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II

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

428TH PLENARY SESSION HELD ON 5 AND 6 JULY 2006

Opinion of the European Economic and Social Committee on Regulating competition and consumer protection

(2006/C 309/01)

On 14 July 2005, the European Economic and Social Committee decided to draw up an opinion, under Rule 29(2) of its Rules of Procedure, on: *Regulating competition and consumer protection*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 May 2006. The rapporteur was Ms Sánchez Miguel.

At its 428th plenary session held on 5 and 6 July 2006 (meeting of 5 July 2006), the European Economic and Social Committee adopted the following opinion by 134 votes to none, with two abstentions.

1. **Conclusions and recommendations**

1.1 Free competition offers benefits to all market participants, especially consumers. Nevertheless, infringements of the laws governing this area have had a major impact on competing businesses and the rules allow for sanctions to be imposed, thus mitigating the economic impact of the lack of competition between companies.

1.2 In the past consumers have not had at their disposal any appropriate legal instruments based on competition law which would help them to take action or seek redress for any loss suffered in the market as a result of prohibited competitive practices. Only following on from the major changes in the internal market, in particular the liberalisation of sectors of general economic interest, has the debate opened on the need for instruments that would enable consumers to play a part in competition policy.

1.3 The first step in this direction was the appointment of a Consumer Liaison Officer within DG Competition to mediate between the DG and consumer organisations on competition-related matters in which his opinion was relevant. Today, three years later, his effectiveness has proved limited, owing to lack of resources.

1.4 In the meantime, in the main liberalised sectors, real restrictions on free competition have arisen, resulting in competitors being excluded from the market and clearly limiting consumers' economic rights. One of the reasons for this negative impact is the national approach adopted by most Member States with regard to liberalisation, with a trend towards protection for national businesses. The Commission should be given the necessary means to put a stop to such practices.

1.5 Article 153(2) TEC provides the Commission with the legal base for establishing a horizontal consumer protection measure in all Community policies, and in competition policy in particular, to ensure that the provisions of Articles 81 and 82 TEC cover the interests of consumers as well as of competing businesses affected by infringements of competition rules. In turn, the Member States will be required to ensure that their national laws also serve this purpose.

1.6 With this in mind, measures should be put in place providing compensation for any damages, especially to economic rights, caused by prohibited practices.

1.7 Systems for informing and consulting consumers must also be strengthened. If DG Competition retains its liaison officer, he should be given the means necessary to perform his duties, and DG SANCO must involve all the bodies with which

it works, in order to have a greater impact on competition-related matters directly affecting consumer interests. In this regard, we believe that the European Competition Network could adapt its activities to incorporate any information and observations that national or Community consumer organisations wish to provide in order to make competition policy more efficient in the markets and to ensure that consumers' economic rights are recognised.

2. **European competition policy today**

2.1 Free competition is a fundamental principle of the market economy, which is based on the idea that economic players, and more generally all private individuals accessing the market, have freedom of initiative. The need for rules combing free competition in the market and the rights of all persons involved in the market gave rise to the Treaty rules used to regulate it. At the height of the liberalisations, the European Commission stated the need ([1]) to strike a balance between the interests of businesses and those of consumers, bearing in mind new economic situations that had not been foreseen in competition law. It also stated its support for making voluntary instruments workable and for promoting dialogue between consumers and businesses in order to increase consumer confidence in the market, because competition could not achieve this on its own.

2.2 The current situation features some new aspects as set out in the Commission report on competition policy 2004 ([2]) and in the speech given by Commissioner Kroes ([3]). Both of these highlight the need to focus action on those sectors that are essential to the internal market and to competitiveness under the terms of the Lisbon agenda and, most particularly, taking account of consumers' interests, especially the effects of cartels and monopolies on their rights. This approach can be seen as a first step towards incorporating consumer protection as a measure for regulating the market from the consumer's point of view and not only from that of the supplier, which has been the case to date.

2.3 It should be stated that competition policy must apply to the EU as a whole, in cooperation with the Member States, not only because it applies to the single market and consequently to cross-border transactions but also because its purpose is to harmonise national legislation so that protectionist national policies are not implemented in order to favour domestic markets, discriminating against competitors. The Community authorities, especially the Commission, thus have a crucial role to play. The Commission is not only responsible for drawing up legislative proposals to regulate competition, but also for controlling mergers and state aid, in which the general interest must take precedence over each state's national interest.

2.4 The liberalisation of sectors of general interest and the regulation of financial services have led to attempts to establish a link between competition policy and other Commission policies, in particular consumer policy. In fact, the latest Report on Competition Policy (2004) states that one of the reasons for applying this policy rigorously is to increase consumer interest and confidence in the internal market.

2.5 Despite this declaration of principles, the analysis of the different provisions setting out European competition policy gives few practical details and indeed its position remains the same as before. In 2003, on the European Day of Competition ([4]), it was announced that a Consumer Liaison Officer would be appointed within DG Competition, with the remit to act in each of the areas covered by this policy, in order to watch over consumer interests. Information leaflets are also being published ([5]) to guide and inform consumers as to the content of competition policy and how it could affect their interests.

2.6 The tasks to be fulfilled by the Consumer Liaison Officer ([6]) include the following:

— acting as a contact point for consumer organisations and individual consumers ([7]);

— establishing regular contacts with these organisations and in particular the European Consumer Consultative Group (ECCG);

— alerting consumer groups to competition cases where their input might be useful, and advising them on how they can express their views;

— maintaining contacts with National Competition Authorities (NCA) regarding consumer protection matters.

2.7 This trend in competition policy towards considering consumer interests as well would have to be applied across the board, thus putting an end to the clear-cut divisions between the Directorates-General for Competition and for Health & Consumer Protection. There would have to be ongoing coordination between all policies, not only at European level, but also between these and national policies, in order to ensure free market competition that benefits economic and social actors and consumers too.

([1]) Consumer policy action plan: 1999-2001.
([2]) SEC(2005) 805 final, 17.6.2005. EESC opinion: OJ C 110 of 9.5.2006, p. 8.
([3]) London, 15 September 2005, at the conference 'European Consumer and Competition Day'.
([4]) Rome, 6 December 2003, Commissioner Monti announced the appointment of Mr Rivière y Martí.
([5]) EU competition policy and consumers: Publications Office, Luxembourg.
([6]) See XXXIII Report on Competition policy 2003 p. 6. et seq. SEC(2004) 658 final, 4.6.2004. EESC opinion — OJ C 221, 8.9.2005.
([7]) This can be done via e-mail at: comp-consumer-officer@cec.eu.int.

3. **EU competition policies that affect consumers**

3.1 Competition policy could be said to have recently undergone a major change, due not only to the widespread occurrence of what is known as economic globalisation but also to the much-needed reconciliation of service-sector liberalisation with other public service goals, such as ensuring the pluralism and reliability of the providers of these services. Competition policy is committed to playing a key role in implementing the aims of competitiveness as defined in the Lisbon Agenda, which focus on the smooth operation of the market economy and above all of economic mergers, which are crucial to the success of the European economy, vis-à-vis our international competitors, without any consequent loss of rights for European competitors and especially consumers.

3.2 The need to define competition policy as it affects consumers calls for a close look at the points regulating this matter, in other words, those corresponding to the articles in the Treaty and to its implementing regulations. Some of these have recently been amended, whilst others are pending adoption.

3.3 *Restrictive agreements and practices*

3.3.1 Agreements between undertakings are part and parcel of market relations and help to ensure that markets operate as they should, but these agreements are not always concluded for competitive reasons. Often the opposite is true; and even when the common market was created, there was discussion of the need to ban such agreements, where these aim to prevent, restrict or distort free competition. The same applies to associations of undertakings, which are most evident in cartels operating as business groupings, without any obvious coordination between them. Where their activity restricts or prevents free competition, it will be covered by the prohibition.

3.3.2 The legal basis of agreements and decisions between undertakings is the contract, which imposes obligations on the parties concerned. In both cases, their validity is conditional on compliance with the relevant legal provisions. The issue under consideration here is the effects of these agreements on third parties and in particular on the rules governing competition in the market.

3.3.3 The aim of the law is definitively to prohibit the end result, which is restriction on competition but it goes beyond this, since it declares all agreements or decisions void, with all the practical consequences that this entails for compensation for the harm done to competitors and to the economy in general by the distortion of the way in which markets operate.

3.3.4 The complexity of the situations covered by the rules set out in Article 81 of the Treaty, in national markets as well as in the European internal market, led the Commission to draw up what is known as the 'modernisation package' ([8]) which helps to bring the Treaty's provisions into line with the case-law of the courts and with the many situations which have occurred in the course of its application.

3.3.5 Rules on block exemptions have also been updated ([9]). This regulation presents new rules for exemptions in line with current market needs, and in particular for exemptions of technological agreements. The need for clear legislation that will make it easier to secure agreements between undertakings, without falling foul of the prohibition, requires boundaries to be set for cooperation between undertakings and must above all ensure that consumers never suffer as a result of these exemptions.

3.4 *Abuse of a dominant position*

3.4.1 Article 82 of the Treaty prohibits *any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it*. This provision does not prevent a dominant position from occurring (in fact the trend has been to encourage economic mergers that allow European undertakings to compete with others throughout the world) but rather aims to prevent the dominance acquired being used to impose conditions on competitors, thus eliminating competition. In this case, the provision contained in this article is not concerned with the origin of this dominant situation, unlike Article 81, which is interested in the origin of the agreement or of the decisions, in order to be able to declare them void.

3.4.2 The effects of a dominant position are different to those of collusive practices, since this does not appear to affect competition, which may already be limited by an absence of competitors or by the insignificant role of competitors in the market. However, intervention is necessary on behalf of the consumer, whose interests will suffer as a result of the conditions imposed by the dominant enterprise in question ([10]).

([8]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and later amended by Council Regulation (EC) No 411/2004 (OJ L 68 of 6.3.2004); Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18). Also published was a series of communications and guidelines with a view to laying down the procedures for relations between competition authorities and the Commission and between the Commission and the judicial authorities.

([9]) Commission Regulation (EC) No 772/2004, 27 April 2004, on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (OJ L 123, 27.4.2004, p. 11).

([10]) The case-law of the ECJ has had to define the concept of a dominant position because it is not defined in the Treaty and does so by considering this to be an economic position held by one or more undertakings, enabling them to prevent real competition in the market, by acting independently of their competitors, customers and consumers.

3.4.3 Against this background, the Commission has been taking action in the main sectors where, because the sectors were liberalised only recently, companies enjoyed a dominant position in most EU countries, such as the telecommunications sector ([11]), or where, because major technological innovation was involved, companies faced no genuine competition, as in the case of Microsoft ([12]). Both cases were found to involve an abuse of a dominant position. In the first case, as a result of illegal price-fixing in the provision of telecommunications services ([13]). The ruling was also noteworthy because it concerned an economic sector subject to state regulation and the Commission thus felt that it should take action, even though prices were subject to sectoral regulation.

3.4.4 In the second case, concerning Microsoft, the issue was more complicated, because this is a US company with an almost total monopoly over the use of its computer systems. Nevertheless, the Commission decided that Article 82 had been infringed, through Microsoft's abuse of a dominant position in the PC operating systems market by refusing to provide information on interoperability and above all by bundling Windows Media Player with Windows. The Commission not only imposed substantial fines for a very serious infringement, but also required Microsoft to adopt a set of measures, making available information on its operating systems and unbundling the individual components of its Windows operating system.

3.5 *Merger control*

3.5.1 The EC Treaty contained no specific article regulating mergers, initially because this type of economic operation was not common and later because Member State authorities supported mergers in order to make national companies more competitive. Nevertheless, when these mergers resulted in dominant positions, both Articles 81 and 82 were applied, but with one proviso; these mergers would not be examined as a matter of course, but only when an abuse of a dominant position had occurred.

3.5.2 To remedy this shortcoming and to make proper monitoring possible, on the basis of Articles 83 and 308 TEC, which allow for additional powers to achieve the stated aims — in this case free competition — the Council adopted a number of regulations leading up to the current Regulation 139/2004 ([14]) amending and improving Regulation (EC) 1310/97 ([15]) and in particular incorporating the case-law arising from the Gencor/Commission ruling ([16]).

3.5.3 The new regulation also amends jurisdictional aspects, by referring what the Commission or at least three Member States deem to be national issues to the national authorities in order significantly to reduce the work of the Community competition authorities. In our view, however, this responsibility can only be handed over to the Member States if it does not affect a substantial part of the common market, which makes it easier to prevent restriction of competition and protect the interests of those affected, especially consumers.

3.5.4 With regard to the amendments of substantive aspects, both the quantitative thresholds set out in Article 1 and the conceptual thresholds in Article 2 are more clearly defined, thus clarifying in what situations a dominant position occurs and in particular where competition is substantially reduced.

3.5.5 Other, equally important, aspects that have been changed, are those covering procedures, which have been substantially amended with regard to extending deadlines for referring cases to Member States, enabling the parties concerned to take more effective action, whilst respecting the provisions of national legislation. The same applies to deadlines for the requesting parties; in this case 15 working days at the very beginning of the procedure could be seen as being too rigid, as this would deny the parties the opportunity to familiarise themselves with any arguments submitted to the Commission in connection with the case. In any event, it should be pointed out that at no stage of the procedure is there any provision that allows consumers to take action and, what is more, the requirement to consider the interests of the employees of the undertakings and employment when evaluating mergers has disappeared from the text.

3.6 *Types of restriction on competition*

3.6.1 In Articles 81 and 82, the Community legislative authority has drawn up a non-exhaustive list of what it considers to be prohibited practices, with the first article covering collusive practices and the second abuse of a dominant position. It must be stated first of all that these lists are not complete, but simply indicate common practices in which these two forms of behaviour occur, which means that others having the same effects could be identified and would consequently be subject to the same prohibition.

([11]) Deutsche Telekom Case COM/C1/37. OJ L 263, 14.10.2003, p. 9.
([12]) Microsoft Case COM/37/792.
([13]) Deutsche Telekom substantially reduced its bundled line rates for broadband Internet access on its fixed telecommunications network.
([14]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings. OJ L 24, 29.1.2004; Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004, OJ L 133, 30.4.2004, p.1.
([15]) Council Regulation (EEC) No 4064/89 (OJ L 395, 30.12.1989, p.1) and the amendments made to this regulation by the Act of Accession of Austria, Finland and Sweden, were amended by the Regulation referred to. The new regulation is thus a reworking of all the legal texts and of the amendment of the articles subject to interpretation in the light of case-law.
([16]) Case T-102/96, in which the ECJ defined the concept of a dominant position and that of a substantial reduction in competition to include previously unclear situations, such as oligopolies, for example.

3.6.2 The types of practice listed are similar in the two articles:

— price fixing;

— limiting or controlling production, markets, technical development, or investment;

— sharing markets or sources of supply;

— applying dissimilar conditions to equivalent transactions with other trading parties;

— making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations.

3.6.3 All of the behaviour listed can be classified into two groups, reflecting the situation in which they occur:

a) Abuse of competition, which brings together a large number of anti-competitive practices, such as refusal to supply, fixing prices below cost price, loyalty bonuses or discriminatory pricing. This behaviour has an economic effect; it reduces or prevents competition in the market or in a substantial part of it.

b) The abuse or unfair exploitation of undertakings that depend on the dominant position of one or more companies for buying goods or services, by means of unfair pricing, discrimination, inefficiency or negligence or even abuse of industrial property law.

3.6.4 One of the most common types of abuse is price fixing, a concept which is interpreted broadly, to cover discounts, excessive profit margins, payment terms or rebates. Also covered are failing to honour prior commitments, deviating from price lists and not selling at the stated price. Consumers are affected in all of these cases — despite specific legislation protecting their rights, they are in a position of weakness vis-à-vis businesses that occupy a dominant position in the market and which are often the only supplier in that particular market.

3.7 *Competition developments in some liberalised sectors*

Community competition policy, as set out in the TEC, was designed with the traditional sectors of the European economy in mind. Consequently, its implementing regulations have had to develop in line with new economic developments, which required greater competitiveness. The procedures under which the liberalisation of major market sectors has taken place have had a negative impact on consumers, since in most cases the enterprises in question have gone from being public services to undertakings with a dominant position in their respective markets, with which other businesses struggle to compete.

3.7.1 Energy

3.7.1.1 In recent years, great progress has been made on opening up the European energy (electricity and gas) sector which until a short while ago was part of the public sector and as such was controlled in terms of supply pricing and terms. The Commission had provided for a market opening for all non-domestic customers by 1 July 2004 and for all domestic customers by 1 July 2007. The first deadline has not been entirely met and as matters stand today, total liberalisation of domestic consumption will also not be achieved.

3.7.1.2 The situation is complicated and the performance of privatised networks, especially in the electricity market, could even be described as a poor, with these companies investing little in maintenance, which has a significant impact on users, who experience frequent power outages.

3.7.1.3 However, the current electricity regulation ([17]) promotes cross-border trade in electricity and it can help to increase competition in the internal market, by means of a mechanism compensating network operators and by establishing non-discriminatory and transparent tariffs that are not distance-related.

3.7.1.4 The Commission then set up an energy sub-group, as part of the European Competition Network, in order to discuss and draw up an agreement on applying Community competition rules to the energy markets.

3.7.2 Telecommunications

3.7.2.1 Legislation relating to the telecommunications sector developed significantly in 2002 ([18]), largely due to the updating of the package of rules on electronic communications, which adapted the networks so that they could be used by the new technologies. The various Member States' adaptation of the legislation produced uneven results; in fact, the Ninth Report ([19]) on the Implementation of the EU Electronic Communications Regulatory Package focused on the process of incorporating these regulations into national legislation, and on the tasks to be performed by the national regulatory authorities (NRAs).

3.7.2.2 The Ninth Report notes that the number of operators has remained stable, although some of these have simply stayed in their home market, whilst competitive pressure between operators has shifted from the international markets and long-distance calls to the local call market, with traditional operators experiencing a gradual reduction in calls of this type. Consumers have benefited from this in terms of call prices, but they can also lose out in some cases as a result of their original position being abused when it comes to signing new contracts.

([17]) Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity. OJ L 176, 15.7.2003.

([18]) Directive 2002/77/EC, (OJ L 249, 17.9.2002, p.21).

([19]) COM(2003) 715 final.

3.7.2.3 Monitoring the telecommunications markets closely to determine the current state of competition to some extent helps to monitor operators in a dominant position, so that specific obligations can be imposed on them to ensure that consumers do not suffer the imposition of unfavourable conditions and prices. In any event, the Commission closely followed up the implementation of Directive 2002/77/EC in each of the Member States ([20]), with a view to remedying any shortcomings detected that not only restricted competition but also affected consumers' interests.

3.7.3 Transport

The transport sector must be considered in the context of the different modes of transport used; we will refer mainly to air, rail and maritime transport, which have undergone substantial changes, in particular with a view to improving passenger protection in the first case and maritime safety in the third.

3.7.3.1 Air transport

3.7.3.1.1 In 2003, the Commission opened dialogue with the civil aviation sector with a view to drawing up a common position on implementing competition policy in the alliances and mergers taking place in that sector. It also became clear this year that Regulation (EC) 1/2003 needed to be amended, in order to increase air transport between the Union and third countries, with the aim of creating an 'open sky' that would enable action to be taken on alliances between undertakings from Europe and from third countries, in particular the United States. During this period, the Commission looked at various agreements between undertakings and ruled that some contravened the rules of competition ([21]) and imposed changes in content and duration on others.

3.7.3.1.2 In the same period, the regulation setting out passengers' rights was adopted ([22]).

3.7.3.2 Rail transport

3.7.3.2.1 Regulation 1/2003 allows the national competition authorities to apply rules to defend competition in the rail sector. Community and national authorities are required to identify issues of common interest relating to rail liberalisation, in cooperation with the Directorate-General for Energy and Transport.

3.7.3.2.2 The first package of rail directives aimed at opening up the market was intended to ensure free movement in cross-border goods transport and to establish a reference framework for access to both goods and passenger services, setting routes, fares, etc.

3.7.3.2.3 The second package includes the liberalisation of national freight markets, and the opening-up of the national and international passenger market.

3.7.3.2.4 The overall aim is to secure a common approach to implementing competition legislation in the rail sector in order to prevent conflicting decisions being taken by national authorities and the Commission.

3.7.3.3 Maritime transport

3.7.3.3.1 The maritime sector has one of the highest numbers of block exemptions, relating in particular to liner conferences and consortia, which comply with Regulation (EC) 823/2000, currently under review ([23]), and which seek to develop Article 81(3) TEC, because this allows maritime consortia and conferences to exceed the limits laid down in legislation provided that, the Commission having been notified, authorisation is obtained for the opposition procedure.

