for the TWF Directive, the Commission referred to the need to update the Recommendation on the protection on minors and human dignity, focusing on the development of self- and coregulatory models, in particular with a view to the online environment, in order to ensure due respect for the principles of protection of minors and public order. The Commission also announced that it would adopt the idea of a right of reply that applies to all forms of media, and which could initially be enshrined in the Recommendation on the protection of minors and human dignity, COM(2003) 784 final of 15.12.03.

j) the recent Proposal for a European Parliament and Council Decision on establishing a multiannual Community programme on promoting safer use of the Internet and new online technologies focusing on the end-users – particularly parents, educators and children (COM(2004) 91 final of 12.3.04).

2.5 The EESC too has taken a number of initiatives that have identical concerns. The most important of these are:

a) the opinion on *A programme for child protection on the Internet* ([10]);

b) the opinion on the Commission Communication on Principles and guidelines for the community's audiovisual policy in the digital age ([11]);

c) The opinions on Proposals for Decisions 276/1999/EC and 1151/2003/EC, (respectively Doc. COM(1998) 518 final and COM(2002) 152 final) ([12]);

d) the opinion on the Proposal for a European Parliament and Council decision on safer use of the Internet (Doc. COM(2004) 91 final of 12.3.2004) ([13]).

The reader is referred to the considerations and recommendations contained in them.

3. **General comments**

3.1 The EESC welcomes the Commission initiative to extend and implement the EP and Council Recommendation of 24 September 1998 in the light of the results of the second evaluation report on its implementation in key aspects such as the protection of minors and human dignity, combating social discrimination in any form and ensuring the right of reply across the media, including the Internet.

3.2 The EESC acknowledges that, in the current context, the Treaty does not grant the European Union own powers to harmonise laws in the audiovisual sector but is unhappy at this state of affairs and recommends that it be addressed in the next revision of the Treaties.

3.3 The EESC finds it illogical that, in order to protect minors and human dignity, to protect honour and privacy in the media within the European Union, with the completely open borders provided for in the *TV without frontiers* Directive, it should be necessary to invoke as a key factor not rights relating to the personality as such, but *'the development of the competitiveness of the European audiovisual and information services industry'*. Protecting this core of fundamental citizens' rights must not be seen as a merely incidental aspect of achieving the aim of developing the audiovisual market.

3.4 The EESC does recognise, however, that given the aforementioned legal restrictions, the recommendation, broadly in the terms drawn up by the Commission, is the best way of making progress on the issues at stake. It also agrees with the legal basis suggested by the Commission for this recommendation (Article 157 of the Treaty establishing the European Communities), which is in fact identical to the legal basis used in the Council Recommendation of 24 September 1998 on developing the competitiveness of the European audiovisual and information services industry, by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity ([14]), complemented by the present draft recommendation and by Council Decision of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus — Development, distribution and promotion 2001-2005) ([15]).

3.5 The EESC reiterates the view expressed in the opinion ([16]) on the proposal for a *Council recommendation on the protection of minors and human dignity in the audiovisual and information services industry* (98/C 214/07), to the effect that the European audiovisual and information services industry can only achieve its full potential in a climate of confidence which, in turn, can only be achieved by guaranteeing the protection of minors and human dignity.

([10]) OJ C 48 of 28.2.2002 The rapporteur was Ms Davison.
([11]) OJ C 14 of 16.1.2001. The rapporteurs were Mr Morgan and Mr Carroll.
([12]) OJ C 214 of 10.7.1998. The rapporteur was Ms Drifthout-Zweijtzer and Opinion in OJ C 73/2003 of 26.3.2003. The rapporteur was Ms Davison.
([13]) OJ C 157 of 28.6.2005, adopted by the Plenary on 16.12.2004. The rapporteurs were Mr Retureau and Ms Davison.
([14]) OJ L 270 of 7.10.1998, p. 48
([15]) OJ L 13 of 17.1.2001, p. 35. See also the recent proposal for a Decision on the MEDIA 2007 Programme, COM(2004) 470 final of 14.7.2004 and the EESC opinion being drawn up by the rapporteur for this opinion.
([16]) Opinion of the Economic and Social Committee on the *Proposal for a Council Recommendation concerning the protection of minors and human dignity in audiovisual and information services* (98/C 214/07), OJ C 214 of 10.7.1998, p. 25.

3.6 The EESC also confirms its belief that only a harmonised and integrated international approach to the regulation of audiovisual services can result in the effective implementation of any protection measures, in particular as regards aspects of the rating systems and filtering software and clarification on responsibility for illegal and harmful content. Hence the Committee's renewed call for greater cooperation and coordination between European and international organisations and its reiteration of the proposal to establish international codes of conduct, guidelines and grass roots measures for the adequate protection of minors and human dignity.

3.7 The EESC draws attention in particular to the definition of the concept of human dignity provided by the European Union's Charter of Fundamental Rights, which is an integral part of the European Constitution (Article I-2) and to the need, in the context of this proposal for a Recommendation, for this concept to be viewed in a way that is entirely consistent with the aim and the content of the aforementioned Charter.

3.8 The EESC believes that effectively protecting minors and human dignity in the light of technological developments in the audiovisual and information services industry requires, in particular, the promotion of media literacy *'to enable consumers to use the media in a manner geared to the values of society and to develop a sense of judgment in these matters'* ([17]).

3.9 Where the Internet in particular is concerned, the EESC believes it to be crucial to coordinate policies and measures to promote literacy and the safe use of the Internet by minors, and consequently agrees with the conclusions of the European Forum on Harmful and Illegal Cyber Content: Self-Regulation, User Protection and Media Competence, organised by the Council of Europe on 28 November 2001 ([18]).

3.10 The EESC reiterates its support for self-regulation, where justified, and highlights the importance of using co-regulatory models because these appear to be particularly effective for implementing rules on protecting minors, as specifically mentioned in the Commission Communication, *the Future of European Regulatory Audiovisual Policy* COM(2003) 784 final of 15 December 2003 ([19]).

3.11 Without prejudice to the vital importance of initiatives to promote media literacy, the EESC welcomes the idea of establishing Community criteria for describing and identifying audiovisual content whilst stressing, however, in order to take account of specific cultural characteristics, that content should be reviewed at national and regional level.

3.12 The EESC wishes to express its support for the vast majority of very positive innovations and developments contained in the new Commission initiative, which represent significant progress in relation to its previous Recommendation. Of these it would highlight:

a) the reference, in the first indent of point I(2) to media literacy and media education programmes;

b) the call for active encouragement to combat all and any form of discrimination, above and beyond a purely passive concept of 'avoiding' such discrimination, in point I(3);

c) the idea of a 'bottom-up' harmonisation through cooperation between self-regulatory and co-regulatory bodies in the Member States, and through the exchange of best practices concerning such issues as a system of common, descriptive symbols which would help viewers to assess the content of programmes (point II(1));

d) and, in particular, the recommendation to ensure the right of reply across all media, including the Internet, assuming that the same right will also apply to the Community institutions' own publications and broadcasts.

3.13 The EESC believes, however, that it should have been possible to take the recommended approach further, in the following ways:

([17]) Paragraph 14 of the European Parliament Resolution on the Commission's Evaluation Report to the Council and the European Parliament on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity COM(2001) 106.

([18]) European Forum on Harmful and Illegal Cyber Content: Self-Regulation, User Protection and Media Competence, 28 November 2001 (Human Rights Building).

([19]) Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: the Future of European Regulatory Audiovisual Policy COM(2003) 784 final of 15.12.2003; see also the revised Draft Information Report on the current state of co-regulation and self-regulation in the Single Market (INT/2004 of 16.11.2004). The rapporteur was Mr Vever.

4. **Specific comments**

4.1 *Protection of minors*

4.1.1 Minors are not the only group requiring special protection from certain harmful and dangerous content, involving in particular violence, pornography and paedophilia — this also applies to other more sensitive or vulnerable groups, such as the elderly or persons with learning difficulties, and the recommendation should also take these groups into account.

4.1.2 Various aspects relating to the protection of minors, raised by the EESC in its recent opinion on the Proposal for a European Parliament and Council Decision on establishing a multi-annual Community programme on promoting safer use of the Internet ([20]), should be seen as useful recommendations to the Member States, to be incorporated into this Proposal for a Recommendation and including, in particular:

a) better training and information on the means of making Internet use safer;

b) holding Internet service providers liable and obliging them to comply immediately with any decision of a legitimate authority ordering that that they should cease transmission of illegal, harmful or dangerous programmes or content;

c) encouraging and supporting the introduction of hotlines, filtering technologies, content rating, and anti-spam and spim measures;

d) making authors of Internet access software and server operating systems liable for protecting and maintaining any systems sold against virus attacks, with the obligation to provide easy and accessible anti-virus technology;

e) implementing systems to identify and provide information on harmful and dangerous content and the withdrawal of all racist or xenophobic content or content which advocates crime, violence or hatred.

4.1.3 Specific concerns about Internet use must not mean, however, that less attention is paid to traditional forms of media, in particular radio and television broadcasts, where serious offences against vulnerable members of the public, particularly minors, must be dealt with as a separate issue, either through self-regulation or regulation by other bodies.

4.2 *Protection of human dignity*

4.2.1 Protecting human dignity in the media cannot be confined to banning all forms of discrimination. Programmes with content that could undermine anyone's privacy or fundamental rights must also, where this is justified by the potential effect on society, be discussed by the competent national authorities.

4.2.2 The Member States must also be recommended, in this area, to:

a) encourage the media to adopt precise and specific ethical rules to ensure due respect for privacy;

b) encourage the media to put in place self-regulatory mechanisms to which the victims of attacks on privacy and human dignity can address complaints;

([20]) See footnote 13

c) set up independent bodies, including judicial bodies, to hear this type of complaint should the self-regulatory mechanisms prove ineffective;

d) establish a right to compensation for material and non-material damage which would at the same time provide redress for victims and act as a deterrent for those responsible for serious and systematic attacks on people's privacy and human dignity;

e) monitor programmes with content that could constitute attacks on privacy, human dignity and fundamental rights.

4.3 *Right of reply*

4.3.1 In addition to a right of reply, provision should also be made for a 'right of correction', with the same general scope and in the same conditions, in order to combat false, incorrect or inaccurate content that affects people's rights.

4.3.2 It must be stated clearly that the right of reply can be guaranteed not only by legislative means but also by the use of co-regulatory and self-regulatory measures.

4.3.3 The Annex must include provisions on:

a) the precise and mandatory identification of cases in which publication of a reply or correction can be rejected (as stated in Resolution 74/26 of the Council of Europe), and determination of a short deadline within which any rejection must be made;

b) the principle that the reply must be given the same prominence in the place of publication or type of broadcast as that in the publication/broadcast being replied to;

c) the principle that exercising the right of reply and the right of correction must be free of charge.

4.3.4 The first indent of the annex, which reads *regardless of nationality* should be expanded to read *or of place of residence*.

5. **Final comments**

5.1 The EESC once again welcomes the proposal for a recommendation now being considered, with the reservations stated in the 'specific comments' section and, given that technological innovation and progress will create new challenges in terms of both quality and quantity, also suggests that an evaluation of the recommendation's impact on Member States, industry and the other interested parties should be made, four years after its adoption.

5.2 Bearing in mind the evaluation process referred to in the previous point, the EESC suggests that a Monitoring Centre should be set up, with the task of systematically charting the measures promoted by the Member States, by industry and parties involved in implementing this recommendation.

Brussels, 9 February 2005.

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

Opinion of the European Economic and Social Committee on Employment policy: the role of the EESC following the enlargement of the EU and from the point of view of the Lisbon Process

(2005/C 221/18)

On 1 July 2004 the Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on Employment policy: the role of the EESC following the enlargement of the EU and from the point of view of the Lisbon Process.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 January 2005. The rapporteur was Mr Greif.

At its 414th plenary session on 9 and 10 February (meeting of 9 February 2005), the European Economic and Social Committee adopted the following opinion by 138 votes to 1, with 4 abstentions:

1. **Introduction**

1.1 In March 2000, the Lisbon European Council launched an exacting reform programme with ambitious growth and employment objectives. The aim was to combine enhanced competitiveness in a knowledge-based economy and sustainable job-creating economic growth on the one hand, with better quality of employment and greater social cohesion on the other. The reform package, which enjoyed broad support, fuelled the hope that putting it into practice on the ground would draw Europe's grassroots citizens much closer to the venture of EU enlargement.

1.2 Given the current economic position, there is a risk that the 2010 targets — particularly in relation to employment — will not be met, thereby threatening the credibility of the entire process. The European Economic and Social Committee feels that the only way to defuse this credibility issue is to give the public confidence in the efforts of political players to secure the consistent implementation of the Lisbon strategy with its matching, equal-status objectives (enhanced competitiveness, economic growth with more and better jobs, greater social cohesion and sustainable environmental development).

1.3 The Committee firmly believes that what the Lisbon strategy needs is not a new agenda, but rather a policy approach that also seeks to achieve the set targets through appropriate action, particularly at the level of the Member States. In issuing this own-initiative opinion and building on its earlier opinion on *Improving the implementation of the Lisbon strategy* ([1]), the Committee is seeking to identify key employment challenges and submit recommendations for the further implementation of the process from now until 2010.

2. **The Lisbon strategy mid-term review: Europe is far from achieving the goal of more and better jobs.**

2.1 In the Lisbon strategy, enhanced competitiveness and sustainable economic growth are considered to be key instruments enabling more and better jobs to be created in Europe and to put social security systems on a more solid foundation as a protection against poverty and exclusion. The Committee feels that this holistic approach is one of the Lisbon strategy's notable strengths.

2.2 On the jobs front, Lisbon was designed to breath new life into the European employment strategy, to strengthen the role of pro-active employment policy in tackling poverty, to foster entrepreneurship as a key engine of growth and employment and to increase labour force participation across the EU through quantitative targets.

— The aim was, by 2010, to raise the average overall EU employment rate from 61 % to 70 % and to increase the number of women in employment from 51 % to 60 %. A year later, intermediate targets were agreed on in Stockholm to raise the employment rate to 67 % overall and 57 % for women by 2005. A new target was also introduced to increase the employment rate among 55- to 64-year-olds to 50 % by 2010.

([1]) EESC opinion on *Improving the implementation of the Lisbon strategy* (rapporteur: Mr Vever, co-rapporteurs: Mr Ehnmark and Mr Simpson) (OJ C 120 of 20.5.2005).

— Proceeding from their different starting points, Member States were asked to set correspondingly ambitious national targets. Those countries that already had an employment rate of over 70 % in 2000 (such as Sweden, the Netherlands, Denmark and the UK) — or just under (Austria, Portugal and Finland) — were thus also expected to make an appropriate contribution to the Lisbon objectives.

2.3 Lisbon did not, however, merely raise the prospect of 'more jobs' but also introduced the notion that performance and competitiveness were to be achieved above all by fostering innovation and improving the quality of employment. Investment in human resources, research, technology and innovation was therefore given the same priority as labour market and structural policies. Accordingly, further quantitative targets were set, including increasing per capita investment in human resources and promoting lifelong learning (securing a further-training take-up rate of 12.5 % among all adults of working age, halving the number of 18- to-24 year olds not in further education and training), raising the R&D rate to 3 % of GDP (with two-thirds of the investments coming from the private sector) and improving childcare provision (providing childcare facilities for 33 % of 0- to 3-year-olds and 90 % of children up to mandatory school age).

2.4 Despite some initial successes, Europe at the beginning of 2005 is still far from reaching its ambitious targets. The European economy is now in its third successive year of very low and substantially below-par growth. Overall economic recovery is hesitant and, given high oil prices and massive global imbalances, highly vulnerable. As a sobering mid-term balance, it is virtually certain that the Lisbon employment targets will not be met by 2010.

2.5 All three graphs 1-3 (see below: in each case the highest figure represents the Lisbon goal) indicate how unlikely it is that the Lisbon targets will be realised by 2010.

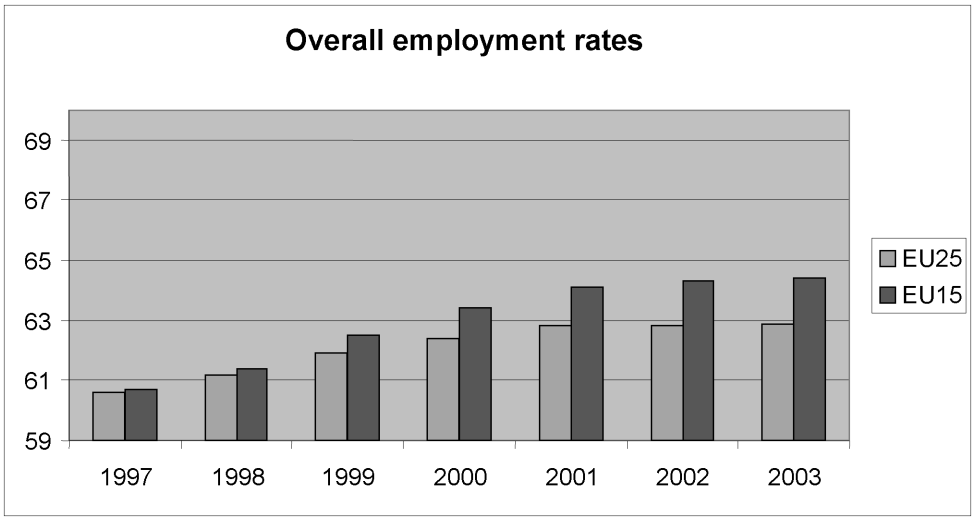
— Both the overall and female employment rates rose fairly quickly during the late 1990s, as the European economy achieved relatively rapid growth. The economic slowdown, caused by external shocks from which macroeconomic policy provided an inadequate shield, meant that overall progress in employment rates came to a virtual standstill in 2001. The female rate has continued to rise at about ½ % a year. A swift upturn in economic growth may make this target reachable by 2010, at least for the EU-15.

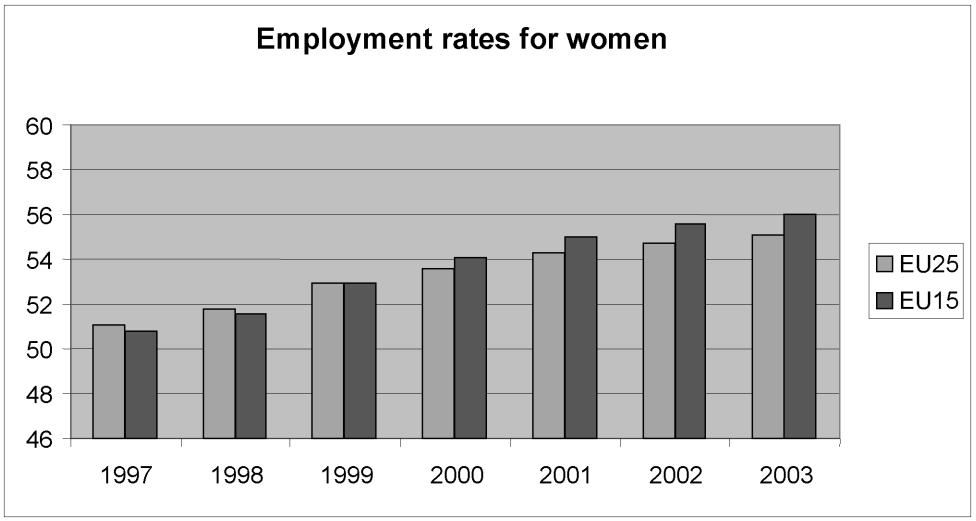
— At more than 8 % for the EU-15 and almost 10 % for the EU-25, the gap to the employment target for older workers is widest and least bridgeable ([2]). However, the pick-up in the rates of increase, despite the economic slowdown, appears to indicate that measures taken to avoid early retirement and promote active ageing under the Lisbon strategy have had some effect. For instance, the average exit age from the labour market increased from 60.4 years in 2001 to 60.8 in 2002 ([3]). For the other two main employment indicators, however, the irony is that employment growth was on target before the announcement of the Lisbon strategy, but has not been so since. This is clearly indicative of the importance of cyclical and macroeconomic factors. These have been neglected at the expense of a focus on so-called 'structural' measures. Both are important, however.

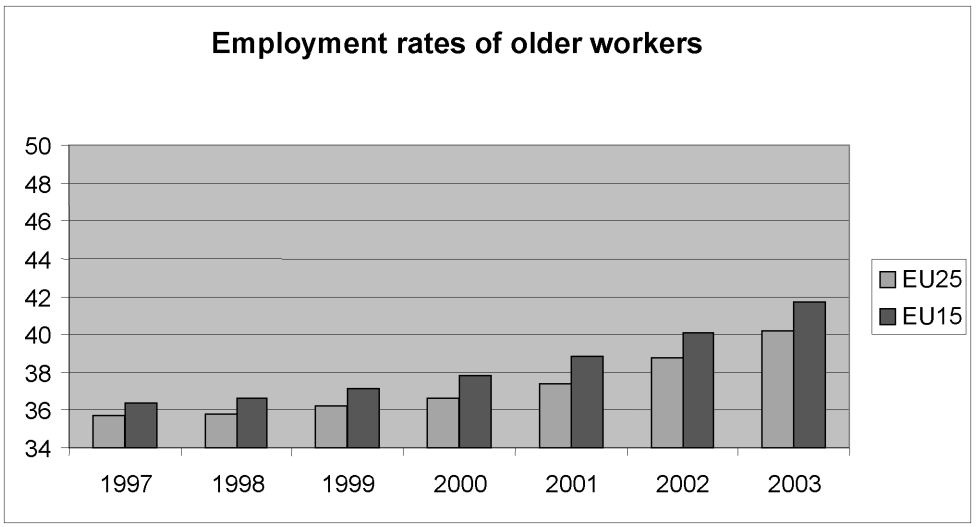
([2]) On this point, see the EESC opinion of 16.12.2004 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on increasing the employment of older workers and delaying the exit from the labour market* (rapporteur: Mr Dantin – OJ C 157 of 28.6.2005).

([3]) See the Communication from the Commission on *Increasing the employment of older workers and delaying the exit from the labour market* (COM(2004) 146 final).

Graphs 1 — 3: **Developments in the Lisbon employment objectives** ([4])







([4]) Eurostat data are currently only available to 2003. Given very sluggish employment growth, however, the 2004 figures will at best be only marginally higher than those for 2003.

2.6 Meeting the 70 % Lisbon target would necessitate the creation, by 2010, of some 15 million new jobs in the EU-15 and 22 million in the EU-25. That works out at more than 3 million new jobs a year, as many as were created in the EU-15 in 2000, the best year for employment for over a decade.

2.7 EU enlargement is generating economic momentum across Europe but is also a key factor in employment trends. As the graphs above show, employment rates in the new Member States are lagging considerably behind those in the EU-15. Even in the late 1990s, that was not the case, especially for women. On the other hand, current economic development in the new Member States is considerably more dynamic, with annual growth rates sometimes running at well over 4 %. The EU must pay special attention to the needs of the new Member States when framing its employment strategy so that these countries too can meet the Community-wide employment targets. In doing so, the convergence criteria for any desired accession to the euro-zone must be such that they foster rather than hinder economic development and employment growth. The Committee has already addressed this issue in depth with representatives from organised civil society from the new Member States in the joint consultative committee.

3. **Employment policy must mean more than labour market structural reform**

3.1. The weak employment position outlined above is doubtless due in no small measure to economic developments. The Lisbon objectives were devised on the presumption of 3 % annual average growth in real GDP. Instead of the expected upswing, however, the economic environment has deteriorated rapidly since 2000. Growth rates in subsequent years have been extremely low: 1.7 % in 2001, 1 % in 2002 and just 0.8 % in 2003.

3.2. Against that background, it is clear that the employment targets cannot be met unless we succeed in ushering in a sustainable economic upswing. Appropriate framework conditions which are conducive not only to external demand, but also to internal demand must be established, in order to enhance the potential for growth and to achieve full employment. On that score, the Committee has, on a number of occasions recently, pointed out the need for a 'sound macroeconomic background' at European level. This includes, above all, a macropolicy which gives Member States scope to take cyclical action in economic and finance policy during times of economic stagnation, and the appropriate room for manoeuvre during times of economic growth.

— The Committee therefore welcomes the Commission's reform proposals for the stability and growth pact as a step in the right direction, particularly the proposal that any assessment of fiscal deficits should to be made contingent on the specific circumstances of the country concerned (e.g. economic situation, debt levels, inflation). The fact that Member States and national parliaments are to be involved more fully in budgetary consolidation also reflects the more growth-oriented thrust of the reformed pact. Moreover, greater attention must thereby be paid to the quality of public expenditure, for instance by explicitly removing strategic investments for growth and employment from the deficit calculation. ([5]) It should be the Council, acting on the Commission's proposals, that defines what should be declared as strategic investment of European interest.

— This should be backed up by a pragmatic monetary policy that takes account of the economy as a whole and thus also the impact on jobs. With this in mind, the EESC has repeatedly called for serious reflection on the measures needed to ensure that the ECB meets a stability target in the broader sense, taking into account not only monetary stability but also the stability of growth, full employment and the social cohesion systems. This would necessitate constant dialogue with the European institutions and the social partners, and would also boost the confidence of investors and consumers alike.

([5]) On this point, see, among other things, the EESC own-initiative opinion of 26 February 2004 on *budgetary policy and type of investment* (rapporteur: Ms Florio) (OJ 322, 25.2.2004, ECO/105).

3.3. The slowdown in growth of the past few years (after a growth rate that still reached 3 % in the EU-15 in 2000) was due mainly to macroeconomic factors, and less so to structural ones. The Committee has therefore repeatedly urged that this fact be reflected in the recommendations of the European broad economic policy guidelines ([6]). The main elements of demand — consumption and investments (both private and public) — need to be given a substantial boost so as to offset Europe's weak buying power. Europe — with a positive trade balance and increasing exports — is without doubt competitive. What is stagnating, however, is internal demand. Structural reforms can only succeed in a more favourable macroeconomic climate. Wages must not only be seen as a supply-side cost factor, but also as a major determinant of demand and therefore of the market prospects for small and medium-sized enterprises, which are tied to a specific location. As the example of Germany shows, marked wage moderation may well strengthen the supply side, but at the same time stymies any economic recovery by weakening demand. Although wage negotiations are influenced by several factors, it should be noted that gearing real wage increases to national rises in productivity across the economy as a whole generates adequate growth in demand at the same time as underpinning the European Central Bank's focus on stability. This approach to economic policy can help Europe achieve sustained, stability-oriented economic growth.

3.4. Over the past few years, European policy recommendations have been dominated by the view that the problem with the European labour market lies in structural factors (such as social partners' wage policies, rigid labour market regulation, excessively short working time and an immobile, inflexible workforce). Indeed, employment policy in most Member States has, over the past few years, focused on these factors. In contrast, moves to foster employability, eliminate skills deficits and get disadvantaged groups into work have clearly been left by the wayside.

3.5. In this connection, the Committee has frequently pointed out that cuts in social benefits and workers' pay — and insufficient investment in human resources — weaken internal demand, thereby aggravating the economic difficulties and impairing the development of labour productivity. Moreover, this single-ended supply-side approach runs counter to the holistic Lisbon targets themselves, not least as regards increasing the productivity and quality of employment. At all events, any labour market policy that pays too little attention to upskilling, and forces skilled, but unemployed people to take low-skilled jobs will have a negative impact on labour productivity. The Committee believes that the only appropriate way forward is to secure a parallel increase in employment and in labour productivity, as recently advocated by the Commission. Of course, some low-skilled jobs will also be created. In this context, social and labour legislation will have to be observed,

3.6. The current European employment debate focuses on the need to increase employment rates. The Lisbon strategic target is to promote employment as the best way to prevent poverty and exclusion. This requires a strategy for improving the quality of employment, rather than simply creating jobs at any price. Europe's path to full employment must therefore be tied to commensurate wages, social security and high standards of labour law. The EESC calls for greater importance to be attached to the further pursuit of the Lisbon strategy on quality of work, particularly when it is a matter of implementing structural reform measures.

3.7. The Committee is most certainly not saying that labour market reforms or reforms in other areas are irrelevant to job creation. To retain the target of creating more and better jobs, however, the Committee does feel, however, that, at the present juncture, the most important thing is to boost the economy and promote sensible structural reforms. That is the only way to raise the impact and acceptance of reforms. Macropolicy and structural reforms must be mutually supportive, not mutually exclusive.

([6]) See *inter alia* the EESC's opinion of 11.12.2003 on the *Broad economic policy guidelines 2003-2005* (rapporteur: Mr Delapina - OJ C 80, 30.3.2004).

4. **New approaches to employment policy: innovation in business — investment in work — knowledge as a key resource**

4.1 The innovativeness of European enterprises is essential to economic dynamism. Without new, improved products and services, without an increase in productivity, Europe will fall behind economically and in terms of employment policy. Raising productivity also means a change in the working world, not always and immediately with positive effects. But the absence of social and economic innovation undoubtedly leads to a downwards spiral. The consequences of this change for the labour market must be cushioned by accompanying social measures.

4.2 Economic growth and a climate for investment are key prerequisites for creating new jobs and retaining existing ones. In the European single market, this is done to a sizeable degree through new businesses and SMEs. ([7]) Small and micro-businesses are also to a large extent rooted in the local economy and therefore benefit in particular from stable and growing domestic demand. Thus, on employment issues, the Committee has also repeatedly called particular attention to the development of entrepreneurship, policies to enable companies to stay in business, and the promotion of business start-ups ([8]), which create jobs through innovation. Often, given the need to maintain their position on the market, SMEs in particular are especially innovative. Attention should also be paid to promotion of micro-businesses, enabling them to fully realise their innovative potential, in particular by giving them better access to financing, simplifying administrative aspects of business management, and stepping up training measures.

4.3 The Committee has also repeatedly pointed out that people, with their knowledge and skills, constitute the most important resource for innovation and progress in the knowledge society. ([9]) Europe must find ways to build up its potential in skilled people, science, research and technology — a potential to be converted into marketable new products and services and hence into employment. This calls for a high level of involvement of all population groups in education, a good vocational education, and a smoother transition from higher education to the world of work. The social climate must be developed in such a way that education in self-reliance, and higher education, are not regarded as the privilege of a few. Current OECD studies have once again drawn attention to the weaknesses in the education and training systems of many Member States. ([10]) The shortage of graduates and of specialists is turning out to be an economic bottleneck and reflects the obstructed access routes to education. Action on training and further training policies is overdue. Where are the necessary investments

— to reduce the drop-out rates drastically, raise the number of graduates and guarantee in practice the possibility of lifelong learning for all;

— to ensure a smoother transition from higher and university education into employment, particularly in SMEs;

([7]) See the EESC opinion of 30.6.2004 on the *Proposal for a Decision of the European Parliament and of the Council amending Decision 2000/819/EC on a multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs) (2001-2005)* (rapporteur: Mr Dimitriadis – OJ C 302, 7.12.2004); the EESC opinion of 31.3.2004 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Updating and simplifying the Community acquis* (rapporteur: Mr Retureau – OJ C 112, 30.4.2003); and the EESC own-initiative opinion of 18.6.2003 on the *role of micro and small enterprises in Europe's economic life and productive fabric* (rapporteur: Mr Pezzini – OJ C 220, 16.9.2003).

([8]) See also in particular the EESC opinion on the *Green Paper on Entrepreneurship in Europe* (rapporteur: Mr Butters – OJ C 10, 14.1.2004).

([9]) On this point, see, for instance, the current EESC exploratory opinion of 28.10.2004 on *Training and productivity* (rapporteur: Mr Koryfidis) (CESE 1435/2004).

([10]) The PISA 2003: OECD Programme for International Assessment (PISA) is of current relevance.

— to ensure, as an essential preventive measure in employment policy, high-quality initial and vocational training which would allow young people to enter the labour market as smoothly as possible and to remain in employment from then on; and

— to give as many employees as possible access to training, for example by giving them the option of one week's annual training leave?