3.7.3.3.2 In practice, some consortia have taken advantage of these procedures to engage in practices not covered by the exemption, such as price fixing, which has led to the Commission taking action ([24]), to restrict the content of agreements. Similarly, the Court of First Instance (CFI) ([25]) delivered a ruling on an agreement between maritime transport undertakings not to give their customers discounts on the published tariff charges and surcharges.

3.8 *Effects on consumers in the liberalised sectors examined*

3.8.1 The procedures under which the liberalisation of the sectors referred to above have taken place at national level, can be considered to be harmful as regards the internal market, having created oligopolies that have denied consumers genuine competition that would help to bring prices down and to stimulate competition between undertakings. The Commission should also look closely at the effects that mergers in the liberalised sectors have had to date, especially on consumers.

([20]) See a detailed summary of measures adopted in the XXXIII Commission report on competition policy — 2003 p. 41 et seq.
([21]) The Commission refused to authorise the initial version of the Air France/Alitalia agreement and requested that the other parties concerned submit their views on the matter. With regard to British Airways and Iberia, the Commission limited the agreement's duration to six years.
([22]) Regulation (EC) 261/2004 (OJ L 46, 17.2.2004, p.1).
([23]) OJ C 233, 30.9.2003, p. 8.
([24]) The Wallenius/Wilhelmsen/Hunday case 2002.
([25]) Case IV/34.018. L 268, 2000, p. 1.

3.8.2 In general terms, the lack of transparency, the high and unjustified charges imposed on business customers and consumers and the vertical integration of undertakings have not brought about real competition in the liberalised markets. In fact, the terms of consumers' contracts have in many cases failed to meet the standards set for standard contracts.

3.8.3 The issue concerns the tools available to consumers for enforcing their rights in disputes with such companies, in particular by bringing legal action based on competition law, in particular on Articles 81 and 82 of the Treaty. The vast majority of complaints lodged with the competition authorities, the Commission and national authorities are made by businesses and the ECJ has not ruled on a single complaint made by a private individual.

3.8.4 The Commission's presentation of the Green Paper on *Damages actions for breach of the EC antitrust rules* ([26]) must provide a tool for consumers, which will be discussed in detail in the EESC opinion to be drawn up on the subject.

4. **Competition policy and consumer protection**

4.1 Consumers do, of course, have a specific body of legislation setting out their rights and obligations ([27]). Article 153(2) TEC lays down that *'Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities'*. This is a horizontal policy and, as such, must form part of all policies affecting consumers. There is no doubt that, in the context of competition policy, consumers are an integral part of the market covered, because they represent demand within that market.

4.1.1 This paragraph attempts to determine which of consumers' recognised rights are affected by competition policy, in particular by the effects of non-compliance with these rules in the internal market, and in what manner these rights are affected. There is also a need to treat consumers as interested parties in this policy so that the Commission can take account of their interests when it has to take action in specific cases to establish market rules.

4.2 *Economic rights*

4.2.1 The concept of consumers' economic rights is based on the absence of any financial loss preventing the consumer or user from using or enjoying the goods or services acquired under the terms agreed with the undertaking should be clarified. The basic principle regulating this entire matter is that of good faith and proper balance between parties, which means that any instrument or clause contravening this principle can be deemed an abuse or contrary to the consumer's interest.

4.2.2 The relationship between antitrust policy and freedom of choice for consumers has been one of the main concerns of Community legislation, as recognised in former Article 85(3) and in the current Article 81 TEC, which establish that collusive agreements can only be authorised where, despite restricting competition, they offer some benefit to consumers. A typical example of this would be competitors sharing out geographical areas in order to secure total market coverage, even in areas that are not profitable.

4.2.3 In terms of consumer protection, supervising the market means being attentive to potential horizontal agreements, such as voluntary agreements, price cartels, common purchasing centres, market sharing, etc., as well as vertical agreements, such as contracts regulating relations between producers and importers, etc. Attention is also paid to abuses of a dominant position by means of practices that obstruct or prevent competitors from entering the market, to setting prices that are excessively high or low, exclusionary pricing or offering terms that discriminate between customers.

4.2.4 In its annual report, the Commission presents a large number of decisions on alleged concerted practices and abuses of a dominant position and some ECJ rulings that frequently mark changes in interpretation of the law and even require legislative changes to be made.

4.2.5 In recent years, the Commission has considered fewer and fewer cases, largely due to the firm line that national competition authorities have taken towards their own markets, and in particular as a result of the abolition of the notification system. DG Competition resolved 24 cases by formal decision, a very small number in comparison with the field of merger control, in which a large number (231) of formal decisions were taken ([28]), complying with the procedure set out in the amended regulation. Fewer decisions will be issued in the new phase, when in most cases national authorities will take over responsibility in this area.

4.2.6 Of the cases examined, some directly affected consumers or were particularly important to them. The individual decisions concerned the mobile telephone, broadcasting and airline sectors ([29]), and in the sectoral initiatives, measures were

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

([27]) See EESC opinion — INT/263, AC 594/2006, rapporteur, Mr Pegado Liz.

([28]) See Annual Report — 2003, p. 191 et seq.

([29]) See Box 3 in the 2003 Annual Report, p. 29 referring to abuses in the telecommunications sector; Box 2 in the 2004 Annual Report, p.28: the sale of sports rights for use over 3G networks, in the Annual Report for 2004, p. 43.

adopted in the transport, liberal professions, motor-vehicle and media sectors ([30]). All of the cases examined concerned price-related abuses, with Article 82 applying, as a result of abusive exclusionary pricing for the provision of goods or services ([31]).

4.3 *The right to be informed and to participate*

4.3.1 The effectiveness of consumer policy will depend on consumers' participation in the policies that affect them, and they must thus be involved in all policies in which they have to date been excluded. One of the aims of the Consumer Policy Strategy ([32]) was to ensure that consumer organisations were sufficiently involved in Community policies and, indeed, one year later, a Consumer Liaison Officer was appointed in DG Competition.

4.3.2 Consumer organisations have a forum — the Consumers' Committee — the mechanism for taking action specifically on consumer policy, but this has not been extended to include participation in other policies. The current aim is for consumers to be able to make a contribution to Community initiatives, at all stages of the EU decision-making process. Minimum requirements will have to be set, enabling consumers to participate in consultative bodies, as already happens in agriculture and in particular in the newer bodies, such as those for transport, energy, telecommunications or any other that might be set up.

4.3.3 With regard to the issue now under consideration, there is no formal means of participation, and consumers are not even consulted on issues that the Treaty considers to concern them, such as exemptions from the rules on concerted practices, Article 81(3) and abusive practices that limit or control production, markets or technical development to the detriment of consumers, Article 82(b). It is therefore the responsibility of DG competition and consumer organisations to set up mechanisms for participation and consultation, through rules agreed on jointly and which will have an impact on the internal market, as set out in the White Paper on European Governance ([33]).

4.3.4 Equal responsibility falls to DG SANCO: it could use the European Consumer Consultative Group to take action on competition-related issues that affect consumers' rights.

4.3.5 Consumers' right to information concerning competition has been given a boost by the appointment of a liaison officer to act as a point of contact with them. European consumer organisations are informed regularly and national organisations and individual consumers have their own web page ([34]) which even includes a complaints form ([35]) for any harm they might suffer as a result of companies' anti-competitive behaviour.

([30]) See Annual Report 2004, transport. p. 52; Liberal professions, Annual Report for 2003, p.60; motor vehicle distribution, Annual report for 2004, p. 44.

([31]) The British Telecommunications Case, OJ L 360, was particularly significant because it concerned what was still state monopoly.

([32]) Commission Communication on Consumer Policy Strategy 2002-2006 — COM(2002) 208 final.

([33]) COM(2001) 248 final.

5. **Representative bodies**

The EESC considers that, in order to make consumers' right to be informed and to participate a reality, it must firstly be ensured that they are legitimately represented by their organisations. Secondly, it must be determined which body will ensure this genuine participation, as discussed below.

5.1 *For consumers*

5.1.1 Consumer organisations are regulated by national rules that lay down minimum requirements for them to be recognised and legitimate, to ensure that they have the legitimacy to exercise their rights as consumers when these rights are affected by any prohibited practice.

5.1.2 At European level, all organisations registered with DG SANCO are fully recognised and are entitled to be informed and consulted and are involved in any matter that is considered to fall within their sphere of competence.

5.1.3 This legitimacy, which is somewhat exclusive, can be questioned when competition-related issues are at stake, given that these tend to concern breaches of tangible consumer rights, including those that are limited to certain territories and to certain issues. A wide-ranging debate should be held on the concept of having the legitimacy to take action in this area.

5.2 *The European Competition Network*

5.2.1 Regulation 1/2003 EC ([36]) and what is known as the 'modernisation package' established the means of cooperation between the Commission and the competition authorities that form the European Competition Network (ECN) ([37]). This network started its work in 2003, with a working group that examined more general issues such how it would operate and the arrangements for communication between national authorities. It is now fully operational, and is divided into 14 sub-groups, which address sectoral issues ([38]).

([34]) Web page: http://europa.eu.int/comm/consumers/redress/compl/index_en.htm.

([35]) Will be appended.

([36]) Of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, subsequently amended by Regulation (EC) 411/2004, OJ L 68, 6.3.2004, p. 1.

([37]) Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43).

([38]) In 2004, the sub-groups examined 298 cases, 99 of which had been referred by the Commission and 199 by national competition authorities.

5.2.2 Regulation 1/2003 grants the ECN's member authorities the means to help one another and to act on the instructions of the competent authority and more generally to gather all information needed to solve the problems under their consideration. They also take charge of investigations requested by national authorities, the results of which are forwarded in line with established procedure, so that they can be accessed by all parties concerned.

5.2.3 The ECN's action as part of the leniency programme is very important because Member States have signed a declaration committing themselves to abide by the rules set out in the notice referred to above. The network thus provides practical assistance to the national courts with jurisdiction over competition, which are also responsible for keeping up to date with the case-law of the European Court of Justice ([39]).

5.2.4 The necessary communication between the ECN, the competition authorities and the courts helps to disseminate information on cartels and abuses of a dominant position and the applicable procedure, thus enabling a decision to be taken on who should bring the case more rapidly than has until recently been the norm.

5.2.5 Another of the ECN's tasks is to detect infringements and this activity, which is really a form of prevention, diminishes the harmful effects on competitors and consumers. One task that should be highlighted is the network's action on exemption procedures, in which it must be assessed whether the outcome benefits consumers and even whether the agreement should include a reference to the tangible benefits that consumers can expect from it.

Brussels, 5 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([39]) Commission Notice on the cooperation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC, (OJ C 101, 27.4.2004, p. 54).

Opinion of the European Economic and Social Committee on Implementing the Community Lisbon Programme: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — More Research and Innovation — Investing for Growth and Employment: A Common Approach

COM(2005) 488 final

(2006/C 309/02)

On 12 October 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 May 2006. The rapporteur was Ms Fusco.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion with 152 votes in favour and three abstentions.

1. Background and gist of the Commission communication

1.1 The Commission communication aims to **offer a common approach** [1] to research and innovation in the context of the implementation of the Lisbon programme, which was written into the decisions taken by the Lisbon European Council in March 2000, and which set the EU the goal of becoming *'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' by 2010*. That Council endorsed the plan set out by the Commission in its Communication entitled 'Towards a European research area' [2].

1.2 In its resolution of March 2002, the Barcelona European Council set the objective of increasing EU investment in research and development (R&D) to 3 % by 2010 and raising the proportion of private funding to two thirds. The Brussels European Council in March 2003, meanwhile, called for practical measures.

1.3 In its Communication of 30 April 2003 *'Investing in research: an action plan for Europe'* the Commission outlined the measures required at national and European level, in accordance with an earlier Communication of September 2002 entitled 'More research for Europe — Towards 3 % of GDP' [3]. The first official figures for R&D show that in 2003 *'the R&D intensity was almost stagnant at 1.93 % of EU-25 GDP'*. Only Finland and Sweden achieved the objective.

1.4 In March 2005, the European Council relaunched the Lisbon Strategy [4]. The joint political will to do this had been reaffirmed in October 2005 in Hampton Court at an informal meeting of European heads of state and government, in response to the considerable need for greater competitiveness in the face of global competition.

1.5 The Commission's first initiative since signing up to the relaunched Lisbon Strategy was on the European Information Society 2010 [5]. It required Member States to define their national information society priorities in their National Reform Programmes by mid-October 2005 with a view to contributing to the objectives set out in the communication on i2010.

1.6 Justification for the options and activities proposed stems from the contrast between external and internal factors: fierce global competition on the one hand; and rigidity and fragmentation in national markets faced with the need to build a single European area and promote the mobility of highly skilled workers, on the other. Accepting its limited expertise in this area, the Commission is seeking above all to act as a *catalyst*.

1.7 The Commission is seeking to strengthen the links between research and innovation, by means of a **research policy** centred on the production of new knowledge and its applications and on the provision of a structure for research and an **innovation policy** that focuses on translating knowledge into economic value and commercial success. In the bid to improve regulation, all measures with a potential impact on competitiveness are to undergo an **impact assessment**.

1.8 The assessment that accompanies the present communication chooses the last of three considered policy options [6]:

— do nothing;

— policy integration;

— a common approach.

[1] SEC(2005) 1289, Annex to COM(2005) 488 final, Impact Assessment, in which the Commission chooses the third option — a common approach.

[2] OJ C 204 of 18.7.2000.

[3] COM(2002) 499 final.

[4] 'Working together for growth and jobs — A new start for the Lisbon Strategy' [COM(2005) 24 final] of 2.2.2005 and 'Common Actions for Growth and Employment: The Community Lisbon Programme' [COM(2005) 330 final] of 20.7.2005.

[5] COM(2005) 229 final and SEC (2005) 717 of 1 June 2005 on 'i2010 — A European Information Society for growth and employment' promoting growth and employment in information society industries and the media. This sector of the EU economy accounts for 40 % of the EU's productivity growth and 25 % of GDP growth.

[6] SEC(2005) 1289, Impact Assessment.

1.9 The action plan set out in the communication is divided into four parts:

— Research and innovation at the heart of EU policies

— Research and innovation at the heart of EU funding

— Research and innovation at the heart of business

— Improved research and innovation policies

1.10 There are 19 actions covering three main fields: public policy and regulation, finance and taxation ([7]) and the role of the private sector ([8]).

1.11 Although the present communication appears to continue along the path traced out by its predecessor in 2003, the Commission now makes research and innovation a firm priority of the National Reform Programmes (NRP). The NRP are thus supported by Community funding targeting activities of European interest, by advice on coordinated policy development, and by improved platforms for mutual learning, in all regions where transnational cooperation offers high value added. R&D efforts are recognised in the stability pact, in which spending on R&D is authorised in excess of the 3 % deficit limit.

1.12 The EESC would also refer to the Esko Aho Report, despite it not being the subject of this consultation, noting in particular that the Commission mentions it in point 3.1 of its communication to the 2006 Spring European Council (Investing more in knowledge and innovation) but does not mention COM(2005) 488 final. The EESC regrets not having been consulted on that report and not having been able to make a prior assessment of it, and therefore includes it in the present debate.

1.13 In October 2005, in Hampton Court, a group of four people were appointed, with Mr Esko Aho acting as coordinator. The January 2006 report, which was submitted to the Commission with a view to the 2006 Spring European Council, made recommendations on accelerating the implementation of European and national initiatives for research and innovation. The report is based on the present communication but recommends greater integration [option 2, SEC(2005) 1289]. The report was presented to the Competitiveness Council and the Brussels European Council in March 2006. The European Council stressed the report's importance, and asked the Commission to assess it by September 2006 ([9]).

([7]) Mobilisation of public and private resources; tax incentives; European Structural Funds; SME access to finance.

([8]) University-industry partnerships; poles and clusters; pro-active business support services; innovative services.

([9]) Presidency conclusions of the Brussels European Council of 23-24 March 2006.

2. **General comments**

2.1 The EESC welcomes the communication, whose starting point is the *partnership for growth and jobs*, as it seeks to cover the complete gamut of research and innovation, including non-technological innovation. It outlines initiatives that would exceed the Barcelona 3 % objective ([10]) and describes in general terms the commitments made by the Community, detailing current and future measures to support research and innovation ([11]).

2.2 As the communication mentions, global competition to attract investment in research and innovation is constantly on the increase, not least in emerging economies such as China, India and Brazil. *'The gap in research investment between the European Union and the United States is already in excess of EUR 120 billion per year and widening fast'* ([12]). The level of competition is such that in Europe no one country can succeed alone. Transnational synergy is the only way to promote research and innovation and to convert them into growth and jobs. In addition, research and innovation are needed to make the EU economy more sustainable, by finding solutions for economic growth, social development and environmental protection.

2.3 Under the Action Plan, the majority of Member States have begun to introduce national measures to stimulate R&D in the private sector and have set targets to raise investment in research to 2.6 % of GDP by 2010. This is where tax incentives come into their own ([13]). However, the level of research in the EU appears to be more or less stagnant, including in the private sector. The situation is a matter for concern.

2.4 The justification for the measures opens the debate on comparison of productivity between EU Member States and other countries.

2.4.1 First, there are various definitions of productivity (the ratio between the quantity of a good or service produced and the number of production factor units used). The most commonly used measure employs a single factor, labour, with hourly output per worker in the industrial sector as an indicator. This is the easiest figure to obtain, but it gives an incomplete picture and excludes capital from the production process.

([10]) INI/2006/2005: European Parliament analysis of COM(2005) 488 final.

([11]) SEC(2005) 1253 Annex to COM(2005) 488 final, 'Steps to the implementation'.

([12]) COM(2003) 226 final, point 2.

([13]) In the eight Member States that have already introduced them, they account for 13 % of direct investment in research.

2.4.2 Second, it is important not to make generalisations when comparing Europe and the USA but rather to pinpoint the main differences by sector and State, even within a country such as the USA. There are competitive European sectors and countries that are making considerable progress in their productivity. According to O'Mahony and van Ark (2003), calculations of unit labour costs in the manufacturing sector for the EU as a whole suggest that the EU is not competitive vis à vis the USA in high-tech sectors, but is elsewhere. However, it is the low wages in third countries, not the United States, that are the main source of competition in the traditional industries and that are putting real pressure on the EU. Dosi, Llerena and Labini (2005) are more critical and feel that the need for a European industrial policy should not be treated as taboo.

2.4.3 Third, the best measure is *total factor productivity* (TFP), 'achieved by adjusting GDP for differences in all the inputs used' (Calderon, 2001), which enables a better comparison between countries. To explain cross-country differences in productivity, empirical surveys have classified determinants of labour (and/or total) productivity growth into three groups. However, given the interdependence between countries, Calderón states that the differences in TFP between countries appear to be driven by the speed of technological diffusion (through trade, direct foreign investment or migration) ([14]).

2.4.4 If securing rapid diffusion makes all the difference, innovative SMEs must be key to dissemination while developing new markets. For the same reason, the choice of strategic priorities for research and innovation might favour the more speedy dissemination of knowledge.

2.4.5 Lastly, securing skilled personnel and company investment is a concern for the USA and Europe alike, especially vis à vis competition from China, itself short of the 75 000 highly skilled workers it needs to move into a service economy.

2.5 Meanwhile, there are two 'macro' visions that influence policy choice. On the one hand, there is an urgent need for organisational innovation as a precondition for technical innovation (Lam 2005 and OECD 2005), and this also applies to the European institutions (Sachwald 2005, Sapir et al 2003, Esko Aho 2006); and on the other, the reason why companies do not invest enough in R&D and innovation in Europe is the absence of an innovation-friendly market on which to launch new products and services (Esko Aho 2006). However, the EESC points out that the spirit of enterprise and risk-taking remain essential.

([14]) Ibid, Calderón 2001, page 19.

2.6 The shortcomings of the market as a generator of innovation are widely recognised in literature on the subject, starting with Arrow (1962) and Dasgupta and Stiglitz (1980). The Commission's framework programmes have been broadly based on a rationale of active support at micro level for company R&D, through a mixture of support for R&D and promotion of cooperation to overcome the most discouraging obstacles (facilitating the search for partners and promoting synergy-generating benefits in terms of market entry, downstreaming and economies of scale). However, these initiatives have not been sufficient to kick-start a sustainable innovation dynamic throughout the EU.

2.7 The EESC therefore welcomes the Commission's emphasis on the meso, sectoral and cross-border dimensions. Partnerships, networks, clusters, agglomerations, forums and dialogues highlight the importance of linkages, externalities and spillovers between companies and organisations, and in terms of geography, to facilitate innovation. Coordination of this kind can more easily identify factors impacting on levels of investment in innovation and bottlenecks.