4.4 In this context, the EESC has frequently emphasised the importance of taking on general responsibility in the field of training and further training, and thereby also established that investments in schools concern not only the public authorities but also enterprises and individuals themselves, given that lifelong learning benefits employees, businesses and society as a whole ([11]). Vocational training and lifelong education and further training must not be looked at in isolation, but, on the contrary, must be fundamental elements of workers' career planning. Irrespective of age group or education, there should be adequate motivation and opportunities to take part in further training. The development of skills and of willingness to innovate thus also presupposes corresponding investments at company level in training and further training, and the development of an innovation-promoting enterprise culture.

4.5 Nowadays it is not enough for an individual to be creative and willing to learn. The enterprise itself must be willing to learn, i.e. new knowledge must be taken up and converted into marketable products and services. Readiness to innovate is an essential competitive factor. To lay the basis for future innovations, high value must be attributed to science and research. It is a matter of making full use of the potential of the public and private research systems and integrating them effectively. To this end it is extremely important to promote innovation and research, and to raise R&D expenditure to 3 % of GDP in accordance with the Lisbon objective, with two-thirds to come from the private sector ([12]). Public R&D support should be stepped up at European and national level, not least in growth-promoting key technologies in order to expand the scientific base and increase the lever effect on private-sector R&D investments. At the same time, the Member States and the European Commission should try to use public procurement for new research- and innovation-intensive products and services.

4.6 Innovative organisation of work and innovation management, however, are also an issue for small and medium-sized enterprises. Many of these SMEs have developed specific solutions and are global players; others need particular advice on innovation, not only in terms of innovation management but also to establish working environments conducive to learning and to meet the staff's specific skills needs. Networking and knowledge management can help SMEs to tap together into new knowledge potential ([13]). These cultural obstacles must be overcome to enable SMEs to benefit more from basic research. To be innovative, SMEs also need sound core financing and access to risk capital. In specific terms, that also means that many EU single market directives need to be reviewed for their impact on SMEs, and if necessary improved (e.g. those liberalising the financial markets or on Basle II).

([11]) EESC own-initiative opinion of 26.2.2004 on *Employment support measures* (rapporteur: Mrs Hornung-Draus, co-rapporteur: Mr Greif) (OJ C 110, 30.4.2004).

([12]) On that point, see the EESC opinion of 15.12.2004 on the *Communication from the Commission: Science and technology, the key to Europe's future - Guidelines for future European Union policy to support research (rapporteur:* Mr Wolf) (OJ C 157 of 28.6.2005).

([13]) A joint study by Cambridge University and Massachusetts Institute of Technology (USA) revealed that about two-thirds of British small and medium-sized enterprises used higher education institutions as sources of knowledge, compared with one-third of the US respondents. However, only 13 % of British SMEs rated close cooperation with academia as important, compared to 30 % of SMEs in the USA (Financial Times, London, Tuesday 30 November 2004).

4.7 In the EU, a highly productive industrial core is and will continue to be the foundation of economic prosperity. Manufacturers and service providers are mutually dependent. Scope for innovation also means directing research and development specifically to the needs of the knowledge and service society, with the emphasis on exploiting new employment possibilities, not only in traditional areas of manufacturing industry but elsewhere too. As well as promoting state-of-the-art technology, Lisbon also requires an emphasis on the service economy. As a precondition for this, socially related services must be reassessed, pressure on public budgets relieved and the importance for economic development of efficient public administration acknowledged. Key words such as education, mobility, individualisation, standards on population growth, care and health, reconciling family and work commitments, and changing communication and leisure habits indicate an additional new requirement for social and personal but also for commercial services. They are often found at the start of a professional development ([14]). With this in mind, the EESC has repeatedly drawn attention to the significance of the social economy and the third sector for innovation and employment ([15]).

4.8 Innovation is primarily a matter of people, scope for creativity, skills, knowledge, willingness to learn and work organisation. Critical factors are self-reliance, self-determination and participation rights. In this respect reorganisation of working relations and co-determination structures is of the highest importance. Stable industrial relations promote innovation. Anyone who now seeks to reduce instead of strengthening the representation of interests, the organisation of working relations, and hence the fundamental rights of employees, creates new obstacles to innovation. The Committee therefore notes that the present proposal for a framework directive on the internal market in services should not lead to a reduction in existing social, wage and safety standards.

5. **Change requires a welfare state which is viable in the long-term, an active and preventive labour market policy, and modernisation and improvement of social protection systems**

5.1 Anyone who plucks up courage for innovation and change needs not just their own initiative but also support on the part of society. The willingness to take risks and social security go hand-in-hand with one another. In this respect, many depend on social services to make it possible to approach something new and put it into practice. Innovation goes hand in hand with organisation and social cohesion as an essential feature of the European social model. Admittedly, the welfare state must always take new demands into account. In this respect the EESC is convinced that the Lisbon employment objectives only become attainable if social policy is strengthened as a field of action, and the policy of minimum social provisions is continued as a minimum requirement for harmonising working and living conditions in Europe. This is particularly urgent in the enlarged Union, since welfare standards in the EU continue to fall.

5.2 To counteract the risk of competition in social standards, therefore, existing provisions in EU social legislation, particularly in the fields of working conditions, work and health protection, workers' rights, equal treatment of both sexes and protection of individual rights, should be implemented more effectively and developed further. This also applies to questions of working time.

([14]) See also EESC opinion of 10.12.2003 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Mid-term review of the social policy agenda* (SOC 148) – Rapporteur: Mr Jahier (OJ C 80, 30.3.2004), EESC own-initiative opinion of 12.9.2001 on *Private not-for-profit social services in the context of services of general interest in Europe* (SOC 67) – rapporteur: Mr Bloch-Lainé (OJ C 311, 7.11.2001) and EESC opinion of 2.3.2000 on *The Social Economy and the Single Market* (INT 29) – Rapporteur: Mr Olsson (OJ C 155, 29.5.2001).

([15]) See the report of the high-level group on the future of social policy in the enlarged European Union (May 2004).

5.3 The EESC has already repeatedly addressed (for example in its opinion on *Employment support measures* prompted by the Employment Taskforce report) necessary and feasible innovations in the following fields ([16]):

— social security on a broader basis — setting up barriers against poverty;

— need for adaptability to achieve a better balance between flexibility and job security on the labour market; new forms of work organisation call for new forms of job security;

— promotion of active and preventive measures in labour market policy, particularly for groups who are at a disadvantage on the labour market, and improving the integration of migrants;

— integration of young people in the labour market and combating youth unemployment;

— education offensive — improvement of pre-school education — full-day care of high quality — further education opportunities for lifelong learning, backed up by wage agreements;

— investment in age-related work planning — making full use of the knowledge and experience of older people;

— increasing the gainful employment of women — ensuring that work and family commitments are compatible.

5.4 The Committee attached particular value to the following points:

— the promotion of active and preventive measures for unemployed and non-active people must be recognised as an important aim, and labour market policy instruments must therefore be directed towards the reintegration of the unemployed in the primary labour market;

— above all, unemployed young people must be given adequate assistance in entering the labour market as smoothly as possible. The ability of young men and women to stay in work and to get ahead in the labour market will be closely dependent not only on increasing growth but also on the quality of vocational training and on the provision of the best possible education right up to university level. To that end, all labour market players are called upon to review their present contributions and policies, particularly as regards combating youth unemployment ([17]);

— for specific groups, such as disabled people or people with few skills who are confronted with additional difficulties on the labour market, the necessary conditions must be created — particularly in terms of further training — making it easier to enter the labour market, stay in work, and get ahead;

— given the predictions of a decline in the working population in Europe, immigrants can play an important role in ensuring there is an adequate supply of skilled workers on the labour market: this presupposes corresponding measures ([18]);

([16]) EESC own-initiative opinion of 26.2.2004 on *Employment support measures* (rapporteur: Mrs Hornung-Draus, co-rapporteur: Mr Greif) (OJ C 110, 30.4.2004).

([17]) See also: 'The European Pact for Youth' introduced at the European Council on 5 November 2004 by France, Germany, Spain and Sweden beside others addressing youth unemployment and social exclusion.

([18]) EESC opinion of 10.12.2003 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment* (rapporteur: Mr Pariza Castaños) (OJ C 80, 30.3.2003).

— the declining numbers and ageing of the working population make it necessary to promote active ageing: in order to achieve this in practice, the economic and political framework conditions must be created to strengthen the incentives for longer working lives and at the same time make it easier for enterprises to employ older workers.

5.5 In that context, the EESC above all stressed the need to do more to raise the employment rate of women and to remove the obstacles which continue to prevent women entering the labour market, and to tackle consistently the existing inequalities (primarily in remuneration). In view of the fact that greater participation by women in the labour market depends mainly on both men and women reconciling family and work requirements, this specific Lisbon objective must be consistently pursued. The EESC therefore welcomes the call to the Member States to ensure at all levels, including public employment, that day-care facilities for children and others in need of care (such as sick or elderly dependents) are made available to the public at large in sufficient numbers and quality and at a reasonable cost. The Member States should follow the corresponding recommendations of the current employment policy guidelines, by establishing practical objectives and developing corresponding action plans to achieve them.

5.6. In addition, when implementing the Lisbon Strategy in relation to employment and social inclusion of all excluded and disadvantaged groups, appropriate attention should be paid to combating discrimination and promoting equal opportunities. Member States should be strongly encouraged to continue to pursue anti-discrimination measures under their National Action Plans.

5.7 The expert report on the future of social policy recently noted that the commonly held perception of social protection undermining competitiveness, economic growth and high employment levels is hardly defensible in empirical terms, and that in countries such as Sweden, Denmark, Austria, Luxembourg and the Netherlands, high economic performance goes hand in hand with a high level of social protection ([19]). The countries which take the lead in competitiveness all make relatively high investments in social policy and the social security systems, and show high employment rates and low poverty rates after social transfers are taken into account. What is important now is the balanced linking of modernisation and improvement of the social security systems to adapt them to current conditions (e.g. demographic trends) while maintaining their social protection functions. In this context, ensuring financial viability in the long term must also take account of the criteria of social fairness, general accessibility and high quality of the services.

5.8 In most European countries, social security is funded mainly by contributions from workers and employers. In places these contributions have reached a level which can have a negative effect on job creation.

— In this respect the EESC agrees with the recommendations of the high-level group on the future of social policy in the enlarged Union that the funding basis for social security systems should be broadened so as to take the pressure off the labour factor ([20]).

— At the same time measures should be taken to avert the threat of an undermining of the tax and contribution system. On this issue too, the Committee has already made the point that a uniform EU-wide measurement basis for company taxes could be a key step in this direction. Minimum tax rates should be discussed for taxes on mobile factors and in the environmental field.

([19]) See: European Policy Centre (2004): Lisbon revisited – Finding a new path to European growth (quoted in the May 2004 report of the high-level group on the future of social policy in an enlarged European Union, p. 53).

([20]) See the report of the high-level group on the future of social policy in the enlarged European Union (May 2004).

— The Committee has also repeatedly called on Member States to step up efforts to modernise and improve their social security systems in a bid to make them more employment-friendly ([21]).

5.9 Increasing the participation of older workers in the labour market is also one of the Lisbon tasks. According to the Commission, 7 million jobs should be created in order to achieve the aim of 50 %. The EESC has already pointed out that under favourable economic and political conditions in the context of a strategy of active ageing, it regards raising the effective age of exit from the labour market as a reasonable objective in principle. However, many Member States in their pension reforms have made a central point of the simple raising of the legal retirement age, with access to early retirement being increasingly restricted or indeed abolished altogether. Behind this lies the one-sided assumption that the main reason why older workers do not remain longer in employment is the individual wishes of those concerned and the lack of incentives in pension insurance arrangements. Other important aspects are overlooked. Member States should offer incentives to encourage workers, on a voluntary basis, to delay their exit from the labour market within the legal retirement age and also to support companies in organising posts and working conditions accordingly.

5.10 In agreement with the high-level groups on employment; on the future of social policy in the enlarged Union; and on the Lisbon strategy for growth and employment, the EESC would argue for approaches like those adopted in certain Member States (Finland and Sweden) which contribute to the quality of work and of further training. For the 55-64 age group to remain in productive employment in the year 2010, a labour market is above all needed that also allows for the employment of older workers; this calls for active planning by all players concerned, including the improvement of skills. To this end, investment in productive further training and preventive measures in the field of health protection and health promotion are necessary in order to maintain employability. However, any policy that seeks to change conditions for older workers comes too late if it starts only with the 40-50 age group. For that reason, it is essential to have in place a human resource management that takes account of age from the very start of employment. There is also a need for models of workplace planning for older staff (especially appropriate working time models which reduce physical and mental stress) ([22]).

6. **The EESC's policy recommendations**

6.1 *Dovetailing of content in economic and employment policy coordination*

— Since Lisbon, positive efforts have been made to synchronise employment policy coordination with that of economic policy. There is still a problem with the deficit in the dovetailing of the content, where it must be ensured that employment policy guidelines and the guidelines on economic policy are coherent and — on an equal footing — mutually consistent.

— There will be effective coordination between the players (governments, ECB, social partners) only when financial and budgetary policy takes responsibility for growth and employment and becomes one of the essential features of economic policy.

([21]) EESC opinion of 1 July 2004 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Modernising social protection for more and better jobs - a comprehensive approach contributing to making work pay* (rapporteur: Ms St. Hill) (OJ C 302, 7.12.2004).

([22]) On this point, see the EESC opinion of 16.12.2004 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on increasing the employment of older workers and delaying the exit from the labour market* (rapporteur: Mr Dantin – OJ C 157 of 28.6.2005).

— In this context more account should also be taken of the Commission's reform proposals — which also tie in with calls from the high-level expert group on the Lisbon strategy — on steering the Stability and Growth Pact more towards growth including the removal of strategic investments from the deficit calculation. It should be the Council, acting on the Commission's proposals, that defines what should be declared as strategic investment of European interest.

6.2 *Better integration of the social partners and enhancing the value of the macro-economic dialogue*

— This must take place at national and European levels. In that way a pragmatically enhanced macro-economic dialogue can contribute significantly to better governance involving the social partners and taking their views into account, and hence to the overall success of the process. It is the only way in which all those with some responsibility for economic and employment policies can discuss in open debate how a 'policy mix' to promote growth and employment can best be achieved in the EU.

— At Member State level, appropriate participation of the social partners must be ensured — while taking account of their full autonomy — especially on questions of structural reforms, skills and innovation, but also in debates and at all stages of implementation of the European Employment Strategy (formulation, implementation, evaluation of national action plans) ([23]).

6.3 *Effective cooperation between the specialised Councils of Ministers*

— For it to be possible to pursue an overall employment strategy successfully in the EU, it is necessary to step up cooperation between the various 'Lisbon-relevant' Council of Minister configurations. Particularly necessary is a close intermeshing between the work of the Council of economic and finance ministers and that of the Councils for competitiveness and for employment, social policy, health and consumer protection.

— Better coordination of this kind is also especially needed in the preparations for the spring summit: Lisbon is a horizontal process, and should not be left to the ECOFIN Council alone.

6.4 *Macro-policy and structural reforms must complement each other*

— It should be noted that the slowdown in growth of the past few years, after a growth rate that still reached 3 % in the EU-15 in 2000, was due mainly to macroeconomic factors, and less so to structural ones. The recommendations of the European broad economic policy guidelines should take this into account.

— There must be a noticeable revival of the demand components — consumption and private and public investment — in order to overcome the weakness of purchasing power in Europe. By building on this, intelligent planning of structural reforms so as to avoid further weakening of internal demand can be combined with an important boost to job creation.

— To this end, it is especially important to promote employability, overcome skills deficits and integrate disadvantaged groups in the labour market.

([23]) On this point, see the 2004 report on social partner actions in Member States to implement employment guidelines, ETUC, UNICE/UEAPME, 2004.

— At present, the EU as a whole is able to hold its own in global competition, with a favourable balance of trade, even though growth rates are insufficient. In global competition, Europe needs to play to its strength. After all, it cannot compete with African and Asian countries in terms of low wage costs. Rather, it should continue to set store by a broad-based innovation policy and on the manufacture of quality goods and services with a high added value.

— In order for free trade to have a beneficial impact, currency policy should not lead to any distortion in the prices of traded goods, and the division of tasks between all trading countries should be such as to permit wages to rise in step with productivity. Neither of these conditions has yet been met, and political players in the EU should make them a priority.

— The EESC calls for greater importance to be attached to the further pursuit of the Lisbon strategy on quality of work, particularly when it is a matter of implementing structural reform measures.

6.5 *Supporting the job-creating role of SMEs*

— Small and medium-sized enterprises in particular secure economic growth and new jobs in the European single market. Entrepreneurship must therefore be promoted and entrepreneurial potential fully harnessed, not least by giving such companies better access to financing, simplifying administrative aspects of business management, and stepping up training measures. ([24])

— All businesses which contribute to growth and employment through innovation should be able to benefit from support; this is far more important than the mere proliferation of companies.

6.6 *Optimising implementation in the Member States themselves*

— The Committee agrees with the November 2004 report of the high-level expert group on the Lisbon strategy chaired by Mr Wim Kok that, in order to attain the Lisbon objectives, the Member States need to be reminded of their commitments more forcefully than hitherto. The failure to achieve specific objectives has at present hardly any effect on national policy planning. Public pillorying has only a limited effect.

— The general employment objectives must be broken down into correspondingly ambitious national objectives, while ensuring greater transparency and wider national debates around a national Lisbon implementation report (or action plan).

— Benchmarking should be structured in such a way that the relative position of individual Member States can be presented and meaningful political conclusions can be drawn.

— On the basis of their initial figures of 2000, certain Member States must make greater efforts than others to reach the general employment objective set in Lisbon. Those with participation rates of 70 % or above are called upon to do so just as much as those below that rate. To that end more attention should be given to the development of employment, rather than simply comparing rates.

([24]) See the EESC opinions mentioned in footnotes 7 and 8.

— For the process to succeed, truly national reform partnerships adequately involving the social partners — as suggested by the European Council in March 2004 — must be promoted, and the national parliaments must be given a greater share of the responsibility.

6.7 *Taking more account of the enlargement aspect*

— The EU should pay special attention to the needs of the new Member States in planning its employment strategy, so that these countries can also attain the Community-wide employment objectives.

— Here too, special attention should be paid to sufficient and effective involvement of the social partners at all stages of the employment strategy.

— With a view to these countries' possible entry into the euro zone, the convergence criteria must be so designed that they promote growth and employment rather than hindering them.

6.8 *'Lisbonisation' of the EU budget*

— Achieving the EU employment objectives also requires European growth initiatives, which are not limited to an anticipation of already decided EIB projects. The Sapir Report of 2003 has already provided some important suggestions on short-term budgets.

— The Commission document on the financial perspective for 2006-2013 also contains interesting proposals, such as the establishment of a growth adjustment fund. These ideas must be further pursued and every effort made to ensure that the future EU budget can give rise to effective European growth and employment initiatives.

— In doing this, it is important to ensure that available resources are used effectively to enable consistent implementation of the Lisbon growth and employment objectives, especially in the enlargement countries.

6.9 *Strengthened dialogue with civil society and role of the EESC*

— The Lisbon process also depends on what people in Europe think of it. The EESC is prepared, in the context of European employment policy, to offer its specialised knowledge and its contribution to full understanding of the Lisbon strategy and its necessary communication to the public.

— In this connection, the Committee sees the Lisbon process as one of its key priorities and considers that appropriate internal structures are essential so as to remain in close cooperation with the Commission and other EU bodies and in permanent operational contact with civil society at European level and in the Member States.

— Given its expertise and its representative character, the EESC believes it could play a role in drawing up impact assessments, which the Commission intends to place on a systematic footing. As the discussions now taking place have shown, it is essential that draft legislation reflect a plurality of viewpoints and be underpinned in the most rigorous and objective manner. Sending impact assessments to the EESC as a matter of priority and giving it the opportunity to add its comments before the assessments are sent to the European institutions could lead to greater acceptance of European legislative initiatives, in line with the spirit of the Partnership for European Renewal.

Brussels, 9 February 2005

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council and the European Parliament: Financing Natura 2000

(COM(2004) 431 final)

(2005/C 221/19)

On 15 July 2004, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Agriculture, Rural Development and the Environment, which was responsible for the Committee's work on this subject, adopted its opinion on 13 January 2005. The rapporteur was Mr Ribbe.

At its 414th plenary session, held on 9 and 10 February 2005 (meeting of 10 February 2005), the European Economic and Social Committee adopted the following opinion by a unanimous vote:

1. **Preliminary observations**

1.1 In this opinion the EESC:

— describes the situation as regards nature conservation in Europe, which continues to be unsatisfactory;

— draws attention to the large number of political decisions, taken by EU Heads of State and Government and other bodies, on maintaining biodiversity in Europe;

— sets out the relevant European nature conservation legislation and the attendant commitments to be met not just by the EU, but also by the Member States, particularly with regard to the establishment of the Natura 2000 network of nature conservation sites;

— reiterates the reasons why there has to be a commitment to nature conservation; these reasons are not confined solely to the nature-conservation and cultural spheres but clearly also embrace the economic and social sectors; and

— puts forward proposals with regard to the possible co-financing by the EU of measures to be taken in connection with the Natura 2000 network.

1.2 In its Communication, the Commission describes current practice as regards Community co-financing, which derives primarily from Article 8 of the Council Directive on the conservation of natural habitats and of wild fauna and flora (the *Habitats Directive*) ([1]); this practice has up to now not offered a satisfactory solution to the problems encountered.

1.3 An estimate of the financial cost arising from the establishment, implementation and maintenance of the Natura 2000 network is set out in the Commission's Communication. The Commission does, however, underline the fact that a definitive, precise figure is not yet available. The estimate of the annual cost which is currently regarded by the Commission as being the most reliable points to a figure of EUR 6.1 billion (for EU-25) ([2]). The Commission stresses that this estimate 'can and should be further refined'. This is a task, in particular, for the Member States, since they are ultimately responsible for submitting applications for funding under the co-financing arrangements.

1.4 It is clear from the Commission's document that the debate in the EU is no longer about *whether* Community funding will be made available for establishing and maintaining the Natura 2000 network but solely about *how* this can best be achieved.

1.5 Three possible options are discussed:

— the use of existing EU funds, (notably rural development funds made available under the Guarantee Section of the EAGGF, Structural Funds (such as the ERDF, ESF, the Financial Instrument for Fisheries' Guidance (FIFG), the EAGGF Guidance Section, the Cohesion Fund and LIFE-Nature);

— increasing and upgrading the Life Nature instrument to serve as the primary delivery mechanism;

— the creation of a new funding instrument dedicated to Natura 2000.

1.6 After carrying out its assessment, involving, inter alia, consulting the Member States concerned, the Commission concludes that the first option should be adopted, i.e. making use of existing EU funds.

1.7 The Commission does, however, also highlight the limitations which will have to be overcome in respect of this option. Attention is drawn, *inter alia*, to the fact that some of the currently existing Funds are not used on an across-the-board basis, with the result that the particular regions which may include the Natura 2000 sites have been virtually excluded from such aid. As is generally known, the ERDF, for example, does not provide blanket coverage and in the case of the Cohesion Fund, too, only particular Member States are eligible to benefit from its resources. The Commission promises to remedy this matter as part of the re-organisation of the Structural Funds.

([1]) Directive 92/43/EEC (OJ No. L 206 of 22.7.1992, page 7).
([2]) Overall costs, to be financed by the Member States and the EU.

2. **General comments**

2.1 The EESC welcomes the Commission's Communication, which, on the whole, provides an excellent basis for discussion. Consideration of these issues is overdue, since, despite the various political expressions of intent, no decisive changes have occurred over the last few years in the field of nature conservation which, in some cases, is having to contend with a critical situation. The Commission and the Member States are repeatedly highlighting the ongoing deterioration in the situation with regard to nature conservation. Judging by the yardstick of GDP, people in the EU have never before been so prosperous whilst nature conservation has never before been in such a poor situation as is the case at present.

2.2 The EESC wishes to draw attention, in this context, to its own-initiative opinion from 2001 entitled *'The situation of nature and nature conservation in Europe'* ([1]) and the Commission's *2003 Environment Policy Review* ([2]). The EESC welcomes the fact that there is a large measure of agreement between the Commission and itself over the appraisal of the situation.

2.3 The establishment of the Natura 2000 network is based primarily on the Habitats Directive adopted in 1992. In adopting this Directive, the EU Member States and the EC Commission made two promises:

— to conclude the establishment of a European nature conservation network, to be known as the Natura 2000 network, within three years ([3]);

— to make the requisite funding available in order to ensure that landowners or land-users do not have to bear the financial burden.

2.4 Neither of these promises has yet been kept. Both the Commission and the Member States are thus urged not just to take fine-sounding decisions but also to be fully consistent in implementing such decisions.

2.5 The Natura 2000 network is an element of decisive importance in the campaign to safeguard biodiversity. Heads of state and government have repeatedly committed themselves publicly to halting the dramatic decline in biodiversity. The EESC also draws attention to the commitments entered into by the EU and the Member States under the Biodiversity Convention. Nature conservation and the protection of species are also necessary in order to safeguard genetic and biotic resources.

2.6 It is clear that the issue of the funding of Natura 2000 will be of decisive importance not just for nature conservation, as such, but also for the social acceptance of nature conservation and the credibility, in the environmental field, of both the Commission and the Member States.

2.7 The EESC notes the extremely long delays in designating Natura 2000 sites; the network has not yet been established even 12 years after the adoption of the Habitats Directive. Up to now landowners and land-users have frequently regarded it as a disadvantage to be located in Natura 2000 sites or to manage such sites. One of the reasons for taking this attitude is that the question of the financial implications of these sites has not been finally resolved.

2.8 The EESC has repeatedly stressed that, if Europe's unique natural heritage is to be conserved, a real partnership will have to be established between nature conservation, on the one hand, and the agricultural sector, on the other hand. With this aim in view, farmers who take account of the corresponding nature conservation provisions and implement them must, in turn, also be treated as fully-fledged partners by the authorities and nature conservation bodies operating at local level. In this context, resolving financial questions is a matter of decisive importance.

2.9 The presentation of the Commission's communication was therefore overdue. It has not escaped the EESC's notice that there were considerable difficulties in reaching agreement within the Commission on the formulation of the communication; these difficulties led to repeated delays in the presentation of the document.

2.10 In its own-initiative opinion, the EESC drew attention to two key points, which the Commission, too, is now regarding as especially important. These points are as follows:

— Europe does not have just an outstanding cultural heritage. The various man-made and natural landscapes also represent a **remarkable natural heritage which should be preserved**. The continent of Europe owes its appeal and fascination to its great variety of different types of landscape and animal and plant species. The preservation of this natural heritage, in order to ensure that future generations, too, will be able to enjoy it, has become a key joint task for politicians, administrations and the general public at all levels of policy-making and administration.

— **Nature conservation is, however, not just an end in itself**. Nature plays **a vital role in our lives and in the economy**; it provides an important resource for economic activities and is also a prerequisite for a variety of sporting, leisure and recreational activities, health care and some forms of medical treatment.

2.11 The EESC welcomes the fact that, in its Communication, the Commission also highlights, in particular, the economic aspects. The EESC strongly supports the Commission's declaration that biodiversity protection is not simply *an option; rather it is a vital component of sustainable development*.

([1]) See OJ C 221 of 7.8.2001, pages 96-102.

([2]) Communication from the Commission to the Council and the European Parliament entitled '2003 Environment Policy Review', COM(2003) 745 final of 3.12.2003.

([3]) The three-year deadline (i.e. by 1995) referred to the notification of the sites concerned by the Member States. In some cases this notification has still not been finally concluded.

2.12 It must, however, be recognised that the importance to regional economies, as described in point 2.2.3 of the Communication, and the attendant economic benefits, together with the resulting social benefits, are all too rarely appreciated or taken into account in the debate on nature conservation and Natura 2000.

2.13 Nature conservation (and therefore the designation of Natura 2000 sites) is often rather regarded — wrongly — as a cost factor, an imposition, a disadvantage or a threat; this is one major reason why these projects frequently give rise to opposition and why critical problems continue to arise with regard to the implementation of what is often exemplary nature conservation legislation.

2.14 The EESC paid considerable attention to this important fact in its abovementioned own-initiative opinion. It notes that very little has changed in this context over the last few years. The EESC calls upon the Commission, working together not just with the other EU Institutions but also with all other stakeholders at EU level and in the Member States, to launch a wide-ranging campaign to stimulate awareness in this field.

2.15 It is essential that to instil a real awareness of the fact that, as the Commission points out, '*a Natura 2000 site can become a driver for sustainable development in the local economy and can contribute to sustaining the local rural communities. Active consideration of these issues in dialogue with all relevant stakeholders is the key to the successful establishment of the Natura 2000 network and its integration into the wider socio-economic sphere of an enlarging European Union*'. In the EESC's view, the achievement of such an awareness is equally as important to the success of nature conservation in the EU as is the need to resolve the financial arrangements.

2.16 It has so far only been possible in a small number of isolated cases to bring about a general awareness not just of the economic benefits for regional development (tourism, the sale of regional products, etc.) of having a high level of biodiversity but of the general benefits of nature conservation areas in respect of, for example, climate protection ([1]) and protection against flooding. Studies, such as those mentioned in Annex I to the Commission document, have so far done little to change this situation, despite the fact that they clearly indicate that '*the purely monetary benefits of conserving biological diversity significantly outweigh the costs*'.

2.17 In this context, the EESC can only express its amazement at the fact that it appears to be easier to provide EU funding for dealing with the effects of natural disasters, which are partly due to over-exploitation of natural resources and landscapes — i.e. to a failure to implement nature conservation — than it is to secure funding for what is, in the final analysis, the cheaper alternative of taking steps to prevent such disasters.

([1]) Moors and marshlands, for example, act as valuable 'carbon sinks'.

2.18 The EESC draws attention to the fact that Article III-184 of the draft European Convention sets out the following principle: '*The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters within the Union*'. Natura 2000 sites are, in many cases, in a position to assume such a role.

2.19 By way of example, whilst, following the devastating flooding disasters on the River Elbe in 2002, an EU Disaster Fund was soon established, it is, however, proving to be extremely difficult to implement and secure funding for integrated, ecological flood-protection measures covering rivers and meadows, which can demonstrably bring about a considerable reduction in peak high water levels downstream ([2]), thereby making it possible to avoid potential damage. A similar situation arises with regard to measures to prevent forest fires, particularly in the case of southern European states. Charges will have to be introduced. EU policy should be guided by the motto that 'prevention is better than cure'. Nature conservation can make decisive contributions towards the achievement of this goal.

2.20 One of the reasons for this situation is undoubtedly the fact that, in many cases, it is private landowners and land-users who have to bear the brunt of the cost — both direct and indirect — of nature conservation measures, whereas the social benefits of such measures can virtually only be 'entered into the accounts' as 'positive externalities' (in contrast to 'external costs'), which means that they do not figure in the calculation of, for example, GNP. The new financing arrangements must pay particular attention to this fact.

3. **Specific comments**

3.1 The EESC welcomes the fact that, at the Commission, it is now no longer a question of whether it is to co-finance EU measures in respect of Natura 2000 sites; the 'only' question now being addressed is that of identifying the instruments to be used to this end.

3.2 The EESC understands the reasons for choosing the financing option in question, namely in order to develop and make appropriate use of existing aid instruments. It is essential for planning, administrative and financial arrangements in respect of the implementation of Natura 2000 to be carried out at the level where both the problems and the positive development potential exist, namely at local level in the Member States. Organising and making use of the existing Funds, such as the ERDF, the ESF, the Cohesion Fund, the EAGGF and the new European Agricultural Fund for Rural Development (EAFRD), in a way which is more in tune with the needs of nature conservation will provide the responsible bodies in the Member States with scope for flexible action.

([2]) These measures may also have a cross-border impact: the Netherlands is a clear beneficiary of such measures, which are often also of a high value in terms of nature conservation.

3.3 The Commission also rightly points out that this may well be the best way to ensure that *'the management of Natura 2000 sites is part of the wider land-management policies of the EU'*.

3.4 The EESC does, however, believe that it is important to underline the need for the Commission and the other responsible bodies to redouble their efforts with a view to ensuring that, in future, there are no more reoccurrences of the scenario whereby projects which have a detrimental effect on nature conservation benefit from co-financing by the EU, with the EU stepping in again at a later stage to pick up the bill for the resultant damage to nature and the environment.

The financial situation in the EU and the expected argument over funding

3.5 The discussion on the financing of Natura 2000 sites has to take place against the background of the expected wrangling over the size of the overall EU budget and the allocation of resources ([1]). There is no doubt that there will be a lively dispute over funding:

— the financial perspective for the EU, submitted by the Commission, covering the period 2007 to 2013, foresees expenditure amounting to, on average, 1.14 % of Gross National Income, with the ceiling for 'own resources' being set at 1.24 %. The Member States which are 'net contributors' are currently insisting on an upper limit of 1 % which, were their demand to be accepted, would mean a cut in expenditure of some EUR 30 billion in 2013;

— the enlargement of the EU is bound to lead to shifts in funding between the Member States and the regions, particularly in the field of structural aid. ([2]) Regions which up to now have received aid will, where appropriate after a transitional period, no longer be eligible for aid.

3.6 The discussion on the upper limit should be seen in the context of the fact that the amount to be set aside for nature conservation, estimated by the Commission at at least EUR 6.1 billion per annum, is in addition to the tasks to be carried out under the second pillar, even though, up to now, the requisite funding has not been provided under the financial perspective. There is likely to be a lively dispute over funding, both between regions and between the various policy areas. Such disputes are by no means new; in the past, however, nature conservation all too often had to bow to the needs of other policies.

3.7 Steps must therefore be taken to ensure that nature conservation, which is rightly seen as forming part of overall EU policy, is not subordinated to other tasks when funding is being provided by Member States; this would effectively doom nature conservation to failure. The EESC would once again reiterate the fact that nature conservation in Europe is not to be regarded as a luxury which we can 'afford' when the economic situation is favourable and which we can turn our back on when we are of the opinion that no funding is available. As the heads of state have often stressed, nature conservation is a task for society as a whole and a vital political requirement for which financing had to be found.

3.8 In order to adhere to the principle of making economical use of budgetary resources, there is a need to specify (a) which of the areas of responsibility under Natura 2000 identified by the Commission are to be regarded as absolutely vital and (b) which of these areas may be regarded virtually as 'optional'. In respect of those responsibilities which are vitally important (e.g. compensatory payments or the provision of incentives to landowners or users of land), funding then clearly has to be earmarked. Should this fail to be the case, the EESC would be unable to support the principle of incorporating the financing of Natura 2000 into the existing funds, and would have to come out in favour of introducing separate financing arrangements, echoing the views of many of the stakeholders involved in the preliminary stages of the Natura 2000 programme.

Particular requirements of nature conservation in the EU

3.9 In Table 2 of the Annex to the Commission document (SEC(2004) 771), Natura 2000 sites are broken down by type of land-use, covering the following categories: pastures/heath-scrubs-grasslands, which account for 26.3 % of the area covered by Natura 2000 sites; forests (principally non-exploited forests or forests which are only exploited on an extensive basis), which represent as much as 28.9 % of the area concerned; inland waters-marshes-bogs, which make up almost 13 % of the area; and old orchards and the tremendously species-rich Spanish and Portuguese 'Dehesas' (covering an area of almost 800 000 ha), which account for approximately 2 % of the overall area. Only 5.6 % of the overall area is listed as 'agricultural land' ([3]).

3.10 In Part 3 of the Annex (SEC(2004) 771) the Commission describes in detail the actions needed for the implementation of the Natura 2000 network and makes a calculation of the costs involved (the current figure is EUR 6.1 billion). Broadly speaking, a distinction may be drawn in this context between administrative and planning costs, investment costs (e.g. respect of the purchase of land and also other forms of investment) and ongoing costs, including the cost of compensatory payments to landowners and maintenance costs.

3.10.1 In the EESC's view, it is absolutely essential to present more precise cost calculations as quickly as possible. It has doubts, for example, over whether the sums indicated in respect of the new Member States (EUR 0.3 billion, as opposed to EUR 5.8 billion for EU-15) will be sufficient. It is clear that some states (such as Poland) will certainly have to subsequently notify many more sites, thereby ultimately adding to the financial requirements.

([1]) See the opinion of the EESC on the Communication from the Commission to the Council and the European Parliament – Building our common future: Policy challenges and budgetary means of the enlarged Union 2007-2013, COM(2004) 101 final – Opinion no. CESE 1204/2004 – which has not yet been published in the Official Journal.

([2]) Large parts of the funding for Natura 2000 would have to come from structural aid.

([3]) A further 13 % of the overall area is made up of marine areas and 4 % comprises coastal areas, in which the main costs involved are monitoring costs.

3.11 In the EESC's view, the Commission rightly points out that nature conservation is frequently a matter of, as a general rule, ensuring the continuation of traditional management regimes, which are essential to the creation and maintenance of habitats. In many cases although the management regimes in question are now demonstrably no longer profitable for the operators concerned, it is, however, desirable on social and nature conservation grounds, for them to continue to be used. By way of example, there is virtually no other pattern of grazing which is more in line with the sustainability principle than the extensive system of grazing formerly used in the Spanish and Portugese 'Dehesas' which also involved driving livestock in the spring to the summer grazing areas in the mountains ('transhumance'), along the migration routes ('canadas' meadows), which have developed over decades into valuable areas for nature.

3.12 After reading the Commission document, however, EESC members still find it unclear (a) whether co-financing by the EU is actually being demanded, as a matter of urgency, or planned in the case of all of the areas listed or (b) in which fields financial contributions are expected to be made solely by the Member States, in pursuance of the implementation of EU law. This matter requires further clarification.

3.13 In many cases conflicts arise as a result of the fact that previous users of the land in question have so far failed to receive adequate compensation or incentives; this is thus an area to which very special attention needs to be devoted. We cannot, on the one hand, speak of the social or even the overall economic value of nature conservation whilst, on the other hand, expecting land-users or landowners to bear the costs. Future financing arrangements must ensure that private landowners or land-users, at least, will be assured of receiving compensation or, better still an incentive, for carrying out measures which are in accordance with the goal of nature conservation. Living in or managing a Natura 2000 site should, in future, be regarded as a benefit, rather than as a drawback.

3.14 With a view to ensuring that this approach is adopted, there is a need to ascertain, in each individual case, the exact extent of the claim for compensation. Setting a blanket upper limit and deadlines for the submission of claims for compensation, as is the case at present would be detrimental to the whole approach.

3.14.1 If no separate budgetary heading is introduced, consideration should be given first and foremost, in the case of compensation payments, to drawing on the second pillar of the CAP, whereas, in the case of investments, use should rather be made of the standard Structural Funds. The EESC draws attention, with considerable concern, to the fact that new tasks or payments, under the second pillar (the future rural development pillar) in addition to the current payments, cannot be financed from this programme unless expenditure on other tasks is reduced or additional funding is provided.

3.14.2 To put it in a nutshell: if we wish to maintain the quality of rural development and also help to finance Natura 2000 via the second pillar of the CAP, additional funds clearly have to be earmarked. The EESC does, however, note that such an increase in funding is not provided for under the financial perspective presented by the Commission and there is a very grave danger that savings are to be made, particularly under the second pillar; furthermore, the figure for EU revenue proposed in the financial perspective is not accepted by the Member States which are net contributors. In the EESC's view, this set of circumstances not only constitutes a major weak point and presents considerable potential for conflict; it also jeopardises the full range of nature conservation efforts in the EU.

3.14.3 The EESC is therefore able to endorse the proposed arrangements only on condition that they are not implemented at the expense of other rural development measures. Should additional funding not be made available, neither the Commission nor the Member States will be able to fulfil their claim and their political promise both to promote rural development and implement Natura 2000. Politicians wishing to pursue this line in the EU should at least have the courage to tell the public openly that there is no longer a political will to assume certain tasks (e.g. nature conservation).

3.15 In the EESC's view this does not mean that there is no need to make economical use of resources also when addressing the issue of nature conservation. The primary objective of the EU's nature conservation provisions, and therefore of the Natura 2000 network itself, is to maintain bio diversity. This represents virtually a 'mandatory programme'; in this context there is a need for EU participation, at least in those areas which are of European importance.

3.16 The natural corollary of this argument is, however, that not every local nature conservation measure represents a measure of European importance, which therefore deserves to be co-financed by the EU. The Member States, regions and local authorities must not be relieved of their clear political and financial obligation by citing the motto that: 'No EU funding means no nature conservation'. The EU, for its part, must also not take the view that: 'We make it possible to finance measures using the existing Funds. If the Member States fail to do this because they set themselves other priorities, then they themselves are to blame'.

3.17 On the other hand, whilst tapping the regional economic development potential of Natura 2000 sites, as referred to by the Commission, would be desirable (since it is becoming clear that nature conservation may also actually bring economic benefits), this aspect is, however, not necessarily relevant to the issue of species conservation.

3.18 In the EESC's view, this therefore implies that particular measures to be funded as part of the establishment of the Natura 2000 network are vitally important and that the requisite funding should therefore be clearly earmarked. The EESC asks the Member States and the Commission to formulate ideas with this aim in view.

Brussels, 10 February 2005.

The president

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on services in the internal market

(COM(2004) 2 final — 2004/0001 (COD))

(2005/C 221/20)

On 20 February 2004, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 January 2005. The rapporteur was Mr Metzler. The co-rapporteur was Mr Ehnmark.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 10 February), the European Economic and Social Committee adopted the following opinion by 145 votes to 69, with 9 abstentions:

1. **Preliminary remarks**

1.1 The Committee has also referred to the explanatory notes from the European Commission to the Council (Document 10865/04 of 25 June 2004 and Document 11153/04 of 5 July 2004 on Article 24) and the European Parliament working documents of 25 March 2004 (Committee on Legal Affairs and the Internal Market — rapporteur: Evelyne Gebhard) and 26 March 2004 (Committee on Employment and Social Affairs — rapporteur: Anne E.M. van Lancker).

1.2 On 24 May 2004, the Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, held a public hearing based on a questionnaire sent out previously, attended by representatives of the service society; it looked at over 100 additional responses submitted orally and in writing.

2. **General comments**

2.1 Following the Lisbon agreement, the service sector is taking on a key role in the implementation of the European internal market, and is of fundamental importance to economic growth in the EU. The Commission is submitting the draft directive on services in the internal market with accompanying explanations as part of the European economic reform process, which is designed to transform the EU into the most competitive and dynamic knowledge-based economy in the world by 2010, capable of sustainable economic growth with more and better jobs and greater social cohesion. The draft directive is intended to provide an essential building block and a reliable legal framework for the cross-border provision of services and freedom of establishment in the Member States in the areas of industry, commerce, trade, and the liberal professions for full-time, part-time and temporary work. The new horizontal approach includes simplified procedures, harmonised quality assurance, and increased transparency in regulations for the protection of consumers. The provision of cross-border services is an essential part of the market, and the removal of barriers is of fundamental importance for the economic development of this sector and particularly important for consumers. The directive could lead to an increase in supply and more competition. Consumers will thus benefit from lower prices and a wider range of choice. The Committee therefore expressly welcomes the overall aims of the proposed directive.

2.1.1 Whilst an effective internal market does require the removal of barriers, it also requires adequate regulation. In order to make Europe more competitive, national and EU-wide rules — and consequently harmonised standards — are essential.

2.2 Given individual Member States' differing legal systems and cultures, the Committee is aware that completing the single market in services is a complex venture. The Committee already recognized that fact in its opinion (INT/105) of 28 November 2001 [1] on the Communication from the Commission on an Internal Market Strategy for Services, and it has explicitly welcomed European Commission efforts to speed up single market completion. As the purpose of the draft directive is to directly establish a framework that applies to a range of different sectors, it should offer non-bureaucratic and flexible solutions that draw on proven self-regulatory schemes within the European Union. It will be vital to further optimise the integration process, not least through the additional draft directive from the European Commission on the mutual recognition of professional qualifications, while keeping in mind proven social, environmental, and consumer protection (safety) standards.

[1] OJ C 48, 21.2.2002

2.3 The draft directive has close links with the proposal for a Directive on the recognition of professional qualifications, with the communication on competition in professional services, the current debate on services of general interest, and also the ongoing consultation on social services of general interest, the Rome I convention and the proposed Rome II regulation. All these proposals aim at improving the functioning of the single market. Specialised and improved coordination from within the Commission in order to ensure dovetailing of work and provisions would therefore be desirable.

2.4 The draft directive focuses on two forms of free movement concerning cross-border services and cross-border company establishment: (i) where a service provider from one Member State wishes to establish himself in another Member State in order to provide his services there; and (ii) where a service provider wishes to provide a service in another Member State from (out of) his Member State of origin, in particular by moving temporarily to that other Member State. The draft directive proposes four key measures to remove the obstacles envisaged so far by the European Commission:

— the application of the country-of-origin principle,

— the allocation of tasks between Member State of origin and Member State of destination with regard to the posting of workers in the context of the provision of services,

— the development of mutual trust, and

— stronger mutual assistance between Member States, while at the same time limiting the scope for Member States to introduce their own monitoring, supervision and enforcement mechanisms.

3. **The proposal for a Directive point-by-point**

3.1 The EESC has carefully analysed the draft directive from the perspective of the requirements that a directive with such a broad scope has to meet. The EESC has concluded that numerous clarifications and amendments are needed to sufficiently accommodate unresolved issues and make this new effort to promote services in the internal market a real step forward. This conclusion was reached not least due to the insufficient assessments made before the draft directive was launched. The numerous concerns of varied economic and social interest groups aired at the public hearing held on 24 May 2004 have still not been fully addressed, in spite of the European Commission document submitted to the Council of the European Union on 25 June (Council document 10865/04). An extended impact assessment by the Commission would be of value to all stakeholders.

3.2 *Empirical basis*

3.2.1 For the Committee, it is striking that the explanatory memorandum to the proposed directive does not provide any reliable statistical basis to quantify the cross-border provision of services and the cross-border establishment of businesses. This data should therefore be added to the assessment report from the Commission. If, in future, we are to gain any reliable picture of the significance of the service sector and the effects on the operation of the single market — whether positive or, indeed negative — of simplifying procedures as envisaged by the draft directive, then a more precise empirical basis is of considerable importance. The Committee considers that the most accurate possible recording of the true conditions in the cross-border provision of services and business establishment is a crucial factor in the implementation of the internal market.

3.2.2 Statistical materials available in public administration, research institutes, the insurance sector and self-governing bodies in the various Member States should be taken more closely into account.

3.2.3 In addition, in order to deal with existing shortcomings, the Committee believes that it is essential to explore new approaches to obtaining empirical data, not least in order to avoid further red tape. In some cases, consideration should be given to supplementing official statistics through specific surveys.

3.3 *Scope: definitions — rules on conflict of laws — distinctions*

3.3.1 The Committee calls for the scope of the directive and derogations from it to be set out more clearly, and sharper distinctions to be drawn between them. With regard to practical application of the directive, uncertainties about its scope and which parts of the services sector will be affected and in what way still remain, since clear distinctions have not been drawn.

3.3.2 The Committee advocates drawing a clear distinction between trade services and those provided by the liberal professions. Clearer distinctions are also needed in view of the Committee's recommendation that the harmonisation of certain areas (liberal professions, and other sensitive areas) should be given priority over a transition period. This would make the quality assurance mechanisms envisaged by Chapter 4 of the draft directive more conducive to consumer protection. In its ruling of 11 October 2001 (Case C-267/99) the European Court of Justice for instance highlighted the key elements that make up the liberal professions. This ruling could serve as a basis for a definition at European level.

3.3.3 In 2003, the Commission submitted a Green Paper and then, on 12 May 2004, a White Paper, on services of general interest, making it desirable to better identify and distinguish the effects of the draft directive on this sensitive area in the Member States. As the Commission is committed to submitting a report by the end of 2005 on the feasibility of and need for a framework law (this is referred to explicitly in Article III-122 of the Constitutional Treaty), the Committee believes it would be preferable to exclude all services of general interest (economic and non-economic) from the scope of the Services Directive, pending the establishment, within a Community framework, of the principles and conditions, economic and financial in particular, that will enable services of general interest to fulfil their purpose.

3.3.4 The derogations to the country-of-origin principle set out in Article 17(8) in respect of the Directive on the recognition of professional qualifications, which is still in the pipeline cannot be restricted to individual articles or titles. Thus the application of the country-of-origin principle must be coordinated with the implementation of the proposed Directive on the recognition of professional qualifications. The Directive on the recognition of professional qualifications will put in place an integrated quality assurance system. If the derogation provision in Article 17(8) is to apply solely to Title II of the draft directive on the recognition of professional qualifications, it remains unclear how tasks should be divided between the 'contact points' set out in Article 53 of that draft directive and the 'one-stop shops' proposed in Article 6 of the draft directive under review here. If 'contact points' carrying out one and the same role are what is meant here, then a unified term should be employed in both draft directives.

3.3.5 In order to avoid conflicts, the scope of the directive and of the country-of-origin principle in particular needs to be more clearly distinguished from national legislation in the areas of taxation and criminal law. For example, under criminal law in certain Member States, auditors, tax consultants and lawyers have rights and obligations to maintain confidentiality vis-à-vis investigating authorities, whereas in other Member States practitioners are, to a limited extent, obliged to disclose information or even to report on clients. In the case where a provider of services is required to disclose information in a particular country, but under the country-of-origin principle is entitled and indeed obliged not to do so, is the provider of services permitted to flout the criminal law system of the country concerned? Criminal law and tax legislation are the responsibility of Member States and not of the EU, and therefore, in order to avoid adverse effects for users, a clear legal distinction needs to be made.

3.3.6 In addition, the possibility of coordinating welfare systems and other obligations of national governments more closely at the same time as applying the country-of-origin principle should be investigated. Whenever there is a risk that applying the country-of-origin principle would undermine national welfare and healthcare systems, an overall derogation must be put in place, as required.

3.3.7 With regard to health matters, the Committee points out that inclusion of the hospital sector needs to be reviewed. Perhaps the case law of the European Court of Justice on obtaining reimbursement of costs for cross-border treatment could be made more compatible through specific arrangements for statutory insurance schemes; such arrangements should not, however, fall within the field of application of the proposal for a Directive.

3.3.7.1 The Committee recommends that, in the case of social and health services, the first step should be to await publication of the Commission communication promised for 2005 and to ensure that there is appropriate coordination. The Committee would point out that many voices have been expressed broadly in support of excluding this area from the scope of the proposal for a Directive.

3.3.8 The same applies to providing a coherent definition of the scope of the Eighth Council Directive on the approval of persons responsible for carrying out the statutory audit of accounting documents (article 17(15)), which is currently being revised. The requisite clarity is still lacking from some translations of the Commission's proposal.

3.3.9 The point made in the explanatory memorandum, that the provisions on services and freedom of establishment do not apply to activities connected with the exercise of official authority (Articles 45 and 55 of the EC Treaty) should be included in the binding text of the directive.

3.3.10 Temporary work represents a particularly problematic area which should be explicitly excluded from the entire field of application of the proposal for a Directive. EU-wide harmonisation of the requisite national provisions in this sector is desirable. In this context, the EESC would draw attention to the recently announced proposal for a Directive on working conditions for temporary workers. Consideration must also be given to ILO Convention 181 on private employment agencies, Article 3(2) of which explicitly provides for licensing and certification systems to protect workers and encourage high-quality work by such agencies.

3.3.11 In some Member States, there are exceptionally strict legal rules to protect press freedom. In this area too, the Committee considers it essential to determine the scope of each of these rules in relation to the draft directive.

3.3.12 In addition, the Commission should make it quite clear whether the proposal also applies to television broadcasting services, and if so, how it intends to make the proposal compatible with the provisions of the 'Television without Frontiers' Directive. Likewise, it should be made clear whether audio-visual services in general and those provided at individual request ('service on demand') fall within the scope of the proposal, as these are already covered by specific Community legislation *on certain legal aspects* (Directive 2000/31/EC on electronic commerce).

3.3.13 In the EESC's view, these services should at present be explicitly excluded from the scope of the proposed directive, particularly with regard to its provisions on the country-of-origin principle and the concept of *establishment* as an essential connecting factor and the main criterion for identification of the Member State concerned.

3.4 *Single points of contact (one-stop shopping)*

3.4.1 The idea of simplifying procedures by creating a single point of (first) contact for service providers is to be welcomed. However, the Committee is concerned that, in the case of freedom of establishment, Article 6 allows certain procedures, such as access to an activity, to be dealt with by a single agency. For the Committee, the problem arises that in the case of statutory public registration (e.g. in the trade register), the single point of contact would need to refer matters on to the competent registration authorities. Points of contact providing so-called one-stop shopping will not be able to deal with this area on their own. Clarification is needed as to how, in practice, the single points of contact will cooperate with existing competent registration authorities.

3.4.2 Article 53 of the draft directive on the recognition of professional qualifications mentions contact points, which are intended to function as central information points. Article 6 of the draft directive under review here mentions so-called 'one-stop shops' as centralised contact points. Coordination is needed here to ensure that the creation of various new agencies does not interfere with the overall objective of safeguarding citizens' rights to easily accessible information within and on the European Union. Red tape should be specifically targeted during the new Commission's term of office. The creation of new bureaucratic hurdles in the individual Member States must be avoided.

3.4.3 Moreover, the question of the liability of single points of contact if they provide incomplete or even false information needs to be clarified. In such cases, service providers may suffer if they have neglected to obtain a given permit and are therefore in breach of the law. Consumers, for instance, may also suffer, however, if the existence of adequate liability insurance is not checked.

3.5 *Country-of-origin principle*

3.5.1 The Committee feels that, in order to make steps to complete the internal market suitably effective, the proper conditions must first be created for there to be universal application of the country-of-origin principle by adopting a differentiated approach, making it a priority to align this approach on employment, consumer-protection and environmental standards in each individual sector.

3.5.2 The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations listed in Article 17, form the basis of the draft directive. However, it is only appropriate for the type of services which lend themselves to standardisation or to cases where harmonisation of legislation has progressed sufficiently to leave no scope for distortions of competition, social dumping and lack of confidence among consumers. It should be acknowledged that there are areas where standards have not yet been laid down or where indeed it would be impossible to do so (so-called non-specifiable services).

3.5.3 The Committee therefore believes the blanket application of the country-of-origin principle in the cross-border provision of services is premature. This principle assumes a comparable environment — both de facto and in law. The Committee feels that it will only be possible to apply the country-of-origin principle effectively if there is legal certainty and clarity regarding its scope. Applying this principle without an appropriate transition period would therefore give rise to problems, especially in view of the fact that the Committee believes not all the available options for sector-by-sector harmonisation have yet been made use of. It involves the risk of systems competing with one another, weakening employment, environmental, and consumer protection standards, given that differing legal, welfare and healthcare systems continue to exist within the EU. Rather than prematurely introducing measures of a purely horizontal nature, the needs of the single market could be best met by harmonisation on a sector-by-sector basis, particularly in sensitive areas. This process would involve examining — as part of a comprehensive impact assessment, also including social and environmental aspects — the suitability of each sector for introduction of the country-of-origin principle, in conjunction with all the groups concerned, especially consumer protection organisations and the social partners. As harmonisation measures are at least as important a means of completing the single market, there should be legislative harmonisation within an appropriate time frame in areas where Member States have responsibilities in respect of health care, welfare and professional activity. At an intermediate stage, the European Commission, Parliament and Council should

assess whether harmonisation in these areas has made sufficient progress. If necessary, and depending on the stage which harmonisation of legislation has reached, an additional transition period could be granted to bring national legislation into line. The Committee feels that this approach, together with an exact definition of services which qualify for special treatment (e.g. those provided by the liberal professions), would enable gradual adjustment in the areas concerned; on completion of the transition period the country-of-origin principle could then come into force, enabling completion of the single market. The same applies to co-regulatory and self-regulatory mechanisms.

3.5.4 The Committee feels that it would be worth examining whether it would be useful to have a central, independently administered and readily accessible register of infringements and misconduct arising in the course of cross-border service activities involving regulated professions. Authorities could record professional misconduct in the register. The aim of the register would be to make communication between the relevant national authorities as rapid and as free of red tape as possible, besides ensuring effective monitoring and disciplining of operators on the market.

3.5.5 The draft directive stipulates that the Member State of origin is responsible for supervising the provider and the services provided by him, including services provided in another Member State. This provision places a very heavy responsibility, and workload, on the country of origin and the appropriate bodies there. However, Article 6 b) of the draft directive on the recognition of professional qualifications already emphasises the need for activities in cross-border services requiring certain qualifications to be reported in the host country. Furthermore, competition may be unexpectedly distorted if a service provider moves to another Member State with stricter regulations. The Committee is convinced that such distortions of competition could be avoided if national legislation were to be gradually aligned on minimum standards stipulating appropriate protection for consumers, employees and the environment. The terms and conditions for the supervision of service providers operating in other Member States must be clearly defined, so that consumers can be confident that the services offered to them comply with the laws in force.

3.5.6 The country-of-origin principle is only workable if national authorities are highly organised, including at the regional and local level. Current supervision structures and cooperation networks operating on an electronic basis are not adequately linked up. Even supervision by the country of origin which, under Articles 36 and 37 of the draft directive is to take the form of cooperation between country of origin and host country, is not guaranteed to be effective.

3.5.7 The Committee believes that delays due to language barriers and slower channels of communication will make it impossible to offer a prompt response to consumers who have been affected by, or suffered losses as a result of poor service. Consumers must be guaranteed the possibility of an effective and straightforward method of lodging complaints and submitting claims for unsatisfactory service. Under the directive's proposals the competent authorities in the host country would not even be able to act themselves, as they are not routinely informed of the name under which the foreign service provider enters into contact with consumers in the host country, what kind of liability insurance cover is in place, etc. The directive will therefore have to make at least supplementary provision, making it compulsory for certain information to be communicated to the competent authorities of the host country and authorising the host country to take disciplinary measures. The central register could play the key role here. Amendments along these lines have already been taken up in the legislative procedure for the proposal for a Directive on the recognition of professional qualifications during its first reading by the European Parliament.

3.5.8 Finally, the Committee is concerned that the draft directive, in spite of partial derogations in Article 17(20)-(23), jeopardises the successful creation of a unified legal instrument for contractual and non-contractual obligations as set out by the Rome I regulation and the proposed Rome II regulation. Both regulations follow a universal approach by applying international civil law in a uniform fashion both within the EU and in third countries, thus ensuring legal clarity for all parties to a contract.

3.6 *Posting of workers*

3.6.1 The purpose of Directive 96/71/EC of 16 December 1996 on the posting of workers is to ensure that increased possibilities for companies to provide services in other Member States are consistent with the implementation of employees' minimum social standards. The directive covers the practical coordination of terms and conditions of employment for posted workers. With Article 17(5) of the draft directive the Commission has provided for a derogation from the country-of-origin principle for the directive on the posting of workers, and in doing so has demonstrated that a clear distinction between the respective areas of application was what it had intended. However, following closer examination of Articles 24 and 25 of the present draft directive the Committee is not convinced that the wording of the intended derogation is sufficiently clear and comprehensive.

3.6.1.1 The relationship between the Posting of Workers Directive and the Services Directive has provoked a large number of questions. These questions differ from country to country depending on differing labour market systems. The views of the social partners, both European and national, must be considered carefully if a Services Directive is to be acceptable.

3.6.1.2 The Services Directive must not affect trade union rights, the right to organise and collective bargaining, including the right of the social partners to enter into collective agreements, or the right to take industrial action. We propose that this be made clear in Article 3. Workers from another Member State must receive exactly the same treatment as workers from the country in which the work is being done. This is quite clear from the anti-discrimination perspective that underpins the EU treaties. Wages and working conditions are therefore in all significant aspects to be governed by the rules applying in the country in which the work is being carried out. Control of compliance with these rules in all significant aspects must, to be effective, take place at the place of work. The Services Directive must therefore make clear that the objective of the Posting of workers Directive is to protect workers and that under this directive it is fully permissible to have better rules than the mandatory minimum requirements for workers in a certain country.

3.6.2 The Committee feels that the prohibition of supervisory procedures provided for in Articles 24 and 25 of the draft directive renders the derogation in Article 17(5) absurd, as there is the unanswered question of how the country of origin is to be informed of possible infringements in the country of posting, which, for its part, is no longer allowed to exercise supervision and impose penalties. Even if we admit this as a possibility, it is still unclear how the country of origin should proceed in a foreign country in which it has no jurisdiction. By contrast, the Directive on the posting of workers allows Member States to stipulate which statements may be required from companies in the host country (for example in the case of public procurement), who should act as an authorised agent for legal proceedings and fines, and how detailed activity notices should be. This is how it should remain.

3.6.3 While closer cooperation between authorities in the country of origin and the country of posting is indeed both desirable and to be encouraged, practical experience suggests that what actually happens in such cases is rather different, and the Committee feels that the draft directive does not yet take that sufficiently into account. The conclusion of the EESC is that the Directive on services needs to be much clearer and more specific with regard to cooperation between the country of origin and the country of posting.

3.6.4 In the case of cross-border posting of third-country nationals, according to the draft, it must be the responsibility of the Member State of origin to ensure that the service provider only posts workers who, whether or not they are citizens of the EU, fulfil the conditions for residence and lawful employment as laid down in the legislation of the country of origin. The host Member State may not impose any preventative controls either on workers or the service provider. The effects of this proposal are likely to give rise to difficulties comparable to those described above. Therefore, here too the directive should make clear that the legal position will remain as it currently is.

3.7 *Consumer protection through compulsory insurance*

3.7.1 The Committee acknowledges that making professional indemnity insurance compulsory for service providers whose services involve a health, safety, or financial risk for clients is one way of raising consumer confidence. Laying down a uniform set of rules on professional indemnity insurance to apply throughout Europe is also advisable in order to ensure that service providers compete on a level playing field. However, weighing up all the arguments for and against compulsory insurance, the latter can only be warranted if there is an overwhelming need to protect third parties or consumers. The directive should stipulate to which groups of professions and sectors this applies. Rules also need to be flexible enough to accommodate individual risk situations and the insurance cover needs of the many potential policy holders.

3.8 *Quality assurance through certification*

3.8.1 The Committee is convinced that to provide a knowledge-based service, competitors need to engage in continuous training. They will only be able to stand their ground if they are on top of the latest scientific and technological standards. Stamps of quality and certificates will only have the desired effects in terms of quality assurance if it is clear to consumers which standards are behind them. For widespread recognition, a certain level of familiarity needs to be attained, or the transparency required by consumers will be lacking. Consumers should have clear and transparent information on how the quality of services is designated. Due to the appearance on the market of many stamps of quality which are not recognised by consumers, there is a risk that such designations may become devalued, without providing consumers with the information they need.

3.9 *Transparency in pricing*

3.9.1 As already implied in Article 26(3) of the draft directive, there should be transparency in pricing and the method used to calculate prices. In the view of the Committee, it is worth considering making it compulsory to disclose pricing details not just at the request of (non-business) clients but, automatically, whenever orders are placed. One way of achieving such transparency would be to lay down regulations on standard fees and charges in a way which is compatible with Community law. However, these would not necessarily apply to business-to-business transactions.

3.10 *Use of electronic media*

3.10.1 The Committee is pleased that, in principle, all procedures are to be processed electronically. This is a forward-looking and, generally speaking, positive development. However, it must be remembered that, as already indicated in the restrictions set out in Article 5 of the draft, originals — or certified translations thereof — of significant documents such as certificates, extracts from registers, etc., can only be submitted electronically if their authenticity can be verified by a recognised signature or the like. In the case of ordinary electronic means of communication, this is not yet the case, and the appropriate technology needs to be put in place in all Member States (see the Committee's work on modern media and communication).

3.11 *Inter-disciplinary cooperation*

3.11.1 For the Committee, it is important for consumers to have access to comprehensive packages of solutions in the case of intersectoral cooperation in the provision of services. However, given the special position of some service providers under their country's legal system, the importance of legal requirements for cooperation must be remembered. Cooperation will only be possible if the rights and obligations relating to confidentiality that apply to certain service providers are the same for all of the various professionals working in a single office. Failing this, there is a risk of infringing the rights of individual consumers guaranteed under the European Charter of Human Rights.