2.8 However, although considerable resources and coordination potential will be required in order to see through the approach and measures proposed, no budgetary indications are provided. Furthermore, on the very page of its communication to the 2006 Spring Council where the Commission makes its only reference to the present communication, it mentions that *'legislative proposals will only produce practical effects once adopted by Council and Parliament. In addition, many of the financing actions depend on the finalisation and implementation of the financial perspectives 2007-2013'*. The *'proposed actions are therefore only of an indicative nature'*.

2.9 The EESC calls on the Commission to provide budget indications as soon as possible and to include a clear system setting a precise date for monitoring and evaluating this communication, for instance 2008. Furthermore, the EESC believes there is a need for a Commission report that brings together all the expert group reports relating directly to the communication, accompanied by an evaluation of the recommendations made. These indications must be consistent with the option and actions chosen. Lastly, as part of the drive to overcome existing fragmentation, it would be useful to have a chart listing all the people responsible at all levels (in the regions, Member States and European institutions) for coordinating the actions proposed in COM(2005) 488. The Commission has made prodigious efforts with the country trendcharts. These describe research and innovation institutions and could be used as the basis for such a chart. It would also be worthwhile looking into the experiences of US virtual agencies with regard to research and innovation.

2.10 The EESC would also note that the communication fails to define key concepts (research, innovation, knowledge and technology). The Commission, however, has backed trans-European research to arrive at those definitions. Work has also been done by Eurostat and the OECD to define innovation. The latest European Innovation Scoreboard on the ratio between innovation input and output develops the concept of innovation efficiency and views R&D as an innovation input. In addition, a clearer distinction must be drawn between actions targeting research and innovation as such and policies to promote the right conditions for innovation (such as: training, reception and support for worker mobility, support for SMEs and less-favoured regions during ICT uptake, where the costs are proportionately higher than for other players). In other words, a distinction must be made between innovation in the form of new products and services on the market and innovation as a process. The first is a necessary but not sufficient condition for dynamic endogenous growth.

2.11 The EESC has been following this matter very closely and has issued a number of opinions on the vast field covered by COM(2005) 488, but there is only room for a brief mention of them here. They include in particular an opinion on the European research area (CESE 595/2000), which picks up on all the themes covered in COM 488, especially in point 7 on 'Research and technological innovation' and point 8 on the need for 'Staff exchanges between research centres and industry'.

2.12 Opinion CESE 724/2001 on Science and society noted the role which fundamental research has played in most of the great discoveries. The EESC's opinion on Europe and basic research ([15]) looks at the link with applied research, and stresses the question of patents: point 2.5 mentions the urgent need for a system of European patents that includes a grace period between the publication of scientific findings and the patenting of its use, following the example of the USA. It must be possible to obtain the Community patent quickly and at low cost. The EESC regrets the delay on this, which has been caused by language issues.

2.13 The EESC opinion on researchers in the European Research Area ([16]) backed the European Researcher's Charter and in point 5.4 agreed on the imperative need for exchanges between academia and industry. Recommending that greater value be placed on experts with years of experience, the opinion stressed the need for a greater compatibility and recognition of the various aspects of social security and housing, all the while aiming to protect family cohesion (point 5.5.5). Another opinion of note looked at science and technology ([17]). In its opinion on the seventh framework programme for research ([18]), the Committee stressed the importance of the endeavour and commented on the funding and organisation into sub-programmes and nine research subjects, on which it issued separate opinions ([19]).

2.14 In its opinion on competitiveness and innovation 2007-2013 ([20]), the EESC noted the importance of participation by SMEs and the social partners in innovation ([21]): for innovation to be successful, they have to be closely involved. In its recent opinion on a policy framework to strengthen EU manufacturing, the EESC welcomed the sectoral emphasis, but pointed out that coordination requires resources, whereas there is no budget. It hoped that workers' skills, which remain a cross-sectoral issue, would receive the necessary attention. A more integrated industrial policy is very important: the EU manufacturing industry '*employs over 34 million people*' and '*over 80 % of EU private sector R&D expenditures are spent in manufacturing*'.

3. **Specific comments**

3.1 The EESC especially welcomes the Commission's efforts to promote a competitive European system for intellectual property and to lay down rules for disseminating research results (2007-2013), and recommends paying special attention to the management of innovative patents in the context of the instruments mentioned in point 2.7.

3.2 A better system for disseminating knowledge is key to competitiveness. Attention should be given to the Innovation Relay Centres initiative and the Commission's idea of providing SMEs with vouchers for innovation-strategy consultancy services as part of the CIP. Cross-border clusters would facilitate dissemination, and their importance will be recognised in a forthcoming communication on clusters in Europe. Work on a clusters database is due to start in 2006.

3.3 The EESC stresses the importance of the social dimension of innovation, and of actions to raise the value of human and social resources as generators of research and innovation. It hopes that the next version of the Oslo Manual (OECD-Eurostat) will include statistics to take account of this, including indicators for qualified human capital and for other places that spawn innovation: universities and other educational institutions and joint industry/State body/university platforms.

([15]) OJ C 110 of 30.4.2004.
([16]) OJ C 110 of 30.4.2004.
([17]) OJ C 157 of 26.6.2005.
([18]) OJ C 65 of 17.3.2006.
([19]) Nanotechnology, biotechnology, health research, information technology, energy research (including fusion energy research), space and security research.
([20]) OJ C 65 of 17.3.2006.
([21]) '98 % of businesses in Europe are small and medium-sized enterprises (SMEs). They provide 55 % of private-sector jobs. In terms of production processes, products and services SMEs have considerable innovative potential.'

3.4 As regards State aid for innovation, which can have a major leverage effect on company spending on research, the EESC welcomes the attention given to SMEs and asks the Commission to view job creation as an investment in research and innovation, if the jobs are specifically targeted on these two areas. The EESC also underlines the need to promote innovative SME start-ups using instruments such as venture capital funds including the involvement of the European Investment Fund.

3.5 Given the global competition mentioned in point 2.4.5 above, an important factor in innovation is having the right human resources at all levels. The communication focuses on scientific resources. However, non-scientific skilled jobs are also worthy of attention. Supply and demand for specific skills and expertise should be more closely matched according to sectoral needs. With a view to finding swift and effective solutions, it would be useful to involve all the social partners and stakeholders concerned. The EESC asks the Commission to launch a debate on this subject.

3.6 In addition, in order to offer mobility, progress is needed on joint European skill charts, necessary for each sector or theme, not forgetting the qualitative dimension of education (values, equal opportunities). As the Employment and Education and Culture DGs also deal with the subject of 'human resources', their research and innovation initiatives should also be included in the present communication in order to cover the entire gamut.

3.7 The EESC invites the Commission to promote research and innovation in all possible sectors: competitiveness problems are not exclusive to the hi-tech sector. The proposed measures could include the strategic management of change following a massive uptake of new technologies in SMEs. The involvement of social partners and other stakeholders would be essential here.

3.8 The EESC agrees with the Esko Aho report that companies with more than 250 workers are not given proper attention, probably because the definition of SME is too restrictive compared with those of the United States and Japan. In the EESC's view, the special attention given to funding innovative SMEs is necessary for creating a European economy of innovation with social cohesion. It is no surprise that the Emilia Romagna Paxis region is one of the most active despite the fact that other innovation indicators in Italy are less favourable. Similarly, business support services must be specialised to cater for the specific characteristics of SMEs in their various forms (cooperatives, other third sector undertakings, etc.).

3.9 The EESC would like the Commission to mention research and innovation measures involving other regions. The Commission already takes a world view in the Trendcharts and a number of other initiatives. Following Communication 346 of 25 June 2001 on 'The International dimension of the European Research Area', the INCO section of the FP6 made a point of encouraging the involvement of third countries, and this is set to continue in the FP7. These measures could be highlighted in a special section. The role which urban and metropolitan areas play in innovation also deserves greater study.

3.10 The EESC recommends that the Commission evaluate the timing of technological investment, liberalisation and restructuring, given that companies, especially large ones, have to consider changes in management at the same time as research and innovation investment needs (for instance in the field of energy, transport and network industries).

3.11 Furthermore, the EESC would point out that it may be necessary to strike the right balance between promoting innovation, focusing on the joint marketing and licensing of new products and services by companies, and competition law.

3.12 The EESC considers innovation to be an input for a competitive economy with social cohesion and not as an end in itself. While accepting that this will be a challenge, the EESC would call on the Commission to collate statistics and promote studies in order to gauge the links between innovation, competitiveness and social cohesion more effectively, with a view to evaluating results clearly and effectively and putting them across to the European public in a convincing way. As others have said: 'build ambitious, technologically daring missions justifiable for their intrinsic social and political value' (Dosi et al, 2005).

3.13 In addition, viewing innovation as a system, the EESC asks the Commission to coordinate its work with the European Investment Bank (EIB) in order to secure a synergistic relationship between EIB programmes, the European Investment Fund, the seventh research framework programme and the framework programme for competitiveness and innovation (CIP), and thus ensure that innovation becomes a dynamic and well structured system.

Brussels, 5 July 2006

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 advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004

COM(2005) 567 final — 2005/0227 (COD)

(2006/C 309/03)

On 10 January 2006 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 31 May 2006. The rapporteur was Mr Bedossa.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 150 votes, with one abstention.

1. **Summary**

1.1 The Committee welcomes this proposal for a Regulation of the European Parliament and of the Council on advanced therapy medicinal products and amending Directive 2001/93/EC and Regulation (EC) No 726/2004.

1.2 Against a backdrop of accelerating scientific progress, especially in the field of biotechnology, there is a real need for clarification, rigour and expertise.

1.3 The aim of the proposal is to provide a coherent picture of the various advanced therapies, to fill the existing regulatory gap and to bolster specific evaluation by the European Medicines Agency in these new disciplines. This will secure:

— a swift response to the demands of patients and expectations in the industry with regard to research into and the development of regenerative medicine;

— a high level of health protection for European patients;

— overall legal certainty, while allowing for sufficient flexibility at technical level in order to keep pace with the evolution of science and technology.

1.4 Given the particularities of advanced therapy products, it is essential to provide a robust and comprehensive regulatory framework that is applicable in all Member States.

1.5 A regulation is therefore considered as being the most appropriate legal instrument. This is all the more important given that current public health issues regarding advanced therapy medicinal products will remain unresolved in the EU until a specific legislative system is put in place.

1.6 However, some aspects of this draft regulation may give rise to implementing problems, in view of the definitions used, with the draft directive on medical devices. Care must be taken to ensure that the final text clears up outstanding questions and possible doubts. For instance:

— What is the point in this new regulation given that advanced gene and cell therapy medicinal products are already governed by specific directives on pharmaceutical products?

— The definitions given in Article 2b, in particular, appear complicated and are rather superfluous.

— It is also clear that national pharmaceutical legislation might stand in the way of European legislation.

— It would have been preferable in this case to use a more flexible approach and begin with mutual recognition.

— The question of autologous products of non-industrial origin in the hospital sector also raises the issues of 'border line' products of other origins and of rules applying at European level.

2. **General comments**

2.1 An article by article examination of the regulation raises a number of comments, questions and recommendations. With regard to Article 2: 'Definitions' ([1]):

2.2 The definitions concerning gene therapy and somatic cell therapy do not generally pose any problems given that reflection and experience have led to a consensus. These products are classed as medicines and are already regulated as such within the Community.

2.2.1 The definition of a tissue engineered product seems more complex however. As currently worded, the first indent of Article 2(1)(b) states that a tissue engineered product 'contains or consists of engineered cells or tissues', without specifying 'as an integral part'. In practice, therefore, medical devices which contain tissue engineered products 'with an ancillary function' are also included among innovative medicinal products. This makes the provisions of the proposed directive on medical devices meaningless.

([1]) COM(2005) 567 final.

2.2.2 The wording of the second indent of Article 2(1)(b) could also give rise to implementing difficulties and, in particular, overlap with the medical device directive. As tissue engineered products are covered by legislation on medicinal products, it would be desirable to mention their primary activity of disease treatment or prevention, or of altering physiological functions through pharmacological, immunological or metabolic action, rather than just referring to their properties for 'regenerating, repairing or replacing a human tissue', as these properties are also shared by some types of medical device.

2.3 An effort has been made to narrow down the exact definition of a 'tissue engineered product' as much as possible. Nevertheless, the difference from cell therapy (bone marrow transplants, stem cell transplants, umbilical cord blood transplants, adult or embryonic stem cells, etc.) is not entirely clear.

2.4 The Committee proposes that examples of products currently considered to have been generated by tissue engineering be used as a starting point for attempts to clarify the definition. This would assist understanding, particularly since it is no secret that the subject is the focus of debate and controversy, particularly regarding embryonic stem cells.

2.5 At this point, there are no ethical problems apart from those surrounding human embryonic stem cells (HESC).

2.6 The controversy centres on the means of producing stem cells. More specifically, the production of these cells by nuclear transfer (in other words cloning) raises major ethical questions, and no real consensus has been found within the European Union to this day. Current concerns focus on the risks of reproductive cloning, egg trafficking and the commercialisation of human body parts.

2.7 Such practices are explicitly condemned by the European Convention on Bioethics (Oviedo Convention, 1998) and by the International Bioethics Committee (UNESCO, 1997).

2.8 In the absence of a consensus between EU Member States, HESC use falls within national responsibility.

2.9 The detail given in the recitals ([2]) is therefore essential, as it gives clear consideration to the reality of the debate and states that this text regulating advanced therapy medicinal products at Community level is not designed to 'interfere with decisions made by Member States on whether to allow the use of any specific type of human cells, such as embryonic stem cells, or animal cells'.

2.10 Neither is it designed to 'affect the application of national legislation prohibiting or restricting the sale, supply or use of medicinal products containing, consisting of or derived from these cells'.

([2]) COM(2005) 567 final, 6th recital.

3. **Specific comments**

3.1 The harmonisation of the principles governing other modern biotechnological medicines currently covered by Community-level regulations involves a centralised authorisation procedure, i.e. a single scientific evaluation of the quality, safety and effectiveness of advanced therapy medicinal products.

3.2 However, unlike traditional medical treatments, these therapies by their very nature require specific pre-clinical and clinical procedures, with particular emphasis on expertise, risk management and post-marketing authorisation (MA) pharmacovigilance.

3.3 The present draft regulation is right to stress the need to develop specific expertise in the evaluation of these products within the European Medicines Agency's Committee for Medicinal Products for Human Use (CHMP ([3])), also involving patient associations in the evaluation groups.

3.4 The proposal to set up a Committee for Advanced Therapies (CAT ([4])) which the CHMP would consult on everything concerning the evaluation of data regarding advanced therapy medicinal products before issuing its final scientific opinion, is key.

3.5 This committee will bring together the few top experts currently working in the Community in the area of advanced therapy medicinal products and selected representatives of the parties concerned.

3.6 It is wholly justified as it will provide a means of defining not only scientific procedures but also standards for good clinical and manufacturing practice and will follow evaluation through to marketing authorisation (MA) and beyond to post-marketing authorisation.

3.7 The mention of the principle whereby 'human cells or tissues contained in advanced therapy medicinal products should be procured from voluntary and unpaid donation' is important. It responds to the constant concern to raise safety standards for tissue and cells, remove the risk of commercialising human body parts, and protect human health.

3.8 The proposal confirms the advisory role of the European Medicines Agency. This role will be critical on all kinds of issue that may arise as science evolves, be it the production of advanced therapy medicines, good manufacturing practice or rules relating to the summary of product characteristics, labelling or the package leaflet stating technical specificities, or when it is necessary to define the dividing line with other fields (such as cosmetics or certain medical devices).

([3]) CAT: Committee for Advanced Therapies

([4]) It should be noted, when it comes to the membership of the CAT, that some language versions of COM(2005)567 final — 2005/0227 (COD) use the term 'surgeons', whereas others refer to 'doctors'. This opinion refers to doctors not surgeons.

3.8.1 Some have pointed out that the procedures used might be expensive, whereas national authorisation procedures are by nature more economical. There is also the problem of national transition periods being longer than EU transition periods (five years as opposed to two). The political risk posed by decentralised national procedures may hinder access to advanced therapy medicinal products, as some Member States have access and others do not.

3.9 Lastly, the proposal takes a useful look at the economic dimension ([5]). In the context of global competition in the health industry, the European Union must claim its rightful place on both the internal and global markets.

3.10 The economic risks linked with uncertainty or rapid changes in science, and the considerable cost of studies, hold back major and lasting investment in the field of medicine and advanced therapy medicinal products in particular.

3.11 Furthermore, it is frequently small and medium-sized companies that carry out the studies necessary to demonstrate the quality and non-clinical safety of advanced therapy medicinal products, and these do not always originate from previous experience in the pharmaceutical field (typically taking the form of spin-offs from biotech laboratories or manufacturers of medical devices).

3.12 The Commission proposes a 'system of early evaluation and certification of quality and non-clinical safety data by the Agency, independently of any marketing authorisation application' in order to support and encourage SMEs carrying out studies. This seems appropriate.

3.12.1 Meanwhile, in tissue engineering, products are often developed by SMEs, with the generation of start-ups and spin-offs, rather than by major pharmaceutical companies. This gives rise to a number of comments:

— What must this regulation cover in order for it to become operational? It will surely engender a heated debate, although the technologies used are full of promise.

— The membership of the CAT also poses a problem owing to its dependence on the CHMP (which is made up of one representative per Member State).

— The legislative framework used is inadequate, as these are unconventional pharmaceutical products that will require changes to other texts.

— The precautions taken regarding the use of stem cells may provoke a veto in the countries concerned, as the wording must be acceptable to avoid problems with the small print.

3.13 The aim of facilitating the evaluation of any subsequent request for marketing authorisation using the same data, should be supported and encouraged.

3.14 However, care should be taken and the provision altered if necessary in order to take account of rapid developments in scientific data (e.g. duration of data validity, data storage conditions), to provide permanent protection for patient health and, more generally, to abide by ethical standards.

3.15 The planned report on the 'implementation of this Regulation after experience has been gained' should provide an opportunity for debate within the bodies concerned (in particular the Committee for Advanced Therapies (CAT) and the Committee for Medicinal Products for Human Use (CHMP)).

3.15.1 However, the subordination of the CAT to the CHMP (the original mechanism for providing expertise) will weigh procedures down considerably and may give rise to unnecessary contradictions.

3.16 More generally, the planned publication of the report (Chapter 8, Article 25) could include not only 'comprehensive information on the different types of advanced therapy medicinal products authorised pursuant to this Regulation' but also information and results concerning the incentive measures provided for in Chapter 6 (Articles 17-18 and 19): 'Scientific Advice', 'Scientific recommendation on advanced therapy classification' and 'Certification of quality and non-clinical data'.

4. **Conclusions**

4.1 On the whole, this draft regulation is relevant and useful. It provides a means of keeping up with scientific developments and deciding on definitions and the conditions for using advanced therapy medicinal products, thus serving patients' interests.

4.1.1 These new technologies offer patients great hopes in terms of overcoming human suffering. However, if they are to respond to legitimate expectations, especially in the field of regenerative medicine, research must be supervised using essential tests, and the protocols for these must offer an absolute guarantee of patient safety. With this aim in view, the main objectives set out in the Justification of the Commission's proposal for a Regulation (point 2.1) should be to guarantee not just a high level of health protection but also to give a guarantee of medicinal quality assurance. The issue of non-used waste — a rarely-discussed environmental aspect — must also not be overlooked.

4.2 The regulation is important, especially in the realms of gene therapy and somatic cell therapy. The caution exercised with regard to both definitions and the use of the products of tissue engineering clearly shows that the draft regulation is not intended to settle the debate once and for all or to pre-empt the deliberations of each Member State, since the ethical debate is not yet resolved and since it depends on varying interpretations of humanist values.

([5]) See COM(2005) 567 final, 23rd recital.

4.2.1 This draft regulation creates the preconditions for closing the regulatory gap that exists between its subject matter and the draft directive on medical devices. The general principle of risk evaluation applies to both advanced therapy medicinal products and medical devices. Complications may arise with combination products (i.e. medical devices containing tissue engineered elements). In such cases, both quality and safety must be guaranteed, and the evaluation must also cover the efficacy in use of an innovative medicinal product in a specific medical device.

4.3 In conclusion, the Committee endorses the proposed regulation while also stressing certain areas of concern for which clear solutions will be needed in order for the directive to be implemented successfully.

Brussels, 5 July 2006.

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 — Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment

COM(2005) 535 final

(2006/C 309/04)

On 9 December 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 May 2006. The rapporteur was Mr Cassidy.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July 2006), the European Economic and Social Committee adopted the following opinion by 146 votes in favour and six abstentions.

1. **EESC conclusions and recommendations**

1.1 This opinion is a referral from the Commission and is a follow-up of its Communication of March 2005 *Better Regulation for Growth and Jobs in the European Union* ([1]).

1.2 Simplification should result in a high quality regulatory framework, easier to understand and more 'user friendly'.

1.3 Simplification should increase respect for EU legislation and, in the process, reinforce its legitimacy.

1.4 The Committee believes that Member States have a heavy responsibility to ensure that EU measures are properly transposed into their national law and enforced. The Committee recognises that the Interinstitutional Agreement on Better Lawmaking ([2]) provides a 'code of conduct' for Member States in better transposition and application of EC directives. What is important is that the resulting regulatory framework at national level is both as balanced in terms of content and as simple as possible for business, employees, consumers and all civil society players.

1.5 The Committee wishes socio-professional actors to be associated with the 'comitology' procedures of simplification of regulation, on a model similar to the SLIM committees, but in a more systematic way and upstream of this regulation, rather than *a posteriori* as it was the case of the SLIM experiments.

1.6 The Committee would like to see more consultation between the Commission and stakeholders similar to that which has lead to the Communication under discussion. It believes that this would be a material assistance to the 'co-regulation' ([3]) referred to in the Communication's paragraph 3d. It regrets, however, the absence of any reference to 'self-regulation' ([4]), something for which the EESC has been calling for some time ([5]).

([1]) COM(2005) 97 of 16.3.2005.
([2]) OJ C 321, 31.12.2003.
([3]) OJ C 321, 31.12.2003.
([4]) OJ C 321, 31.12.2003.
([5]) Information report on *'The State of co-regulation and self-regulation in the Single Market'*, CESE 1182/2004 fin, 11.1.2005, rapporteur: Mr Vever.

1.6.1 However, the Committee acknowledges that there is a danger with self-regulation that instead of rules which are binding on stakeholders, the stakeholders themselves conclude voluntary agreements which they may or may not choose to comply with.

1.7 The European Court of Justice is playing an increasing role in the interpretation of European Community directives and has found itself having to interpret the sometimes ambiguous wording of directives which emerge from the 'co-decision' process. The ECJ is also being required increasingly to give guidance to national courts where their activities are complementary. The Committee notes the progress made by the ECJ in reducing by 12 % the number of cases pending concerning Member States failure to notify, incorrect application and non conformity with EC directives.

1.8 The Committee acknowledges the importance of this Commission Communication in implementing the Lisbon programme, in which progress has been lamentably slow owing to the reluctance of governments of Member States to carry out the commitments they entered into at Lisbon.

1.9 The EESC particularly welcomes the Commission's commitment to make more extensive use of information technology and hopes that the Commission will ensure that whatever arrangements are set up for improved IT, they will be compatible with national arrangements (or that national arrangements should be compatible with the EU's!).

1.10 The EESC has always supported the declaration by the Six Presidencies 'Advancing regulatory reform in Europe' of 7 December 2004 ([6]) and hopes that the presidencies to follow will support the same declaration ([7]).

1.11 The EESC is aware of the European Parliament's reports on better regulation and in particular the Gargani report on *Strategy for the simplification of the regulatory environment* ([8]).

1.12 The Committee acknowledges that the current Commission is making a determined effort to build on the SLIM and BEST sectoral initiatives. The framework action (February 2003-December 2004) resulted in the screening of about 40 policy sectors and the adoption by the Commission of about 40 simplification proposals. To date, nine simplification proposals related to that programme are still pending.

1.13 The Committee acknowledges that the enlargement of the European Union to 25 Member States has also increased the regulatory burden both on the Commission services and on new Member State bureaucracies.

1.14 Simplification and better lawmaking are complementary activities involving Council and Parliament as well as the Commission, with the advice of the EESC and the CoR where necessary.

1.15 The Committee reiterates its support frequently expressed in previous opinions on the importance of alleviating the regulatory and financial burdens on business, especially SMEs.

2. **Introduction**

2.1 The Committee has over the years delivered a number of opinions on Simplification going back to a request from the European Council in 1995 when a working party was set up to consider ways of simplifying EU rules.

In this series of opinions, the EESC has concluded that:

— there should be a dialogue between the EESC and the Committee of the Regions as well as with the Economic and Social Councils in the Member States;

— the simplification process does not need new ideas; what it needs is the effective implementation of the ideas which have already been expounded by the European institutions and by the Lisbon European Council;

— legislative proposals should respond to the following criteria:

  — are the provisions understandable and user-friendly?

  — are the provisions unambiguous in intent?

  — are the provisions consistent with existing legislation?

  — does the scope of the provisions need to be as wide as envisaged?

  — are the time scales for compliance realistic and do they allow business and other stakeholders to adapt?

  — what review procedures have been put in place to ensure even enforcement and to review effectiveness and costs?

— there is a great deal of support from 'stakeholders' for the idea of more self and co-regulation;

— *the possibilities have not been properly explored for less detailed and less finicky regulation, offering scope for co-regulation and self-regulation* ([9]).

2.2 There is a necessary interaction between simplification and better implementation and enforcement. The current Commission Communication shows signs of having taken account of some of the conclusions of previous EESC reports

([6]) A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the EU.

([7]) 2007: Germany January to June; Portugal July to December; 2008: Slovenia January to June; France July to December.

([8]) A6-0080/2006, adopted on 16.5.2006.

([9]) Information report on *The State of co-regulation and self-regulation in the Single Market,* CESE 1182/2004 fin, 11.1.2005, rapporteur: Mr Vever.

recognising that *'simplification is not a new issue'*. The series of Commission Communications dates back to 1997, i.e. two years after the EESC's first call for simplification.

3. **Summary of the Commission Communication**

3.1 The Communication recognises that the requirement is for simplification, not only at Community but also at national level to make things easier and more cost-efficient for citizens and operators.

3.2 An important part of the new simplification strategy at EU level is a review of the *acquis*. It sets out an ambitious 3 year rolling programme from 2005 to 2008 based on stakeholders' practical experience with an approach based on continuous in-depth sectoral assessment.

3.3 The Commission's approach to simplification is based on five instruments ([10]):

a) **repeal** — the elimination of irrelevant or obsolete legislation;

b) **codification** — the consolidation of an act and all its amendments into a new instrument without changing the substance;

c) **recasting** — consolidation as above but with some change of substance;

d) **modification of the regulatory approach** — identifying a more legally effective approach to that currently in use e.g. substituting a regulation for a directive;

e) **reinforcement of the use of information technology** ([11]) — facilitating the use of IT to improve efficiency.

3.4 The Commission's Communication recognises that it can only succeed with support from other EU Institutions and above all of Member States. An important part would be the recognition by the latter of the need to keep the implementation of EU legislation as close as possible to the original directives agreed under the co-decision procedure and not to add on (or 'gold-plate').

3.5 The Communication takes account of the findings of the widespread consultation process with the Member States and stakeholders. The conclusion of the process is that EU proposals should:

— clarify and improve the legibility of legislation;

— update and modernize the regulatory framework;

— reduce administrative costs;

— reinforce the consistency of the *acquis;*

— **improve the proportionality** ([12]) **of the *acquis*.**

The last is probably the most far-reaching concern of stakeholders.

The Commission's Communication in its Annex 2 lists 222 measures for simplification. The Commission's simplification programme covers the period 2005 to 2008.

3.6 The first Company Law Directive (68/151/EEC) was simplified, updated and modernised in 2003 to maximise the potential of modern information tools and technologies and to enhance transparency regarding public limited liability companies. However, the modified Directive could well be included in a possible recast or codification exercise. A public consultation has been launched at the end of last year to collect stakeholders' views on such options.

4. **General comments**

4.1 Generally, 'simplification' must not be misunderstood as a means of achieving deregulation 'through the back door'. Social standards — and in particular standards for the protection of employees, consumers and the environment — must not be undermined or watered down as a result of administrative simplification.

4.2 The Committee welcomes the Communication and supports the Commission in pointing out that the success of simplifying the regulatory environment depends as much on the Member States and their regulatory agencies as it does on the European Institutions.

4.2.1 It would be helpful if a code of conduct could be drawn up as previously suggested in EESC opinions ([13]) (see also Appendix I).

4.2.2 The EESC recalls the fact that the success of the simplification programme will not depend solely on the Commission's ability to deliver, but also on the co-legislators' capacity to adopt within a reasonable timeframe the simplification proposals tabled by the Commission.

4.2.3 It should be recalled that the interinstitutional agreement on 'better lawmaking' stipulates in its § 36 that *'within six months of the date upon which this Agreement comes into force, the European Parliament and the Council, whose task it would be as legislative authority to adopt at the final stage the proposals for simplified acts, need to modify their working methods by introducing, for example, ad hoc structures with the specific task of simplifying legislation'*.

4.3 The Communication acknowledges the importance to SMEs and to consumers of the simplification initiative. Poorly drafted EU or national legislation leaves consumers uncertain as to their rights and their possibilities of redress.

([10]) Action plan for *Simplifying and improving the regulatory environment* COM(2002) 278 final and Codification of the *Acquis communautaire*, COM(2001) 645 final.

([11]) The Commission proposes to bring forward an initiative in the area of e-government with a launch of an e-government Action Plan in 2006.

([12]) Regulations should be proportionate to the aims to be achieved.

([13]) (OJ C 125, 27.5.2002) (OJ C 14, 16.1.2001).

4.4 The Committee also welcomes the Commission's commitment to improving the process of producing Impact Assessments, not only in the context of burdens on business, but also in their impact on consumers, on disadvantaged groups (such as people with disabilities) and on the environment. In line with the declared goal of the Lisbon process of creating 'more growth and employment', impact assessments for employees and employment in general would also be very positive. Especially welcome is the suggestion that there should be more use made of 'one-stop-shops' and its reference in certain directives to 'virtual' or 'self-testing' in the context of motor vehicles.

4.5 It would be helpful if the Commission could produce an impact assessment to justify its withdrawal of proposals as it is now doing for new proposals.

5. **Specific comments**

5.1 The Communication implies that the process of adapting directives to technical progress ('comitology') needs to be made more transparent — something urged frequently by the European Parliament. Member States have a responsibility in this, however. The comitology work is carried out by 'national experts' and there is considerable evidence to suggest that these 'experts' do not take account of their government's views in their comitology activities (an example of this is the 1979 Birds Directive to which the technical annexes were added by 'experts' after ministers had given their approval in Council to the directive itself).

5.2 The importance of simplification to consumers, social partners and other 'stakeholders' should be highlighted. Conflicts between national implementing legislation and the original EC directives on which they are based add greatly to the work load of the European Court of Justice (ECJ) whose role is 'interpretation' but which is increasingly finding itself having to fill in details which appear to be overlooked or for which the requirement for Council unanimity has failed to produce a satisfactory text e.g. in taxation matters. However, the fact that the ECJ is increasingly being given the role of a political decision-maker is a problem. The ECJ lacks a clear political basis for this, besides exceeding its remit. It therefore takes decisions which should be taken by democratically elected authorities.

5.3 The EESC acknowledges that the Commission itself has made an effort and there have been several hundred repeals and declarations of obsolescence, which should have significantly contributed to reducing the volume of the *acquis* but not necessarily reducing burdens on business, on employees, on consumers or on other 'stakeholders'. The Committee acknowledges that there are still areas where more legislation is needed at EU level in order to defend the environment and the rights of employees, consumers and disadvantaged groups (such as people with disabilities or other minorities), and to make sure that they all can have full access to the benefits of the single market.

5.3.1 On the other hand the most commonly employed system to date is that of updating. While this permits the introduction of certain necessary changes so as to update the regulations, the aim of simplification is not always achieved; indeed, on the contrary, measures are sometimes superimposed so that old and new regulations exist side by side in some Member States causing confusion to stakeholders. Enforcers in Member States may be left in doubt as to whether or not they are acting in accordance with their legal institutions.

5.3.2 The simplification features of each simplification proposal of the Rolling Programme should be clearly spelled out in the corresponding exploratory memorandum, and, where relevant, the accompanying Impact Assessment. The Commission services should carefully monitor these proposals in the course of their inter-institutional decision-making process to ensure that the simplification dimension is preserved, as required by Interinstitutional Agreements (on the 'codification technique' ([14]), on the 'recasting technique' ([15]) and on 'Better Lawmaking' ([16])).

5.4 The Committee draws attention once again to its long series of opinions on the need for better regulation and simplification, particularly to its most recent opinion on *'Better Lawmaking'* ([17]) in response to a request for an exploratory opinion of the UK Presidency.

5.5 The Committee reiterates its frequently expressed wish that the process of better regulation and simplification should continue following the Six Presidencies declaration ([18]).

Brussels, 5 July 2006

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([14]) OJ C 102, 4.4.1996.
([15]) OJ C 77, 28.3.2002.
([16]) OJ C 321, 31.12.2003.
([17]) CESE 1068/2005, OJ C 24, 31.1.2006, rapporteur Mr Retureau.
([18]) *Advancing regulatory reform in Europe* — A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the European Union of 7.12.2004.

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council laying down the Community Customs Code (Modernised Customs Code)

COM(2005) 608 final — 2005/0246 (COD)

(2006/C 309/05)

On 17 January 2006 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 31 May 2006. The rapporteur was Mr Burani.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 152 votes to one with three abstentions.

1. **Introduction: principles underlying the new Code**

1.1 One of the priorities of the Community customs action programme (Customs 2007), adopted by the Council in 2002, was a complete overhaul of the current customs Code [Council Regulation (EEC) No 2913/92], which has become outdated following developments in the markets and technology, the adoption of various Treaties and, above all, successive EU enlargements.

1.2 The idea of a completely modernised code was prompted by the fact that the old Code — which is still in force — 'has not kept pace with either the radical changes to the environment in which international trade is conducted … or with the changing focus of customs work'. The proposal in question is in line with Community policy — particularly with the principles of the internal market and consumer protection, and with the Lisbon Strategy — and forms the basis for further measures to streamline customs systems and procedures and to bring rules into line with common standards governing Member States' IT systems as they are drawn up.

1.2.1 The Commission believes that this raft of measures will make it possible to incorporate the Council's eGovernment and 'better regulation' initiatives, and to achieve a number of specific objectives, including increased security and safety at external borders, reduced risk of fraud and, lastly, greater consistency with other Community policies, particularly fiscal policy.

1.3 The new Code must be seen in the context of the Lisbon Strategy, which seeks to make Europe 'a more attractive place to invest and work'; it is also in line with the Commission's proposals, approved by the Council in December 2003, to create a simple, paperless environment. Moreover, another vehicle for the Council's policy is the parallel Proposal for a decision on a paperless environment for customs and trade [COM(2005) 609 of 30 November 2005], on which the EESC will draw up a separate opinion.

1.4 The new elements introduced by the new Code are not just a matter of form or updating rules; the changing focus of customs policy is much more important. Over the past 20 years, the role of customs has gradually been shifting away from the collection of duties towards much greater focus on application of non-tariff measures, in particular those related to security and safety, controlling illegal immigration, combating fraud, money-laundering, narcotic drug trafficking, sanitary measures, health, the environment and consumer protection, as well as the collection of VAT and excise duties. The Commission document does not explicitly mention under security and safety a secondary element which is certainly part of customs' role — the valuable assistance they provide in combating arms trafficking and terrorism. In this context, there is a gap in the plans for IT systems, on which the EESC comments in point 3.1.3.1 below.

1.5 Another new element is the introduction of computerised procedures. The current Code provides for these procedures — and they are widely adopted in almost all Member States — but they are optional both for national customs and for users. The new Code, however, makes them compulsory; this is necessary to eliminate the need for paper — the aim of the parallel initiative described in point 1.3 above.

1.6 The Code has been drawn up in line with Commission policy and with due regard for the procedures laid down in the areas of feasibility, transparency and impact assessment. The EESC is pleased to note that the civil society sectors concerned have been consulted and are largely in favour; it agrees with the Commission regarding respect for the legal bases and for the subsidiarity and proportionality principles, but reserves the right to comment on the impact assessment at a later date.

1.7 The Commission has looked at four different approaches to the issue, opting in the end for a solution which provides for closer cooperation between national customs' IT systems, on the grounds of the need to comply with the subsidiarity principle and Member States' clear reluctance to accept a solution based on a centralised European system. The EESC notes that this decision was unavoidable but points out that the latter

option would have provided a more reliable, simpler and less burdensome solution for users. The subsidiarity principle would then have been devolved at European level rather than national level.

2. **General comments**

2.1 In February 2005, the EESC commented on a Proposal for a Regulation of the European Parliament and of the Council amending the Customs Code ([1]), which, even then, proposed innovations concerning a paperless environment and integrated management of external borders. The EESC is pleased to note that the principles enshrined in that proposal, on which its comments had been broadly positive, have also been included in the present proposal and converted into specific provisions which, once again, in general, it can accept.

2.2 The raft of new provisions is evidence of greater focus on operators' rights and needs, taking into account, where necessary, any damages that may result from the procedures. Both the streamlining of legislation and the concentration of customs procedures — which are being reduced from the current 13 to three: import, export and special procedures — are evidence of this approach. Moreover, in the drafting process, two-thirds of the articles of the present Code are amended, merged or transferred to the implementing provisions, with the result that the number of articles falls from 258 to 200.

2.2.1 The EESC congratulates the Commission on its sensitive, laborious work, in which it has respected the general principles of the internal market and shown great respect for operators' rights and needs. Incidentally, however, it notes that the lack of an implementing regulation — which the Commission does, moreover, have the power to draw up — leaves room for some uncertainty for the moment as regards a number of provisions: it therefore calls for a new implementing regulation to be drawn up and adopted without delay.

3. **Specific comments**

3.1 *Title I: General provisions*

3.1.1 Article 3 lists the national territories making up the Community customs territory. It does not call for any particular comment, apart from the uncertainty raised by paragraph 3, which states: 'Certain provisions of the customs legislation may apply outside the customs territory of the Community within the framework of legislation governing specific fields or of international conventions'. Legal certainty does not allow a law to mention 'certain provisions' without specifying in the same text or an appendix which provisions are referred to. From a legal point of view — and also for reasons of transparency — it needs to be clearly specified in detail which territories and legislation are being referred to. All too often, the public — and experts, too — fail to notice exemptions and derogations granted on various occasions in various different ways: these exemptions and derogations are often genuine distortions of competition, and they are not always temporary.

3.1.2 Generally speaking, the exchange and protection of data (Articles 5, 6 and 7) do not call for any particular comment, as the proposed legislation is in line with the normal protection provided by public administrations for people's privacy and business confidentiality. The EESC particularly welcomes the provisions in Article 8, which require customs authorities to provide information on the application of customs legislation, and to further transparency by making legislation, administrative rulings and application forms available on line to operators free of charge.

3.1.2.1 The first paragraph of Article 5 warrants particular attention. It requires electronic data processing techniques to be adopted for all exchanges of data, documents, decisions and notifications between economic operators and customs authorities. This provision, which is wholly appropriate where businesses and professional operators are concerned, could cause difficulties where the importer (or, more rarely, the exporter) is a private individual and not necessarily an 'economic operator'. The problem is anything but minor, at a time when the amount of on-line and catalogue purchases of goods in countries outside the EU is growing exponentially. The EESC notes that the matter is currently being discussed under the comitology procedure and suggests that private individuals be explicitly included among those permitted under Article 93 to submit summary declarations. The provisions of Article 94, granting customs authorities the possibility of accepting paper-based import summary declarations although only in exceptional circumstances, should also be amended. Alternatively, or in addition, the possibility could be explored of extending to private individuals the right to submit the occasional simplified declarations — again paper-based — provided for in Article 127.

3.1.2.2 On a more general note, although still on the subject of electronic data processing techniques, the EESC points out the high costs of the new integrated data processing system; these costs have to be borne within a short period of time, while a substantial part of the benefits (particularly where quality is concerned) will only become apparent in the medium to long term. Some Member States already seem to be concerned at both the costs that will have to be borne and the obligation to respect the timeframes for implementing the new systems; others — particularly those which are most advanced in terms of computerisation — feel that it would be costly to change recently introduced systems to come into line with the joint system. The EESC acknowledges these concerns, which the Commission must not ignore. However, it believes that the benefit to Europe of having an efficient, modern customs system is worth some individual sacrifices, which could perhaps be alleviated by assistance in specific cases of documented need.

([1]) OJ C 110 of 30.4.2004.

3.1.3 Article 10 requires Member States to cooperate with the Commission 'with a view to developing, maintaining and employing an electronic system for the common registration and maintenance of records' of all operators and authorisations granted. Any uncertainty regarding the nature and operation of the system is cleared up in Article 194: each Member State is to maintain its own electronic data processing system, ensuring interoperability with the systems of the other Member States in accordance with rules and standards established by the Commission, assisted by the Customs Code Committee. The system is scheduled to enter into force on 30 June 2009. The EESC believes that a system based on national databases exchanging — once interoperability is ensured — information and updates may well prove difficult to manage, as well as costly. Above all, it is somewhat unlikely that a system of this kind could actually become operational within the specified timeframe. The Commission's impact assessment estimated the additional cost of implementing the system at EUR 40-50 million per year, a figure which various experts feel to be over-optimistic.