3.12 *Codes of conduct*

3.12.1 The Committee supports the proposal to introduce codes of conduct at a European level. With various pieces of national legislation in place to regulate the exercise of professions and professional conduct, codes of conduct are one of several options for guaranteeing the quality of the service provided. Quality assurance schemes put in place by service providers are voluntary agreements which are not legally binding. Although this does not render such agreements ineffective, it limits their enforcement. In many Member States, there are legal constraints which make it difficult to enforce such agreements.

3.13 *Social security*

3.13.1 Within the enlarged European Union, there are many different social security systems, which have evolved over long periods, and with the close involvement of the social partners. Exchange of best practice has been the principal method of promoting the evolution of social security systems. This also has implications for the draft directive on services in the internal market. It must be ensured that joint social policy achievements are not undermined.

3.13.2 It goes without saying that the social partners have a natural and strong role to play in the development of the services sector. However, in this connection, it should be pointed out that trade unions are not explicitly included in the consultations of 'interested parties' mentioned in the draft directive. The EESC strongly emphasises that the social partners, and organised civil society, must be consulted wherever appropriate in the development of the services sector. It also consistently welcomes initiatives by stakeholders.

3.13.3 A particularly important point in this context is the fact that the proposal for a directive does not take into account the fact that in some EU Member States, collective agreements have taken over the role of legislation. In practical terms, this means that collective agreements have the same legally binding effects as conventional legislation. The specific role of collective agreements is particularly relevant to the Nordic countries, where it is the usual practice for independent social partners to negotiate pay and conditions collectively. The draft directive should be amended so as to explicitly acknowledge that collective agreements are a means of fulfilling the obligations under the proposed directive.

3.14 *The authorisation system*

3.14.1 The proposed restrictions on the Member States' scope to introduce or maintain their own authorisation systems are very strict, and will lead to changes in a number of Member States. Inevitably the question arises of whether this will prevent Member States from requesting the application of national rules in areas such as the social, health and environmental fields. The freedom of Member States to shape their own provisions and the existence of decision-making leeway at national, regional or local levels are of crucial importance when it comes to bringing an influence to bear on quality and safety standards in the social services and health sector. Powers in the framing of social policy, in particular, are also linked to the scope for imposing individual conditions and demands on service-providers at national, regional and local levels.

3.15 *Taxation*

3.15.1 Article 2 of the draft excludes taxation from the scope of the directive. The Committee would point out that one of the main barriers to completing the single market continues to be the lack of a consistent approach to tax rules among Member States. Harmonised rules at Community level may in some cases bring about change. However, the country-of-origin principle is not considered to be fully applicable in this area either: for example, in its reform of the sixth VAT Directive, the European Commission is proposing that services provided between taxable persons should be taxed in the host country, rather than in the country of origin. Although it would be useful or even necessary, there is a lack of consistency here in the simplification of cross-border service provision.

4. **Overview of the Committee's proposals**

4.1 The Committee welcomes the Commission's goal, set out in the draft directive on services in the internal market, to turn the internal market into a reality and to take a further step forward in making the EU the world's most competitive and dynamic knowledge-based economy, capable of sustainable economic growth, with more and better jobs and greater social cohesion (Lisbon Strategy). The services market is an important multiplier, creating jobs and engendering economic growth in the entire EU. Completion of the single market in services can also bring major benefits for consumers in terms of lower prices and greater choice. Moreover, the Committee believes that the changes and specifications recommended here should be incorporated into the draft directive so that this target is really achieved.

4.2 The central corner stones of this opinion are the following:

4.2.1 *Harmonisation of specific services over a two-stage transition period:* The Committee therefore believes the blanket application of the country-of-origin principle in the cross-border provision of services is premature. As a general recommendation, the Committee suggests reviewing the feasibility of applying the country-of-origin principle to various sectors, such as the health and social services sectors. Wherever application of the principle appears to be generally feasible, it should be borne in mind that harmonisation and the country-of-origin principle carry at least equal weight as instruments in the creation of the internal market. However, harmonisation should be given priority at least for a transitional period for work — to be defined separately — performed in the national health systems, the liberal professions and other sensitive areas. At present the Committee is concerned that immediate application of the country-of-origin principle would result in a 'watering down' of standards. The new provisions must be as easy to apply, and as clearly structured as possible in order to ensure that the implementation is achieved smoothly and without complication. The same applies to co-regulatory and self-regulatory mechanisms.

4.2.2 *Issues connected with the social dimension:* The draft directive should not lead to any watering down of existing social protection, wage, and safety standards in the workplace, particularly those laid down in the Directive on the posting of workers. National arrangements for collective negotiations and agreements, including the national implementation of the associated Directive on the posting of workers (Directive 96/71/EC), should not be adversely affected. Member States must be in a position to apply set definitions to the terms 'employees', the 'self-employed', and the 'false self-employed', in order to establish clear principles for application within the scope of the Directive on posting workers, limiting the scope of the country-of-origin principle. In addition, it should be up to the Member States to lay down employment conditions which would generally apply in their countries to the relevant employees, as well as to immigrants and posted workers. If necessary, one of the employees in the country of posting should be designated as an authorised agent, whose task would be to have ready the documentation required locally for employment.

4.2.3 *Scope and rules on conflicts of laws:* The scope, derogations and the rules on conflict of laws in the application of the country-of-origin principle to cross-border service provision must be set out more clearly and sharper distinctions must be drawn between them. The scope of this Directive must be marked off clearly against that of the planned Directive on the recognition of professional qualifications, and clarification is needed as to whether and how, for example, to avoid conflicts between the country-of-origin principle — to which the draft directive gives precedence in each case — and the social, tax and criminal law standards of the host country. Legal incompatibilities vis-à-vis existing legislation must be avoided at all cost. In particular, the Rome Conventions I and II must not be affected. However, in many situations disputes can be resolved with greater clarity by reference to international private law. All services of general interest must be excluded from the scope of the Services Directive, pending a Community framework.

4.2.4 *Central register on cross-border activities:* In the Committee's view, consideration should be given to whether setting up a central EU-wide register to record requirements and infringements noted in the course of supervision could be an effective and useful means of fulfilling the requirements set out in the draft directive for the monitoring of specific service providers, such as members of the liberal professions.

4.2.5 *Improvements in empirical record keeping*: Mechanisms to record trade flows within the single market for services need to be reviewed and improved, so that the reason for — and impact of — measures can be better identified and evaluated.

4.2.6 *Quality assurance and transparency in pricing*: Consumer protection should be upheld through quality assurance systems and, where appropriate, the introduction of compulsory insurance. In the cross-border provision of services, steps should be taken to ensure that customers in the 'business to consumer' sector have an idea of the conditions and costs of such services, without specifically having to ask for them. Rules on standard fees and charges are one possible option, provided that they are compatible with Community law.

4.2.7 Alignment of tax regulation: In addition to many minor obstacles, both real and perceived, the main obstacle to the implementation of the single market is a matter for Member States and local authorities: diverse and inconsistent implementation of the legislation on social security contributions and on taxation. The Committee reminds Member States that this situation will continue to require particular attention on their part.

5. Generally speaking, the positive aspects of the single market, particularly for SMEs and the self-employed, should be promoted more intensively, with the involvement of the Committee's PRISM project. Unless a significant number of service providers and consumers are convinced of the benefits of the single market, the Committee feels that it will not be possible to tap into the growth potential of the service sector.

Brussels, 10 February 2005.

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

APPENDIX I

to the Opinion of the European Economic and Social Committee

The following amendments were rejected in the course of the debate but received at least a quarter of the votes cast:

Point 2.1.1

Amend as follows:

'Whilst an effective internal market does require the removal of barriers, it also requires adequate regulation. In order to make Europe more competitive, ~~national and EU-wide rules and consequently harmonised standards are essential~~ administrative procedures and formalities for access to services and their provision need to be simplified.'

Voting:

For: 48

Against: 113

Abstentions:6

Point 3.3.3

Delete.

Voting:

For: 52

Against: 130

Abstentions:6

Point 3.5

Delete the entire point and replace as follows:

3.5.1 Although free cross-border service provision is already covered by rights enshrined in the Treaty and by case law, businesses are, in practice, often unsure of what their rights actually are. The Services Directive sets out these rights and gives them practical shape. A central plank is the country-of-origin principle, which can make it easier for small and medium-sized enterprises in particular to know their obligations and rights when providing cross-border services without being established in the host country. Although the directive does contain a long list of derogations from the country-of-origin principle, the Committee feels that, provided no additional derogations are introduced, this may be a key lever for the further development of the single market in services, benefiting both consumers and workers and boosting European competitiveness.

3.5.2 The Committee considers the country-of-origin principle as a catalyst for bringing Member States' legislation closer into line, possibly followed at a later stage by harmonisation in the fields of consumer protection and the environment.

3.5.3 The Committee feels that it will only be possible to apply the country-of-origin principle effectively if there is legal certainty and clarity as to its scope. The principle should therefore be put into practice in such a way that it does not infringe workers' and consumers' existing rights, or impinge on current levels of environmental protection. Uncertainties regarding the principle's compatibility with international law, Rome I and II and any other legal difficulties should be resolved without impeding the principle's purpose, i.e. in order to make it easier for companies to provide cross-border services.

Voting:

For: 68

Against: 127

Abstentions:5

Delete points 3.5.1, 3.5.2 and 3.5.3 and replace by a new point (3.5.1):

The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations stated in Article 17, form the basis of the draft directive. This is the only way to make a successful start on opening up the market for services, without further delays. Cross-border competition between service providers will benefit consumers and may also create new jobs. However, the Committee feels that application of the country-of-origin principle is only likely to succeed if there is legal clarity and legal certainty as to its scope. The application of the country-of-origin principle should therefore be accompanied by an examination of which services might benefit from further harmonisation of the legal bases. At the same time, it is important to ensure that the freedom to provide services is not detrimental to workers' and consumers' rights or to the protection of the environment. Compared to the rest of the world, the EU is already setting high standards in these areas, and these standards must be safeguarded.

Voting:

For: 83

Against: 122

Abstentions: 5

Point 3.5.1

Delete.

Voting:

For: 73

Against: 141

Abstentions: 7

Point 3.5.2

Amend as follows:

'The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations listed in Article 17, form the basis of the draft directive. The country-of-origin principle~~, which currently applies to goods, is being applied across the board to services. However, it is only appropriate for the type of services which~~ is particularly appropriate where those services lend themselves, like goods, to standardisation or to cases where harmonisation of legislation has progressed sufficiently to leave no scope for conflict. It should be acknowledged that there are areas where standards have not yet been laid down or where indeed it would be impossible to do so (so-called non-specifiable services).'

Voting:

For: 76

Against: 134

Abstentions: 6

Point 3.5.3

Amend as follows:

~~'The Committee therefore believes the blanket application of the country-of-origin principle in the cross-border provision of services is premature. This principle assumes a comparable environment — both de facto and in law.~~ The Committee feels that it will only be possible to apply the country-of-origin principle effectively if there is legal certainty and clarity regarding its scope. ~~Applying this principle without an appropriate transition period would therefore give rise to problems, especially in view of the fact that the Committee believes not all the available options for sector-by-sector harmonisation have yet been made use of. It involves the risk of systems competing with one another, weakening employment, environmental, and consumer protection standards, given that differing legal, welfare and healthcare systems continue to exist within the EU. Rather than prematurely introducing measures of a purely horizontal nature, the needs of the single market could be best met by harmonisation on a sector-by-sector basis, particularly in sensitive areas.~~ This process would involve examining — as part of a comprehensive impact assessment, also including social and environmental aspects — the suitability of each sector for introduction of the country-of-origin principle. As harmonisation measures are, together with the country-of-origin principle, complementary ~~at least as important a~~ means of completing the single market, there should be legislative harmonisation within an appropriate time frame in areas where Member States have responsibilities in respect of health care, welfare and professional activity ~~At an intermediate stage,~~ if the European Commission, Parliament and Council considers them necessary. ~~should assess whether harmonisation in these areas has made sufficient progress. If necessary, and depending on the stage which harmonisation of legislation has reached, an additional transition period could be granted to bring national legislation into line. The Committee feels that this approach, together with an exact definition of services which qualify for special treatment (e.g. those provided by the liberal professions), would enable gradual adjustment in the areas concerned; on completion of the transition period the country-of-origin period could then come into force, enabling completion of the single market.~~ The same applies to co-regulatory and self-regulatory mechanisms.'

Voting:

For: 79

Against: 139

Abstentions: 7

Point 3.5.4

Delete.

Voting:

For: 65

Against: 150

Abstentions: 4

Point 3.6.2

Delete.

Voting:

For: 74

Against: 140

Abstentions: 3

Point 3.9

Delete.

Voting:

For: 73

Against: 134

Abstentions:5

Point 3.15

Delete.

Voting:

For: 90

Against: 135

Abstentions:2

Replace point 4.2.1.:

The Commission's approach in applying the country-of-origin principle across the board, apart from the derogations mentioned in the draft directive, is correct. This is the only way to make a successful start on opening up the market for services, without further delays. Care should also be taken to ensure legal clarity and legal certainty in the application of the country-of-origin principle. The application of the country-of-origin principle should be accompanied by an examination of which services might benefit from further harmonisation of the legal basis. It is important to ensure that the freedom to provide services is not detrimental to workers' and consumers' rights or to the protection of the environment. The new provisions must be as easy to apply and as clearly structured as possible in order to ensure that they are implemented smoothly and without complication. The same applies to co-regulatory and self-regulatory mechanisms.

Voting:

For: 66

Against: 146

Abstentions: 4

Point 4.2.1

Delete and replace as follows:

'The country-of-origin principle and harmonisation are both key tools for securing the free movement of services. This principle can also be seen as a catalyst for bringing Member States' legislation closer into line, possibly followed at a later stage by harmonisation in the requisite fields. In itself, the country-of-origin principle can help secure much greater transparency for businesses embarking on cross-border service provision, but without establishing themselves in the host country. It will be a key lever for the further development of the single market in services, benefiting both consumers and workers and boosting European competitiveness. It is, however, important to clear up any outstanding legal issues before the country-of-origin principle can be expected to operate effectively.'

Voting:

For: 75

Against: 135

Abstentions: 3

Point 4.2.2

Amend as follows:

Issues connected with the social dimension: The draft directive should not lead to any watering down of existing social protection, wage, and safety standards in the workplace, particularly those laid down in the Directive on the posting of workers. National arrangements for collective negotiations and agreements, including the national implementation of the associated Directive on the posting of workers (Directive 96/71/EC), should not be adversely affected.

Voting:

For: 84

Against: 132

Abstentions: 1

Point 4.2.4

Delete and replace as follows:

'The proposals to simplify procedures and establish a single point of contact for service providers are to be welcomed. Missing from the draft, however, are more specific details about the procedures involved. Particular attention should be paid here to cutting red tape and reducing administrative burdens.'

Voting:

For: 74

Against: 141

Abstentions: 3

Point 4.2.6

Delete.

Voting:

For: 76

Against: 140

Abstentions: 1

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council and the European Parliament: Clearing and Settlement in the European Union — The way forward

(COM(2004) 312 final)

(2005/C 221/21)

On 29 April 2004, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

On 1 June 2004, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Burani as rapporteur-general at its 414th plenary session, held on 9 and 10 February 2005 (meeting of 10 February), and adopted the following opinion with 99 votes in favour and two abstentions.

1. **Introduction**

1.1 As part of the Action Plan for Financial Services, launched in 1999, the Commission is addressing the complex problem of transactions in securities, and in particular that of **clearing** and **settlement**, which are the cornerstone of such transactions. The safety and efficiency of systems — which are invisible to the retail investor — are fundamental to the life of the securities markets. The basic concepts are simple: clearing provides the parties with a guarantee against the risk of 'replacement costs' (insolvency of one of the counterparties), and settlement guarantees payment for the securities that have been sold. However, the underlying processes, mechanisms and regulations are an extremely complex and specialised subject. In this chapter, the key points of the Commission document are summarised.

1.2 At **national** level, the systems work **satisfactorily** from a cost-effectiveness and safety point of view; however, problems arise at **cross-border** level, where **inefficiencies, risks and increased costs** exist as a result of undue fragmentation of the markets, which is in turn caused by **different legislation, rules and customs** in different countries. It is the market operators themselves who feel the need for reform.

1.3 The Communication — which will be followed by a directive to be published shortly — puts forward the various aspects of the problem for discussion by the interested parties, with the fundamental aim of **creating an efficient, integrated and safe** European market for the clearing and settlement of securities transactions. Integration of systems will have to be achieved through **the combined intervention of market forces and public authorities**; the Commission itself proposes to promote **coordination** among private sector organisations, regulatory authorities, and legislators.

1.4 A **framework directive** will be necessary to ensure that **infrastructure providers and service users** (authorised operators) **have access to the clearing and settlement system of their choice**; this system must be properly authorised, supervised, and comply with competition rules. The Commission declares that when drafting the directive, it will respect the principles of **subsidiarity** and **proportionality**, taking into consideration the requirement to avoid, wherever possible, interfering with the rules adopted by national authorities to regulate the relevant market structures. The result of this approach should be a clear, reliable and consistent **legal basis.**

1.5 The Commission does not intend to go into the issue of a possible (cross-border) **consolidation of clearing and settlement activities**, believing that this should largely be market-driven. It does, however, propose to ensure that public policy concerns (competition, soundness/efficiency of systems) are taken into consideration.

2. **Current situation**

2.1 Clearing and settlement procedures are complex. The Commission uses these terms to describe 'the full set of arrangements required to finalise a securities or derivatives transaction'. More precisely, the function of **clearing** includes ***novation*** (intervention by the clearing house and management of counterparty risk), and ***netting*** (calculation of debit and credit positions and settlement of bilateral obligations); there is also the ancillary function of ***netting with novation,*** which protects the counterparties from the 'replacement cost risk' (the risk of losses arising from the default of a counterparty).

2.1.1 The nature of **settlement** functions, to put it very simply, is (a) ***notarial*** (codification of securities, central deposit of dematerialised securities, exchange of particulars between depositors and issuers, etc.); (b) of ***central holding of securities*** (management of securities current accounts, position monitoring, etc.) and (c) of ***settlement*** in the strict sense (calculation of counterparties, transfers between securities current accounts, interconnections with central banks, automated payments of cash balances, sub-daily transactions to bring liquidity to cash and securities payment systems, implementation of monetary policy transactions, etc.).

2.1.2 The **definition of functions**, of technical terms and their meaning sometimes lends itself to ambiguity, both because the terminology in different languages is not always exactly equivalent, and because different shades of meaning can be applied with different nuances onto national markets. It is therefore extremely important that the future directive uses **accurately verified terminology** that is universally understood and is translated into the different languages with the cooperation of national experts.

2.2 **Clearing** services are provided by bodies commonly called **central counterparties (CCP)**. **Settlement** is carried out by **central securities depositories (CSD)**. CCPs and CSDs form a **'closed circuit'** which includes, in addition to their reciprocal relationship, central banks and authorised banks and financial institutions. **Investors do not have a relationship with CCPs or CSDs**; these are only accessible to operators (i.e. banks and financial institutions that are Clearing Members).

2.3 Cross-border transactions can take place in different ways according to the following alternatives:

— direct remote access to the foreign Securities Settlement System;

— use of a custodian having direct or indirect access to the foreign Securities Settlement System;

— use of an international CSD having direct or indirect access to the foreign Securities Settlement System.

2.3.1 Aside from the fact that not all of them are available to all operators, each one of these options has advantages and disadvantages. However, they do have **one thing in common: high costs and inefficiencies**, these latter not being the fault of the systems, but inherent to the need to use complicated procedures and to protect all participants from the risk of default or non-delivery.

2.4 From what has been said in the previous paragraph, it would be easy to conclude that, in order to create an integrated, competitive and safe market, it would be enough to adopt common standards, harmonise legislation and taxation, and rationalise and internationalise the structures. The Committee warns against simplistic optimism; solutions that might seem easy in theory must be carefully assessed against the **current situation** of a Europe made up of 25 countries, which differ profoundly in size and in economic weight. In the Union as a whole, there are 24 CSDs, of which just two deal with 32.2 % of the number of transactions and 60.4 % of their total volume; 14 of the 25 countries do not have clearing structures (CCP). Moreover, in the EU15, settlement with central bank money far exceeds settlement with commercial bank money, accounting for 67 % of both the number and volume of transactions.

2.4.1 This apparently very lop-sided situation is understandable if one considers that various countries with low market capitalisation do not have, nor can have, CSD or CCP structures: these are costly and can only survive if they can rely on significant volumes. Some structures have reached a **near-monopoly position** at national level (which does not necessarily mean that they are in breach of competition rules) and work **efficiently and at low cost**.

3. **General comments**

3.1 The Committee takes note of the Commission's initiative, and welcomes the drafting of a document that represents progress on the road to integration of the European securities markets. The subject area is a specialised one. It is highly technical in nature, and with economic and financial content that cannot always be easily understood, but also has **political and competition** aspects that could have significant effects on the future of the markets. Innovations — whether suggested or imposed — should therefore be implemented **gradually**, with both immediate and long-term **repercussions** being assessed.

3.2 Whilst the implied aim of the Commission's initiative is to make the European market competitive with the American one (which, moreover, is used as a benchmark at the suggestion of the European Parliament), it should not be forgotten that the recent **enlargement of the EU** has brought in relatively 'weak' markets, or ones with experience and structures that are not yet consolidated. Changes made without assessing their immediate and, even more importantly, long-term consequences could have traumatic effects, with the risk of bringing about undue dominance of the 'stronger' systems. **Consolidations**, mentioned by the Commission as a beneficial effect of integration (and on which it declares itself 'neutral') should not be determined by the need to survive, but rather decided on by market forces **freely assessing their appropriateness**.

3.3 Aside from the situation described in point 2.4, the main factors determining the fragmentation of markets are **differences in national legislation and tax systems**, both as regards property law and as regards transactions. Community intervention is needed in these fields in order to achieve **regulatory convergence** that will remove the legal — but especially fiscal — obstacles that currently exist.

3.4 Whilst regulatory convergence is a necessary precondition, it is not enough. If the ultimate aim is to create a robust pan-European structure, there needs to be **a level playing field for competition among banks and financial institutions** and competition based primarily on **freedom of choice** of intermediaries (see point 3.7) through careful monitoring of **access rules**. Creating the conditions for optimum competition is a prerequisite for achieving a **reduction in prices** for investors.

3.5 The Commission does not express a view on the issue of **clarifying and keeping distinct the roles of operators** (banks and financial institutions) **from those of infrastructure.** These latter carry out the function of **clearing** (central counterparties, CCP) and **settlement and custody** (central securities depositories, CSD). Each category has different purposes and operational characteristics, and therefore need **different rules and supervision** appropriate to each role. However, the Committee would point out that commercial banks are increasingly tending to 'internalise' clearing and settlement functions.

3.5.1 Two of the biggest organisations, which present precisely the situation described in the previous paragraph (i.e. combining banks and intermediaries, albeit with separate accounts) have been operating in the market for some time. The experiences of these organisations have been positive in terms of efficiency, economies of scale and profitability. Furthermore, it would be unrealistic to think that it would be possible at this stage to order the splitting up or restructuring of businesses that make up the backbone of the market.

3.5.2 There are two possible courses of action: either to accept that combined organisations can exist, or to go down the strictly legalistic path of imposing separation between banking activities on the one hand, and clearing and settlement activities on the other. The first solution would benefit the market in terms of efficiency and costs, but raises — at least in theory — the possibility of increased risks and of making controls less effective; the second would be in line with the traditional doctrine of separation of activities, but does not appear to be achievable, nor, all things considered, desirable. It is clear at this stage that the only recommendation the Committee can make is that **the keeping of separate accounts be sufficiently transparent as to enable effective controls, both by supervisory authorities and by competition authorities.** A directive setting out the details by which these conditions could be fulfilled would be welcome, not to say necessary.

3.6 As already stated above, investors have relationships only with operators; **central counterparties** (CCPs) and **central securities depositories** (CSD), on the other hand, are **accessible only to operators** by means, respectively, of clearing members and securities depositories. The CSDs interact, in turn, with the respective national central banks and with other domestic or foreign CSDs.

3.7 Operators are already monitored by the supervisory authorities, but intermediaries lay down extremely strict proprietary and technical rules with regard to accessing their services. The consequence of this is that only a limited number of operators have direct relations with intermediaries, whilst the others must go through authorised operators in order to complete transactions that carry a risk. The rules laid down by the intermediaries are shaped by the **public interest function** vested in these bodies: they have the task of ensuring the **stability of the market** and, in the final analysis, **the protection of investors**. The supervision and competition authorities also have to ensure that the rules on access laid down by intermediaries do not lend themselves to being used to restrict **freedom of access**.

3.8 In view of the operational characteristics of each player, **investors have a *direct* interest in the reliability and soundness of *operators;* the market**, on the other hand, **is based on the reliability and soundness of the *intermediaries***. Whilst the systemic risk is common to operators and intermediaries, the checks carried out on each of them need to be different in approach. Hence the need, mentioned in point 3.5 above, to **maintain distinct roles and rules.** As far as the CSDs are concerned, it is worth noting that the credit risk of the participants (which are, for the most part, financial institutions) is practically non-existent, since the laws of Member States protect investors against the insolvency of a CSD by requiring that securities held in custody do not appear on the participants' balance sheets.

3.9 On the subject of separation of roles, the Committee is puzzled — as indeed are some operators — by the trend for some **banking institutions to buy out CSDs** in a number of countries, thus integrating — or, to put it better, mixing — their traditional role with that of international CSDs (I-CSDs). The Committee requests the Commission to search, in the first instance, for any signs of **distortions of competition** resulting from the presence in the same entity (or in separate but related entities) of the functions of operator and intermediary. In particular, it would be appropriate to check that CSD functions are not being used to finance or promote other activities.

3.10 Whilst distortions in competition remain to be proven, the combining of functions certainly gives rise, as has been stated above, to **difficulties of supervision** by the authorities: as a bank, an I-CSD remains subject to the banking rules and supervision of the country in which it is based, whereas as a CSD, it is subject to different rules and to supervision by the authorities responsible for securities markets in the country in which it operates. Even if the accounts are segregated, links — whether obvious or less so — can bring about overlapping responsibilities, or, worse still, dangerous gaps in supervision. However, for the sake of objectivity, it should be recalled that laws on the custody of securities (see point 3.8) effectively protect the investor.

3.11 In concluding its general comments and as an introduction to the specific comments that follow, the Committee notes that the Commission document is based on the desire to create an integrated market that is free from restrictions, complies with competition rules, and operates at low costs. All these aims are to be supported. In particular, the EESC would like to emphasise the following:

— every innovation has an impact, whether positive or negative, on the **soundness of the market**. No consideration, whether of liberalisation or of competition, must override the need to protect investors;

— the rules on **competition** must be observed, but it must be remembered that **not all participants are equal in terms of risk**,

— the notion of an open market must be tempered by the concern not to impair its quality,

— until real **convergence of tax rules** is achieved, the market will continue to show **distortions and high costs**, which will become even more obvious once the technical and legislative obstacles have been removed; furthermore, uniform procedures would make it easier to control tax evasion,

— whilst it is right that the barriers that currently hinder access to **local markets** should be removed, the fact that each market has its **particular characteristics and customs**, which no harmonisation will ever succeed in eliminating, must not be underestimated. On this matter, although the Commission's declaration quoted in point 1.4 appears reassuring, the Committee would point out that **legal certainty** is not an optional extra.

4. **Specific comments**

4.1 *The obstacles identified by the Giovannini reports*

4.1.1 The two reports of the Giovannini ([1]) group form the basis of the Commission's deliberations; the findings of these reports are the result of the work of authoritative experts, who command complete confidence. However, whilst **the facts** as stated are indisputable, the Committee believes that there remains some margin for further discussion on **the opinions** expressed. Therefore, the following comments are made in a constructive spirit.

4.1.2 The obstacles identified by the two Giovannini reports (15 in all) can be sorted into three groups: those that are **technical or result from market practices**; those linked to **tax formalities**; and **legal** obstacles. According to the opinion expressed in the reports and shared by the Commission, one of the main obstacles to integration is **restrictions on clearing and settlement locations**, which, when applied, deprive operators of freedom of access to, and choice of, clearing and settlement locations. The commission rightly states that such restrictions **restrict competition**; whilst the Committee is broadly in agreement with this, it would suggest that a closer look be taken at the reasons for some of these restrictions in order to ascertain whether valid reasons exist that justify them, beyond mere protectionism.

4.1.3 Other identified obstacles are those that cause, or indeed oblige, operators to **use local participants to access foreign Securities Settlement Systems**. Here, too, the Committee would advise caution: as highlighted in point 3.11 above; not all restrictions and obstacles arise out of the desire to protect domestic markets.

4.1.4 On the other hand, the Committee wholeheartedly agrees with the Commission's criticism of the fact that in some countries, settlement systems must **have an integral mechanism for collecting transaction taxes**, whilst the use of another system could give rise to the payment of higher taxes. However, this barrier, which certainly limits operators' freedom of choice for cost reasons, is one of the most difficult to remove, as it relates to a national taxation measure.

4.2 *Absence of a common regulatory/supervisory framework*

4.2.1 Clearing and settlement systems are subject to regulation and supervision by national authorities: **there is no European regulatory framework**. In the absence of common legislation — and thus of a 'European passport' — it is logical that national authorities should be able to deny access to their own markets by systems that they do not control. The justification arises from the fact that their job is to protect the market for which they are responsible. In order to put right this shortcoming, the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR) have set up a working group charged with developing **common standards** for European providers of clearing and settlement services, adapting the recommendations of the G-10's Task Force on Securities Settlement Systems to the European context. The results of this work will be translated — it is hoped — into **recommendations and not rules**. The advantage of recommendations is that they can be adopted by everyone, and can also be changed rapidly to take account of changes in technology and in the market.

([1]) The Giovannini reports and the related documents are available on the Commission's website at http://europa.eu.int/comm/internal_market/financial-markets/index_en.htm#otherdocs.

4.2.2 The adoption of common rules is the basis of market integration. The ESCB/CESR standards **will not be binding**, since only a Community directive can change or supplant national laws. The Committee hopes that the ESCB/CESR rules will be **published after the framework directive is approved** and will be consistent with that directive, limiting themselves to integrating the rules set out in it or filling any legislative gaps. Any other approach would risk creating confusion in the markets.

4.3 *Absence of a level playing field*

4.3.1 Some institutions that provide clearing and settlement systems are also licensed as banks or investment firms. The Commission notes that whilst banks and investment firms can offer **custody services on a cross-border basis** using their ISD (Investment Services Directive) passport, no comparable right is provided for providers of clearing and settlement services only. Moreover, the two types of operator have different capital adequacy requirements and are subject to different rules on supervision and on the supply of services. The Commission concludes that this situation raises **major level playing field issues.**

4.3.2 The Commission appears to see the problem primarily in terms of **opening markets** and of a **level competitive playing field**; the Committee prefers to give precedence to the **safety of the markets** and **the effectiveness of controls**. The situation that is currently emerging should be viewed with some concern. In the absence of clear, uniform rules, hybrid or joint structures have been created, in which it is difficult to understand what the main activity is — banking, intermediary services, or clearing. Whilst joined or complementary activities can create synergies and economies of scale, it is also the case that subjecting different activities to multiple controls and rules should be avoided.

4.3.3 In conclusion, the Committee would be extremely wary of an approach focusing on competition: the **safety of the markets must be the pre-eminent factor that shapes all decisions.** Once this condition is satisfied, it will be a matter of finding a sensible balance between respecting the rules of the free market on the one hand, and protecting the interests of operators and investments on the other.

5. **The Commission's objectives**

5.1 The Commission's objective is the creation of EU Securities Clearing and Settlement Systems that are **efficient and safe** and which ensure a **level playing field** among the different providers of these services. It proposes to achieve these aims by adopting appropriate measures and policies on:

— **liberalisation and integration** of existing clearing and settlement systems, ensuring full rights of access and removing barriers;

— full implementation of **competition rules**;

— the adoption of a **common regulatory and supervisory framework**;

— implementation of appropriate **governance arrangements**.

5.2 The Committee agrees, albeit with some reservations, with both the objectives and the procedures and policies to be adopted. It is also broadly in agreement with the operational path marked out by the Commission; therefore, the following paragraphs simply contain a few comments intended to contribute to the excellent work carried out by the Commission.