3.1.3.1 Moreover, there is a clear, crucial shortcoming in the system planned, or at least in the mission statement: there is no specific provision for access to the electronic data processing systems of authorities combating terrorism and organised crime, with, of course, due regard for the rules protecting privacy and production activities. The EESC has repeatedly highlighted this aspect, on a number of occasions. The Council has for years been stressing the need for cooperation between the different authorities — criminal and financial police, customs, secret services, Olaf and Europol, but, regrettably, without significant results thus far.

3.1.4 Article 11 raises a particular concern. It stipulates that customs representatives can 'perform the acts and formalities laid down in the customs legislation', appointed by an operator and acting in the operator's name and on their behalf (direct representation) or on their own behalf (indirect representation). Paragraph 2 requires customs representatives to be established within the Community customs territory, but nothing further. Moreover, the EESC notes that the Commission states in its Explanatory Memorandum that 'The rules on representatives have been changed, with former restrictions being withdrawn'; these were incompatible with a computerised environment and with the principles of the single market. The inference is that customs representatives have a single authorisation (Community passport) enabling them to operate throughout Community territory in the name of any operator, wherever the operator may be established. This article needs to be made more explicit; a separate regulation could lay down procedures for creating a register or list etc. along the lines of the arrangements for authorised economic operators, discussed in point 3.1.5 below.

3.1.5 Another figure of interest is the authorised economic operator (Articles 4 and 13 to 16). In practice, this is a business (more often than an individual) which can guarantee that it is responsible, solvent and professional to a sufficiently high degree to be accredited by Member States' customs authorities as having the right to a certain number of facilitations in the area of controls and procedures. The Commission reserves the right to specify, on the basis of Article 196, the procedures for granting the status of authorised economic operator. The EESC takes note of these provisions, which are clearly intended to facilitate international trade and the creation of an environment conducive to trade, but it also notes that a great deal will depend on the conditions for granting this status and the rules for preventing any abuse thereof. Moreover, it is not clear whether authorised economic operators will be granted a 'European passport'.

3.1.6 Article 22 marks a decisive step towards harmonising customs regimes, by requiring Member States — albeit in fairly loose terms — to adopt administrative and criminal penalties for failure to comply with Community customs legislation. The EESC agrees, of course, on the need to achieve harmonised rules on this sensitive issue, but it remains to be seen how receptive Member States will be to endeavours to lay down rules or guidelines on criminal matters, which are an area where resistance or, at least, reservations, are to be expected.

3.1.7 Articles 24, 25 and 26 deal with appeals against administrative decisions (Article 23 excludes decisions taken by a judicial authority), laying down a two-stage procedure. The first step is appeal before the customs authorities and the second appeal before a higher, judicial or other authority. In the case of penalties a general principle similar to the estoppel principle applies, except where the customs authorities consider that 'irreparable damage' may be caused to the person who lodged the appeal; the EESC is pleased to note this indication of concern for the needs of the citizen.

3.1.8 Article 27 lays down the — clearly necessary — possibility for customs authorities to carry out controls of all kinds (physical, administrative, accounting and statistical). It also provides for an electronic risk management system to be implemented, 'with the purpose of identifying and evaluating the risks and developing the necessary measures to counter the risks'. This system, which Member States are to implement in cooperation with the Commission by 30 June 2009 at the latest, will also be regulated by rules laid down by the Commission on the basis of Article 196. In any case, the EESC welcomes the measure and hopes that the Commission has made quite sure that all the Member States are willing to implement a system which will presumably prove to be costly and sensitive to manage.

3.1.9 Article 30 exempts from customs controls and formalities the cabin and hold baggage of passengers on intra-Community flights and sea-crossings, but without prejudice to security and safety checks and checks linked to prohibitions or restrictions laid down by the Member States: this is tantamount to saying that the exemption only applies in countries which have not laid down prohibitions or restrictions. Since there are

always restrictions in place everywhere, if only with regard to goods subject to excise duty, the general rule is, in practice nullified and customs' power to carry out controls on both cabin and hold baggage remains intact.

4. **Titles II — VIII: Customs formalities and procedures**

4.1 Titles II — VIII deal with customs formalities and procedures, and broadly retain the content of the Code currently in force. The EESC does not intend to analyse these provisions in detail, as they have already been discussed extensively during the consultations held with stakeholders before the text was drawn up. It will therefore merely comment on a few articles of particular interest.

4.2 Article 55 states that a customs debt is incurred even in the case of smuggled or illegally-trafficked goods (defined as 'goods which are subject to measures of prohibition or restriction on importation or exportation of any kind'): customs duties are due in any event, without prejudice to the application of other criminal or administrative measures. However, counterfeit currency and narcotic drugs which do not enter the authorised circuits are exempt from the customs debt; these kinds of trafficking are clearly viewed purely as criminal offences, except in cases where a Member State's legislation requires customs duties to serve as the basis for determining financial penalties. Despite an opinion to the contrary from the European Court of Justice, the EESC does not believe that customs authorities should be deprived of the legitimate income they would have gained from establishing a customs debt — administrative and criminal penalties apart — at least in the case of narcotic drugs, whose value could be set at the respective market price. The fact that a drug is imported illegally does not change the fact that it is still an import. In other words, while the reason for exempting counterfeit currency is clear, the reason for exempting narcotic drugs is not.

4.3 Under Article 61, customs authorities may authorise an operator to provide a comprehensive guarantee to cover its customs debts. Article 64 states that one of the forms that this guarantee can take is an undertaking given by a guarantor, and Article 66 specifies that it can be provided by a 'bank or other officially recognised financial institution accredited in the Community'. This provision is important in that it acknowledges that any bank or financial institution from any European country can provide a valid guarantee for customs in another country: this is an important principle which is already in force but which in practice is often obstructed by customs in various countries. However, it is not yet clear what is meant by the phrases 'officially recognised' and 'accredited in the Community': the EESC feels that they are superfluous and misleading, as banks and financial institutions established in the Community already have a 'European passport' and no further indications are necessary.

4.4 Again on the subject of guarantees, Article 83 gives the Commission the possibility, again under the 'Article 196' procedure, of adopting a 'special procedure' for securing payment from guarantors. However, no information is given as to what the special procedure consists of or its scope. If this is a reference to the petition for prosecution of the guarantor 'at the first request' it is certainly nothing new, as this kind of guarantee already exists and is provided for by other regulations (such as the EU Financial Regulation). If, however, other formulas are implied, it would be as well to specify them because the cost of a guarantee varies according to the risk and the procedures for prosecuting the guarantor.

4.5 Furthermore, Article 83 stipulates that interest on customs debts is to be charged for the period between the date of expiry and the date of actual payment; Article 84 caters for the opposite case, where it is a customs authority which is in debt towards the importer or exporter: here, it is explicitly stipulated that no interest is due for the first three months. The EESC stresses this clear, unacceptable discrepancy between the ways in which the public authority and the general public are treated.

5. **Title IX: Customs Code Committee and final provisions**

5.1 The provisions of this title are essential for understanding the Code's structure and scope. The keystone is Article 196, which states that in implementing the legislation 'the Commission shall be assisted by the Customs Code Committee, hereinafter referred to as "the Committee"', acting under 'Articles 4 and 7 of Decision 1999/468/EC' and 'having regard to the provisions of Article 8 thereof'. In practice, this means that the Commission has the power — albeit with the assistance of the committee — to regulate all aspects of the Customs Code, in line with normal Community procedure. The EESC has no objection to this but trusts that the rules adopted will respect users' needs and will be sufficiently flexible as to be able to be updated at the appropriate time in line with progress in techniques, technology and commercial practice.

5.2 Under the powers conferred on it by Article 196, the Commission (Article 194) can adopt measures laying down:

— rules and standards for the interoperability of customs systems;

— 'the cases in which, and the conditions under which, the Commission may issue decisions requesting Member States to revoke or amend a decision';

— 'any other implementing measures, where necessary, including where the Community accepts commitments and obligations in relation to international agreements which require the adaptation of provisions of the Code'.

5.2.1 The Commission's powers are therefore fairly broad and include the right to determine, itself (second indent), the cases in which, and conditions under which, Member States may be required to revoke or amend a decision. The EESC notes that while, in the cases covered by the first and third indents, the Commission is performing its institutional role of coordinating and implementing decisions adopted or endorsed by the Council, in the case of the second indent it is exercising power in an anomalous way, even though, all things considered, this may be justified by circumstances and the EESC is certainly not opposed to it.

5.2.2 On a general note, the EESC points out that the decision to carry out controls on operations of all kinds effected by the public — including commercial transactions and customs work — will affect free trade, and that it derives from political decisions, endorsed by the EU and the Member States within their different remits. The Commission, of course, implements these decisions.

5.2.3 The EESC hopes that the customs reform will not upset the necessary balance between free trade and users' and end-consumers' safety and security, and that it will be carried out with due respect for the professionalism of customs staff and importers/exporters' employees.

Brussels, 5 July 2006.

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

Opinion of the European Economic and Social Committee on the White Paper on Financial Services Policy 2005-2010

COM(2005) 629 final

(2006/C 309/06)

On 1 December 2005 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *White Paper on Financial Services Policy 2005-2010*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 May 2006. The rapporteur was Mr Iozia.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 152 votes to one with nine abstentions.

1. **Conclusions and proposals**

1.1 The EESC supports the Commission's proposal to devote the next five years to the *dynamic consolidation* of the financial services industry by implementing and strengthening current legislation and by simultaneously avoiding excessive regulatory additions (so-called *gold-plating*), while respecting the spirit of the Lisbon Strategy and the features of the European social model.

1.2 It is essential, not least in the opinion of the EESC, that the role and activities of supervisory authorities be enhanced, thereby optimising coordination as provided for level-3 committees under the Lamfalussy process.

1.2.1 The EESC believes that it would be **premature at this point to establish a single EU supervisory authority** that could, in future, promote market integration, but considers it would be useful to recommend that European authorities **identify a main supervisory authority**, the one situated in the (home) country of the parent company, which would also be entrusted with the task of supervising the activities of subsidiaries and controlled companies situated in other EU Member States. The advantages that would be gained by European-scale companies and consumers are obvious.

1.3 The growing importance of financial activities in the economy (often referred to as the financialisation of the economy) is underpinned by the improved efficiency of financial transactions. Although the financialisation of the economy is reflected in a significant capacity for economic and job growth in the financial sector, it can also adversely affect the whole economy. The power of stock markets focused on shareholder value can also thwart industrial strategies. Commercial

and financial pressures can lead to problems in the long term and, as is the case at the moment, lead to unplanned takeover bids, a large percentage of which have led to the destruction of value in the short term.

1.3.1 It must be remembered however that, at least in the short- to medium-term, in the wake of consolidation, there are fewer jobs in the financial industry, **which gives rise to growing insecurity among the workforce**. The EESC stresses the need to take account of the social consequences of consolidation and hopes that the Member States would **adopt appropriate social shock absorbers and support professional training and retraining schemes**, which are vital in achieving the objectives of the Lisbon strategy.

1.4 The EESC endorses the objectives of simplification, codification and a commitment towards clarification with a view to achieving 'better regulation' and to this end warmly welcomes the Commission's continued commitment to **frequent and open consultation with all stakeholders**, and to carrying out **impact assessments** prior to every new proposal, including the **social and environmental dimensions** and external factors impacting on the whole economic system.

1.4.1 The EESC calls for work on the FSAP to be given a higher profile and to be more widely debated, not exclusively by experts.

1.5 The EESC welcomes the Commission's proposal to issue a Communication/Recommendation on UCITS, with a view to overcoming current obstacles to the free circulation of these financial instruments.

1.6 It is essential to strengthen consumer information, financial culture and awareness. The Commission's intention, therefore, to launch specific initiatives with European consumer associations, is welcome, but the Commission should deal more actively with the Member States, in order that they can be persuaded to establish more robust ways of involving stakeholders at national level. The EESC is happy to contribute to these initiatives by working in tandem with consumer associations and national ESCs.

1.7 Current supervisory rules, which differ across Member States, force companies to comply with requirements in connection with drawing up balance sheets and providing company information. Adoption of the IFRS could represent the ideal opportunity to standardise these information requirements at EU level. The EESC notes that the IASB, a privately-funded international standards body does not fully reflect the present world economic situation and hopes that it will be willing to cooperate internationally with other bodies, for example the European Commission.

1.8 With regard to the directives on the retail market, the EESC reserves the right to comment specifically on the directive on consumer credit, which should be approved as soon as possible, and on the directive on payments services, for which it is drawing up a separate opinion. With regard to the directive on mortgage credit, however, the EESC, though supporting the objectives, has expressed well-grounded concerns about the feasibility of early integration of the credits market. Lastly, as regards clearing and settlement arrangements, the EESC would warmly welcome the adoption of a framework directive.

1.9 The Commission has expressed doubts on adopting the so-called '26th regime' in the area of financial services. The EESC takes note of this and declares that it is willing to assess — once they have been laid down — the conditions for effective application, which must always protect the interests of consumers and provide them with genuine value.

1.10 With regard to future initiatives, the EESC has shown:

— the usefulness of action in the area of UCITS, which aims to bring the regulatory standards of unit-linked policies into line with the other financial products;

— the importance of **ensuring access to a bank account**;

— the need to **remove obstacles to the mobility of cross-border bank accounts**.

1.11 The EESC is convinced that European standards regulating financial services are of a very high quality and that the EU can look forward to becoming a point of reference for all the other countries. Europe should open up a dialogue with both newly-industrialised countries (such as India, Brazil and China), as the Commission is suggesting, and less developed countries that need substantial assistance to develop their financial services markets.

1.12 The EESC supports all European and national institutions in their fight against crime and terrorism. Here again, in line with the Commission's emphasis on the need for the financial system to provide full and ongoing cooperation with the competent authorities, the EESC supports and reiterates this call to both the financial institutions and the competent authorities who ought to inform the financial intermediaries of the follow-up given to the information provided.

2. **Background**

2.1 The White Paper on Financial Services Policy 2005-2010 sets out several objectives aimed at the **dynamic consolidation** of the financial services industry, recognising that an efficient financial market is the cornerstone of an economic growth and development strategy. *Dynamic consolidation* is the leitmotiv of the White Paper, which sets the objective of removing the remaining barriers to the free circulation of financial services and capital, notwithstanding the significant progress already made by the 1999-2005 FSAP.

2.2 The key role of regulation for the functioning of financial markets warrants the focus and emphasis given by the White Paper to the need to implement and strengthen existing legislation, **and at the same time avoids excessive regulatory additions** (so-called *gold-plating*), particularly by Member States.

2.3 Analysis of the legal framework must include **consideration of the limits, remit and coordination responsibilities of supervisory authorities within the EU**. While in the current climate, maintaining a national approach to supervision may still remain the best form of consumer and investor protection, it is important to recognise the two significant problems inherent to this approach.

2.3.1 Not integrating supervision at supranational level substantially limits market integration. It is therefore necessary to **promote and strengthen close cooperation between Member State authorities**. Risk management in the major European banks with operations in several Member States, is implemented at group level on a consolidated basis. The supervisory authorities must be in a position to accurately assess the risk profile of these major European groups.

2.3.2 The retention of a substantial national-level element in supervision must not provide an opportunity for raising those barriers against *dynamic consolidation* at EU level whose gradual removal is called for by the White Paper.

3. General comments

3.1 In a recent opinion, the EESC set out its views on the *Green Paper on Financial Services Policy (2005-2010)*. As the White Paper incorporates many of the proposals set out there, the EESC reiterates views already put forward and will briefly recapitulate them in this opinion ([1]).

3.1.1 The White Paper highlights the **economic and employment growth potential of the financial services industry**. The Committee believes, however, that this central premise of the document must be considered carefully and realistically, in light of various well-documented facts.

3.2 The industry consolidation process can lead to greater efficiency and economies of scale, which can ultimately benefit shareholders of intermediaries' risk capital (through increased return on invested capital) and financial services users (through a reduction in the cost of those services).

3.3 At the same time, however, substantial empirical evidence points to **reduced employment in the financial industry following consolidation, which gives rise to growing insecurity among the workforce**. There is no concealing the fact that business plans presented during mergers and acquisitions focus mainly on cost savings achieved by lowering labour costs. **While in the short term, consolidation may lead to a net loss of jobs, it should also be recognised, however, that it provides room for the development of innovative services and areas of activity, which will in turn have a positive impact on employment**. By lowering the barriers which hinder financial service providers from fully exploiting the synergies of cross-border mergers, banks would be able to provide their services at a lower cost, which would ensure that pricing policies were more attractive to customers and, consequently, boost demand. As a result, financial intermediaries would step up investment, which would have positive repercussions, not least in terms of employment. These new jobs, with certain exceptions, such as call centre and back office functions, generally attract more highly qualified and better-paid professional profiles.

3.4 While accepting, therefore, that industry consolidation does not have an overall negative effect on employment, the EESC firmly stresses that **the gap in terms of both time and different professional qualifications that exists between the loss and creation of new jobs cannot be ignored**. At a time when the emphasis is shifting from job protection to employment possibilities, Member States should give priority to supporting professional training and retraining schemes, as well as providing an appropriate system of social shock absorbers.

3.5 If workers see that they can readily put their qualifications and skills to use, even in a rapidly changing economy, they will be less reluctant to accept the decreased job stability entailed by the *dynamic consolidation* of the industry. This observation should prompt recognition of **professional training as not only an instrument for containing social instability, but also as a vital factor in the long-term success of the *dynamic consolidation* plan and, more generally, of the Lisbon Strategy, which aims to transform the European economy into the most important *knowledge-based economy* in the world.** Moreover, an appropriate social network which would contribute to mitigate the often serious effects of these stages of transition needs to be created.

4. Specific comments

4.1 *Better regulation*

4.1.1 The three guiding principles on the road to better regulation are identified as **simplification, codification and clarification**. It is important to move in this direction in order to ensure legal consistency, simplified application and uniform implementation.

([1]) OJ C 65 of 17.3.2006.

4.1.2 The EESC welcomes the Commission's proposals on *better regulation,* in particular its continued commitment to **frequent and open consultation with all stakeholders**, its commitment to carrying out **impact assessments** for every new proposal, centring on economic costs and benefits in the broad sense, including the **social and environmental dimensions**. A commitment, together with the Council and the Parliament, to improve the quality of legislation and the external factors impacting on the whole economic system is equally important.

4.1.3 The EESC shares the Commission's view of the challenge of ensuring that EU legislation is both properly implemented on time and that it is subsequently properly applied by the 25 Member States, with further enlargements in the pipeline. The Committee also concurs with **the need to curb *gold-plating***, i.e. unilaterally adopting additional regulations that go against the principle of the single market. In fact, **the unjustifiable variety of national consumer protection regulations is one of the principal obstacles to the integration of financial services across the EU**.

4.1.4 The EESC also stresses the fundamental importance of **ex-post evaluations** of whether the rules actually achieve their objectives and, at least for the sectors covered by the so-called *Lamfalussy process,* of whether markets evolve in line with the expectations it contains.

4.1.5 Ensuring consistency between EU and national legislation must begin with the **most significant sectors** or where there are the greatest harmonisation and legal consolidation difficulties, as in the case of **UCITS distribution and marketing**. Increased competition and efficiency in this sector inevitably brings about greater scope for distribution and marketing, which are still greatly hindered by an ill-defined legal framework. We therefore particularly welcome the Commission's proposal to issue a communication/recommendation in the course of 2006 and a white paper on asset management in November.

4.1.6 The Commission will propose to **incorporate 16 existing insurance directives into a single directive**. The EESC supports this codification proposal and considers it an excellent example, which should also be followed in other areas, by adopting legislation aimed at bringing together, simplifying and streamlining all of the issues covered by the various directives.

4.1.7 The EESC also endorses the use of **infringement proceedings** where any incorrect implementation or application of Community law is found, but must point out that, in recent times, the Commission has been greatly influenced by the Council and has been increasingly reluctant to go down this road.

4.1.8 The improvement and rationalisation of the retail financial services industry must not overlook the **issue of consumer information, education and awareness** — these factors are essential to the maximum effectiveness of any legal framework. The EESC strongly backs the Commission's intention, therefore, to **launch specific initiatives at EU level with consumer associations and financial industry representatives**, but feels that the Commission should make greater efforts to ensure that at national level such practices are highly recommended, if not mandatory. The **EU consumer newsletter**, is, in theory, an excellent initiative. The Commission must be aware, however, that information tools must have an element of proximity to the consumer. The EESC calls on the Commission to work with the Council and the Parliament, to ensure that **more robust ways of involving stakeholders at national level** are examined, based along the lines of what it envisages at EU level. Developing FIN-NET, a tool that is currently unknown to the vast majority of consumers, is a step in the right direction. In connection with the review of the role of this instrument, the EESC recommends involving both consumer and civil society organisations and the social players, and could itself support the initiative by, for example, working in tandem with national consumer associations and ESCs.