5.3 The Lamfalussy and Giovannini reports, and indeed the Commission, agree that once all the necessary measures have been adopted, a healthy process of **consolidation** of settlement and clearing systems will be set in motion. **This process should be market-driven**. The Commission believes it must take a **neutral** stance **on structural issues**; it therefore proposes to refrain from adopting a position on horizontal or vertical consolidation and on the provision of intermediary and/or banking services by settlement systems or by central counterparties.

5.4 The Committee would like to make a few comments on this matter, to complement and clarify what has been said in point 4.3.2 above. It believes that, whilst **transnational consolidation of equivalent institutions** is likely to create economies of scale and to simplify procedures, the **consolidation of different activities into a single institution** tends to create gigantic, hybrid businesses. The supervision authorities, working closely with competition authorities, will have to ensure that this does not constitute a threat to the **survival of smaller businesses.** Furthermore, if only from the point of view of transparency, the market ought to be put in a position to understand who does what.

5.4.1 The Commission's declaration of 'non-intervention' should also be considered in the light of the 'declaration of intent' contained elsewhere in the document (see paragraph 6.2, final indent) which provides reassurance on the intention to **monitor compliance with competition rules**.

6. **The Commission's initiatives**

6.1 The Commission's programme for achieving its objectives seems wholly proper and rational, and, above all, realistic: innovations can be introduced **gradually** — which will allow reasonable lengths of time for full implementation — and always in accordance with the rules of the market, carrying out **legislative or regulatory action only when necessary**.

6.2 The Commission has set up **an advisory and monitoring group** with the task of analysing the barriers which, according to the Giovannini report, should be removed by private sector initiative. The Commission further intends to:

— propose a **framework directive** to create a sound legislative framework, thus facilitating the mutual recognition of the various national systems;

— set up **expert groups** who will deal with the various **legal and tax problems** and will be able to suggest ways of harmonising legislation or procedures;

— monitor **effective compliance with competition rules**, verifying '**existing monopoly positions** and further industry consolidation **intervening when necessary**'.

6.2.1 Most of the actions proposed in the Commission's action plan do not require specific comment; the Committee simply offers a few comments to add to the discussion.

6.3 **Rights of access and of choice** (point 2.1 of the Communication) The central problem facing the entire project of an open, pan-European market is the **barriers** imposed by some authorities (and, to some extent, by almost all of them) to **access by providers of clearing and settlement services to the location of clearing and settlement of their choice**. Faced with the resistance of several national authorities, the Commission sees no alternative to a directive requiring the removal of these barriers and **guaranteeing** all the interested parties — investment firms and banks, central counterparties (CCPs), and settlement systems (CSDs) — the **right of access to the relevant counterparties in any EU country.** Within this framework, it would also be possible for regulated markets and multilateral trading facilities to enter into **arrangements with CCPs and CSDs** located in other EU countries.

6.3.1 The Committee agrees in principle with the Commission's aim, but nonetheless wishes to introduce a **note of caution**. Not all of the barriers that currently exist are due to the protectionist concerns of national authorities; in many cases the intention is mainly to **protect the market against risks over which the authorities themselves have no control**. These concerns are legitimate. The exchange of information is not always satisfactory, but above all, information may not be up-to-the-minute, which would be a prerequisite for timely intervention.

6.3.2 The Commission document mentions a series of reinforced prudential measures, particularly with regard to **capital adequacy** and **risk management**, maintaining the principle of **home country control.** A **model for supervisory cooperation** will be introduced, 'to avoid Securities Clearing and Settlement Systems… being subject to the supervision of multiple supervisors'. This approach is certainly right, but the difficulties of implementing it in practice are not to be underestimated.

6.3.3 The growing sophistication of the markets and the sustained pace of consolidation, mergers, and corporate changes, mean that supervision authorities have a heavy workload. Theoretically, there is no doubt that cooperation measures are appropriate and sensible. The Committee is concerned, however, that **in practice,** significant **difficulties will emerge**: it will not be easy to integrate twenty-five systems with varying levels of efficiency, resources and experience. It believes that the **date of entry into force** of the liberalisation measures must be set after the **unconditional agreement of *all* the national supervisory authorities.** These will have to ensure in a responsible manner that they are in a position to participate in the system of information exchange and to guarantee the protection of markets from **systemic risk**.

6.4 **Governance** (point 2.3 of the Communication). The Commission states that it **does not wish to go into the form** of the entities that manage settlement systems and their central counterparties. However, the Committee would point out that many problems of competition and dominant position would be overcome by **a cooperative form of enterprise** among the participants in the system, working on a break-even basis rather than pursuing profits.

6.4.1 Given the sensitive character of the functions of intermediaries and the considerable market power that these hold, the Commission considers it necessary to establish **guidelines for efficient, transparent governance** able to monitor company policy and the management of everyday business. The Committee agrees: the guidelines set out do not call for particular comment, save that they are in line with modern concepts of corporate governance.

6.4.2 The Commission adds that these institutions, precisely because of the considerable power vested in them, could engage in **anti-competitive practices**. In order to ensure that this does not happen, CCPs and CSDs will have to keep **segregated accounts** that shed light on the running of their institutional activities, as distinct from the provision of other services. The same provisions should be applied to what the Commission describes as '**any non-core activity, such as Banking**'. As large as a CCP or CSD may be, describing banking as 'non-core' seems to be something of an oversimplification: participants in the settlement system need credit in commercial bank (or central bank) money in order to overcome temporary shortages in their cash position. Banking can involve very significant figures and, especially at times of tension in the market, the possibility of **systemic risk** arising should not be underestimated.

6.4.2.1 An **exception to the requirement to hold separate accounts** would, however, seem to be acceptable in the case of **CSDs**, in that the 'banking' functions of these institutions relate to participating banks, and therefore tend to be, **by their nature, subsidiary to settlement**. Credit is therefore, in a way, an integral part of the regulations and, as such, could — or, according to some, should — be linked to the institutional function of CSDs. The same can apply to CCPs when credit is required for the smooth functioning of settlement, of which it could be considered to be an integral part.

6.4.3 It is unclear how, in practice, banking **supervisory authorities** and authorities responsible for supervising CCPs and CSDs can **cooperate in times of emergency** with the necessary speed. As already stated above, the Committee hopes that the consideration of potential risks for the market will lead all the supervisory authorities responsible for banking and non-banking activities under the aegis of the ECB to sign reciprocal cooperation and information agreements on an ongoing basis, and to adopt timely and effective measures in emergencies.

6.5 **Legal and tax law discrepancies** (point 3 of the Communication). The legal problems are so numerous and complex that it is not possible to list them all in a coherent fashion. **Differences in legislation** affect contractual and capital aspects, as well as matters of international, company and bankruptcy law, and have **legal repercussions at every stage in the processes** of purchase, clearing and delivery of securities. The Commission notes that '*discrepancies in the national substantive laws of the various jurisdictions concerned may still adversely affect the whole process*'.

6.5.1 It is widely accepted that solving the innumerable and complex legal problems will take **a long time**. Realistically, the fact of the matter is that national peculiarities and bureaucratic conservatism have often given rise to **impediments and obstacles to the process of legislative harmonisation**. The Committee hopes that, for once, Member States' sense of responsibility will prevail over national interests. The Commission proposes to set up a **group** consisting of academic experts, public authorities and practising lawyers, which will have the task of looking in greater depth at the analyses started by the Giovannini group and to suggest appropriate solutions. The group will have to keep up contacts with the bodies that have undertaken similar work at global level (UNIDROIT). The Committee suggests that the group include technical and legal experts from among the operators.

6.5.2 The process of legislative harmonisation that the Commission proposes to undertake cannot be completed until the other aspects of the framework directive have been developed. In the meantime, we will have to **live with the existing legislation**, intervening at the legal level only when strictly necessary; hasty interventions that might need subsequent changes are to be avoided. Furthermore, the Committee notes that the markets have operated up until now without serious problems, and have done so on the basis of **established customs and practices**, which have rarely give rise to disputes, and even more rarely been subject to judicial decisions. Legal discrepancies are therefore to be considered, rather than as a barrier in the strict sense, as a procedural complication that leads to considerably increased costs.

6.5.3 The comments made in the previous point also apply to **taxation** measures, an area where legislative discrepancies and the legitimate desire of Member States to tax capital gains give rise to a mass of confusing provisions, which are often discriminatory, sometimes difficult to interpret, but always **costly for the market.** The Committee does not consider it necessary to go into the measures proposed by the Commission, which are formally correct but will not always be easily accepted by the Member States, especially if opposing ideological positions are not first set aside. The main objective is to **harmonise procedures for collecting taxes**; each of the various methods put forward as options has advantages and disadvantages, but it is important that, at least on this point, the Member States reach an agreement.

6.6 **Competition policy** (point 4 of the Communication): the Commission document gives particular attention to this issue, and establishes **an important principle: measures aimed at liberalising and integrating systems and competition policy complement each other**. This principle might seem obvious, but once put into practice might lend itself to different interpretations, particularly of the restrictive variety. The Commission states that it **wants to remain neutral on the question of horizontal or vertical consolidation**, but warns that **competition-related problems *might* arise** when such consolidations lead to the creation or strengthening of a dominant market position, as is already the case. The problem is not the dominant position, which is not illegal *per se*, but **illegal use of the dominant position**: if this were to happen, given the nature of the market, it could create problems with applying the rules.

6.6.1 There have already been examples, quoted by the Commission, of **cross-border consolidation** between national and international CCPs, which have led to the creation of organisations of considerable size. Other forms of consolidation or structured cooperation are under discussion. When examining whether or not existing or proposed structures comply with competition rules, it must be remembered that in any case, **CCPs and CSPs are by their nature few in number and large in size**. Given their special nature, it is unrealistic to think that in each country a sufficient number of institutions could emerge as to prevent one of them having a stronger position than the others; the same could be said even more emphatically at European level. The difference between an institution that is more powerful than others and one that has a *dominant* position is very subtle. The judgment of the competition authorities should be based on an in-depth knowledge of the characteristics of the market and of its operational needs.

6.6.2 Judgment on dominant positions or **anti-competitive practices** would be even more difficult if the trend — on which the Commission is neutral — towards horizontal integration between central operators and banking activities were to continue. **Controlling prices** will be particularly complicated and difficult. These certainly cannot be a matter for regulation, but the Commission states that it wants to check that they are not applied according to **discriminatory criteria**. The criteria for setting prices follow, or ought to follow, the rules of the market, and relate to volume, safety, the guarantees offered and to a series of qualitative considerations; it will be difficult to establish with certainty which assessments are subjective and which are objective, and when they are discriminatory. Assessing **excessive prices** resulting from a dominant position may prove more difficult still: there are no *a priori* criteria that can be applied to such cases, which need to be evaluated individually.

6.6.3 To conclude this brief look at the competition aspects, the Committee would like to express its broad agreement with the Commission's approach, but would also call for cooperation — based on binding rules — between supervisory and competition authorities, both at national and at European level. Supervisory authorities (in cooperation with competition authorities) can carry out *ex ante* monitoring to prevent the existence of dominant positions giving rise to abuse and exclusion. *Ex post* interventions, which are confrontational and damaging to the market, would thus be kept to a minimum once clear and sensible market and supervision rules had been introduced.

6.6.4 Finally, the Commission addresses, without adopting a position, the problem of agreements (exclusive and otherwise), clearly preferring to examine them on a case-by-case basis. This is a balanced approach, which the Committee supports wholeheartedly.

7. **Conclusions**

7.1 The Committee has looked at the Commission document with considerable interest, and has analysed it above all from the point of view of the social partners it represents: it agrees with the approach and the guidelines. It recognises that the subject is extremely complex and delicate, and that there is therefore a long way to go before it will be possible to implement a future directive. The experts believe that implementing the rules could take several years.

7.2 The Committee recognises that consulting all the interested parties — the market, supervisory authorities and governments — will necessarily be a long and difficult process, and that the legislative process for a future directive could be very complex. It wonders, therefore, what situation might develop in the meantime; this is a legitimate question, which is asked without wishing to be unduly alarmist. After all, the markets have up until now shown that the existing rules are adequate to enable them to deal with emergencies, and the authorities have kept even the most difficult situations under control.

7.3 The problem, if anything, is that of the short-term future: the development of 'foreign' markets — not just American, but also Asian — is encouraging the trend to create stronger, more efficient structures in Europe. This trend is rational and consistent with the rules of a market which cannot — including from the point of view of regulation — be isolated from a global context. Common sense and prudence will therefore be needed, in the light of the rules on competition, when permitting or prohibiting consolidations of businesses or the taking on of new tasks by businesses or financial groups.

7.4 On the other hand, the Committee believes that the **decisions cannot be taken by the competition authorities alone**: the **binding opinion of supervision authorities** should be a rule that — although it is not applied always and everywhere — applies from now on. The desire to **open up markets and comply with rules on competition must not overlook the safety** of the markets themselves. This aspect can only be assessed by those who are responsible for it.

Brussels, 10 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council establishing an integrated action programme in the field of lifelong learning

(COM(2004) 474 final — 2004/0153 (COD))

(2005/C 221/22)

On 9 September 2004 the Council decided to consult the European Economic and Social Committee, under Article 149(4) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 January 2005. The rapporteur was Mr Koryfidis.

At its 414th plenary session held on 9 and 10 February 2005 (meeting of 10 February), the European Economic and Social Committee adopted the following opinion by 107 votes to 2 with no abstentions.

1. **Introduction**

1.1 After a lengthy process of research, preparations and consultations ([1]), the Commission has presented its proposal establishing *an integrated action programme in the field of lifelong learning*.

1.2 The European Economic and Social Committee welcomes this development and points out that the purpose of the ideas set out in the present opinion is to make the Commission's proposal more effective and practical.

1.3 The EESC's view of the Commission's proposal is therefore determined mainly by the knowledge and experience it provides in connection with:

the delay in achieving the Lisbon objectives;

the delay in matching education and training with productivity ([2]);

the demographic situation in Europe; and

the discussions which have recently developed at European and national level to find solutions to these problems ([3]).

([1]) The main stages in this long process are listed in the Appendix.

([2]) OJ C 120 of 20.5.2005.

([3]) It should be noted that considerable momentum has been built up in seeking solutions to the Union's current key problems, such as the Lisbon objectives (employment, knowledge-based economy, sustainable development, etc.). Life-long learning, and the need to put it on an institutional footing, represent a common denominator in all the approaches to resolve such problems. This momentum includes the initiatives taken by the Dutch Presidency, in cooperation with the European Commission, on the links between training and productivity and on strengthening European cooperation on vocational training, together with the Kok Report on the mid-term review of the Lisbon strategy in March 2005 (http://europa.eu.int/comm/lisbon_strategy/pdf/2004-1866-EN-complet.pdf).

2. **The Commission proposal**

2.1 The Commission's proposal (COM(2004) 474 final) aims at a restructuring of existing education programmes. According to the proposal, this restructuring responds in particular to four factors:

— to changes across the EU whereby education and training systems are becoming increasingly integrated in a lifelong learning context (…);

— to the increasingly important role for education and training in creating a competitive and dynamic knowledge-based economy in Europe (…);

— to the need to reinforce the strengths of programmes and address the discontinuities and lack of synergy (…);

— to the need to simplify and rationalise Community legislative instruments by creating an integrated framework within which a wide variety of activities can be funded.

2.2 The proposal is based on the existing Socrates, Leonardo da Vinci and eLearning programmes, the Europass initiative, and the various actions funded through the Community action programme to promote bodies active at European level and to support specific activities in the fields of education and training.

2.3 The proposal is also based on the realisation that 'significant advantages would accrue from integrating Community support for transnational cooperation and mobility in the fields of education and training into a single programme, which would permit greater synergies between the different fields of action, and offer more capacity to support developments in lifelong learning, and more coherent, streamlined and efficient modes of administration' ([1]).

2.4 The proposal therefore concludes that 'an Integrated Programme should (…) be established to contribute through lifelong learning to the development of the European Union as an advanced knowledge society, with sustainable economic development, more and better jobs and greater social cohesion' ([2]).

2.5 It is pointed out that 'given the specificities of the schools, higher education, vocational training and adult education sectors, and the consequent need for Community action to be based on objectives, forms of action and organisational structures tailored to them, it is appropriate to retain individual programmes within the framework of the Integrated Programme targeted at each of these four sectors, while maximising the coherence and commonality between them' ([3]).

2.6 The 'integrated programme' contains the following categories of programme:

— The sectoral programmes:

  — the Comenius programme, which is to address the teaching and learning needs of all those in pre-school and school education (…)

  — the Erasmus programme, which is to address the teaching and learning needs of all those in formal higher education and vocational education and training at tertiary level (…)

  — the Leonardo da Vinci programme, which is to address the teaching and learning needs of all those in vocational education and training (…)

  — the Grundtvig programme, which is to address the teaching and learning needs of those in all forms of adult education (…);

— The 'transversal programme' is to comprise the following four key activities:

  — policy cooperation in lifelong learning within the Community

  — promotion of language learning

  — development of innovative ICT-based content, services, pedagogies and practice for lifelong learning

  — dissemination and exploitation of results of actions supported under the programme and previous related programmes, and exchange of good practice;

— The Jean Monnet programme is to support institutions and activities in the field of European integration. It will comprise the following three key activities:

  — the Jean Monnet action

  — operating grants to support specified institutions dealing with issues relating to European integration

  — operating grants to other European institutions and associations in the fields of education and training.

2.7 An important element in the Commission's proposal is the revision of the quantified targets, in the light of the changes to the amounts that were proposed in the detailed financial perspective 2007 to 2013. These targets are:

— 1 in 20 school pupils involved in Comenius activities 2007 — 2013

— 3 million Erasmus students by 2011

— 150,000 Leonardo placements by 2013

— 25,000 Grundtvig mobilities by 2013.

([1]) COM(2004) 474 final – recital (16).
([2]) COM(2004) 474 final – recital (17).
([3]) COM(2004) 474 final – recital (18).

2.7.1 The Commission views such ambitious targets as essential to make the new programme an adequate instrument to support the achievement of the most competitive and dynamic knowledge-based economy by 2010.

2.7.2 The indicative financial amount proposed is set at € 13.620 billion for the seven years of the programme.

3. **General comments**

3.1 Addressing the Commission proposal constructively will certainly be a complex process. It will demand general and expert knowledge of the objectives, measures and difficulties encountered in the development of European education policy. It will also depend on the possibility of tying educational choices tightly in with the Union's major objectives for the 21st century ([1]) and more specifically with the major objectives of the current decade ([2]). Lastly, this will require a far-sighted approach, to ensure that the choices taken now for the future are the right ones.

3.2 The EESC has a clear position regarding the relative importance of the Union's current central objectives, and has formulated an approach regarding how to tie life-long learning into these objectives. Its ideas were set out in its recent exploratory opinion on 'training and productivity' ([3]), requested by the Dutch presidency. Thus the EESC's approach to the Commission proposal is based to a large extent on the above-mentioned ideas and positions.

3.3 The EESC's approach is also determined by its experience of the results of the Union's policies and programmes to date in the fields of culture and education, vocational training, youth and sport.

3.3.1 The overall picture is generally positive, with a few reservations. The Committee regards the programmes as:

— high-quality and effective channels of communication between Union bodies, and more specifically the Commission, and the European public;

— a basis for developing within the Union effective mobility of people and mobility of ideas and best practice;

— a basis for action that promises a high level of European value added, both now and in the future.

3.3.1.1 It is worth pointing out that the Union's educational programmes to date are among the very few Community actions addressed directly to its citizens. The new programme should therefore aim to promote democracy based on participation and active citizenship, and to promote employment and a versatile labour market. The new programme should also contribute towards personal and occupational fulfilment for Europe's citizens, through the creation of opportunities to broaden and make use of their potential. It is important, from the point of view of the Union and its links with its citizens, for a comprehensive programme to be built up targeting different age groups, individual citizens, the workplace, SMEs and the social partners.

3.4 In the Committee's view, the Commission's plan to establish an 'integrated action programme in the field of lifelong learning' marks a positive step. Consequently, the EESC's proposals on the matter are designed exclusively to improve the programme.

3.4.1 In this context, the EESC would first note a shortcoming in the definition of lifelong learning.

3.4.1.1 Specifically, the EESC believes that there should be a single approach to ([4]) education, training and youth policies, because it sees lifelong learning as a single process from nursery school to retirement and beyond ([5]). Furthermore, the EESC believes that there is a need to move beyond the age-related educational restrictions imposed on the European public by the European education and training systems. It therefore expected more from the programme, particularly concerning the establishment of a framework for lifelong learning. In the EESC's view, the main difficulty is the need to

([1]) These include the objectives of creating a knowledge-based society, sustainable development and its three dimensions and the multifaceted system of global governance.

([2]) These are the objectives set in Lisbon, relating to the knowledge-based economy and sustainable development (Gothenburg), and Barcelona, relating to the qualitative dimension of European education systems.

([3]) See CESE 1435/2004.

([4]) See OJ C 157 of 25.5.1998, point 3.7.1, which states the following: *'The ESC considers a key issue in the development of the European educational area, and in European education policy generally, to be the consolidation of relevant policies (education, training, youth) and integration of the relevant action programmes. Policies on education, training and youth must be incorporated within a single framework of action and integrated from inception and adoption right through to implementation. This view derives not so much from the fact that initiatives on education still exclude certain areas, but more from the need to adopt a centralised policy approach. It derives from the need at last for there to be a single strategy on education, training and youth, as well as integrated planning of measures.'*

([5]) See the definition of lifelong learning in Article 3, point 27 of the Commission proposal.

give the single, transversal concept of lifelong learning a practical and legal basis that goes beyond access to the sectoral programmes. The integrated programme should act as a specific instrument for the EU Member States to create the conditions for everyone without exception — regardless of age and social status — to have genuine and unconditional access to education and training programmes. It should also be possible to defend this principle as a fundamental right before the European Court of Justice.

3.4.1.2 The EESC is aware that the future of lifelong learning will fundamentally be decided at national, regional and local level. It also realises that there are obstacles at European level to the programme being integrated in substance and in practice. However, it calls for provisions in the sectoral programmes to remove the severe restrictions (on age and content of study) that existing education and training systems impose on each other and on those wishing to learn. It is also in favour of active cooperation in developing the integrated programme and cultural and youth programmes, as well as (with a view to the probable ratification of the European Constitution) sports programmes. This is important because the above-mentioned informal education provided for young people in particular relates fundamentally to acquisition of the basic skills needed to ensure their employability as citizens and active social integration.

3.4.2 There are also shortcomings regarding horizontal communication and links between the sectoral programmes.

3.4.2.1 The EESC believes that the problems relating to the process of achieving the major goals of the Union are complex. Consequently, their solution requires the removal of obstacles to enable all forms of mobility to develop between the educational subsystems, within individual countries and between countries. Removing barriers and limitations is also the precondition for making lifelong learning a conscious and productive reality.

3.4.2.2 The explanatory memorandum of the Commission's proposal contains an important point, first set out in its Communication on the new generation of Community Education and Training Programmes after 2006 ([1]). It argues that '… education and training systems are becoming increasingly integrated in a lifelong learning context, in order to respond to the new challenges of the knowledge society and of demographic change' ([2]). Unfortunately, this position does not materialise in the present proposal. The Commission's proposal is basically geared to existing educational structures and promotes only minimal synergies between the different educational levels. The EESC believes that the new programme would be more adaptable and more innovative if access to the specific programmes covered priority target groups without excluding groups which might be interested on the basis of their educational qualifications or age.

3.4.2.3 For these reasons, the funding and scope of the transversal programme must be broadened. The aim should be to develop cooperation and measures to create the foundations of a genuine European area of lifelong learning, bringing substantial European added value and contributing significantly to realisation of the Lisbon objectives and sustainable development. Obviously, the above cooperation and action will call for the involvement of all types of educational subsystems ([3]), the social partners and, more generally, organised civil society and public authorities, regional and local authorities in particular.

3.4.2.4 Given the above, a particular boost should be provided for the Grundtvig Programme, which is designed to meet all types of adult education needs.

3.4.3 There is a third, but important, shortcoming in the link between the integrated programme and the goals of the Lisbon strategy.

3.4.3.1 The EESC believes that we are already far behind in achieving the Lisbon objectives. It also believes that 2010 is approaching fast and that, consequently, whether or not the Lisbon objectives are reached will depend on those Europeans who are currently in work. Lastly, it believes that raising awareness of the Lisbon strategy and objectives will require persistent and comprehensive action vis-à-vis this sector of the European public, in collaboration with the social partners. This means giving priority to enhancing people's understanding of the Lisbon strategy and to working with them to successfully adapt to the challenges of sustainable development and the knowledge-based economy, while also promoting lifelong learning as an overall approach at all levels.

([1]) COM(2004) 156 final.

([2]) COM(2004) 474 final, point 1.3, first indent.

([3]) The educational subsystems include primary, secondary and higher education; general education and vocational training/education; educational establishments (suppliers of education and/or training); and types of education (conventional and alternative).

3.4.3.2 To this end, the EESC would recommend strengthening the lifelong learning programmes addressed to citizens that are currently in the workforce, while also making an immediate link between these programmes and sustainable development and the achievement of a knowledge-based economy. In other words, this means developing individual small and large-scale lifelong learning programmes on the basis of the specific requirements for broader programmes on sustainable development and achieving the Lisbon objectives [1], that will meet the approval of the social partners, following consultation and agreement.

3.4.3.3 The EESC attaches particular importance to the possibility of SMEs having access to the programme. It has argued that '… SMEs (…) are obliged to seek the advice and support of the social and economic environment in which they operate, since it is difficult for them to carry out complete educational actions by themselves' [2]. The EESC therefore proposes a special approach for SMEs, simplifying the relevant procedures in order to make their participation in the programme both feasible and effective.

3.4.3.4 These recommendations of the EESC could be financed within the proposed budget for the programme, if the balance between mobility and development actions were adjusted in favour of the latter for the period up until 2010. The above recommendation could also be financed by ensuring greater consistency and complementarity with other relevant Community policies (cf. Article 14 of the proposal). In this context European employment and research policies, European Social Fund policies, as well as Structural Fund policies, must include a lifelong learning dimension. At the same time and up until 2010, the above policies must be as compatible as possible with the objectives of the lifelong learning programme.

3.5 A further shortcoming concerns the confusion surrounding the division of responsibilities between the European, national, regional and local levels, and between the public authorities and the social partners and, more broadly, organised civil society.

3.5.1 The EESC considers it vital for there to be a clear and efficient allocation of roles and responsibilities among all the factors and players contributing to the implementation of the integrated programme of lifelong learning. It is contradictory for a line to be drawn between active policy-makers on the one hand, and passive recipients on the other, in such an important joint effort geared to the future aim of a knowledge-based Europe.

3.5.2 The EESC calls for the social partners, together with regional and local authorities, to be involved in the entire range of processes and actions under the integrated programme of lifelong learning. All social and civil organisations could, at their own request, be awarded a European label for taking part in the integrated programme — provided they themselves launch complementary schemes. As label holders, they would be able to join a European popular education 'coalition', which could have one or more representatives on the programme committee. Active involvement of this kind would make the system socially acceptable and lend it dynamism and effectiveness.

3.5.3 This recommendation would make it possible to relate the lifelong learning programme to practical, everyday social needs, and with the needs of the market. Among other things it would maximise the chances of improving the balance between the needs of the market — especially the labour market — and social needs.

3.5.3.1 The EESC draws attention in particular to the fact that the Commission's proposal makes no mention of the priorities set out by the social partners in March 2002 regarding the framework of actions for lifelong development of skills and qualifications.

3.6 Another important issue is that of mobility, the funds to be assigned to it, and how they are to be distributed between the sectoral programmes.

3.6.1 The EESC believes that mobility is a positive factor, provided it ties in with the qualitative elements of the programmes. The aim of tripling the mobility programmes must therefore include qualitative features. In view of the above, and in the present phase up to 2010, mobility of citizens currently at work contains such qualitative features and has a major contribution to make to achieving the Lisbon objectives.

3.6.2 The EESC therefore calls for a more balanced distribution of mobility funds to the benefit of these citizens.

[1] For additional information see CESE 1435/2004, point 9 (an example of best practice).

[2] OJ C 120 of 20.5.2005, point 8.1.1.3.

3.7 The EESC considers that the communication aspect is a significant issue in terms of European citizens' engagement with the integrated programme.

3.7.1 In this regard, the EESC would also point out that the term 'integrated programme' does nothing — including from the communication point of view — to present the programme in a positive way.

3.7.2 Consequently, it is proposed that the term 'integrated programme' be replaced with one which is both accessible and descriptive. The EESC believes that 'Athena' — the ancient Greek goddess of knowledge and wisdom — could be an appropriate title.

4. **Specific comments**

4.1 Following on from the general comments, the purpose of the specific comments is to set out in detail the reservations and disagreements of the EESC regarding certain articles of the Commission's proposal. This means that it should generally be understood that the EESC endorses the articles in question to the extent that it does not state otherwise.

4.2 **Articles 1-8**:

4.2.1 The EESC thinks that Articles 1 to 8 should be revised in accordance with its recommendation that the social partners — together with civil society and regional and local authorities — should be more actively involved in the planned processes and actions (point 3.5.2); and with its recommendation on the programme title (point 3.7.2).

4.2.2 As regards the specific programmes in particular, and still in the context of its general comments, the EESC recommends that institutional structures be created to strengthen joint — and perhaps long-term — actions, above all in spheres that cultivate the principle of lifelong learning and citizens' response to current challenges.

4.3 *Articles 9-14*

4.3.1 The EESC feels that Article 11, which refers to representation and participation of the social partners in the Committee, is poorly formulated.

4.3.1.1 Firstly, there is a fundamental problem in relation to the form of participation of the social partners in the Committee. Giving them the status of observers, even though they may state their opinions in practice, is not consistent with the principle of democratic participation espoused by the Union in its constitution which is in the process of ratification. In addition, the main issue here is to establish the basis for cultivating a sense of shared social responsibility in framing and developing European education policies. If the social partners participate fully in the Committee (i.e. with voting rights), there will be a basis for such a sense of shared responsibility and its role will be of critical importance in framing and developing effective education policies. Furthermore, in addition to the responsibility of public authorities for decisions of a general educational nature, a corresponding responsibility also falls to the social partners. This responsibility is for training throughout working life and is expressed, or should be expressed, officially, through the processes of collective bargaining.

4.3.1.2 This inadequate form of participation of the social partners also sets a precedent for similar decisions at national, regional and local level, which makes no sense given that in certain Member States at least the social partners already play a key role in framing these policies.

4.3.1.3 The EESC believes that a separate dialogue is needed on the composition of the Committee, on a basis which would make it functional and effective. However, in general terms the EESC thinks it necessary for the Committee to include, on the basis of an intelligent balance, representatives of all groups who influence or are influenced by lifelong learning and have the relevant general and specialised knowledge. In other words, the Committee must be composed not only on a national basis, but also on an economic social basis (social partners — civil society more generally) and a knowledge basis (academic community).

4.3.1.4 Finally, the EESC takes the view that it is a mistake to limit the participation of the social partners to questions relating solely to vocational training. The work of the Committee will need to be integrated in the process leading to achievement of a knowledge-based Europe. That means that this Committee can provide an example of good practice for planning and policy choices based on reliable knowledge — knowledge of the whole picture, but also specialised knowledge as part of the whole. It will therefore be important for all players represented in the Committee to take part in all its procedures, in a way which is both functional and committed, as regards the *what*, the *how* and the *why* of the policy choices.

4.3.1.5 The EESC calls for a more active approach concerning the specific learning needs of people with disabilities. To this end, it proposes that Article 12(b) be amended to read as follows:

'making provision for learners with special needs, and actively taking into account the specific needs of people with disabilities, in particular by helping to promote their integration into mainstream education and training'.

4.4 *Articles 15-46*

4.4.1 The EESC, in the context of its general comments (point 3.4.2 above), proposes broadening the activities and increasing the funding of the transversal programme, with a corresponding reduction in the funds allocated to sectoral programmes.