4.1.9 The EESC believes that at a time when the Commission is stressing the importance of circulating information, particularly among consumers, investors and financial industry employees, **the issue of the language in which documents are available must not be underestimated**. The Commission needs to focus on this issue, sparing no effort in ensuring that the essential documents at least are available in as many languages as possible.

4.1.10 The EESC welcomes the **attention given to consumers and to bank and financial services staff** and to their regular consultation on major issues. The added value of market integration lies in consumer satisfaction, while due attention must be paid to the social impact of decisions taken. Nevertheless, previous financial directives have not always taken this approach. The observations put forward in the *General comments* section of this opinion are intended to firmly stress this perspective.

4.1.11 With regard to **interaction with other areas of EU economic policy**, the EESC has already highlighted that, for the major European groups ([2]), the **VAT system** can hinder the strengthening of financial services and is pleased that the Commission intends to present a legislative proposal in this regard. Particular attention needs to be given to assessing the economic, social and environmental impact of the desired VAT harmonisation process. The EESC has also shown how the current situation could hinder the complete integration and full development of the financial market. Furthermore, the EESC

([2]) OJ C 65 of 17.3.2006.

highlights the case of **outsourcing, which could be greatly incentivised by a non-harmonised taxation system**, with negative effects on employment, on the quality of services and on the reliability of the whole system. The EESC hopes that this subject will be given careful consideration, given that various instances of outsourcing have had less than ideal results.

4.2 *Ensuring the right regulatory and supervisory structures*

4.2.1 The objective of **increased coordination of market supervisory authorities** is clearly one we would share. This objective could be facilitated by giving an **increasingly decisive role to level-3 committees**, and harmonising the responsibilities of their members under the Lamfalussy process, as part of the completion of the EU legal framework. This would result in both an easing of the Commission's workload and a decreased risk of *goldplating* by Member States or supervisory authorities.

4.2.2 The EESC believes that it would be premature at this point to consider establishing a single EU supervisory authority which would be responsible for coordinating supervisory activities. Nonetheless, the Committee believes that national supervisory authorities must engage in active and continuous cooperation, and work towards establishing **common codes of conduct and standard procedures**. The ensuing increase in mutual trust would represent a first step on the road to the future establishment of an EU supervisory authority for the major financial, banking and insurance groups operating in various Member States. One of the first important decisions to be made should be to identify a main supervisory authority situated in the country hosting the parent company, which would be responsible for supervising subsidiaries and controlled companies situated in other European states. Multinationals and supervisory authorities could effectively benefit from the single market, by not having to repeatedly present balance sheets and information documents and by not having to take account of different national regulations.

4.2.3 The method used, for instance, in the Market Abuse Directive should be promoted. The presentation of a very detailed draft directive ensured a high level of uniformity in its subsequent transposition, leaving a significant margin of responsibility to regulators: this was also shared at EU level, and specified the duties to be transferred to the remit of the various supervisory authorities.

4.2.4 **The adoption of the IFRS** was an important opportunity to streamline financial reporting by business management and bring it in line with modern standards. It could also represent an opportunity to **standardise at EU level the types of data that intermediaries must present to their respective supervisory authorities**. The EESC believes that with the adoption of the IFRS there are no longer any grounds for deferring or delaying the achievement of this objective, which is a pre-requisite for efficient and effective supervisory coordination and cooperation at EU level. Nevertheless, these should be brought into line with the corresponding objectives of the EU Solvency II project. Those companies which have not yet harmonised their balance sheets and consolidated balance sheets with the IFRS should not however be at a disadvantage compared with companies that are obliged to do so.

4.3 *Current and future legislative initiatives*

4.3.1 Current legislative initiatives

4.3.1.1 Retail banking is covered by three major initiatives. With regard to **mortgage credit**, the EESC [3] has already expressed well-grounded concerns about the feasibility of integrating the market, in the light of legal implications and significant difficulties which were outlined in a recent opinion. The EESC awaits the Commission's line of approach and replies to the objections submitted.

4.3.1.2 The amendments to the directive on consumer credit proposed by the Commission, currently under examination by the European Parliament, improve the previous proposal without fully meeting the needs of consumers. The EESC awaits the outcome of the examination and hopes that the directive will be approved shortly.

4.3.1.3 The **payments services directive** also has an important role to play. Cross-border payments services are still something of a grey area. The financial system must subject itself to the competition, transparency and comparability rules issued by DG Competition. The creation of a Single European Payment Area (SEPA) by 2010 is an ambitious and desirable objective that will ensure that cross-border payments are more efficient and provide consumers with a guarantee. However, it must be taken into consideration that efficient and low-cost systems (such as the direct debit system) are already in place in some Member States. When the SEPA is implemented, the users' interests must be taken into account and added value provided. The EESC is currently drawing up an opinion — specifically on payments services — in which the Committee will set out its detailed assessment.

4.3.1.4 The reappraisal of the **notion of qualifying shareholdings**, through the revision of Articles 16 and 15 of, respectively, the Banking Directive and the Insurance Directive, is a key initiative to prevent certain supervisory authorities from hindering the balanced development of the internal market, using the prudential management of financial systems as a pretext. The EESC considers that improving the efficiency of a system, rather than limiting the transfer of control of companies, offers the best guarantee of its stability.

[3] OJ C 65 of 17.3.2006.

4.3.1.5 As regards **clearing and settlement arrangements**, the lack of a regulatory framework has contributed to the persistence of serious diseconomies and genuine abuses. Cross-border settlement and clearing infrastructures are more costly and less efficient than national ones. The EESC would warmly welcome the issue of a framework directive with a view to increasing the competitive capacity of European operators, not least when competing internationally. An efficient and well-ordered market attracts investment and Europe needs to attract investment if it genuinely wishes to pursue the objectives of economic and job growth.

4.3.2 The current debate

4.3.2.1 The EESC agrees with the Commission's assessments following its examination of the unjustified barriers to the full achievement of free movement of capital and cross-border investments.

4.3.2.2 The Commission has expressed doubts on the so-called **'26th regime' in the area of financial services**. On the other hand, the minimum harmonisation principle has created too many differences. The **'home country'** principle has been a formidable instrument of liberalisation and competition within the EU. Indeed, the more solidly **mutual trust** over the quality of internal legislation in each Member State is anchored, the more fully this principle will be accepted by the Member. In this regard, the goal of full **harmonisation of rules is a significant catalyst, enriching and consolidating these trust-based relations** which underpin the progressive creation of a common culture. This should lead to the harmonisation of the essential provisions of financial services contracts. The EESC would like to point out that, on the other hand, no evidence of the (effective) applicability of the 26th regime has been adopted so far and that the Commission should, in any case, conduct an in-depth assessment of its application. In a recent opinion, the EESC stated that: *'[the] 26th regime (…) could be a valid option only after it has been ascertained, through a thorough study of the laws and contracts of all 25 countries, that the "parallel" instrument does not contravene the rules and laws of any of them. **At all events, it is necessary that standardisation rules should not hinder the supply of new products and thus become a brake on innovation***' ([4]).

4.3.3 Future initiatives

4.3.3.1 In its recent opinion on the Green Paper of July 2005, the EESC has shown the **usefulness of action in the area of UCITS** ([5]). *'Investment funds compete against financial products such as unit-linked policies, perceived as comparable by investors, despite the fact that they are governed by a very different legal framework. This can distort investors' choices with negative repercussions on cost and risk levels in the investments concerned. The EESC believes that this problem cannot be addressed with reduced competition or by easing the restrictions and guarantees imposed on investment funds. We would call instead for an upward adjustment of standards so that financial products that are perceived as being a direct alternative to investment funds are subject to regulatory requirements that are comparable to those pertaining to such funds.'* The imbalance in the requirements of funds and unit-linked policies, the incomplete development of the European Passport due to the obstacles that certain supervisory authorities continue to create, the lack of transparency of costs, especially exit costs, and market fragmentation with the associated high costs are some of the problems outlined. Nevertheless, the EESC expresses concern at the development, in some Member States, of guaranteed capital funds without the need for the management company to have sufficient own funds, with the result that, in the event of particularly disadvantageous market trends, consumers could be inadequately protected. The EESC calls on the Commission to remedy this shortcoming, by establishing appropriate corporate responsibility obligations for companies issuing guaranteed capital funds and by setting a precise and adequate level of monitoring. The EESC is particularly aware of the pressure to achieve more efficient UCITS, not least due to the fact that, being a significant component of pension fund schemes, they can make a substantial contribution to resolving a problem that was rightly pointed out at the beginning of the White Paper, i.e. the financing of the considerable pensions deficit which affects most European economies.

4.3.3.2 The EESC agrees with the Commission on the importance, which is not merely economic, of having **access to a bank account**. In modern economies, having a bank account in practice confers a kind of economic citizenship on individuals. In certain Member States, this citizenship right is legally recognised, thereby obliging the financial system to ensure that basic banking services can be provided at minimum cost. In other EU countries, a strong awareness of the issue is spreading among companies, which, for a few euros a month, offer a 'package' of services associated with current accounts.

4.3.3.3 The aim to **remove obstacles to the mobility of cross-border accounts** is commendable and could contribute to lowering bank charges. The possibility of opening online bank accounts could actually bring the objective of ensuring intra-European mobility of accounts within reach. However, it must be remembered that not all consumers are IT-oriented. The Commission should propose a satisfactory alternative for these people, who usually belong to the more vulnerable sectors of the population. It must be emphasised that only the consolidation of effective and constructive cooperation between

([4]) OJ C 65 of 17.3.2006.
([5]) OJ C 110 of 17.5.2006.

the supervisory authorities can give concrete form to this possibility. Acting on proposals set out in the White Paper, on 16 May 2006 the European Commission [6] decided to entrust an expert group with the task of assessing customer mobility in relation to bank accounts.

4.4 *The external dimension*

4.4.1 The Commission's ambitious goal of giving Europe a leading role in setting standards at global level is certainly to be welcomed. Furthermore, in line with the recommendations of the Doha Round, the EESC hopes that Europe will steer the most advanced countries in a commitment to provide less developed countries with proper technical and financial assistance in regulatory and implementation issues relating to the agreements and standards adopted. The advance of international integration must also take account of the **needs of weaker economies** which need to attract investment. The EESC trusts that the Commission will bear these needs in mind during negotiations and discussions with the other more advanced economies.

4.4.2 The EESC supports the Commission and the other European institutions in their fight against all kinds of criminal activities — frequently connected with international terrorism — and is committed to combating the criminal use of financial systems. There are many types of economic crime: corporate and commercial fraud, money laundering, tax evasion and corruption. Illicit funds are frequently channelled through financial services systems to serve criminal ends. The EESC calls on the financial institutions to provide the best possible assistance to the authorities concerned, who, on the other hand, should take sufficient heed of their recommendations. If financial institutions are kept abreast of the follow-up given to information supplied to the authorities in connection with suspect transactions, they will be more motivated to continue and step up the efforts required.

Brussels, 5 July 2006.

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

[6] Commission Decision 2006/355/EC of 16 May 2006 setting up an expert group on customer mobility in relation to bank accounts (OJ L 132 of 19.5.2006).

Opinion of the European Economic and Social Committee on the Proposal for a Council Decision approving the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999

COM(2005) 687 final — 2005/0273 (CNS)

and the

Proposal for a Council Regulation amending Regulation (EC) No 6/2002 and Regulation (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

COM(2005) 689 final — 2005/0274 (CNS)

(2006/C 309/07)

On 17 February 2006 the Council decided to consult the European Economic and Social Committee, under Articles 308 and 300 of the Treaty establishing the European Community, on the abovementioned proposal.

On 14 February 2006 the Council decided to consult the European Economic and Social Committee, under Article 308 of the Treaty establishing the European Community, on the

Proposal for a Council regulation amending Regulation (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

COM(2005) 689 final — 2005/0274 (CNS).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 May 2006. The rapporteur was Mr Bryan Cassidy.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 155 votes to 3 with 2 abstentions.

1. Executive summary of EESC conclusions and recommendations

The two Commission proposals are linked and will therefore be taken in one document for the purposes of the EESC's consideration.

The EESC fully supports the Commission proposals.

2. Main elements of the Commission proposals

2.1 These proposals seek to establish a link between the Community registered design system and the Hague system for the international registration of industrial designs, by the accession of the EC to the Geneva Act of the Hague Agreement. The first proposal is to accede to the Act. The second is to amend the relevant Regulations to make this possible.

2.2 The Hague System is based on the Hague Agreement concerning the International Registration on Industrial Designs. This Agreement is constituted by three different Acts; the 1934 London Act, the 1960 the Hague Act and the 1999 Geneva Act. The three acts are autonomous and coexist with respect to their substantive provisions. Contracting parties may decide to become party to only one, two or all three Acts. They automatically become members of the Hague Union, which at present has 42 Contracting States, including 12 EU members ([1]).

2.3 Accession would allow designers throughout the EC to protect new and original designs in any of the Geneva Act countries with a single application. It would add another route by which applicants could protect their designs, with protection available at a national level, at Community level through the Community Registered Design and internationally through the Hague system.

2.4 The result would be a simpler, more economically efficient and cost effective system. Under the Hague system, applicants are not required to provide translations of documents, do not have to pay separate fees to offices and agents in different countries, nor do they have to keep watch on the different deadlines for renewal of national applications. Instead, a single application is deposited at a single location with a single fee, resulting in multiple international registered design rights in nominated Geneva Act countries.

([1]) They are: Belgium, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Slovenia and Spain. The EU itself is not at present a member of the Hague system.

2.5 The Community design system allows designers to protect new and original designs, which are characterised by their visual appearance, by the granting of individual monopolies over registered designs, which are unitary in character and valid throughout the EC. Registered design rights also exist in each of the Member States but the Community design is an economical and convenient way of obtaining uniform protection throughout the Community by any business operating in the European market.

2.6 The Hague Agreement Concerning International Registration of Industrial Designs provides a system, administered by the World Intellectual Property Organisation (WIPO) by which filing a single design application together with a single fee will result in a bundle of registered designs in nominated contracting states. The Hague system can be used by any resident or national of or business established in a state, which is party to the Agreement. At present WIPO does not receive applications filed though national offices. Direct filing at WIPO avoids confusion and duplication and the possibility of overpayment to the OHIM.

2.7 One of the advantages of the Hague system is that it facilitates the modification of design protection and renewal at its expiry.

2.8 The Geneva Act of the Hague Agreement entered into force on 23 December 2003. Among other modifications to make the system more accessible, it allows for the accession of intergovernmental organisations such as the EC to the Hague system. Currently, 19 countries are parties to the Geneva Act including Switzerland, Singapore and Turkey. A number of Member States have yet to sign and/or ratify.

2.9 The Geneva Act allows applications in only one of two official languages — English and French.

2.10 The United States is due to accede to the Act in November 2006 and accession by both the EU and the US should encourage other major trading partners (China, Japan, Korea) to accede allowing registration in several significant countries.

2.11 The proposal establishes a link between the EC, which is regarded as a single country under the Act and the Hague system thereby increasing its usefulness.

3. **Specific comments**

3.1 The proposal for a Council Decision [COM(2005) 687 final] allows the EC to act as a single country in the Hague union in relation to the Community Design system. The amendment to regulation EC/6/2002 (Community Designs Regulation) gives effect to the accession to the Geneva Act.

3.2 The amendment of regulation EC/40/94 (the Community Trade Mark Regulation) allows for the Office for Harmonization in the Internal Market (OHIM) in Alicante to accept fees for designs registered under the Geneva Act.

3.3 The legal base for the proposal to amend these two Community Regulations is Article 308 of the EC Treaty.

3.4 The European Parliament is consulted. The two proposals are not subject to co-decision.

3.5 Voting in the Council is by unanimity.

4. **Costs**

4.1 It is not expected that additional costs will be incurred by this proposal as it concerns amendments to Regulations which have direct applicability to Member States.

4.2 Currently, design registrations are subject to filing fees and renewal fees in each country in which they are filed. Typical national filing fees are estimated to be generally under EUR 100 but in addition, there is the cost and inconvenience of currency conversion when filing internationally.

Brussels, 5 July 2006.

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 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)

COM(2005) 705 final — 2005/0277 (COD)

(2006/C 309/08)

On 1 March 2006 the Council decided to consult the European Economic and Social Committee, under Articles 167 and 172(2) 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 31 May 2006. The rapporteur was Mr Wolf.

At its 428th plenary session, held on 5-6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 152 votes to 1, with 3 abstentions:

1. **Summary**

1.1 The Commission proposal concerns the conditions, rules and procedures according to which undertakings, universities, research centres and other legal persons receive support from the Seventh R&D Framework Programme.

1.2 The Committee welcomes the majority of the proposed regulations and views them as improvements with the potential to bring about a considerable simplification of the administrative procedures. In that connection, the Committee recommends that there also be greater standardisation and more consistent application as regards the Commission's internal implementing rules, which are still pending (in the applicable criteria, for example).

1.3 However, since the Commission's internal implementing rules are still pending, some of the specific outcomes of the proposed regulations cannot yet be assessed. In such cases (e.g. reimbursement of additional costs), the Committee recommends retaining the existing rules at least for the time being, so that grant recipients do not lose out.

1.4 The Committee welcomes the planned new support ceilings for grant recipients and their respective areas of activity. In particular, it also welcomes the fact that this will lead to improvements in support for SMEs.

1.5 The Committee recommends the equal treatment of all research institutes that receive their core funding from the State, irrespective of their legal status.

1.6 The Committee recommends that in the future parties to contracts be given greater freedom in the contractual arrangements, but also in the choice of instruments. This concerns in particular access rights to foreground and/or background owned by one of the parties. Royalty-free access rights should be offered here as an option, but not unconditionally — as has been proposed for certain cases.

1.7 See chapter four for further details.

2. **Introduction**

2.1 In its proposal for the Seventh R&D Framework Programme (2007–2013) ([1]), abbreviated as the FP7, the Commission outlined the objectives, content, themes and budget for its support of research, technological development and demonstration activities during this period. The Committee has already adopted opinions on the framework programme ([2]) and on the preparatory and accompanying proposals in particular for the specific programmes ([3]).

2.2 The Commission proposal discussed here concerns the conditions, rules and procedures which apply to the participation of undertakings, universities, research centres and other legal persons in actions under the Seventh R&D Framework Programme, in the sense of their receiving support from the programme.

2.3 An important point which should be noted here is that the Commission intends to simplify the administrative procedures associated with research funding. This intention was welcomed and endorsed by previous opinions; for its part, the Committee reiterates its previous recommendation that administrative procedures should be made simpler and less burdensome, thus enhancing the effectiveness of the European research programme: *'as they stand, the application and approval procedures involve too much work and are too expensive, causing difficulties for scientific and industrial users. The European research programme must be a worthwhile venture for those taking part in it, including in terms of the risk involved in making the application. This also applies in particular to smaller players, such as SMEs or smaller research groups from universities and research centres'* ([4]). According to the Commission's statements, the proposed rules for participation are intended to bring about such simplification.

([1]) COM(2005) 119 final.
([2]) COM(2005) 439, 440, 441, 442, 443, 444, 445 final.
([3]) OJ C 65, 17.3.2006 and CESE 583/2006.
([4]) OJ C 65, 17.3.2006.

2.4 The Commission proposal thus explains the applicable rules aimed at ensuring that Community funding for research and development under FP7 is as effective, efficient and fair as possible.

2.5 The proposed rules for the participation of undertakings, research centres and universities should therefore 'provide a coherent and transparent framework to ensure efficient implementation and ease of access for all participants in the Seventh Framework Programme'. They are intended to promote a wide range of undertakings, research centres and universities and enable participation from the outermost regions of the Community.

3. **Gist of the Commission document**

3.1 The Rules for Participation for the Seventh Framework Programme proposed by the Commission are intended to implement many aspects of that simplification and to build upon principles established in the Sixth Framework Programme (FP6). A few important points are briefly summarised in this chapter.

3.2 The Commission's proposal covers the following aspects: introductory provisions, conditions for participation in indirect actions and the relevant procedures, the Community financial contribution, rules for dissemination and use of findings, access rights to and protection of background and foreground, and the role of the European Investment Bank.

3.3 *Conditions for participation in indirect actions*

3.3.1 At least three legal entities must participate in indirect actions, each of which is established in a Member State or associated country, and no two of which are established in the same Member State or associated country.

3.3.2 For coordination and support actions, and actions in favour of training and career development of researchers, the minimum condition is the participation of one legal entity.

3.3.3 For indirect actions to support investigator-driven 'frontier' research projects funded in the framework of the European Research Council, the minimum condition is the participation of one legal entity established in a Member State or in an associated country.

3.4 *Community financial contribution*

3.4.1 For research and technological development activities, the Community financial contribution may reach a maximum of 50 % of the total eligible costs.

3.4.1.1 However, in the case of public bodies, secondary and higher education establishments, research organisations ([5]) and SMEs, it may reach a maximum of 75 % of the total eligible costs.

3.4.2 For demonstration activities, the Community financial contribution may reach a maximum of 50 % of the total eligible costs.

([5]) The term 'research organisation' is defined in Article 2.3 of the Commission proposal; the terms 'research institute' and 'research centre' are also used elsewhere in the proposal as synonyms.

3.4.3 For activities supported by frontier research actions, coordination and support actions, and actions for the training and career development of researchers, the Community financial contribution may reach a maximum of 100 % of the total eligible costs.

3.4.4 For management and audit certificates, and other activities not covered by paragraphs 1, 2 and 3 of Article 33, the Community financial contribution may reach a maximum of 100 % of the total eligible costs.

3.4.5 For Networks of Excellence, a special lump sum is proposed. The amount of the lump sum is established by the rules for participation as a fixed amount calculated according to the number of researchers to be integrated in the Network of Excellence and the duration of the action.

3.5 *Other rules*

— The Rules identify the procedures for issuing calls for proposals, for submission, evaluation, selection, award and support for proposals.

— The evaluation process developed for previous framework programmes is continued without major changes. A model grant agreement will be established by the Commission that will establish the rights and obligations of participants vis-à-vis the Community and each other.

— Three forms of grants are proposed: reimbursement of eligible costs, lump sums, and flat-rate financing. For frontier research actions, the European Research Council's Scientific Council will propose appropriate funding arrangements.

3.6 There should be as much continuity as possible in the rules for dissemination and use and access rights (ownership, protection, publication, dissemination and use, and access rights to background and foreground). The changes should allow participants more flexibility as their projects progress. The option of excluding background and of defining terms and conditions other than those established by the Rules remains. The coherence of dissemination and publication requirements has been improved.

3.7 As in the Sixth Framework Programme (FP6), participants in a consortium will have the responsibility to fully carry out the tasks entrusted to them even if one of the participants fails to comply with assigned tasks. However, the principle of financial collective responsibility established in FP6 for most actions is not continued. Depending on an assessment of the risks inherent in European research funding to the Community budget, a mechanism may be introduced to cover the **financial risk** of a participant's failure to reimburse any amount due to the Community. Therefore, bank guarantees are only to be requested in the rare case in which pre-financing represents over 80 % of the grant.

4. **The Committee's comments**

4.1 **Simplification.** The Committee supports the extremely important objective of simplifying all of the procedures that the Commission had been using until now or that the Commission has requested of R&D actors. The Committee sees its comments as a constructive contribution to their achievement and is aware that achieving this objective is not straightforward, given the general budgetary rules and the call for transparency — a call which the Committee itself subscribes to. It would be particularly useful to try out administrative procedures which have been simplified even further, within the limits of what is legally possible, on selected pilot projects; the resulting experiences could help in reaching decisions on future measures.

4.1.1 **Improvements**. The Committee recognises that the Commission has made efforts to achieve this aim and to ensure that the Community provides the best possible support for research. In that connection, it regards many points in these proposals as clear improvements to the existing procedures, for example with regard to reimbursement of costs (Articles 30 and 31), to forms of grant, as well as to grant agreements, contracts and appointment letters (Articles 18 and 19); however, in the latter case the new rules will only represent an improvement if payment and above all reporting arrangements are also simplified. In that connection, the Committee would also refer to its earlier recommendations on simplification ([6]), which, among other things, concern the harmonisation of the procedures requested by the Commission with those of other funding or supervisory bodies in terms of content and timetable ([7]).

4.1.2 **Standardisation.** Efforts to standardise the procedures followed or requested by the Commission — e.g. costing or credit rating — more closely also serve to meet the objective of simplification. In the interests of the Single Market and also of greater legal certainty, the Committee fully concurs with this ([8]). Unfortunately, full standardisation will not be achieved unless the various recipients of grants, such as universities, in the different Member States for their part apply standardised or aligned accounting systems.

4.2 **Other rules and measures**. To achieve simplification and standardisation, the Commission will need to adopt **further measures**, which are as yet only outlined in the proposal, for example in Article 16.4: *'The Commission shall adopt and publish rules to ensure consistent verification of the existence and legal status of participants in indirect actions as well as their financial capacity'*. Since these other rules, referred to henceforth as 'the Commission's internal implementing rules', are still pending, in certain cases it is still too early to assess what the impact of the corresponding proposals of the Commission will be.

4.2.1 **Consistent interpretation and criteria**. Furthermore, the Committee expects consistent interpretation of the Commission's internal implementing rules, especially those concerning the legal and financial aspects of projects, in all relevant Commission departments, enabling further progress towards simplification and standardisation and ensuring that the respective R&D actors do not lose out by comparison with existing arrangements. In general, the Committee recommends additional clarification in the Commission's internal implementing provisions to close any remaining loopholes in the Commission's proposal, in the interests of legal certainty.

4.2.2 **Support measures.** However, the **helpdesks** and '**clearing houses**' proposed or already provided by the Commission should ensure that the messages given out by the Commission are consistent and uniform. The Committee sees this as a important and useful measure. However, it should also be ensured that a consistent approach is followed in internal Commission procedures and in the requirements and decisions of **project officers**.

4.2.3 **Reporting requirements.** For example, it is also important to avoid situations, apart from in well justified exceptional cases, in which project officers request mid-term reports over and above what is required by the rules, and in which several versions of identical information have to be included in various reports ([9]). It is also important to standardise reporting requirements, not only in terms of formal requirements but also in terms of content.

4.2.4 **Mid-term assessment**. In view of the fact that the 7th Framework Programme will run for seven years, the Committee also recommends that a mid-term assessment of both the programme and the rules for participation be carried out halfway through this period in order to make any necessary adjustments.

4.2.5 **Project officers.** Another important requirement for simplification, standardisation and for effective administrative procedures in general, which also serves to maintain the necessary continuity (see next point), is for project officers to have detailed specialist knowledge of the subject in question and to know the persons concerned; project officers cannot confine themselves to a purely administrative role unless they have in-depth subject and background knowledge. The Committee would refer to its recommendations ([10]) on this point ([11]), which it has reiterated on several occasions.

4.3 **Continuity**. Given that any change in the rules means a break in continuity and additional friction, it is important to carefully consider whether the Commission's proposed changes would actually translate into significantly enhanced efficiency so as to outweigh such disruption, or whether it would be better to retain the existing rules. The Committee acknowledges

([6]) OJ C 110, 30.4.2004.
OJ C 157, 28.6.2005.
OJ C 65, 17.3.2006.

([7]) OJ C 157, 28.6.2005: **Preventing overlap and parallelism of administration and governing bodies**.

([8]) Going beyond what is envisaged by the Commission's proposal, it would even be desirable to standardise payment procedures for all Community support measures — including the CIP programme and Structural Funds — more closely.

([9]) See also the previous two footnotes.

([10]) e.g. point 9.8.4 in C 204 of 18.7.2000.

([11]) See footnote 6.

that the Commission's proposal envisages retaining many rules which have proved effective. However, in the case of some proposed changes it is not clear whether they would actually represent an improvement on existing rules. In such cases the Committee recommends that continuity should be the primary consideration.

4.4 **Community financial contribution — reimbursement and forms of support**. Subject to a satisfactory resolution of the questions which are still open (e.g. in point 4.5), the Committee sees the relevant Commission proposals as a substantial improvement and supports them.

4.4.1 **SMEs**. In particular, the Committee welcomes (Article 33-1, second sentence) the increase in support ceilings, e.g. ([12]) for **SMEs** from 50 % to 75 %. It sees this partly as a reflection of its earlier recommendation to offer more and better incentives for greater SME participation in the Seventh R&D Framework Programme and also to promote closer networking of SMEs and research institutes ([13]).

4.4.2 **Higher education establishments etc.** The Committee also welcomes the fact that support ceilings will rise to 75 % in public bodies, secondary and higher education establishments and research organisations as well (also Article 33-1, second sentence). In that connection, it recommends that Article 33 be worded more clearly so that it is possible to distinguish more easily between profit and non-profit making parties.

4.4.3 **Average rates for personnel costs**. The Committee believes that giving participants the option of applying average rates for personnel costs could help to achieve simplification (Article 31-3 (a)).

4.4.4 **Management costs.** In the interests of maintaining the necessary continuity, the Committee also welcomes the fact that 100 % reimbursement of **management costs** will continue. However, the proposal to unconditionally do away with the previous ceiling of 7 % for this type of expenditure could cause problems, unless stringent standards are applied to the necessary management costs in some other way. Admittedly, the previous 7 % ceiling was found to be too low, given that administration, coordination, etc. required a great deal of expenditure, and it should therefore be raised. However, unlimited reimbursement of all administrative costs should not be allowed to result in an unwelcome inflation rather than reduction in management costs.

4.5 **Additional costs for universities**. Under the Commission proposal, universities and similar research institutions should no longer be able to have 100 % of their so-called additional costs ([14]) reimbursed. Although other accounting models are proposed, the Committee feels that the proposal could cause problems, given that such institutions do not usually have suitable analytical accounting procedures to calculate full costs ([15]). What is more, it is too early to tell if the possible alternative of a flat rate proposed by the Commission will make them significantly worse off, as the Commission's internal implementing rules for this proposal are still pending (see above). Therefore, if full cost accounting is not available to these institutions, the Committee recommends retaining the existing rule on 100 % reimbursement of additional costs, at least until it is certain that other accounting models ([16]) will not result in these institutions losing out by comparison with existing arrangements.

4.6 **Legal status of research organisations.** The Committee feels that research organisations which are mainly State-funded should receive equal treatment in all respects (and in all articles of the regulation, for example Article 33-1 and Article 38-2), irrespective of their legal status. This means for example that non-profit making research organisations or research centres established under private law which receive their core funding from the State ([17]) should also be placed on an equal footing with public-law organisations. Ultimately, the choice of most appropriate legal status for such research institutes lies within

([12]) And also for public bodies, secondary and higher education establishments and research organisations.

([13]) In this connection, the Committee would refer to its recommendation on the introduction of a grace period for patents; however, it would not be necessary to associate a right of priority with the scientific publication. See CESE 319/2004, points 2.5 ff., OJ C 110, 30.4.2004.

([14]) Additional cost model: calculation of reimbursable direct additional costs of parties to the contract, plus a flat rate for indirect costs, according to the additional cost model. In the Seventh R&D Framework Programme (RP6), this flat rate corresponds to 20 % of all direct additional costs, minus costs for *subcontracts*.

([15]) Full cost model: calculation of reimbursable direct and indirect costs of parties to the contract according to the full cost model; full cost flat-rate model: calculation of reimbursable direct costs of *parties to the contract*; plus a flat rate for indirect costs, according to the full cost flat-rate model. The flat rate amounts to 20 % of all direct costs, minus costs for *subcontracts*. In all three cost models in RP6 (FC, FCF and AC), total costs are calculated simply as the sum of direct and indirect costs.

([16]) In any case, as far as R&D activities are concerned, the possible flat rate to cover indirect costs (overhead) in Article 32 should be at least 20 % of reimbursable direct costs, minus *subcontracts*. This rule applied to the Sixth R&D Framework Programme for full cost flat-rate and additional cost accounting systems and should be retained for the sake of continuity and above all to be fair to the different accounting systems of participating organisations.

([17]) In Germany, research organisations such as the Helmholtz-Gemeinschaft, the Fraunhofer-Gesellschaft, the Leibniz-Gemeinschaft or the Max-Planck-Gesellschaft. In the Netherlands e.g. The Netherlands Organisation for Scientific Research — Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO).

the legislative competence of the Member States, and should certainly not result in any differentiation of Community research funding.

4.7 **Intellectual property.** The rules proposed in Articles 39-43 are intended to ensure that rights to intellectual property derived from findings financed by EU taxpayers' money cannot be transferred to companies outside Europe without being subject to any controls.

4.7.1 **Open source software.** In general, the only chance that software developed within the framework of Community funded research projects currently has of becoming widely available and widely used and of therefore producing spin-off commercial versions or services, is if it is offered as 'open source'. For this purpose, the consortium should be granted as much freedom as possible as regards license conditions.

4.8 **Access rights.** Access rights (Articles 48-52) ([18]) to foreground and/or background owned by the parties do not concern all foreground and background owned by one of the parties (e.g. a university or research centre), but only to foreground and background derived from the work or preparatory activity of organisational entities or groups involved in the relevant joint project and which are needed by the other participants in the indirect action to complete their work. The Committee therefore welcomes Article 48 which enables this issue to be clarified separately for each project through the drawing up of **positive and/or negative lists** ([19]) agreed by all parties to the contract. Furthermore, positive lists can also be used to prevent any disclosure of the existence of background which is to be kept confidential. However, in order not to slow down the start of the project unnecessarily, it would make sense to set a deadline of e.g. up to six months after the beginning of the project for these lists to be drawn up.

4.9 **Royalty-free access to foreground and background**. The Committee has reservations about regulations that will grant unconditional access to foreground and background on a royalty-free basis. In general, it recommends that project partners be granted as much freedom as possible so that they are able to reach the most appropriate agreement. It may make sense, for example, to also grant R&D actors royalty-free access rights.

4.9.1 **Background for the implementation of a measure**. The proposal to always grant R&D actors royalty-free access rights to background, as long as it is essential for the implementation of an indirect measure, is to be welcomed in principle. In certain cases, however, an exclusive regulation of this type can cause difficulties for the relevant actors. The Committee therefore recommends modifying the final sentence of Article 50-2 ([20]).

4.9.2 **Background for the use of foreground**. However, the proposal to always grant R&D actors access rights to background royalty-free, as long as it is essential for the use of foreground, could cause problems. Background was acquired using R&D actors' own resources, the resources of former funding bodies or with the public resources of the respective Member States, and is subject to relevant obligations and conditions ([21]). Should the proposed Commission regulation be applied, there is a risk that especially powerful R&D actors, and those actors with a high level of know-how potential would not be able or even willing to participate, and therefore would be excluded from participating. The Committee therefore recommends deleting or modifying Article 51-5 ([22]).

4.9.3 **'Frontier' research.** Although most of the research and development activity envisaged as part of 'frontier' research is in the field of basic research, the distinction between basic and applied research is often ([23]) blurred, as the Committee has pointed out on several occasions. Therefore the same negative outcomes mentioned above are to be expected here. This should be avoided at all costs and thus taken into account in the regulations. The Committee therefore recommends deleting Article 52-1 or modifying it accordingly ([24]).

([18]) The Committee would like to point out that, when compared with the English version, it is apparent that there are translation errors in Articles 50-1 and 51-1 of the German version of the Commission proposal. This Committee opinion refers to the correct English version.

([19]) Positive list: list of knowledge or areas of knowledge to be made accessible. Negative list: list of knowledge or areas of knowledge NOT to be made accessible.

([20]) A possible suggestion for the final sentence of Article 50-2 would be 'However, RTD Performers shall grant access rights to background on a royalty-free basis, unless for justified exceptions otherwise agreed by all participants before their accession to the grant agreement'.

([21]) In Germany, for example, the Employees' Inventions Act as well.

([22]) A possible suggestion would be 'RTD-Performers shall grant access rights to background needed to use the foreground generated in the indirect action on a royalty-free basis unless otherwise agreed by all participants before their accession to the grant agreement'.

([23]) e.g. in microbiology, laser technology and ICT.

([24]) Article 52-1 could read as follows, 'In the case of frontier research actions, access rights to foreground for the implementation of the project shall be granted royalty-free. Access rights to foreground for use shall be under fair and reasonable conditions or royalty-free as agreed by all participants before their accession to the grant agreement'.

4.9.4 **Specific Groups.** There is no definition in the Commission proposal of the work for Specific Groups. It should certainly not be confused with the definition for 'frontier' research, or even considered to be the same.

4.10 **Free choice of instruments**. The Committee reiterates its recommendation ([25]) that projects should **not be tied in advance to particular instruments**, but that *'applicants must be able to adjust the structure and size of projects to best suit the task at hand. Otherwise, projects will be established whose size and structure are determined by the prescribed policy tools rather than by optimum scientific and technical requirements. The tools must serve R&D working methods and objectives — never the reverse.'* To this end, the option of Specific Targeted Research Projects (STREPs) should be continued, as they are a particularly suitable instrument for supporting participation by SMEs and smaller research groups.

4.11 **Discontinuation of the principle of financial collective responsibility**. The Committee is pleased that the principle of financial collective responsibility is to be discontinued; it would point out that it has already referred to the problems arising from this in its recommendations on the sixth framework programme ([26]).

4.11.1 **Risk fund**. The Committee therefore supports the proposal to establish a **risk fund** to cover possible defaults, with a small percentage of the financial contribution to indirect actions being paid into the fund (Article 38(1)). However, it would be advisable for the Commission to specify the proposed range of percentages when publishing the proposal, depending on the estimated level of risk. The Committee is also pleased that possible surpluses from amounts set aside to cover risks will be reimbursed to the framework programme and constitute earmarked revenue.

4.11.2 **Exemption**. However, the Committee would recommend that Article 38(2) exempt all research institutes which receive their core funding from the State, irrespective of their legal status, from this requirement ([27]).

4.11.3 **Project abandonment**. The Committee would also refer to the proposed **technical collective responsibility** of project participants (see Article 18(4)). In the Committee's opinion, even a consortium should have the option of deciding to abandon a project if excessive expenditure or scientific or technical considerations mean that continuation ceases to be worthwhile or reasonable. Articles 18(4) and 18(5) should be amended accordingly.

4.12 **Programme committees**. Under the Commission's proposal, **programme committees** responsible for streamlining procedures will no longer have the task of approving funding for proposed projects. In the Committee's view, this should only happen if the Commission selects projects on the basis of assessors' evaluations. Otherwise, work programmes and budget allocation should remain subject to approval by the relevant programme committee. (A possible compromise would be to submit a 'call implementation plan' after completion of evaluation to the programme committee for it to discuss and formally adopt.) This would not slow the process down in any way as the programme committee would no longer be taking decisions on individual projects.

4.13 **Grant agreement**. The relevant Article here (19-8) makes reference to the Charter for Researchers and the Code of Conduct for the Recruitment of Researchers. The Committee would like to point out that this Charter is only a recommendation and is therefore not binding. Furthermore, the Committee notes that it actually welcomes many elements of the Charter but that it has also recommended that it be revised, in particular because it contains too many regulations and certain criteria are not clear ([28]).

4.14 **European Investment Bank**. The Committee welcomes the proposal for a grant for the European Investment Bank to cover risks arising from loans in support of the research objectives of the Seventh R&D Research Framework Programme, and the proposed accompanying rules. Such loans should be provided for demonstration projects (e.g. in the fields of energy or security research) in particular.

Brussels, 5 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([25]) Point 3.4, OJ C 157, 28.6.2005.

([26]) OJ C 94, 18.4.2002.

([27]) See above, equal treatment of all research institutes which receive their core funding from the State.

([28]) OJ C 65, 17.3.2006.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation (Euratom) laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007-2011)

COM(2006) 42 final — 2006/0014 (CNS)

(2006/C 309/09)

On 8 March 2006 the Council decided to consult the European Economic and Social Committee, under Articles 7 and 10 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 31 May 2006. The rapporteur was Mr Pezzini.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 156 votes to three with four abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Commission's proposals on the new rules for the participation of undertakings, research centres and universities in implementing the Seventh Framework Programme (FP7) in the areas of research, development and training in the nuclear sector and the dissemination of its results for the period 2007-2011.

1.2 The proposals aim to simplify and streamline procedures and methods with a view to the practical implementation of the Lisbon strategy, as redefined by the European Councils in 2005 and March 2006, and in order to meet the needs of the various research players and end users. However, final judgment on the success of these measures can only be made after the implementation rules are finalised.

1.3 The Commission proposals up to and including Chapter III are virtually identical to those relating to the 7th RTD Framework Programme in the non-nuclear sector ([1]), even though the numbering is different ([2]). The Committee therefore refers to its opinion on the subject and reiterates and draws attention to the comments contained therein ([3]) which are also of relevance to the text of the proposal currently under review, up to and including Chapter III.

1.4 In particular, the Committee believes that the European nuclear fusion programme is a text-book example of genuine integration of Community efforts and of fully coordinated action, in the framework of the European Fusion Development Agreement (EFDA) and the Contracts of Association.

1.4.1 This programme plays a key role for the EU in the area of fusion energy research, and leads to ongoing Community support in the form of financial and human resources and is enhanced by high environmental sustainability through the ITER/DEMO project activities ([4]).