4.4.1.1 The thinking behind the above proposal is straightforward. Strengthening the transversal programme, in accordance with its content, starts off procedures to modernise the European educational systems as a whole. This means essentially that investments made in the transversal programme will yield returns for the European educational systems, depending to a large extent on the form of specific added value in each case. It follows from the above that the investments to be made in the transversal programme will naturally be the most productive and most effective investments.

4.4.2 The EESC proposes that the improved transversal programme for lifelong learning be linked directly with the Lisbon objectives, sustainable development and the European citizens who will be economically active in the period up to 2010 (point 3.4.3.2 above).

4.4.2.1 In practice this means an integrated approach to our overall strategy for lifelong learning, on the basis of the problems which led us to that strategy, the aims we have set ourselves for overcoming those problems and the means available for achieving those aims. It also means:

— supporting research and pilot applications of the academic community, the social partners and organised civil society in general, and at the level of regional public authorities, with a view to achieving the Lisbon objectives;

— particular encouragement for cooperation among the aforementioned players, who are pursuing the same objective and objectives relating to sustainable development;

— alternative proposals by the Union, on the basis of relevant good practice, on how to link lifelong learning with the Lisbon objectives at local level.

4.5 The EESC believes the programme under discussion to be of supreme importance for the future of the Union. For that reason it also thinks it important for the implementation of the programme to be subject to adjustment and for it to be monitored at the highest level. In this context the EESC would like to see the creation of a high-level standing committee to monitor the implementation of the programme, under the open method of coordination. The main task of this committee, with the support of the European Commission, would be to report on progress in the programme's implementation at any given moment and to inform the European Council about it at regular intervals, with a view to making any necessary adjustments.

Brussels, 10 February 2005.

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

Opinion of the European Economic and Social Committee on How to achieve better integration of regions suffering from permanent natural and structural handicaps

(2005/C 221/23)

On 27 January 2004, the European Economic and Social Committee decided, in accordance with Rule 29(2) of its Rules of Procedure, to draw up an opinion on How to achieve better integration of regions suffering from permanent natural and structural handicaps.

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 19 January 2005. The rapporteur was Mr Barros Vale.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 10 February), the European Economic and Social Committee adopted the following opinion by 80 votes, with no votes against and three abstentions.

1. Introduction and general comments

1.1 *Identification and definition of the concept of regions with permanent natural and structural handicaps*

1.1.1 One of the European Union's strategic objectives is to achieve the overall harmonious development of all its territory, in particular by removing all factors — socio-economic, historical, physical or natural — which might compromise the competitiveness of given areas and hamper their development.

1.1.2 Inaccessibility is one of the most significant obstacles, seriously affecting the way life is lived in certain areas, such as island regions or mountain areas. Low population density is a further handicap to development in various regions. Some territories experience more than one handicap at the same time, as in the case of mountainous islands, with increased difficulties as a result.

1.1.3 As part of its efforts in favour of economic and social cohesion, the European Commission has recognised the existence of permanent natural handicaps (specific geographical or natural and demographic disadvantages) in some regions of the EU — upland regions, areas of low population and island regions — which are an obstacle to economic activity and represent a real disadvantage for the development of the regions concerned.

1.1.4 The EESC considers, however, that European regional policy has not overall provided a fully satisfactory response in the sense of taking proper account of the powerful constraints affecting these regions.

1.1.5 A series of Community measures exists, targeting and either actually or potentially involving some of these regions. But there is no structured European policy for all the territories affected by this type of disadvantage, comprising measures individually tailored to their specific needs.

1.1.6 The EESC believes that this situation has come about largely because of the lack of a genuine Community definition of 'regions suffering from permanent natural and structural handicaps' in legal and institutional terms.

1.1.7 In the present context of a post-enlargement Europe of 25 Member States, the EESC considers the legal and formal recognition of this concept to be of the utmost importance as a starting-point for devising a specific framework for action.

1.1.8 The EESC considers that such areas merit special attention, specifically through the introduction of a specific framework including permanent measures, which are in the final analysis the only ones capable of minimising the most persistent structural problems. This is the only way to avert the danger of such regions becoming more isolated/marginalised and to help them to be integrated into the Community of which they are part on fair conditions.

1.1.9 In its opinion on the future of upland areas in the EU [1], the EESC argued that the first step towards instilling a common vision was to enshrine the special position of these areas within the Treaties, as had already been done in Articles 158 and 299 of the Treaty of Amsterdam. Such recognition was justified by the disadvantages and challenges facing these areas, which could be given the right to solidarity, difference and experimentation.

1.1.10 The EESC has always believed that such areas require recognition enabling them to build on the basic principles which would in turn allow them to realise their full potential as regions characterised by authenticity and diversification.

[1] OJ C 61 of 14.3.2003, p.113.

1.1.11 The EESC therefore welcomes the inclusion in the European Union's Constitutional Treaty, adopted on 18 June 2004 by the Intergovernmental Conference attended by the EU Heads of State and Government, and still subject to ratification — in an article which appears to be a reworded version of Article 158 of the Treaty of Amsterdam — of an explicit reference to regions affected by permanent structural handicaps such as islands, mountain areas, or those with low population density.

1.1.12 In the section on economic, social and territorial cohesion, Article III-220 adds the following paragraph to the two already contained in Article 158 of the Treaty of Amsterdam: '*Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and areas which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density, and island, cross-border and mountain areas*'.

1.1.13 The EESC is convinced that the fact that regions with this type of handicap are now clearly mentioned in the Constitutional Treaty will serve as a political lever, opening the way to future national and Community measures which are more appropriate to actual circumstances in these areas and aimed at substantially reducing permanent structural handicaps or at least reducing their impact.

1.1.14 The EESC welcomes the European Union's continuing commitment to encouraging economic and social cohesion, and believes that the recognition in the Treaty of these areas' specific features definitely represents an opportunity for their future. However, the EESC considers that the establishment of a real legal benchmark for recognising the areas in question necessarily entails clarification of the concept, and in particular of the meaning of 'permanent natural or demographic *handicaps*', 'regions with very low population density' and 'mountain areas'.

1.1.15 It is now important for Community legislation to make an objective definition of which areas are eligible, in order to ensure the implementation of future permanent specific measures for these regions.

1.1.16 Formal acknowledgement of this concept would certainly lend greater strength to Community policy measures, tailored to the specific features of these regions, aimed at compensating them for the structural handicaps they suffer.

1.2 *Problems of European Union island regions*

1.2.1 Insularity is indicated as a geocultural factor and a permanent handicap representing an additional constraint on competitiveness in the areas concerned.

1.2.2 In institutional terms, clear reference is made to island regions (Article 154 of the Maastricht Treaty, Article 158 of the Amsterdam Treaty and Declaration No. 30 appended to the latter) which recognise that the structural handicaps linked to their island status seriously impair their economic and social development and recommend that Community legislation may include, where justified, special measures in favour of these regions in order to integrate them better into the internal market on fair conditions.

1.2.3 A March 2003 report on island regions [1] stated, however, that however important these institutional references might be, they had so far produced very little in terms of specific measures.

1.2.4 The study of the 286 island regions [2] showed that:

— they have a population of almost 10 million people who occupy an area of 100,000 km² (approximately 3 % of the European Union's total population and 3.2 % of its total area);

— their estimated total GDP of these areas is EUR 18 billion (i.e. 2.2 % of EU GDP) and that per capita GDP (in Purchasing Power Standard) is EUR 16,300 (72 % of the EU average) with major disparities between the various island regions;

— with a few exceptions, their economic and social situation is less favourable than that of the country to which they belong. Their per capita GDP is generally lower than the national average, although not necessarily the lowest in the country to which they belong (being substantially higher than that of the EU's ten poorest regions);

[1] Final report (2000.CE.16.0.AT.118), Analysis of the island regions and outermost regions of the European Union, March 2003.

[2] The five criteria which Eurostat uses to define islands are as follows: they must have an area of at least one sq. km; they must be at least 1 km from the continent; they must have a permanent resident population of at least 50; they must have no permanent link with the continent; and they must not house an EU capital.

— island economies are very vulnerable, as they concentrate on a limited range of activities with hyper-specialisation in certain sectors such as agriculture, fisheries and tourism. The lack of raw materials hampers the development of the secondary sector (the secondary sector employment rate in island regions is lower than the EU average). A number of strategies seeking to enlarge the economic base and reduce seasonal activities have been implemented;

— they have a high percentage of small firms. The small size of domestic markets, the continuing low level of qualifications and the lack of a tradition of establishing firms make these businesses particularly vulnerable;

— the breakdown of the island population is highly unbalanced among the three geographical areas: 95 % of this population is concentrated on the Mediterranean islands and only 5 % on the Atlantic and northern islands. A breakdown by island makes this imbalance even more marked (five islands or groups of islands account for some 85 % of the population);

— population size is the determining factor in the handicaps they suffer. There appears to be a threshold of 4-5,000 inhabitants above which the rate of population growth is generally positive, the level of facilities and infrastructure is high and the population is younger. Below this threshold, islands are especially vulnerable to out-migration and ageing, and are noticeably under equipped;

— alongside population size, geomorphologic and natural conditions constitute a triple disadvantage: island status, mountainous terrain and being part of an archipelago. Most of these regions are mountainous and must also deal with the constraints imposed by belonging to an archipelago;

— island regions do however possess a number of advantages which must be put to greater, and better use, especially in connection with leisure activities (tourism, sport, second homes, etc.), so that they can play an important role in connection with the 'motorways of the sea'.

1.2.5 The Eurostat definition of an 'Island' excluded any island which houses an EU capital. Prior to enlargement this effectively excluded Great Britain and Ireland, however now it also excluded two relatively small islands Cyprus and Malta. The EESC suggests that the definition be revised to allow for the possible inclusion of these two new Member States. This has already been acknowledged by the EU Commission in its proposal for the new Structural and Cohesion Funds [1] as well as in the context of the new European Constitution [2] which included a declaration to this effect.

1.3 *Problems of upland regions*

1.3.1 Mountain areas cover some 40 % of the EU's territory, with a population of nearly 66.8 million (17.8 % of the total EU population).

1.3.2 Because of their specific geophysical, cultural and economic features (mountains often coincide with national borders), upland regions are unsuited to many economic activities. This has an impact on the way of life of local populations.

1.3.3 A recent study on mountain areas [3] not only highlighted their various natural, economic and social handicaps, but also focused on the considerable disparities between these areas.

1.3.4 The study concluded that national policies for mountain areas varied, in some countries taking on a sectoral character, directed basically to agriculture/rural development, while in others they aimed at multisectoral development, especially in areas such as public infrastructure, the environment and tourism.

1.3.5 The study also pointed out that the environment, landscapes and cultural values, representing a heritage in themselves, are now better protected under national and Community laws, but argued that closer coordination with development strategies was required.

[1] COM(2004) 492 final, Art. 52, point 1b) i)
[2] Appendix XIX
[3] *Mountain Areas in Europe: Analysis of mountain areas in EU Member States, acceding and other European countries*, European Commission, January 2004.

1.3.6 The study warned of three risks arising from globalisation: the trend to turn mountain areas into 'outdoor museums' (nature/cultural reserves and leisure areas), the trend to promote economic growth with no regard to the principle of sustainability, and the trend to population loss.

1.4 *Problems faced by areas with a low population density*

1.4.1 For areas with a low population density the main problem is usually transportation, in terms of both the length of time and cost. In many cases the problem is a real lack of transportation facilities. Economies of scale are seldom to be found in such areas, which is not only a problem for private production but also for social and other public services. This puts national solidarity in society to the test when public services for areas such as these are to take up a larger part of public expenditure than the size of the population would indicate.

1.4.2 A further problematic characteristic of these areas is the climate. Low population density and a cold climate often go together. On top of the costs for long journeys there are also among other things higher costs for heating.

1.5 *Questions linked with transport and transport costs, either in per capita or in absolute terms*

1.5.1 In its Resolution of 12 February 2003 on the White Paper on transport policy, the European Parliament highlighted the need for transport policy to contribute to economic and social cohesion and take into account the specific nature of outlying, island and mountain regions and regions with low population density and stressed that their particular needs must also be taken into account. Given their geographical position, transport is of strategic importance to these regions.

1.5.2 Furthermore, the fact that some of these regions are archipelagos accentuates their dependence on transport, since air and sea transport services are vital for their political, economic and social relations with the mainland.

1.5.3 The additional transport costs generated by both the remoteness of these regions and the need to ensure that services are regular represents a further obstacle to their economic development. These economic disadvantages are, in practice, reflected in the high cost of passenger and goods transport to and from these regions (in island regions, the cost of transporting goods to the external market is higher because of the need to use sea or air transport, both of which are more expensive than road or rail for the same distance), in high distribution costs (given the need to maintain large stock volumes in order to prevent shortages in the event of bad weather or other events, and in order to meet seasonal demand), and in higher production costs (aggravated by the small size of the local market and, in some cases, the high cost of land and low local investment capacity).

1.5.4 Although their economic and demographic weight is modest in relation to the EU as a whole, some regions, including the more remote and outermost ones, represent a potential platform from which Europe can develop its trade relations with neighbouring areas.

1.5.5 It has been argued that the common transport policy is crucial if the specific needs of these regions are to be met in a way permitting their economic and social development, in particular by better integration of their airports and ports into the trans-European networks.

1.5.6 In its Report on structurally disadvantaged regions, the Committee on Regional Policy, Transport and Tourism points to the role that the major trans-European networks can play in the transport and energy sectors, in order to ensure better connections between them and the rest of the EU, and to reduce the internal fragmentation of regional markets.

1.6 *Telecommunications questions*

1.6.1 Long distances to main European markets as well as within the regions seriously hamper their competitiveness and their possibilities for development.

1.6.2 The development of the information society, telecommunications networks, multimedia and technological innovation offer real opportunities to these regions.

1.6.3 By removing the constraints of time and distance, the new information and communication technologies are seen as a means of reducing the effects of insularity and helping provide islands with a range of services (especially in the fields of education and health, in the latter case by means of developing telemedicine); they are also one of the main prerequisites for the growth of businesses in these regions.

1.6.4 Aware that these issues are crucial to the development of local economies, the European Union has been backing the efforts of the regions and of both public and private economic operators to modernise telecommunications infrastructure, build up the services needed to complete the information society and mainstream them more effectively into the regional setting.

1.6.5 Studies show, however, that in spite of considerable improvement to the regions' telecommunications infrastructures, regarding the quality and number of lines, regional and national connections, and international communications, and the development of telematics services, which has enabled users of public and private services to be better informed, important disparities persist with regard to regions on the European mainland.

1.6.6 In brief, despite significant progress, not all problems have yet been fully resolved, but it is hoped that technological advances will pave the way for positive changes in the next few years to lessen the feeling of psychological isolation suffered by people in such regions.

1.7 *Infrastructure and access to public services, namely ports, airports, railways, roads, health services, education and training and knowledge policy*

1.7.1 The regions suffering from permanent natural and structural handicaps have on the whole found it very difficult to keep their populations.

1.7.2 The absence of a critical mass generally leads to qualitative or quantitative public service shortcomings in these areas. The additional costs of basic services, such as transport, have affected the economic development of these regions. It is, therefore, the view of the EESC that public services are also vital to the territorial dynamism of the regions in question, on account of their social impact.

1.7.2.1 As the provision of public services is a responsibility of the Member States, the policies for these services is mainly a national question. The EESC, therefore, urges the Member States to create social service systems characterised by socio-geographical solidarity.

1.7.3 Although information and communication technologies have provided some solutions, progress in this area has remained very slow in most of these regions.

1.7.4 Like the European Parliament, the EESC considers that the reform of Community competition policy must make it possible to enhance the impact of regional aid on regions with permanent geographical handicaps and to ensure that quality public services are preserved therein.

1.8 *Constraints and possibilities relating to the environment; diversity of ecosystems*

1.8.1 The environment of several of these regions is very fragile, and growth of tourism, especially on a number of Mediterranean islands, is further increasing the pressure. However, huge opportunities also arise from, for example, the very diversity of ecosystems. Balanced and sustainable use of these opportunities can and should be made.

1.8.2 With regard to energy, island regions — especially the most remote — are typically highly dependent on oil supplies (on account of their location, distant from the major energy networks, and the higher cost of electricity generation because of the average size, often very small, of the electricity networks to be supplied). For this reason, alternative sources of energy — with which these regions are generally well provided — must be harnessed.

1.9 *Problems concerning economic activity; concentration of sectoral activities and the lack of alternatives; employment situation*

1.9.1 One of the main problems faced by these regions is unquestionably the low capability for establishing and consolidating businesses due to a lack of capital and, in large part, to an economic and social climate which is unfavourable to business growth.

1.9.2 Some studies recommend that the economies of these regions, and especially those which depend exclusively on tourism, should be diversified, and that new integrated sources of locally-generally development should be promoted.

1.9.3 Some studies consider that a training programme designed to support innovation and business creation is essential to the development of new sectors or to allow tourism to take off, and by this means, to promoting employment.

1.9.4 The structure of employment in general shows the considerable weight of the agricultural sector. Employment is also high in the service sector, but is largely due to employment in the public sector.

1.10 *Opportunities for tourism and recreation*

1.10.1 Tourism is without question of great importance as a powerhouse of economic activity and, as such, for overcoming the development gap of regions with permanent structural handicaps. The sector is the largest in terms of wealth-creation in some regions.

1.10.2 The EESC believes that efforts to bring these territories into closer line with the more developed regions of the EU require that maximum advantage be drawn from the role of tourism, put on a truly professional basis, and its potential for economic development,.

1.10.3 The EESC continues to argue that tourism must not be the sole foundation for these territories' economies, which should be diversified and multifaceted.

1.10.4 In its earlier opinion on the future of upland areas in the EU ([1]), the EESC maintained that, with due respect for the need for sustainable development, upland tourism must become more diversified so that it is spread out more evenly over the year (better seasonal balance of visitors) and spatially (better spatial distribution of visitors).

1.10.5 The EESC continues to hold that the attraction of upland areas as a destination for tourists from other areas or simply for recreation is to a large extent thanks to their intrinsic qualities, but considers that this role must be nurtured and adjusted to changing demand.

1.10.6 Studies show that tourism and recreation are key values for these regions, but warn of the disadvantages of excessive specialisation in this economic sector.

([1]) OJ C 61 of 14.3.2003, p. 187.

1.11 *Capacity to attract investment and generate opportunities to keep the population in a region and to develop its endogenous potential*

1.11.1 Since these are regions with objective, permanent disadvantages which constantly generate additional costs, the EESC views it as of the utmost importance that active policies be implemented, e.g. through tax measures, to promote the development of local economies so that local populations can remain in place.

1.11.2 Given the characteristics and constraints specific to these regions, and the clear importance of securing, in each case, the strategy most in line with the objectives, the EESC believes that it is particularly important to support the growth of sustainable and high-quality tourism, together with local production, in order to enable a local economy to develop and contribute to the creation and/or preservation of jobs. One way of doing this might be to develop support services close to businesses and encouraging the creation and development of small and micro enterprises.

1.11.3 The EESC also feels that greater cooperation/involvement between local authorities and the social partners of these regions, for example through integrated actions, could build up the conditions and critical mass which would help in taking greater advantage of the regions' development potential, in order to bring them more into line with the more developed regions of the EU. Because of their tourism-related impact, these regions serve to disseminate the European Union's values.

1.11.4 The EESC believes that access to high quality education and vocational training is the key to the development of these regions.

1.12 *Remoteness from the main markets and major decision-making centres; absence of a 'critical mass' for the economic sustainability of multiple activities*

1.12.1 The remoteness of these regions and also their internal fragmentation present an obvious obstacle to their development, especially since their small size implies difficulties in securing returns on heavy investments and creating economies of scale, or ensuring the economic sustainability of multiple activities.

1.13 *Situation of representative economic and social movements of the regions in question*

1.13.1 In the EESC's view, public policies matching the specific needs of each region can only be put in place with proactive, representative economic and social movements. The absence of a critical mass (people, infrastructure, services, etc.) in many of these regions, and the lack of effective levels of organisation among the economic and social partners are restraining factors on development and competitiveness.

1.14 *Community and national policies for minimising permanent structural problems*

1.14.1 The Structural Funds have covered a significant part of the population of these regions (in the case of islands, more than 95 %), as they are eligible under Objectives 1 and 2.

1.14.2 A number of programmes have been implemented with the support of Community and national policies in order to bring about sustainable development in these regions, based on the exploitation of their specific advantages. Important instances are support for the development of local craft activities, tourist projects, and new transport, training and environmental infrastructures.

1.14.3 A substantial proportion of Community funding has been earmarked for modernisation and reinforcement of economic sectors in order to help create or maintain businesses. As well as conventional direct aid for investment, actions include certain financial engineering devices (guarantee arrangements, strengthening of own resources, preferential interest rates, etc.) which have had a lever effect in mobilising resources on the capital markets. Public aid has also been applied to aspects affecting the business environment, such as equipping business areas, supplying common services, developing applied research projects and technology transfer, and making use of the new communication technologies.

1.14.4 In the agricultural sphere, specific actions have been implemented to strengthen traditional local crops, and to stimulate diversification. applied research and experimentation.

1.14.5 With regard to fisheries and aquaculture, some regions were able to receive financing for projects concerning building and modernisation of vessels, fish farming, equipping of fishing ports, processing and marketing.

1.14.6 Some investments have also been made in the area of training (creation of infrastructure and training courses) with a view to boosting intake capacity and matching the needs of certain sectors.

1.14.7 Measures have also been taken in connection with the environment, seeking to reduce pollution, particularly with regard to the handling and processing of residues and liquid effluents of industrial and domestic origin.

1.14.8 Community rural development measures specifically aimed at supporting upland regions were intended to ensure the continued exploitation of agricultural land in the less productive areas and to provide greater support for investment in them. Agricultural production methods compatible with the demands of environmental protection and conservation of natural areas were supported by agrienvironmental measures.

1.15 *Development of these regions over the years, in the light of the public policies which have been applied to them*

1.15.1 Community policies, particularly by means of the Structural Funds, have played a very important role in the overall development of these regions, especially with regard to convergence with the rest of the European Union. The impact of these policies has been very considerable, or even decisive, in a number of fields, such as transport infrastructure or fisheries and agriculture, two essential economic sectors.

1.15.2 The creation or development of infrastructures reducing external isolation has been one of the most visible aspects of the projects co-funded by the European Union in each of the regions. Accessibility has clearly improved in all regions, to the benefit of both local populations and the tourist industry. Internally, the regions have benefited from major road improvements and, in some cases, measures to develop public transport. In some spheres, infrastructures underpinning economic activity have been boosted to cope with changing requirements.

1.15.3 Together with enhanced air and sea links, advanced communications technology initiatives (teleconferencing, remote diagnostics, telematics and cable networks) have also helped to lessen the inherent disadvantages of island status and/or remoteness.

1.15.4 The efforts made with regard to the various economic sectors have contributed to enhanced productivity for companies and supply more in line with the opportunities of local and export markets.

1.16 *The solidarity effort in structural policies*

1.16.1 In the context of the reform of the Structural Funds for 2006-2013, the specific situation of the islands and regions with permanent handicaps and their permanent structural constraints should be taken into account in addition to their socio-economic characteristics.

1.16.2 The EESC is particularly pleased that the Third Report on Economic and Social Cohesion, adopted by the European Commission on 18 February 2004, refers to the particular problems of these regions and to the need to adopt measures in line with their circumstances.

1.16.3 In the EESC's view, the way resources are allocated under Priorities II (Regional competitiveness and employment) and III (European territorial cooperation), envisioned in the new architecture for EU cohesion policy for the 2007-2013 programming period, should take proper account of criteria which assess permanent structural handicaps such as remoteness, isolation, poor accessibility and low population density. It is known that such factors represent serious obstacles to the economic and social development of the regions affected.

1.16.4 The EESC therefore supports the European Commission's intention to take due account of the territorial dimension alongside the economic and social dimension as part of the new Structural Funds approach for the new financial programming period. The European Commission proposes that Community aid under Priority II should apply territorial criteria reflecting the relative disadvantage of regions with geographical handicaps (islands, mountain areas and regions with low population density).

1.16.5 The EESC agrees with the European Commission's proposal that the Member States should ensure that the specificities of these regions are taken into account when it comes to the targeting of resources within regional programmes, and that territories with permanent geographical handicaps should benefit from an increase in the maximum Community contribution.

1.16.6 The EESC believes that special attention should be given to situations where there is an accumulation of such factors (for example, islands with mountain areas and sparse population).

1.16.7 Moreover, the specific needs of such territories should be reflected not only in cohesion policy, but in all Community policies.

1.16.8 The EESC is convinced that, in tandem with the need for cohesion policy to address the competitiveness-related problems of regions with permanent structural disadvantages affecting their development, other Community policies — such as competition policy — should take account of their direct and indirect and positive and negative implications for these regions, in order to integrate them fully into the Community to which they belong.

1.17 *Objective 1 regions: a sustained and well-adapted effort*

1.17.1 The economic and social development of the least favoured areas of the Union is not only socially just, it is also important for the political stability and harmonious development of the Union itself. It is legitimate that priority be given to those regions whose levels of development rank among the lowest in the EU and which suffer from the most acute social problems.

1.17.2 Within the Structural Fund envelope earmarked for Objective 1 post 2006, constraints linked to permanent handicaps should, in proportion to their respective intensities, be regarded as determining factors in the distribution criteria. The budgetary allocations should also take account of aggravating factors such as the archipelago effect, desertification and problems of accessibility linked to rough terrain.

1.17.3 It matters little whether such an instrument is legally framed as a stand-alone programme, or as a set of special measures in the framework of a new 'Objective 2' regulation, as long as a number of ends and criteria are met:

1.17.3.1 The existence of durable or permanent geographic or demographic constraints should be an explicit criterion for eligibility.

1.17.3.2 The areas in which it is applied should be those which clearly entail durable geographic or demographic constraints. In particular, by:

— financing the purchase or renewal of fixed or mobile transport infrastructure;

— financing risk capital for developing new sea or air links, within the EU or with third countries;

— financing public infrastructures the proliferation of which is justified by an archipelago-type situation, or by isolation due to rough terrain or low population density;

— covering certain additional costs arising from the application of EU legislation in these areas (e.g. application of standards in the field of the environment, waste management, water management, etc.);

— aid to island companies (particularly small ones), for promotion and market canvassing campaigns, insofar as this aid helps them overcome the problems linked to the small size of their local market.

1.17.3.3 The manner in which this instrument is allocated should be based on the principle of proportionality, based on the intensity of the handicap suffered, measured in terms of degree of accessibility, demographic situation, and, possibly, productivity. It should also be possible to take account of the accumulation of constraints which affects many island regions (such as archipelago-type fragmentation, a difficult demographic situation, or the mountainous nature of part of their territory) in the criteria for distributing aid.

1.17.4 If the creation of such an instrument is to be more than merely symbolic, significant resources must be allocated to it. These should range from an amount of aid corresponding to that currently granted to Objective 2 regions, at the lower end of the scale, to that currently granted to Objective 1 regions, at the higher end of the scale.

1.18 *Revising the state aids systems* [1]

1.18.1 The aid mechanisms operated within the Member States concern comparatively greater sums of money than the Structural Funds. It is therefore crucial for these regions that the various aid systems controlled by the Community take account of the additional costs and constraints linked to their specific features.

1.18.2 The case made by the representatives of such regions for a more flexible framework is based on the fact that the aid designed to offset the additional costs linked to their situation, far from distorting the market, contributes to rebalancing it.

1.18.3 EU legislation on aid, in particular state regional aid and agricultural aid, therefore needs to be revised. Such aid must, in accordance with the principle of positive differentiation, include the constraints of their particularities and their possible accumulation with other permanent constraints of a geographic or demographic nature. The following are some examples:

1.18.3.1 The state regional aid system takes account of the constraints suffered by very low population density regions, and currently allows them higher aid levels, together with the possibility of direct aid to transport. It does not, however make any reference to the islands (apart from an anecdotal reference). A minimum requirement, therefore, is that the benefits granted to the low-population areas be extended to all the islands, that is to say:

— comparable NGE (net grant equivalent) thresholds;

— entitlement to operating aid designed to cover additional transport costs.

1.18.3.2 Moreover, in a best-case scenario, this very same legislation tolerates operating aid only where such aid is 'temporary and progressively reduced'. This restriction fails to take account of the permanent nature of the constraints of the island phenomenon and should, therefore, be eliminated in particular in the case of transport subsidies.

[1] State aid is considered as direct transfers to enterprises under the form of grants, tax exemptions, equity participation, soft loans, tax deferrals and guarantees calculated so as to harmonise the state aid component data into a common comparable indicator across countries.

1.18.3.3 The formal prohibition on direct aid to transport in the case of trade between Member States of the Community should be reconsidered in the case of the islands, because such aid could help improve their economic integration in the Community space and enable them to take advantage of their geographic positioning in the maritime spaces around Europe. This particularly concerns those islands closer to the coast of another Member State than to that of their own mainland and even more so — and on another scale — those whose trade with the Community is carried on via trans-oceanic transport.

1.18.3.4 The problem of aid to transport should also be dealt with in the framework of the WTO so as to encourage the development of direct trade with the nearest third countries.

1.18.3.5 The system of competition which prevails in the field of sea and air transport contains miscellaneous provisions in relation to the islands which should be improved or supplemented. For example:

— the rule of the 'lowest bidder' should be amended to take account of factors such as the economic and social impact which the attribution of the contract can have on an island;

— the practice of breaking routes serving a region up into several invitations to tender should be avoided where this practice could jeopardise the quality and reliability of the services;

— it should be possible to extend the term of service public contracts in the field of shipping to take account of the period of depreciation of the ships.

1.18.3.6 In the case of agricultural or fisheries aid, specific support measures for local productions designed to limit the effects of additional transport costs, or the effects of the limited size of the market, should be envisaged. This could apply, for example, to the operating aid intended for small transformation units (abattoirs, creameries, etc.) where the modest volume of the regions' productions, or the small size of the local market, preclude their operation in conditions of economic viability.

1.18.3.7 The application of uniform indirect taxation rates (VAT, excise, etc.) tends to aggravate the situation in the islands where consumption prices are highest. The states should be allowed to exercise a degree of flexibility in the application of certain taxes in those regions where such an approach would contribute to reducing additional structural costs and improving the living conditions of the population. The same applies, for obvious reasons, to transport related taxation of user charges (e.g. airport taxes).

2. **Conclusions and recommendations**

2.1 The state of vulnerability which characterises the regions with permanent handicaps tends to make it more difficult for them to develop, and in many cases to exacerbate their economic and social difficulties. Faced with a similar context, established populations in regions not experiencing such handicaps will enjoy greater prosperity or at least suffer fewer difficulties.

2.2 It would both inaccurate and simplistic to claim that there exists a sort of 'fatality' which condemns regions with permanent handicaps to the role of second-class territories and their inhabitants to endemic under-development. In many cases, European regions with permanent handicaps boast several assets or potentials capable of promoting development: their proximity to relevant natural resources, their capacity to produce renewable energies, their attractiveness to tourists, their geo-strategic position, the proximity of shipping lanes, diversity of ecosystems, etc.

2.3 The problem facing these regions is that, in order to seize these opportunities, they will probably have to work harder or take much greater risks than would be necessary to successfully undertake a similar undertaking in other, more advantaged parts of the EU. During times of recession, on the other hand, they would be among the first affected owing to the poorer profitability of their industries.

2.4 A European policy for regions with permanent handicaps should therefore consist of a set of measures designed to minimise their vulnerability and to help create a real 'equality of opportunities' between these territories and the rest of the Union. As this policy constitutes a response to objective natural constraints, it is legitimate that it be graduated according to the intensity of these constraints. For the same reason, it should constitute an addition to, rather than a replacement for, the measures traditionally implemented as part of the economic and social cohesion policy.

2.5 *What should such a policy entail?*

2.5.1 A European policy for regions with permanent handicaps should be based on three major principles and on several goals:

— the **first** is the principle of 'permanence', because the geographic constraints which affect these territories are of a durable nature. This principle of permanence is in contrast to the 'catch-up' concept which has heretofore served as a basis for EU policies for dealing with economic and social problems;

— the **second** principle is that of 'positive discrimination'. This consists in regarding the measures granted to certain territories to enable them to offset permanent structural constraints not as constituting unfair advantages but as measures designed to bring about real parity. In this respect, positive differentiation is in contrast to discrimination which, according to the definition given by the European Court of Justice, '… consists in treating similar situations differently, and different situations similarly' (Judgment of the Court of First Instance, Fourth Chamber, of 26 October 1993. Joined cases T-6/92 and T-52/92);

— finally, the **third** principle is that of 'proportionality', because situations in regions with permanent handicaps are synonymous with geographic and demographic diversity. The implementation of positive differentiation with regard to regions with permanent handicaps is only justified if it is based on the realities of their geographic, demographic and environmental characteristics, and on the constraints that these entail. These realities are necessarily different from region to region.

2.5.2 The aim is not to come up with measures applied systematically and uniformly to every territory, but, first and foremost, to create a framework which would make it possible to take account of these differences. Based sometimes on legal provisions, sometimes on financial resources, sometimes on modes of governance, such a permanent framework would make it possible to design solutions adapted to each of these regions in proportion to the nature and intensity of the problems encountered. In some cases, this will mean measures common to all the regions with permanent handicaps, and in others provisions specific to a given situation, not suitable for general application.

2.6 *Goals of a policy for regions with permanent handicaps*

2.6.1 The three types of goal for policy for regions with permanent handicaps are of a social, economic and environmental order. These goals are intimately intertwined.

2.6.2 For the proper implementation of aid in underprivileged areas, the term 'sustainability' should be considered to have a dual meaning; firstly, from a socio-economic perspective, it ensures the survival of viable family businesses and productive systems, curbing the demographic exodus, and secondly, it consolidates environmentally friendly practices.

2.6.2.1 **Social goals:** the 'social goals' are to enable the inhabitants of these regions who so wish to 'be born, live and work at home'.

2.6.2.2 The inhabitants of these regions should have a degree of choice and a quality of infrastructures and services as close as possible to those generally available in the other parts of the Union.

2.6.2.3 This concerns a multitude of sectors, especially education, initial and lifelong vocational training, health, transport and telecommunications. Parity with the other parts of the Union cannot be defined in a purely statistical manner; it must be assessed in qualitative terms. When infrastructures or services are sophisticated, the smaller the population of a region, the more disproportionate their size and cost will be with respect to the number of inhabitants. There is no uniform response to this problem, apart from the application of a principle: the need to aim for optimal quality services so as to at least maintain the population.

2.6.2.4 The required resources are those of the Structural Funds, targeted in particular on the fields of transport (fixed or mobile infrastructures), waste management, water, education, and health. In the field of transport, energy and telecommunications, the intervention of the Structural Funds should be strengthened by the effective application of Article 154 of the Treaty in relation to the trans-European networks, with appropriate financial resources.

2.6.2.5 The inhabitants of regions with permanent handicaps should be able to gain access to consumer goods or services at socially acceptable prices.

2.6.2.6 This situation can, in certain cases, be remedied by measures designed to reduce consumer prices, or encourage certain service providers to set up in the most isolated and least populated areas.

2.6.2.7 The required resources are interventionist measures of a social nature, such as:

— direct aid for certain commercial activities or services providers;

— special fares for residents on sea or air transport;

— the existence of high-quality public services.

The intensity of some of these measures may be proportional to the isolation of the communities concerned and also inversely proportional to the size of their market.

2.6.2.8 Extensive use of the provisions of Articles 73 (public services in terms of transport), 86(2) (on undertakings entrusted with the operation of services of general economic interest) and 87(2) (in relation to aid having a social character, granted to individual consumers) of the TEC could, in certain cases, serve as a basis for such provisions.

2.6.3 **Economic goals**: the economic goals of a European policy for regions with permanent handicaps should contribute to integrating the islands in the single market while taking account of their social and environmental fragility. The principles of the free market must therefore be tempered by those of economic, social and territorial cohesion.

2.6.3.1 The integration of the economies of these regions in the single market requires equitable conditions.

2.6.3.2 In general, a reduction in the additional transport costs via direct aid to the companies.

2.6.3.3 On a case-by-case basis, and depending on the situations, provisions designed to counterbalance the restricted nature of the local market, and the limited nature of the natural or human resources. These include incentives and support measures for the private sector, modulated on the basis of the nature of the activities, their profitability, and their social and environmental impact.

2.6.4 **Environmental goals:** the 'environmental goals' of a European policy for regions with permanent handicaps consist in helping to preserve the environment of these regions, in harmony with the requirements of their economic and social development. The 'environment' includes the natural resources, landscapes and ecosystems of these regions, together with their cultural heritage in its most diverse manifestations: architecture, historic monuments, linguistic heritage, song, dance, literature, arts, craftwork, etc.

2.6.4.1 The preservation of the environmental heritage should not be a static or passive approach, tending to turn the regions with permanent handicaps into 'Indian reservations'. On the contrary, it should constitute an active and dynamic approach designed, in particular, to promote the sustainable development necessary to keep resident populations at home, and to guarantee them a good-quality living environment.

2.6.4.2 The environmental goals require interventions at widely different levels, not only local, but also national, European, and even sometimes planetary. For example:

— the preservation of the linguistic heritage requires the implementation of educational policies drawn up on both local and national level;

— protecting the coasts against maritime pollution requires surveillance of navigation in national and international waters, and restrictive measures (such as passage in the straits) which are discussed, not only between the neighbouring states but also on a global level (in the framework of the IMO);

— management of fish resources involves, not only the regions, the Member States, the Community, but also third countries (for example in the Caribbean) or international bodies (such as the North Atlantic fisheries);

— all the policies linked with the observation of the greenhouse effect and the limitation of its consequences must be dealt with at all the previous levels, but must also be dealt with at world level, in the framework of the United Nations and of the various conferences on the environment.

2.6.4.3 The environmental goals are, to a very large extent, a question of governance. The island, northernmost, mountain and outermost communities should be consulted, and if possible, associated, with the environmental decisions concerning them.

2.6.4.4 The European Union should take account of the special vulnerability of its islands when environmental questions are discussed on the international stage (for example for fisheries accords with third countries, or in the field of the fight against the greenhouse effect).

3. **Final comment**

3.1 In view of the importance and wide geographical spread across the Union's territory of regions possessing the special characteristics discussed in the present own-initiative opinion, and of the comments and suggestions the EESC intends to make in order to ensure that they are better integrated, the European Economic and Social Committee will continue to monitor events in this field, contributing to the assessment of future policies designed to resolve their problems.

Brussels, 10 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on Consumer policy post-enlargement

(2005/C 221/24)

On 17 July 2003, the European Economic and Social Committee decided, under Rule 29(2) of the Rules of Procedure, to draw up an opinion on Consumer policy post enlargement.

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 September 2004. The rapporteur was Mr Pegado Liz.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 10 February), the European Economic and Social Committee adopted the following opinion by 95 votes with 2 abstentions.

1. **Introduction — Grounds**

1.1 The enlargement of the EU, when ten new Member States will be joining the EU at the same time, does not just raise problems of a quantitative nature.

A global analysis of the impact of accession on the European Union's structure and the way it operates was one of the main concerns of the European Convention and is behind a whole series of initiatives set out in the draft constitution.

Enlargement also calls for a sectoral policy discussion about the impact on the various sectors which will be affected. ([1])

1.2 As far as EU consumer policy and law in particular are concerned, however, until now there has not been any systematic, in-depth discussion about the qualitative consequences of enlargement, nor about the possible changes and adjustments entailed in adapting consumer policy and law to the new market of around 500 million consumers.

1.2.1 However, during the meeting promoted by the EESC in Thessalonki on 14 and 15 March 2003, it was stressed that enlargement could involve major changes to the guidelines underlying consumer policy, with implications even for the Treaty and also for the concrete methods used to define new consumer protection measures in such a way as to apply them effectively with sufficient harmonisation throughout Europe where differences between Member States' domestic legislation will inevitably grow.

1.3 Indeed, this is a matter of a real 'qualitative leap' — a new way of defending, protecting and promoting consumers' interests, ensuring that consumers are consulted and involved, safeguarding their representation at all levels of political decision-making, in a new landscape with diverse characteristics, distinct consumer practices and habits, different cultural traditions, and different laws and codes of conduct.

([1]) The EESC has had the opportunity to discuss all these issues in a series of opinions, of which the following should be highlighted:
- *The future of cohesion policy in the context of enlargement and the transition to a learning society* (CES 848/2002), for which the rapporteur was Mr Malosse, OJ C 241 of 7.10.2002.
- *Economic and social consequences of enlargement in the candidate countries*, for which the rapporteurs were Mr Dimitriadis and Mrs Belabed, OJ C 85 of 8.4.2003.
- *The impact of enlargement on EMU*, for which the rapporteur was Mr Vever, OJ C 61 of 14.3.2003.
- *The impact of the enlargement of the European Union on the single market*, for which the rapporteur was Mrs Belabed, OJ C 85 of 8.4.2003.
- *Transport/Enlargement*, for which the rapporteur was Mr Kielman, OJ C 61 of 14.3.2003.
- *Financial assistance for Pre-accession*, for which the rapporteur was Mr Walker, OJ C 61 of 14.3.2003.
- *EU enlargement: the challenge faced by candidate countries of fulfilling the economic criteria for accession*, for which the rapporteur was Mr Vever, OJ C 193 of 10.7.2001.
- *Eastward enlargement of the European Union and the forestry sector*, for which the rapporteur was Mr Kallio, OJ C 149 of 21.6.2002.

1.4 The aim of this own-initiative opinion was therefore to encourage as detailed discussion as possible about the effects of enlargement on consumer policy and consumer law, which could lead to proposals being put forward on consumer policy guidelines for the period after the new Member States' full integration, or possible changes to the Community *acquis* for protecting, defending and promoting consumers' interests and involving consumers, or even new legislative initiatives which might be considered necessary.

2. **Method adopted and preparatory work**

2.1 In order to prepare this opinion, it seemed necessary to obtain as clear an understanding as possible of the difficulties the new countries have encountered in implementing Community legislation.

2.2 To this end, two questionnaires were sent out to a variety of high profile speakers with responsibilities in this area, both from public administration bodies and from consumer organisations and certain professional bodies more directly involved in consumer relations. In addition, a hearing on this subject was held on 2 December 2003, attended by a large number of participants.

2.3 Based on the hearing's results and an analysis of the replies to the questionnaire, and taking into account the outcome of bilateral contacts pursued during the work, this opinion is able to provide a basis for conclusions and recommendations about possible changes to post-enlargement consumer policy guidelines.

3. **A definition of 'representative consumer organisation' as a basis for the promotion of consumers' interests and consumer participation**

3.1 It is generally agreed that the primary objective of any consumer policy in tune with the reality of life today in an enlarged single market must be increasingly to promote consumers as 'market partners' and therefore to foster and create the means and mechanisms that allow them to be involved in defining policy guidelines affecting them. ([1])

3.2 While it is true that not only local, regional and national government organisations in the various Member States, but also the different departments of the various Community institutions and bodies, play an important role in achieving this objective, there is a general sense that it is up to consumers themselves to decide — of their own accord and as part of their right to establish and join associations and federations — how best to organise themselves so that their interests are defended and represented and so that they themselves are involved in debating and defining the policy guidelines which affect them at various political and legislative decision-making levels.

3.3 The fundamental principle in this area must therefore be full recognition of the capacity and autonomy of consumers to organise and manage themselves so that they can establish and join associations and federations at local, regional, national, Community and international level, thereby ensuring that their interests are properly represented and that they themselves are involved in all bodies where decisions affecting them are taken.

It is clearly up to the legislator, whether at national or Community level, to ensure that this requirement is met.

([1]) See point 14 of Council Resolution of 2 December 2002 on *Community consumer policy strategy 2002-2006* (OJ C 11 of 17. 1.2003, p. 1) which reads as follows:*'CALLS UPON THE COMMISSION AND THE MEMBER STATES:*
[…] 14.to support representative consumer organisations so that they can independently promote consumers' interests at Community as well as national level and enable them to exert influence, enter, for example, into a balanced dialogue with business and participate in Community policy making. The development of capacity-building projects in order to strengthen consumer organisations where appropriate as well as education tools on specific aspects of cross-border transactions would be key to this end'.

3.4 There have nonetheless been calls from many quarters calling for identical parameters to be defined at Community level to ensure that all consumer organisations respect, of their own accord, the fundamental principles of democratic organisation and methods, which in turn ensure that consumers in general are properly and independently represented.

3.4.1 A number of Community instruments already set out criteria defining the parameters for gauging the representativeness of consumer organisations and associations so that they can be compared across the EU ([1]). These criteria were, however, considered to be insufficient.

3.4.2 To this end, the EU has also defined a number of criteria for recognising representative consumer organisations, such as those laid down in Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests ([2]).

3.4.2.1 However, these criteria entail an 'administrative' decision by the Member States and cannot therefore be used as the basis for a uniform definition of what is meant by a representative consumer association or organisation, which is identical and comparable in the various Member States and throughout the area covered by the single market.

([1]) See, in particular, Article 7 (2) and (3) of Decision No 20/2004/EC of 8 December 2003 establishing a general framework for financing Community actions in support of consumer policy for the years 2004 to 2007 (OJ L 5 of 9.1.2004, p. 1) which state the following:

'2. The financial contributions for action 16 may be awarded to European consumer organisations which:

— (a) *are non-governmental, non-profit making, independent of industry, commercial and business or other conflicting interests, and have as their primary objectives and activities the promotion and protection of the health, safety and economic interests of consumers in the Community;*

— (b) *have been mandated to represent the interests of consumers at Community level by national consumer organisations in at least half of the Member States that are representative, in accordance with national rules or practice, of consumers and are active at regional or national level, and*

— (c) *have provided to the Commission satisfactory accounts of their membership, internal rules and sources of funding.*

3. The financial contributions for action 17 may be awarded to European consumer organisations which:

— (a) *are non-governmental, non-profit-making, independent of industry, commercial and business or other conflicting interests, and have as their primary objectives and activities to represent consumer interests in the standardisation process at Community level, and*

— (b) *have been mandated in at least two thirds of the Member States to represent the interests of consumers at Community level:*

— *by bodies representative, in accordance with national rules or practice, of national consumer organisations in the Member States, or*

— *in the absence of such bodies, by national consumer organisations in the Member States that are representative, in accordance with national rules or practice, of consumers and are active at national level.'*

— (See too the EESC opinion on this by Mr Hernández Bataller (INT/180) of 17.7.2003, OJ C 234 of 30.9.2003.)

([2]) See OJ L 166 p. 51 which reads as follows:

'Article 3

Entities qualified to bring an action

For the purposes of this Directive, a 'qualified entity´ means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

(a) *one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist and/or*

(b) *organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.'*

Or its current 'codified version' which states the following:

'Article 3

Entities qualified to bring an action

For the purposes of this Directive, a "qualified entity" means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

(a) *one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist; and/or*

(b) *organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.'*

3.5 Several characteristics have been identified in an attempt to define a uniform concept of what 'representative consumer association' means, namely:

(a) it must have legal personality and a right to bring an action before a court;

(b) it must be non-profit making;

(c) its main statutory objective must be to defend and represent the interests of consumers in general (general interest associations) or to protect and represent its members and consumers or users of specific goods and services (specific interest associations);

(d) its governing bodies must have been freely elected through a secret ballot of all its members;

(e) it must be financially autonomous; and

(f) it must be independent vis-à-vis political and economic interests, business and business organisations (operating on the supply side of the market).

3.5.1 It has also been suggested that cooperative organisations, in particular consumer cooperatives, should be placed on the same footing as consumer associations ([1]).

3.5.2 In addition, the possibility has been raised of requiring representative associations to be officially recognised by an authorised public body in the Member States; it has also been suggested, however, that support for consumer organisations should be based on their technical qualifications and on the results of their work and not solely on their accreditation by national authorities.

3.6 Owing to the delicate nature of this matter, the Committee, recognising it as being important, believes that the Commission should discuss it in depth and then publish its findings in a Communication.

3.7 In order to ensure that organisations representing consumers' general and specific interests properly exercise the consumer's right to representation at Community level in particular, a number of shortcomings or gaps in existing systems have also been identified.

3.7.1 One aspect warranting special mention is the training needs of managers and trainers in the aforementioned representative consumer associations and organisations ([2]).

3.7.2 In addition to generic information programmes targeting consumers in general, consumer associations and organisations must also be given tailor-made, advance information which they can then pass on to their members or to consumers in general in their respective countries or regions.

3.7.3 Consumer associations themselves must be better represented in the various Community bodies, either directly or through their umbrella organisations. The EESC does, nonetheless, welcome the Commission's recent initiatives to restructure the Consumer Committee ([3]) and appoint a Consumer Liaison Officer within DG Competition ([4]) and hopes that this example will be followed in other policy areas affecting consumers ([5]).

([1]) On the importance of the cooperative sector, see the Commission Communication on the promotion of co-operative societies in Europe - COM(2004) 18 final of 23 February 2004 – which again puts forward the idea of a statute for European cooperative associations (Opinion by Mr Hoffelt).

([2]) The EESC therefore welcomes the Commission's very recent initiative (DG SANCO) to ask BEUC to organise training courses on financial and human resources management, public relations and lobbying, and consumer law in the course of this year.

([3]) Decision of 9 October 2003 on setting up a European Consumer Consultative Group (OJ L 258 of 10.10.2003).

([4]) It was announced in December 2002 that this post would be created with a view to ensuring a permanent dialogue with European consumers; it was filled by Mr Juan Riviere y Marti on his appointment by Commissioner Mario Monti on 9 December 2003 (IP/03/1679 of 9.12.03).

([5]) Of particular importance is the recent Commission Decision setting up Scientific Committees in the field of consumer safety, public health and the environment (OJ L 66 of 4.3.2004).

3.7.4 It would also be a good idea to start organising regular European consumer forums again, in order to step up and improve dialogue, information and cooperation between consumer organisations.

4. **Financing consumer organisations and associations**

4.1 One of the main priorities for proper consumer representation is to ensure that representative bodies are properly financed, at both organisational and operational level ([1]).

4.2 Regardless of the national arrangements in force in each country, a number of consumer representatives feel that only with significant Community support and incentives will representative consumer associations have the resources necessary to play their essential role of defending, promoting and representing consumers at regional, national, Community and international level ([2]).

4.3 The general point has also been made that, because consumer associations rely on funding generated by members' subscriptions and their own initiatives, they can find it difficult on their own to avoid bankruptcy and thereby safeguard their autonomy and independence vis-à-vis political and economic interests ([3]).

In order to safeguard these principles, any financial support received must, as a rule, be put towards action, programmes, projects and initiatives for training technical staff and providing consumer education and towards covering the cost of class actions for defending consumers' general interests, rather than funding the everyday management of these bodies.

4.4 The current Community support framework for consumer organisations and associations is laid down in Decision 20/2004/EC of 8 December 2003 establishing a general framework for financing Community actions in support of consumer policy for the years 2004 to 2007 ([4]), which must be viewed in conjunction with the Review of the rolling programme of actions of the Consumer Policy Strategy 2002-2006 of 15 September 2003 ([5]).

5. **Maximum harmonisation in line with the highest level of consumer protection**

5.1 Article 153 clearly identifies the concept of minimum harmonisation and a high level of consumer protection as a fundamental principle of Community consumer policy ([6]).

([1]) 72 % of the respondents to the questionnaire said that consumer associations did receive state support, but deemed this to be inadequate.

([2]) In August 2003, in a particularly timely statement, BEUC called on governments in the new Member States to provide consumer associations with adequate financial support and raised the possibility of using the PHARE programme to this end.

([3]) 75 % of the respondents said that consumer protection associations did not benefit from tax relief.

([4]) OJ L 5 of 9.1.2004, p. 1, cf. EESC Opinion - Rapporteur: Mr Hernández Bataller - OJ C 234 of 30.9.2003.

([5]) SEC(2003) 1387 of 27.11.2003.

([6]) See Article 153(1) and (5), the latter of which states that measures which support, supplement and monitor the policy pursued by the Member States, and which have been adopted by the Council in accordance with Article 251 and after consulting the Economic and Social Committee, '*shall not prevent any Member State from maintaining or introducing more stringent protective measures*', providing such measures are of course compatible with the Treaty, in particular the subsidiarity and proportionality principles.

5.2 In keeping with this approach, which incidentally is not new [1] and has not been changed in the draft Constitution either, most of the consumer protection directives that have been adopted include a 'minimal clause', worded more or less as follows:

'This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable or more stringent as regards consumer protection in the field in question, without prejudice to their obligations under the Treaty' [2].

5.3 However, it would seem, at least from the Green Paper on European Union Consumer Protection [3] and, more recently, the Communication from the Commission on Consumer Policy Strategy 2002-2006 [4], that full harmonisation is now the preferred method of approximating legislation in areas affecting consumer protection.

5.3.1 This is the line taken, in particular, in the recently proposed Directives on credit for consumers [5] and unfair commercial practices [6]. Together with the excessive importance attached to the principle of mutual recognition [7], this would seem to be a general, as opposed to a merely one-off, approach which is justified either by the nature of the issues concerned or by the need to complete key aspects of the internal market.

5.3.2 Whenever measures intended exclusively or primarily to ensure the smooth operation of the internal market are concerned, the EESC acknowledges the advantage of adopting legislation to ensure the highest possible degree of harmonisation of the rules governing legal transactions between companies or between companies and consumers. This is particularly important given that the EU will soon number 25 Member States.

5.3.2.1 To achieve this objective, the EESC therefore believes that, wherever possible, and taking into account the nature of the subject in hand, the EU needs to adopt regulations (or, to use the new nomenclature of the draft European Constitution, 'European laws' [8]) or otherwise directives (or 'European framework laws') which target full harmonisation, as this is the best way of safeguarding the certainty and security of secondary law.

5.3.3 The EESC nonetheless holds the view that the sine qua non of seeking such harmonisation is that consumer protection must be provided at the highest level in line with technological developments, scientific knowledge and the cultural models of the time.

5.4 In all other situations where the primary objective of promoting these interests is not to ensure the completion or smooth operation of the internal market but rather to secure consumer protection, the EESC believes that the best way of safeguarding these interests is to uphold the principle of minimum harmonisation. The idea would be to ensure a high level of protection while at the same time allowing the Member States to maintain or adopt more stringent consumer protection measures in accordance with the Treaty and in strict application of Article 153(5).

---

(1) The same provision was laid down in Article 129-A as amended by the Maastricht Treaty.

(2) Cf., for example, Directives 90/314/EEC (package holidays), Article 8; 94/47/EC (timeshare), Article 11; 93/13/EEC (unfair terms), Article 8; 97/7/EC (distance contracts), Article 14; 85/577/EEC (contracts negotiated away from business premises); 84/450/EEC (misleading advertising), Article 7; and 87/102/EEC (consumer credit), Article 15. We should mention here the important study carried out at the Commission's request by the Centre for Consumer Law and coordinated by Monique Goyens. The rapporteur of this opinion had the opportunity to take part in this study, along with eminent legal specialists such as Profs. Klaus Tonner, Lopez-Sanchez, Susanne Storm, Jérome Frank, Alexandros Voutsas, William Fagan, Paolo Martinello, Andrée Colomer, A. Tavassy and Geraint Howells (SPC/02/93/CM, July 1994). The final report quite rightly drew a distinction between the various forms of harmonisation: minimum, complete, partial, full and optional.

(3) COM(2001) 531 final of 2.10.2001.

(4) COM(2002) 208 final of 7.5.2002.

(5) COM(2002) 443 final of 11.9.2002.

(6) COM(2003) 356 final of 18.6.2003.

(7) Incorporated into the Treaty when the Single European Act came into force.

(8) Cf. Article 32 of the draft Constitution.

5.5 With another ten countries joining the EU, the EESC recommends that the Commission review its recent approach of adopting a general preference for maximum harmonisation and instead confine this to situations relating to the completion or operation of the internal market. It also calls on the Commission always to ensure that, in such cases, consumer protection is guaranteed at the highest level in keeping with advances in scientific knowledge, technological developments and socio-cultural models in the area in question.

5.6 'Scientific knowledge' refers to the knowledge-basis for consumer policy decision makers. It includes the approved results of

a) the theory of consumption

b) empirical research of consumer behaviour and organisations development

c) assessment of measures and projects programmed by the Commission etc.

Apparent deficits in the availability of a knowledge-basis should be eliminated by setting up a workable research capacity.

5.7 Wherever possible, and technical and legal developments permitting, the EESC also recommends using regulations (or 'European laws' under the new nomenclature), as this is the most appropriate instrument for effectively securing approximation of legislation and for ensuring legal certainty and security when applied to legal transactions ([1]).

6. **The subsidiarity, mutual recognition and precautionary principles — interpretation and application geared to consumer protection**

6.1 A number of basic principles in the Treaty are also fundamental elements of secondary law and must always be invoked when defining the nature, essential attributes, suitability and scope of regulatory measures in the various sectors and when developing EU policies.

Consumer law is no exception.

6.2 The most important of these are the subsidiarity principle ([2]), the principle of mutual recognition and the precautionary principle.

([1]) Good examples of this include recent regulations on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Reg. (EC) No. 44/2001 of 22.12.2000); on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (Reg. (EC) No. 1348/2000 of 29.5.2000); on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (Reg. (EC) No. 1347/2000 of 29.5.2000); on insolvency proceedings (Reg. (EC) No 1346/2000 of 29.5.2000); concerning sales promotions in the Internal Market (COM(2002) 585 final of 25.10.2002); on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2003) 443 final of 18.7.2003); on materials and articles intended to come into contact with food (COM(2003) 689 final of 17.11.2003).

([2]) See Article 5(II) of the EC Treaty, which states the following:
'In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, by better achieved by the Community.'
There are, however, a number of differences in the wording of Article 9(3) of the draft Constitution, which ought to be examined in depth.
The draft Constitution reads as follows:
'Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.'
The most important contributions to the discussion about this principle are as follows:
Subsidiarity: The challenge of change, proceedings of the Jacques Delors Colloquium, published by the European Institute of Public Administration, Maastricht, 1991 (EIPA 11/04); *The principle of subsidiarity,* Jean-Louis Clergerie, Ellipses, 1997; the study, thought to be unpublished, by Prof. G. Vandersanden, *Considérations sur le principe de subsidiarité,* Jan. 1992; *Il principio di sussidiarietà nella prospectiva dell'attuazione del Trattato sull' Unione europea* by Gian Pietro Orsello, Rome, 1993; and the Mégret Commentary of the Treaty, Vol. 1, 2nd ed., Addendum, Ch. III, pp. 421 et seq.

6.3 Without going into an in-depth analysis of the scope of the subsidiarity principle as it applies to consumer protection legislation, when considered in conjunction with Article 153, its current wording gives rise to what some people have termed 'dual subsidiarity' [1].

6.3.1 Indeed, in addition to the test of 'primary' or general subsidiarity set out in TEC Article 3b, the legislator wanted to subject the measures referred to in Article 153(3)(b) to an even more stringent test of 'secondary' subsidiarity. That is, even after they have passed the subsidiarity test, such Community measures will only be admissible if and insofar as they 'supplement' or 'support' Member States' initiatives in the areas mentioned.

6.3.2 In other words, the Member States must always have taken steps to either adopt or propose measures at national level before the Community can introduce measures to 'supplement' or 'support' such steps where it is appropriate to do so.

6.3.3 In short, the Community does not therefore have the power to take action even in the areas explicitly outlined above and even if, according to the subsidiarity principle laid down in Article 3b, such action is justified, unless it is supplementing or supporting specific measures taken by Member States.

6.4 It is therefore essential — in all circumstances and particularly when applying the subsidiarity principle — that consumers' representatives bring home to the Community institutions that their interpretation of this principle must not hold up the adoption of much-needed and appropriate consumer protection measures.

6.5 Likewise as regards the principle of mutual recognition [2] the Committee has already expressed its views in some depth in its November 2000 own-initiative opinion [3] following the key Commission Communication on *Mutual recognition in the context of the follow-up to the action plan for the single market* [4].

6.6 In turn, the Commission has published programmes of measures for implementing the principle of mutual recognition in a number of specific sectors, in particular, decisions in criminal matters and in civil and commercial matters [5].

6.7 As far as measures affecting consumers are concerned, there has been a growing trend towards extending such measures to other areas of legislation, particularly when full harmonisation is also being sought.

6.8 It must be pointed out that, while application of the principle of mutual recognition is in general warranted, there are areas where doing so means that consumers are subject to different Member States' laws. This generates confusion and is a major disincentive to cross-border trade [6].

6.9 The EESC would therefore draw the Commission's attention to the need for the principle of mutual recognition to be applied with care and in such a way that is in tune with the reality of the sector concerned, whenever it is used to approximate legislation.

---

[1] It must, therefore, be stated that the Commission's initial interpretation, presented at the Edinburgh European Council of 11 and 12 December 1992 was that the study, in line with the aforementioned principle, would result in the withdrawal of an entire series of proposals in the pipeline and would put the revision of many others on hold.

[2] This principle was fully integrated into Article 100-b when the Single European Act came into force, definitively incorporating the *Cassis de Dijon* verdict.

[3] *Mutual Recognition in the Single Market* – Rapporteur: Mr Lagerholm, OJ C 116 of 20.4.2001

[4] COM(1999) 299 final of 16.6.1999

[5] OJ C 12 of 15.3.2001.

[6] This refers in particular to financial products sold through mail order.

6.10 On the other hand, the EESC feels that the precautionary principle, incorporated into Community law when the Maastricht Treaty came into force and only applies to environmental policy, must be considered as a legal principle common to all EU policies, in particular consumer protection policy. This would have significant practical consequences, particularly for systematic and objective risks assessment and in terms of reversing the burden of proof in favour of consumers as a general rule in civil liability law ([1]).

7. **A genuinely horizontal approach to consumer policy**

7.1 As referred to above, the idea of a horizontal approach to, and the mainstreaming of, consumer policy was included in the EC Treaty when the Amsterdam Treaty came into force; it had already been mentioned in various Commission programming documents ([2]) and nowadays has gained considerable ground in the Commission's policy guidelines, in addition to warranting mention as a fundamental right in the draft Constitution ([3]).

7.2 Indeed, the Commission's '*Consumer Policy Strategy 2002-2006*' ([4]) states that: '*As well as specific consumer protection rules, consumers are also affected by other important EU policies such as the internal market, environment and sustainable development, transport, financial services, competition, agriculture, external trade and more. Consumer policy as such cannot be developed in isolation without taking into account other areas that have an impact on consumers. Systematic integration of consumer concerns into all relevant EU policy areas is essential*' ([5]).

7.3 In reality, however, this principle has not been put into practice systematically in the measures for implementing and developing the various Community policies, and neither has the above-mentioned strategy document attached priority to this objective, contrary to the proposals put forward by the EESC in its opinion on the Commission's Communication ([6]).

7.4 It thus calls for transparent mechanisms to be devised and credible practices put in place to guarantee that consumers' interests are always taken into account and a high level of consumer protection ensured when measures are adopted in any area falling within the EU's sphere of responsibility ([7]).

([1]) Cf. EESC Opinion on the *Use of the precautionary principle* - Rapporteur: Mr Bedossa - OJ C 268 of 19.9.2000, p. 6.

([2]) Cf. EEC's Preliminary Programme for a consumer protection and information policy of 14 April 1975, which states: '*All these [consumers] rights should be given greater substance by action under specific Community policies such as the economic, common agricultural, social, environment, transport and energy policies as well as by the approximation of laws, all of which affect the consumer's position*' (OJ C 92 of 25.4.1975). The idea was subsequently to be developed in the Communication to the Council dated 4 July 1985 and entitled a '*New impetus*', where, for the first time, it was quite rightly considered that, for the creation of the European Economic Community, the completion of the single market was a means and not an end (COM(85) 314 final). This led to the Council Resolution of 23.6.1986.
The European Parliament also, in its March 1992 Resolution on *the consumer protection and public health requirements to be taken into account in the completion of the internal market*, called on the Commission to take more and more account of consumer protection requirements in all policy areas (DOC. PE 152150).
However, it fell to the EESC, on the eve of the Amsterdam European Council, in its Opinion on *the Single market and consumer protection* (CES 1309/95 of 22 November 1995 – Rapporteur: Mr Ceballo Herrero OJ C 39 of 12.2.1996), to set out clearly a whole series of recommendations on the implementation of a horizontal approach to consumer policy and to call for a general reference to this to be enshrined in the revised Treaty.

([3]) Art III-38 and Art-III-5.

([4]) COM(2002) 208 final of 7.5.2002.

([5]) Ibidem page 7.

([6]) EESC Opinion 276/2003 of 26 February 2003 – Rapporteur: Mrs Ann Davison - OJ C 95 of 23.4.2003.

([7]) In Opinion CES 1309/95 referred to previously, the EESC recommended in this connection that:
'— consumer interests should be taken into account in all EU trade policy decisions, in accordance with objective and published criteria;
— the consultation of consumer organizations should be made mandatory under Treaty Articles 85 and 86 before exemptions are granted in respect of agreements between undertakings and before such agreements are authorized, above all in cases involving mergers, since both practices hinder the orderly operation of the market;
— directives should be adopted on unfair competition and unfair advertising and measures taken to avoid social and environmental dumping, also in the interests of consumers;
— the right to consumer safeguards against discriminatory or aggressive sales practices in this sector should be harmonized;
— cooperation policy should be strengthened in the field of safety standards approval and sanctions against dealing in products or services presenting health or safety hazards.' (Point 3.2.4)

7.5 To this end, the EESC suggests in particular that the Commission weigh up the need to boost the human and material resources of DG SANCO and redefine the way that its methods and procedures tie in with the other directorates-general.

7.5.1 The other Community institutions — from the Council to the European Parliament, Committee of the Regions and the EESC itself — should likewise rework their approach so as to do more to ensure that consumer protection is properly taken into consideration in all Community policies.

8. **Simplification and codification of consumer law**

8.1 Given the increasing proliferation and complexity of new legislation and regulations in the area of consumer law, it would be advisable — if not imperative — to continue to improve lawmaking and simplify legislation.

8.2 The Commission has expressed growing concern about these aspects of the Community legislative process ([1]).

8.3 The Committee meanwhile has not only voiced the same concerns as the Commission ([2]), but since 2000 has also made '*simplification*' an ongoing focus of its Single Market Observatory.

8.4 The EESC therefore welcomes the inter-institutional agreement reached between the EP, the Council and the Commission in this area ([3]) and moreover refers back to the comments it made in the aforementioned opinions and, in particular, in its recently adopted opinion on the Commission's latest Communication on this subject ([4]).

8.5 This subject is particularly important where consumer law is concerned, insofar as the latter primarily affects private individuals; particular attention must therefore be given to further simplifying consumer law so that it is easier to understand and apply ([5]).

8.6 At the same time, efforts should be made to step up codification, as already begun by the Commission, albeit on a small scale where several directives are concerned.

8.7 Given that the term '*codification*' has many possible meanings, there does not seem to be any value in drawing up an actual, dedicated European Consumer's Code ([6]); instead, we should continue with the concerted approach to reworking Community law along the lines of major themes, harmonising the provisions enshrined in the various legislative initiatives and organising them according to subject area.

([1]) Of particular significance since 1992 are its *Better lawmaking* documents, in particular the one for 2002 (COM(2002) 715 final of 11.12.2002) and its Communications of 5 December 2001 on *Simplifying and improving the regulatory environment* (COM(2001) 726 final, of 5 June 2002 on *European governance: Better lawmaking* (COM(2002) 275-278 final) and of 11 February 2003 on *Updating and simplifying the Community acquis* (COM(2003) 71 final) and, in particular, its recently published legislative and work programme for 2004 (COM(2003) 645 final of 29.10.2003) which makes the simplification and codification of Community legislation a priority for 2004 (Annex 5).

([2]) Cf. the EESC Opinions for which the rapporteurs were Mr Vever (OJ C 14 of 16.1.2001), Mr Walker (OJ C 48 of 21.2.2002 and OJ C 125 of 27.5.2002), Mr Simpson (OJ C 133 of 6.6.2003) and Mr Retureau (INT 187 of 17 March 2004 – CESE 500/2004; OJ C 112 of 30.4.2004).

([3]) OJ C 321 of 31.12.2003. Cf. the particularly important EP report of 25.9.2003 (A5-0313/2003) by Monica Frassoni MEP.

([4]) COM(2003) 71 final for which the rapporteur was Mr Retureau (CESE 500/2004; OJ C 112 of 30.4.2004).

([5]) When asked how much progress has been made in transposing the Community *acquis*, 65 % of the respondents to the questionnaire said that the reform of the legal framework has been fully completed, while 35 % said that the transposition process has not been completed.

([6]) The idea of the '*codification*' of Community consumer law and the various meanings of the term '*codification*' were discussed at length at the Colloquium held in Lyon on 12 and 13 December 1997, the minutes of which were published by Bruylant (1998) under the title *Vers un Code Européen de la Consommation*. These were discussed again at the Colloquium held in Bologne-sur-Mer on 14 and 15 January 2000, the minutes of which were published by Documentation Française (Paris 2002). This subject was also discussed by various authors in the work by Dominique Fenouillet and Françoise Labarthe entitled *Faut-il recodifier le droit de la consommation?* (ECONOMICA, 2002).

8.8 One widely acknowledged way of reducing the legislative burden would be to make greater use of self- and co-regulation mechanisms.

8.8.1 Without wishing to anticipate the EESC opinion currently being drafted on this subject, the point can however already be made that, where consumer law in particular is concerned and in an as yet unconsolidated market where there is an acknowledged lack of information, it will only be possible to develop alternative self- and co-regulation systems where there is a legal framework with well-defined scope, parameters and criteria. The EESC has moreover already stated this in its opinion on unfair commercial practices ([1]).

9. **Consumer information and education**

9.1 For a long time now, the EESC has been demonstrating the decisive role of proper consumer information and education in promoting, protecting and defending consumers' interests.

9.2 Where **consumer information** in particular is concerned, the EESC has pointed out that it is not enough to provide specific information about each service or product, however detailed such information may be; rather, there is a need for general information on consumers' rights which in turn must serve as a basis for tailor-made information on the goods and services concerned ([2]).

9.3 Where **consumer education** is concerned, a recent EESC own-initiative opinion not only extolled the virtues of the '*educated consumer*', but also detailed the content and techniques of consumer education and the role of the various players (European Union, Member States, consumer associations, professionals, etc.) in education processes ([3]).

9.4 In any moves to rework consumer policy — a necessary consequence of enlargement — consumer information and education should play an even greater role in ensuring that consumers' interests are promoted and protected effectively, while still leaving it up to the Member States and consumer associations to define the guidelines and criteria for bringing such information and education into line with the specific circumstances and features of each national, regional or local market.

9.4.1 It is not only schools, consumer associations, businesses, professionals, and Member States who have a role to play in this important task.

It is the responsibility of the European Union not only to coordinate initiatives, but also to encourage and promote measures designed to improve the quality of information and the level of education of consumers ([4]).

9.4.2 Such measures must not be limited to providing adequate financial support, but must also include the development of joint information and education campaigns and programmes.

9.4.3 They should also include not only consumers but also professionals, providers of goods and services and even regulators and bodies responsible for implementing the law, with particular emphasis on members of the legal profession (judges, lawyers, public prosecutors, etc.).

([1]) EESC Opinion 105/2004 for which the rapporteur was Mr Hernández Bataller (OJ C 108 of 30.4.2004).

([2]) In this connection, see in general the EESC's opinions on the 'Single Market and Consumer Protection', for which the Rapporteur was Mr Ceballo Herrero (OJ C 39 of 12.2.1996) and on the 'Green Paper on European Union Consumer Protection' for which the Rapporteur was Ms Davison (OJ C 125 of 27.5.2002) and in particular the opinions on proposals for directives on misleading and comparative advertising, doorstep sales, consumer credit, package travel, unfair terms, time share, distance sales of goods in general and services in particular, producer responsibility, guarantees, electronic commerce, product safety and unfair commercial practices.

([3]) EESC Opinion of 26 March 2003, for which the rapporteur was Mr Hernández Bataller (OJ C 133 of 6.6.2003). The Dutch Committee for Consumer Affairs' November 2000 report on this subject is also of interest in this connection.

([4]) As stated by the Council in its Resolution of 9 June 1986 (OJ C 184 of 23.7.1986).

10. **Administrative cooperation on the application of consumer protection laws**

10.1 One fundamentally important element will be the outcome of the recent proposal for a regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2003) 443 final of 18.7.2003), on which the Committee has already issued an opinion ([1]).

10.2 For the system for monitoring infringements of Community legislation to be ever more effective and for national implementation to guarantee effective application, the various limitations revealed in this proposal will have to be tackled.

An aspect worth altering immediately is the proposal's scope, which the EESC considered far too limited.

11. **Some ideas for effectively and adequately protecting, defending and promoting consumers' interests in the enlarged single market**

11.1 The EESC is well aware that no changes to legislation will produce immediate effects or instantaneous results. Therefore — in addition to its concern to stress the need to consolidate and promote proper application of existing laws — in this discussion on the various areas which could be dealt with in greater depth or improved upon, the EESC is also keen to emphasise the gradual, concerted nature of possible developments to pursue, so as not to upset the essential balance between the main interests concerned, but not forgetting that on most occasions consumers are at a disadvantage in the consumption process.

11.2 It is with this in mind that the EESC lists below a number of areas requiring thought, with a view to improving the current legislative framework governing legal transactions which directly affect consumers.

11.2.1 One such area concerns the **safety of services** for consumers, and, associated with this, the way that a **supplier's responsibility for defective services** is regulated.

11.2.2 In 1992, the proposal for a directive on this subject was shelved ([2]). In response to a call from the Council and the Parliament to '*identify the needs, possibilities and priorities for Community action on the safety of services*' ([3]), the Commission has decided to start up discussions on this issue again with its *Report* of 6 June 2003 ([4]), and more recently with its Proposal for a Directive on services in the internal market ([5]); this decision has been greeted with renewed hope.

([1]) Opinion, adopted on 28 January 2004 - Rapporteur: Mr Hernández Bataller (OJ C 108 of 30.4.2004). The Commission had already pointed to the need for better monitoring of the application of Community law in its Communication of 11 December 2002 (COM(2002) 725 final).

([2]) At the Edinburgh Council meeting on 11 and 12 December 1992, it was decided to withdraw a whole series of proposed directives which were in the pipeline in order to apply the subsidiarity principle; this included the text in question. (SN/456/92 Appendix C to the Presidency's conclusions)

([3]) Directive 2001/95/EC, Article 20.

([4]) COM(2003) 313 final of 6.6.2003.

([5]) COM(2004) 2 final of 13.1.2004. See EESC Opinion for which the rapporteurs were Mr Metzler and Mr Ehnmark. See also Council Resolution of 1 December 2003, published in OJ C 299 of 10.12.2003.

11.2.3 There is nevertheless concern that the Commission's approach to this matter, based on an erroneous interpretation of the subsidiarity and complementarity principles in relation to national policies, might mean that timely, effective measures are not taken ([1]).

11.2.4 Another area where there is a major gap in Community legislation concerns the definition of the scope of **key services of general interest** and the standard principles which should govern them, in terms of the continuity and universal nature of services, price accessibility, right of access and freedom of choice, etc. ([2])

11.2.4.1 Following on from its opinions on this subject ([3]), the Committee feels that EU enlargement requires precise guidelines to be drawn up with a view to the privatisation of certain key public services and the identification — as a matter of urgency — of core services of general interest, which will have to include air and rail transport, electricity, gas and postal and telecommunications services. ([4])

11.2.4.2 In the absence of quality indicators precise enough to allow a comparative assessment of these services, the Commission's promised communication on a method for the horizontal assessment of services of general interest is eagerly awaited. ([5])

11.2.5 One other shortcoming noted to date concerns Community-wide standardization of the law applying to non-contractual obligations.

11.2.5.1 The Commission initiative to move forward with a proposal for a Regulation ([6]) on this subject therefore warrants special mention; together with the comments and suggestions made by the EESC in its opinion ([7]), this proposal represents a key component of legislative harmonization throughout the enlarged EU in an area vital for securing adequate consumer protection.

11.3 As far as the **right to information** is concerned, in particular as regards foodstuffs ([8]), in addition to the fact that the labelling should be made increasingly clear for consumers, other modern methods should likewise be used to improve consumer information (internet, free telephone lines, consumer support services, etc) without forgetting, wherever necessary and possible, a reference to the product's origin ([9]).

([1]) This comment is made without any intention of anticipating the EESC Opinion on this topic (CESE 137/2005).

([2]) Cf. Green paper on *Services of General Interest* (COM(2003) 270 final of 21.5.2003) and the Commission Communication entitled '*Services of General Interest in Europe*' (COM(96) 443 final of 11.9.1996).

([3]) Opinion CESE 1607/2003 of 10.12.2003 (OJ C 80 of 30.3.2004) - Rapporteur: Mr Hernández Bataller and Opinion CES 605/1997 of 29.5.1997 (OJ C 287 22.9.1997) - Rapporteur: Mr Van Dijk. Also see the EESC's sectoral opinions on certain key services, in particular Opinion CES 1269/1996 of 31.10.1996 (OJ C 66 of 3.3.1997) on energy and Opinion CES 229/2001 of 1.3.2001 (OJ C 139 of 11.5.2001) on electronic communications services – Rapporteur in both cases: Mr Hernández Bataller.

([4]) In a recent decision in Portugal, telephone services were surprisingly not included as part of key public services (Law 5/2004 of 10.2.2004)

([5]) This Communication appears in document COM(2004) 374 final of 22/7/2003) (Rome II)

([6]) Regulation on *the law applicable to non-contractual obligations* (COM(2003) 427 final of 22.7.2003) ('Rome II').

([7]) Opinion CESE 841/2004 – Rapporteur: Mr Von Fürstenwerth (OJ C 241 of 28.9.2004).

([8]) European Parliament and Council Directive 2000/13/EC of 20 March 2000, OJ L 109 of 6.5.2000.

([9]) The directive stipulates that identification of a product's origin is only mandatory when omitting it might mislead consumers; this gives rise to considerable doubt and from the point of view of legal certainty is not clear enough.

11.4 As regards **health protection and safety**, an increasingly effective operation of the RAPEX system ([1]) depends on the capacity of the Member States to respond. The EESC therefore reiterates that there is a need to invest in the quality of the system for monitoring the Community market through projects which help shape and develop Member States' market control mechanisms, particularly in the accession countries, providing back-up for both consumer representative bodies and the relevant public bodies ([2]).

11.4.1 In turn, consumer organisations must provide reliable information on the safest goods and services and make public the results of inspections carried out at national level.

11.5 On the **protection of economic interests** of consumers, various aspects warrant attention and reworking:

11.5.1 As far as **producer liability** ([3]) is concerned, the current arrangements are out of balance, to the detriment of the consumer, as regards the burden of proof imposed on the consumer on the one hand, and the grounds for exemption from producer liability on the other.

11.5.1.1 There are thus solid grounds for continuing with the current work on Directive 85/374/CEE of 25 July along the lines recommended inter alia in the Green Paper on Liability for Defective Products ([4]), which a succession of studies commissioned by the Commission have taken into account ([5]).

11.5.2 Certain misgivings have been expressed about steps restricting consumer protection on **doorstep sales** ([6]) to express requests from consumers, because of the difficulty in supplying proof and because it is sometimes unclear what rules should apply. The EESC feels that this problem should be revisited so as to work out a basis for protecting the consumer against fraudulent behaviour, in addition to which the whole directive should be reviewed in the light of current unfair, aggressive practices and the Community texts referring thereto.

11.5.3 As regards **distance contracts** ([7])**,** it would be important, as a matter of urgency, to reach a decision on placing the burden of proof on the supplier as regards compliance with requirements on the existence of prior information, written confirmation and consumer consent ([8]). Moreover, it would be appropriate to analyse the suitability of information requirements in distance contracts covering new technologies.

([1]) System for the rapid exchange of information.

([2]) Along the same lines: EESC Opinion on *the Proposal for a Directive of the European Parliament and of the Council on General Product Safety* (OJ C 367 of 20.12.2000). When questioned about mechanisms to monitor the market, 65 % of respondents considered them to be adequate while 37 % considered them to be relatively ineffective.

([3]) Directive 85/374/EEC of 25 July 1985 on *the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products* amended by Directive 99/34/EC of the Parliament and the Council of 10 May 1999, which expanded the scope of the directive to include the electricity market.

([4]) COM(1999) 396 final of 28.7.1999.

([5]) Particular reference is made here to the Lovells Report (MARKT/2001/II/D), Contract N° ETD/2001/B5-3001/D/76; the present rapporteur was also involved in the preparation of the afore-mentioned report.

([6]) Council Directive 85/577/EEC of 20 December 1985 to *protect the consumer in respect of contracts negotiated away from business premises*, OJ L 372 of 31.12.1985.

([7]) European Parliament and Council Directive 97/7/EC of 20 May 1997 on *the protection of consumers in respect of distance contracts*, OJ L 144 of 4.6.1997.

([8]) Ibidem Article 11, para 3a)

11.5.4 The EESC has concerns about the application of the **right of withdrawal**, deeming it to be important to standardise time-limits in the various legal texts concerned and to draw up clear rules for exercising this right, particularly as far as the distance marketing of financial services ([1]) and consumer credit ([2]) is concerned. The EESC feels it has to point out that there is a need to simplify these arrangements which are complex and lack transparency ([3]).

11.5.5 On the protection of consumers against **unfair terms in consumer contracts** ([4]), it would be valuable for the Commission to carry out a systematic, up-to-date survey of general contractual terms which have expressly been declared as unfair, either in Member States' domestic case-law, or in the case-law of the Court of Justice, with a view to passing this information on to consumer and professional organisations ([5]).

11.5.5.1 On the other hand, since it has been recognised that the regulatory framework is outmoded, the EESC calls on the Commission to complete its review work quickly, in the wake of its Report on the implementation of the Directive ([6]) and the numerous meetings it has organised in this connection.

11.5.6 As for the matter of **consumer credit** ([7]), the EESC has already had the opportunity to issue its views on the recent Commission proposal ([8]) on this subject; it feels it appropriate to reaffirm here the need to combat extortionate money-lending practices and to balance out the rights and obligations of consumers and credit providers. Disparities between national legislation in this sphere and the different levels of consumer protection — which could get worse when the new Member States join the EU — could damage confidence on the financial services market and create distortions in competition.

11.5.7 A matter which urgently needs to be dealt with at Community level, as underlined by the EESC on several occasions, is **household over-indebtedness**; this has been worsening recently and there are fears that it will spiral upwards with the likely rise in interest rates ([9]).

11.5.8 The EESC also considers that it is vital to further develop legislation on the **security of electronic payments** ([10])**;** it welcomes the Commission's recent initiative to launch a debate on the establishment of a single area for payments in the single market ([11]).

([1]) European Parliament and Council Directive 2002/65/EC of 23 September concerning the *distance marketing of consumer financial services* OJ L 271 of 9.10.2002.

([2]) Proposal for a Directive of the European Parliament and of the Council on the *harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers* COM(2002) 443 final of 11.9.2002.

([3]) 89 % of respondents said that this right was enshrined in law, but 30 % felt that these mechanisms were not properly applied.

([4]) Directive 93/13/EEC of 5 April, OJ L 95 of 21.4.1993, p. 29.

([5]) As far as is known, the CLAB database is no longer being updated and is difficult to access. 52 % of respondents deemed consumer protection against unfair clauses to be adequate, while only 19 % deemed it to be inadequate.

([6]) COM(2000) 248 final of 6.7.2000; Cf. EESC Opinion - Rapporteur: Mr Ataíde Ferreira – OJ C 116 of 20.4.2001.

([7]) Directive 87/102/EEC, OJ L 42 of 12.2.1987 and Directive 98/7/EC, OJ L 101 of 1.4.1998.

([8]) EESC Opinion on the *Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers* of 17 July 2003 (OJ C 234 of 30.9.2004), where the EESC points out that it does not accept that the proposal should, like Directive 87/102/EEC, maintain that the development of the single market is still the main concern, and that consumer protection is only of importance in so far as it might encourage the free movement of credit supply, not constituting an end in itself but just a means to develop single market.

([9]) To be highlighted in this connection are the still topical EESC Information Report and Own-initiative Opinion on this issue (24.4.2002 - Rapporteur: Mr Ataíde Ferreira, OJ C 149 of 21.6.2002) and the various meetings organised in this connection by the Commission and national organisations.

([10]) Commission Recommendation 87/598/EEC on *a European Code of Conduct relating to electronic payment* (OJ L 365 of 24.12.1987) is not enough to protect consumers' interests in this area.

([11]) Communication from the Commission to the Council and the European Parliament concerning *a New Legal Framework for Payments in the Internal Market* (COM(2003) 718 final); the EESC is to draft an opinion on this subject, for which the Rapporteur will be Mr Ravoet (30 June 2004).

11.5.8.1 However, a comprehensive approach to electronic trade is still lacking; such an approach is necessary to gain consumers' confidence, as was made clear at the conference held in Dublin on the occasion of the 2004 European Consumer Day.

11.5.8.1.1 In addition, work carried out to date to set up systems for accrediting professionals in this sphere has not even led to any self-regulation measures being adopted to enable consumers to identify reliable websites.

11.5.8.1.2 Thus, recent Commission initiatives to promote more secure internet use ([1]) and on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry are to be welcomed, despite their limitations ([2]).

11.5.8.2 Moreover, there is no world-wide legal framework similar to the one introduced in the EU with the Brussels I Regulation, which is essential for the secure development of international electronic transactions; for this reason, a convention on matters pertaining to jurisdiction and the implementation of verdicts in matters civil and commercial is a key objective to pursue at the Hague conference.

11.5.9 One area of crucial importance is the standardisation of **contract law**, launched by the Commission and supported by the EESC ([3]); this should be pursued and further developed, focusing on the standardisation of specific types of contracts which are of particular interest to consumers ([4]).

11.5.10 The recently published Directive on certain aspects of the sale of consumer goods and associated guarantees ([5]) deals with aspects relating to guarantees involved in the sale of goods. The EESC's criticisms directed at that proposal, as set out in its opinion on the subject ([6]), still hold true, especially as regards the links between commercial and legal guarantees, and the procedures for putting these into practice.

11.5.10.1 It will now be necessary not only to rethink the extension of the Directive's scope to cover after-sales services ([7]), but in particular for the Commission to monitor closely how this is being transposed into Member States' legislation, because of the complexity of the arrangements and the fact that it will be difficult to tie these in with national laws.

11.5.11 One area where it was very much hoped that the Commission would adopt a position in the wake of the Green Paper on Consumer Protection ([8]) was, precisely, **unfair commercial practices**.

11.5.11.1 Nevertheless, in its opinion on this subject ([9]), the EESC has already had the opportunity to express its disappointment and a certain apprehension as regards the path and guidelines set out in the Directive concerned.

([1]) Cf. COM(2004) 91 final of 12.3.2004 and the EESC Opinion currently in the pipeline, for which the rapporteurs are Mr Retureau and Ms Davison.

([2]) Cf. COM(2004) 341 final and EESC Opinion currently in the pipeline, for which the rapporteur is the same as for the present opinion.

([3]) Cf. Commission Communication on *European Contract Law* (COM(2001) 398 final of 11.7.2001) and the relevant EESC Opinion – Rapporteur: Mr Retureau – OJ C 241 of 7.1.2002.

([4]) Cf. EESC Own-initiative opinion currently being prepared on the *European insurance contract* (INT/202) – Rapporteur: the same as for the present opinion.

([5]) Directive 1999/44/EC of 25.5.1999, OJ L 171 of 7.7.1999.

([6]) ESC Opinion 743/94 of 1 June 1994 – Rapporteur: Mr J. Proumens (OJ C 295 of 22.10.1994)

([7]) As provided for in the Commission's excellent *Green Paper* (COM(1993) 509 final of 15.11.1993); the Directive concerned did not adhere to the spirit of that Green Paper.

([8]) COM(2001) 531 final; cf. EESC Opinion 344/2002 - Rapporteur: Mrs Davison - OJ C 125 of 27.5.2002.

([9]) EESC Opinion of 28.1.2004 – Rapporteur: Mr Hernández Bataller (OJ C 108 of 30.4.2004).

11.5.11.2 This issue will therefore have to be monitored closely in the future, especially by consumers' representatives and in particular in the new Member States.

11.5.12 In the same vein, the EESC has already expressed its dissatisfaction regarding the draft regulation on **Sales Promotions** ([1]) and it reiterates here that it is apprehensive about the final form of this regulation and the way it will tie in with the proposal on unfair commercial practices, fearing that together these two instruments, instead of helping promote consumers' interests further, will in the end entail a step backwards from current consumer protection levels.

11.6 Lastly, as regards **access to justice**, the EESC deems it necessary to strengthen the protection of not only collective, general and similar individual interests ([2]) — by revising the Directive on injunctions for the protection of consumers' interests ([3]) as a matter of urgency, extending its scope so as to turn it into genuine 'class action' aimed at promoting damage compensation in addition to merely putting a stop to unlawful or unfair practices — but also the legitimate interests of individual consumers in a conflict situation, especially as regards access to speedy justice, ideally free of charge ([4]). In this connection the EESC would reiterate that it advocates the use of not only alternative means of conflict settlement (alternative dispute resolution — ADR) ([5]), but also arbitration procedures, and considers it to be a matter of priority importance to give national authorities operational and technical support for setting up and implementing ADR and arbitration procedures in the various Member States ([6]).

11.6.1 The EESC also advocates adopting binding legislation which, without prejudice to the subsidiarity and proportionality principles, secures the objectives set out by the Commission in its Recommendations on this matter ([7]). These concern in particular the principles of consumer freedom and of the impartiality and transparency of the process, making binding rules out of what are at present mere recommendations which have not been effectively applied in practice on a widespread basis.

11.7 In this connection, the EESC welcomes the Commission's recent initiatives in judicial cooperation; it would highlight the recent regulations on insolvency proceedings ([8]) and the law applicable to court jurisdiction (Brussels Convention) ([9]), as well as the proposed Regulation on the law applicable to non-contractual obligations (Rome II) ([10]), the Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument (Rome I) ([11]), and the Regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters ([12]). It urges the Commission to continue steps to set up a single judicial area as a keystone of structural support for completion of the single market, increasingly important in an enlarged EU.

([1]) In its Opinion (OJ C 221 of 17.9.2002) – Rapporteur: Mr Dimitriadis – on the Commission's proposal for a regulation on this subject (COM(2001) 546 final of 2.10.2001).

([2]) 71 % of respondents said there were mechanisms to enable consumers to gain access to justice, while only 29 % said there were no specific mechanisms for doing so; when asked how effective they were, 58 % deemed them to be adequate, while 35 % deemed them to be relatively ineffective.

([3]) Directive 98/27/EC of 19 May 1998 (OJ L 166 of 11.6.1998) now in a codified version (COM(2003) 241 final of 12.5.2003).

([4]) When asked if there were rules exempting consumer associations from legal costs, 73 % of respondents said there were no such rules.

([5]) EESC Opinion on the *Green Paper on alternative dispute resolution in civil and commercial law* (COM(2002) 196 of 19.4.2002) – Rapporteur: Mr Malosse - OJ C 85 of 8.4.2003. In follow-up to this, the EESC is awaiting publication of the report on the operation of the EEJ-NET (European Extra-Judicial Network); however it would point out here and now the need to make this more operational.

([6]) 78 % of respondents said there were alternative means of dispute resolution, while only 33 % said there were none.

([7]) Recommendation 98/257/EC of 30 May 1998 on the *principles applicable to the bodies responsible for out-of-court settlement of consumer disputes*, OJ L 115 of 17.4.1998 and Recommendation 2001/310/EC of 4 April 2001, OJ L 109 of 19.4.2001.

([8]) Council document 9179/99 and Corr 1-99/00806; the Rapporteur of the EESC Opinion on the subject was Mr Ravoet (OJ C 75 of 15.3.2000); these Council documents have now become Council Regulation (OJ L 160 of 30.6.2000, p. 1).

([9]) Regulation 44/2001/EC (OJ L 12 of 16.1.2001).

([10]) COM(2003) 427 final of 22.7.2003.

([11]) COM(2002) 654 final; the Rapporteur for the EESC Opinion on this subject was the author of the present opinion (Opinion CESE 88/2004 in OJ C 108 of 30.4.2004).

([12]) COM(2001) 705 final of 22.11.2001; the Rapporteur for the EESC Opinion on this subject was Mr Ataíde Ferreira (OJ C 36 of 8.2.2002)

12. **Conclusions**

12.1 Promoting, protecting and defending consumers' interests and involving consumers must be an ongoing objective of all EU policies, as a genuine right of European citizens.

12.2 Now that the EU has ten new Member States, in most of which consumer protection is a relatively new issue, consumer policy as a whole must be rethought so as to bring it into line with the new reality of a market of around 500 million consumers.

12.3 The EU and its institutions play a key role in identifying priorities for re-defining the legal and institutional framework and the programmes and actions essential to ensuring an effective consumer policy that safeguards and meets these objectives.

12.4 With this own-initiative opinion, the EESC — in its capacity as a relay for the concerns of civil society — wishes to play a part in defining such a policy, making a particular effort to involve representatives from the new Member States.

12.5 The EESC is of the view that the immediate priorities for consumer policy must be to:

— consolidate the Community *acquis* through simplification and codification;

— effectively apply laws that have been passed and properly transposed into national law, and closely monitor compliance with these laws;

— implement the framework-directive on unfair commercial practices;

— take urgent steps to improve consumer information and education;

— consider fully mainstreaming consumer policy into other policies, at both national and Community level;

— support consumer organisations in order to undertake product analyses and to exchange information on their quality.

12.6 The EESC considers that strong and independent consumer organisations provide the basis for an effective policy for defending and promoting consumers' interests and involving consumers.

12.7 To this end, the EESC is of the view that it is essential to ensure that consumer organisations are properly financed so that they can develop actions, programmes, projects and initiatives.

12.8 The EESC believes that a key way to make consumer policy more effective is to define criteria for gauging representativeness and the involvement of consumer organisations.

12.9 The EESC considers that — without losing sight of the need to maintain a balance between the interests in question — new legislative initiatives should gradually be introduced, particularly in the following areas:

— safety of services and responsibility for supplying defective services;

— key services of general interest;

— health protection and safety;

— greater security for electronic payments and internet use;

— household over-indebtedness;

— means of payment;

— contract law;

— access to justice and a single judicial area.

12.10 The EESC also believes that existing Community legislation must be reviewed and harmonised to bring it into line with the new enlarged single market, with particular emphasis on the following areas:

— producer liability;

— doorstep sales, distance selling, e-commerce and sales promotions;

— unfair terms in consumer contracts;

— consumer credit;

— guarantees involved in the sale of goods and services.

12.11 The EESC recalls its proposal to set up a European Research Institute for Consumer Protection as a provider of the knowledge-basis for consumer policy ([1]).

12.12 The EESC calls on Member States to make the protection, defence and promotion of consumers' interests and the involvement of consumers a priority in all their policies.

12.13 The EESC recommends that the Commission take account of the proposals and suggestions put forward in this opinion when defining the new consumer policy guidelines and periodically to issue reports on the situation of consumption and consumers in Europe.

Brussels, 10 February 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([1]) Opinion 'Strategy of Consumer Policy 2002-2006' (26.2.2003, OJ C 95 of 23.4.2003, Rapporteur: Ms Ann Davison); Opinion 'Financial Framework for Consumer Policy 2004-2007' (17.7.2003, OJ C 234 of 30.9.2003, Rapporteur: Mr Hernández Bataller)

APPENDIX

to the Opinion or the European Economic and Social Committee

The following proposal for amendment was rejected, but received at least a quarter of the votes cast.

Point 12.5

Add the following to the list of priorities:

'— in the event of difficulties protecting the rights of a consumer outside his own country, make it possible for him to resolve such difficulties in the language of his home country, using the consumer ombudsman of his home Member State as an intermediary.'

Reason

It is currently difficult for consumers to assert their rights in countries of the EU other than their own, due to the language barrier and ignorance of procedural obstacles — for example, if a Latvian consumer has his rights violated in the Netherlands, or vice-versa.

Outcome of the vote:

For: 3

Against: 3

Abstentions: 3.