1.5 The Committee is convinced that nuclear energy ([5]), which generates approximately one third of the electrical energy currently produced in the European Union ([6]), contributes to the independence and security of energy supplies ([7]) and to the sustainability of European economic development, in line with the Kyoto Agreements; this, however, is on condition that better, more efficient and safe waste management standards are applied and that competitive European research and industries in the area of nuclear technology and services can be developed.

1.6 The Committee considers that appropriate levels of Community funding are scheduled for research, training, demonstration activities, coordination and support, networks of excellence, and the financing of fusion energy research.

1.6.1 The EESC stresses the need to promote research and the application of clean and safe technologies, in accordance with the needs and characteristics of individual Member States and urges that respect be shown for the decision of those Member States which do not consider that nuclear energy provides the answer to the problem of how to meet their future energy requirements and also take account of this stance in their research programmes.

([1]) COM(2005) 705 final.

([2]) In fact, there are some exceptions: e.g. frontier research projects.

([3]) e.g. the comments on the legal status of research institutes, access rights to findings, intellectual property rights, reimbursement of costs, funding arrangements and simplification, types of grant and the general principles underlying the European Charter for Researchers.

([4]) See also point 3.11.

([5]) See OJ C 110 of 30.4.2004, rapporteur: Mr Cambus.

([6]) Energy produced in EU-25 in 2004: Nuclear energy 31,2 %; Natural gas 24,3 %; Crude oil 17,1 %; Hard coal 13,1 %; Lignite 10,2 %; Primary energy 4,1 %. Energy consumed in the same period: Crude oil 39,2 %; Natural gas 25,4 %; Nuclear 14,8 %; Hard coal 13,7 %; Lignite 4,9 %; Primary energy 2,0 % (Eurostat, Energy, Issue No 5/2006).

([7]) In 2004, gross imports — dependence on imported energy — in EU-25, represented 53,8 %, of which crude oil and petroleum products 33,2 %. Energy dependence of the four major EU Member States: IT 87,7 %; DE 64,6 %; FR 54,3 %; UK 5,2 %. The only EU Member State which is not energy dependent is DK, which has an energy dependence rate of −53,5 %. (Eurostat, Energy, Issue no. 5/2006).

1.7 The EESC highlights the role of training activities and programmes designed to develop careers in research and stresses that these actions are particularly important for the private sector, civil society and the general public.

1.8 The EESC believes that to enable participation in EURATOM FP7 and its specific programmes, it is vital to provide a framework of rules that is simple, comprehensible, clear-cut and transparent and that, above all, can provide certainties to potential players, particularly those of a smaller scale, on the principles and criteria that govern access to contracts and project management, as well as their evaluation, selection and formulation.

1.8.1 The EESC regrets that this is not always reflected in the proposal and believes that the efficacy of these rules should be monitored by independent experts after a reasonable period of time and that the assessment report should be submitted to the Council and the Committee.

1.9 The Committee considers that in order to respect the 'value for money' principle vis-à-vis European taxpayers, the promotion and dissemination of research results is essential. It therefore points out that a fair balance must always be struck between, on the one hand, the protection of Community interests and the concerns of the Member States, not least as regards defence, and intellectual and industrial property rights, and on the other, the equally significant risks that could arise in cases of an inadequate dissemination of scientific and technical information in the sector concerned.

1.9.1 Lastly, the Committee believes it is essential that the IPR helpdesk be reinforced in order to offer timely and proactive assistance to potential participants in grant agreements and for indirect measures to support researcher training and development, as well as for the preparation and signature of consortium agreements.

2. **Reasons**

2.1 The EESC welcomes the fact that this matter has been referred to it in good time, and is fully aware that it has exclusive powers regarding consultation on EURATOM Treaty matters. The EESC attaches great importance to these powers, in view of the extremely sensitive nature of nuclear energy within society and the need for proper information and consultation.

2.2 Atomic energy raises serious public involvement issues, on account of the major risks and waste processing problems inherent in the sector.

2.2.1 The EESC calls for a clear statement of intent to strengthen performance and safety/security evaluation models in this area by means of permanent information, consultation and training structures.

2.2.2 The aim should be to launch a process of better governance with a view to identifying the best strategic options, and to addressing public concerns about the use of nuclear energy and its long-term impact.

2.3 The Committee has already expressed its views ([8]) on the Commission's proposals for simplifying ([9]) administrative procedures and reducing the effort these involve, in the context of the proposed decisions on the EC Seventh Framework Programme and the EURATOM Seventh Framework Programme, which were adopted on 6 April 2005.

2.3.1 The Commission has singled out ten fundamental measures as being 'crucial factors for success', which are to be implemented with a view to simplifying the procedures for accessing, participating in and managing the FP7. The EESC has stated on the subject that 'As they stand, the application and approval procedures involve too much work and are too expensive, causing difficulties for scientific and industrial users. The European research programme must be a worthwhile venture for those taking part in it, including in terms of the risk involved in making the application' ([10]).

2.3.2 The EESC has also stressed the importance of involving SMEs 'even more closely in research, development and innovation' and has emphasised that 'to win, SMEs set up specifically to develop and market innovative high-tech products above all need [adequate] start capital and venture capital'. In order to achieve this, 'procedures must be kept practicable and in due proportion to the resources of SMEs' ([11]).

2.3.3 The Commission set out the following points on simplifying regulation procedures:

— a narrower range of funding schemes which would ensure continuity with the FP6 instruments and enable a wide flexibility of use;

— high-quality, complete and timely communication providing unambiguous and consistent interpretation of the implementing objectives and provisions for both EC 7FP and EURATOM 7FP;

— streamlining the information requested of participants and extending the two-step procedure, in addition to systematically using IT tools;

— protecting the EU's financial interests without placing an undue burden on participants by reducing *a priori* controls to a minimum, on the basis of a single list of criteria;

— operational autonomy to consortia through the use of contracts which allow for great flexibility and an extensive use of lump-sum financing, on the basis of the actual costs incurred and external, independent audits;

([8]) See OJ C 65 of 17.3.2006, rapporteur: Mr Wolf.
([9]) COM(2005) 119 final — SEC(2005) 430/431 of 6 April 2005.
([10]) See OJ C 65 of 17.3.2006, point 1.11 — rapporteur: Mr Wolf.
([11]) See OJ C 65 of 17.3.2006, points 1.12 and 4.15.2 — rapporteur: Mr Wolf.

— tighter selection procedures by replacing the comitology procedure with a simpler information procedure;

— more effective use of R&D appropriations, via closer coordination with those allocated to the other policies under the Lisbon strategy and by reducing the Community's administrative/management costs for R&D projects;

— wide use of flat-rate financing by means of streamlined Community financial contributions;

— eliminating existing project cost reports which have proved excessively complex, and clarifying the definition of eligible costs;

— the definition of Community contribution rates by activity type (research, development, demonstration, training, result dissemination and use, knowledge transfer, etc.), corresponding to individual activities, together with maximum ceilings in accordance with the type of activity; these should apply to the consortium and not to individual participants.

2.4 Furthermore, the current proposal presents several changes with respect to the previous Regulation ([12]), in particular with regard to: the aim of the proposal; definitions; confidentiality; the evaluation, selection and attribution of proposals; the different forms of grants; refund of costs; the ceilings for Community contributions; consortium risks; the dissemination, use and rights of access; specific rules for the European Fusion Development Agreement and the Agreement on Staff Mobility.

2.4.1 With regard to those sections which are common to the present proposal and the counterpart proposal on the EC Seventh Framework Programme (Proposal for a Regulation of the European Parliament and of the Council laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ([13]), the Committee would refer to the opinion which it is currently drawing up on the latter proposal ([14]).

2.5 The Committee agrees with the limits set for nuclear research funding and training. It particularly welcomes the fact that contribution ceilings will rise from 50 % to 75 % for SMEs, public bodies, education establishments, universities and research organisations ([15]), and that coordination and support actions, and actions in favour of training and career development of researchers may reach a maximum of 100 % of the total eligible costs.

2.5.1 Furthermore, the Committee suggests indicating, in a table to be appended to the proposal, the various types of activity and the relevant maximum contribution rate in place, as well as the possibility of combining these contributions, particularly for research infrastructure, with other types of Community aid (Structural Funds, etc.).

3. General comments on the rules for participation in the 7th EURATOM framework programme

3.1 The EESC regards it as essential to ensure a framework of rules for participation in the 7th EURATOM framework programme and its specific programmes that is simple, comprehensible, clear and transparent, and exists in all the Community languages. This framework should in particular provide potential participants, especially smaller bodies, with certainty about the principles and criteria covering availability, participation conditions, presentation and assessment of project proposals, classification and contractual obligations, rates and systems for distributing Community co-financing, protection of industrial and intellectual property and exploitation and diffusion of knowledge, without prejudice to specific provisions on the thematic priority for fusion energy.

3.1.1 In particular, the Committee recommends that, with the exception of any particular predefined criteria, the selection and award criteria for the indirect actions covered by Article 14, are reincorporated. These general criteria are:

— scientific and technological excellence and the degree of innovation;

— the ability to carry out the indirect action successfully and to ensure the efficient management of resources and competences;

— relevance to the objectives of the specific programme and the working programme;

— European added value, a critical mass of mobilised resources and contributing to Community policies;

— the quality of the plan for using and disseminating the knowledge, the potential for promoting innovation, and clear plans for the management of intellectual property;

— respect for ethical principles and gender equality.

3.2 The Committee has already given its view on the general themes relating to the simplification and rationalisation of the framework programmes for Community nuclear research, in its opinions on the 7th EURATOM framework programme and on these two specific programmes covering (a) nuclear energy with special reference to fusion energy research and (b) the nuclear research activities of the Joint Research Centre. The Committee is also drawing up an opinion on the proposal for participation rules relating to the 7th framework programme of non-nuclear Community research ([16]).

3.3 As regards the rules governing the EURATOM programme, the Committee attaches special importance to the need for a more radical simplification of the formalities concerning the presentation of the files.

([12]) Council Regulation No 2322/2002 (Euratom).
([13]) COM(2005) 705 final of 23.12.2005.
([14]) See CESE 557/2006 (INT/309) — rapporteur: Mr Wolf.
([15]) See CESE 557/2006, point 4.6 (INT/309) — rapporteur: Mr Wolf.
([16]) See footnote 14.

3.3.1 The Committee is pleased that the joint responsibility previously provided for in EURATOM FP6, which could have been a significant obstacle to the participation of small and medium-sized bodies (firms, universities, etc.), has been removed from the current proposal. Instead, the Commission may retain approximately 1 % of the Community contribution ([17]), as a guarantee against the risk of lack of coverage in consortia (Article 37). A considerable part of the research activities in the EURATOM sector can also be entrusted to small and medium-sized bodies, for whom this rule could have been a serious obstacle to participation.

3.4 The EESC has reservations about the large number of possible derogations to the participation rules laid down in the more than 50 articles proposed, as well as the considerable possibilities of varying criteria and regulations being laid down in the annual work programmes, the specific programmes and the invitations to present proposals. These derogations concern in particular: the number of participants and additional access conditions (Article 11); the principles of evaluation, selection and award (Article 14 (1)); the exceptions to the publication of invitation to tender (Article 13); the evaluation criteria with the possibility of laying down additional specific criteria (Article 14 (2)); the Community financial contribution to networks of excellence (Article 34(1) and (3)).

3.4.1 With regard to networks of excellence, the Committee has serious reservations about making the contribution in the form of a flat-rate sum, as it may never materialise and prove to be completely out of touch with reality. This could hamper the development of networks of excellence, which are necessary to the achievement of the specific objectives set out in the programme.

3.5 The Committee underlines that the necessary flexibility of management and definition of the needs in individual projects should not be achieved at the cost of the clarity, certainty and transparency of the participation requirements, the predefined evaluation and selection criteria, and a firm framework for the proposed financing and co-financing arrangements.

3.6 The Committee takes the view that when the grant agreement allows the research consortium the possibility of using invitations to tender to carry out certain work or extend certain activities, the invitations to tender should be organised according to the rules laid down by the Commission, to ensure maximum transparency and accessibility of information.

3.7 The EESC underlines the importance of the provisions on monitoring and control of the programmes and indirect actions for research, demonstration, coordination and training in the nuclear field; it also suggests establishing a ceiling for expenditure on those functions and on the management of invitations to tender, assessment, selection and contract follow-up and auditing of the financed projects. This ceiling should not exceed an overall cost equivalent to between 7 % and 10 % of the overall Community resources of the 7th EURATOM framework programme. The aim should be to devote the bulk of the resources to genuinely primary activities (research, demonstration and training) and to the achievement of practical results which can be transferred to market applications, which are the final objectives of a Community framework programme of research.

3.7.1 In this context, the EESC recommends that, in the framework of IDABC ([18]), the compilation, archiving and management of the monitoring results are stored in an integrated database.

3.8 The Committee welcomes the Commission's proposals as regards the forms of grants: reimbursement of eligible costs in the form of a lump sum or flat-rate financing. However, it suggests that the most suitable methodology should be clarified, including with regard to simplification of eligible costs, and that a prospectus of the various options be appended to the regulation to make it more comprehensible to potential users.

3.9 The Committee recommends summarising the various types of Community financial contribution described in Articles 32 and 34 in a table and annexing it to the proposal. This table should include upper funding limits and any possibilities for combining them (particularly for research infrastructure) with aid from the Structural and Cohesion Funds, the European Investment Bank and the European Investment Fund, not forgetting provisions made in the JEREMIE initiative ([19]) that should facilitate the participation of smaller bodies in the 7th EURATOM framework programme.

3.10 As for the proposed rules on dissemination, use and access rights, notwithstanding the distinction between acquired and previous knowledge and exceptions in the military and security fields, the Committee believes it is essential that the IPR helpdesk be expanded in order to offer timely and proactive assistance to potential participants in grant agreements (see Article 18(5) and (6), and Articles 19 and 21) and indirect measures to support researcher training and development, and for the preparation and signature of consortium agreements, which lay down additional rules on the dissemination and use of results and intellectual property rights (Article 23).

3.11 Lastly, with regard to the 'Fusion energy research' thematic area, in the two opinions mentioned earlier the Committee placed great emphasis on the importance of controlled thermonuclear fusion research in the context of the ITER project, the preparatory programme (DEMO), and studies on confinement ([20]).

([17]) See CESE 557/2006, point 4.11.2 (INT/309) — rapporteur: Mr Wolf.

([18]) See OJ C 80 of 30.3.2004 on IDABC (Interoperable Delivery of European eGovernment Services to Public Administrations, Businesses and Citizens).

([19]) See OJ C 110 of 9.5.2006, rapporteur: Mr Pezzini.

([20]) See OJ C 65 of 17.3.2006, rapporteur: Mr Wolf, points 6.1 et seq.

3.11.1 The EESC takes note that the annual base rate proposed for the Community's financial contribution in the above-mentioned thematic area should not exceed 20 % over the duration of the 7th EURATOM framework programme. The Committee considers this rate as the necessary lever for an essential contribution by the Member States to a well coordinated (see point 1.4) community programme providing the indispensable basis, anchorage and input for the Joint Undertaking ITER and to DEMO. While this rate may be appropriate for a start, it is questionable whether it will be sufficient over the whole duration of the programme as the incentive for a satisfactory and necessary funding contribution on the part of the Member States. The Committee therefore recommends that, as a precautionary measure, this rate be raised to 25 %, which would still be only half or one third (with respect to Article 32, §1) of what would otherwise be contributed by the Community. Moreover, the Committee feels that these upper limits, as a rule should also be applied.

3.11.2 Concerning the proposed maximum contribution rate of 40 % for specific cooperative projects in the area of Contracts of Association, with priority support for ITER/DEMO initiatives and for initiatives in the context of the Agreement on Staff Mobility, the Committee questions whether, in the long run, this rate may be sufficient for desired projects or actions to initiate the required member states contribution. The Committee refers to Article 52, point 2.

4. **Specific comments**

4.1 The Committee questions the removal from Subsection 1 (*'Calls for proposals'*) of the provision relating to the possible prior issue of calls for expressions of interest, to enable a measure's objectives and justification to be accurately pinpointed and assessed and to avoid the unnecessary administrative costs involved both in preparing proposals that cannot be adopted and in submitting them to the Commission and independent assessors for selection and evaluation.

4.2 Calls for expressions of interest could be accompanied by *Proposers' Information Days*, designed to involve potential scientific and industrial users more closely in defining Community nuclear research policy initiatives.

4.3 The EESC would stress the potential dangers of the insufficient dissemination of scientific and technical information in the sector. While recognising that some reservations should be expressed on this subject, there is no need to rule it out entirely. In practice this might mean drawing up an extremely precise technical protocol for content and dissemination methods, taking into account the requirements of security/safety and reliability, while safeguarding a maximum of transparency.

4.4 The EESC feels that it is very important to provide greater information on the rules governing (i) checks that the necessary conditions are met, and (ii) the legal status of participants, and to disseminate them more widely. Similarly, clear and comprehensible rules on the simplified procedures in place for the two-stage submission of proposals and criteria and requirements for the two-step evaluation should be made available to all research players.

4.4.1 These rules should be made available not only to the expert evaluators, but also to project proposers, in accordance with unambiguous and uniform criteria.

4.5 The EESC would also stress the benefits of organising training and information initiatives on the safety/reliability of nuclear power, not only for researchers but also for representatives of civil society and for the general public, while also bolstering instruments and procedures for the development of sound, watertight models for assessing the reliability and safety of atomic energy.

4.6 On the assessment of research results, their dissemination and the protection of intellectual and industrial property rights, a number of rules and safeguards are provided for by the present proposal, the grant agreements, the consortium agreements, Article 24 and the other provisions of the EURATOM treaty ([21]), the Contracts of Association, the European Fusion Development Agreement, the European joint undertaking for ITER and related international agreements, and, lastly, multilateral agreements such as the Agreement on Staff Mobility. Additionally, the EESC thinks that a revised 'IPR-EURATOM guide for proposers' should be disseminated as widely as possible, outlining obligations and benefits for potential participants in the research, demonstration, training and development activities of the 7th EURATOM framework programme in a clear and transparent way.

Brussels, 5 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([21]) See footnote 16.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services

COM(2005) 651 final/2 — 2005/0264 (CNS)

(2006/C 309/10)

On 10 February 2006, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 83 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 30 May 2006. The rapporteur was Dr Bredima-Savopoulou.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July 2006), the European Economic and Social Committee adopted the following opinion by 156 votes to 1 with 7 abstentions.

1. **Conclusions and recommendations**

1.1 Regarding the **tramp and cabotage sectors**, the EESC endorses the proposed extension to these sectors of the procedural competition rules of Regulation 1/2003 ([1]). It appreciates the ongoing discussions between the Commission and the shipping industry regarding the application of Articles 81and 82 to tramp shipping. In the absence of complaints and legal precedents in the tramp sector, more information will be required about its operation and agreements. The EESC therefore welcomes the Commission's initiative to launch a study on the economic and legal characteristics of the tramp sector. For the sake of legal certainty, the EESC urges the Commission to provide guidance (prior to lifting the exclusion to Regulation 1/2003) regarding the self-assessment of the compatibility with EU competition law of various forms of cooperation agreement in the tramp sector.

1.2 With reference to the **liner sector**, the EESC notes the Commission's proposal's to repeal the block exemption of liner shipping conferences from the EC Treaty competition rules on the basis that the four cumulative conditions of Article 81(3) of the EC Treaty are no longer fulfilled. The Commission takes the view that repeal will result in lower transport costs, whilst maintaining reliability of services on all trades, and enhance the competitiveness of European industry. The EESC reserves its position to see whether the proposed repeal will have sustainable effect.

1.3 The EESC recommends the Commission to take the safety aspect (loss of quality shipping as a result of flagging out from the EU) into consideration — in addition to the pure competitive factors — when repealing the block exemption for liner shipping conferences.

1.4 The EESC recommends that the Commission should also take the human resources aspect (impact on employment for European seafarers) into consideration — in addition to purely competitive factors — when repealing the block exemption for liner shipping conferences.

1.5 The EESC notes the Commission's intention to issue appropriate guidelines on competition in the maritime sector so as to help smooth the transition to a fully competitive regime. The Commission intends to promulgate the guidelines by end 2007. Prior to this promulgation, the Commission — as an interim step in the preparation of the guidelines — will publish an 'issues paper' on liner shipping in September 2006. The EESC calls upon the Commission to draw up the guidelines in close contact with the relevant stakeholders and to inform the relevant EU institutions accordingly.

1.6 The Commission proposal is the result of a review process, which started in 2003, involving all relevant EU institutions and stakeholders. The Commission also contracted three studies from independent consultants, who looked into the issues arising from a repeal of the block exemption regime and whose findings are published on the website of the Directorate General for Competition.

1.7 The EESC has also taken note of the fact that the Commission's proposal to repeal the block exemption for liner shipping is based only on Article 83 of the EC Treaty (competition rules), whereas the legal basis of Regulation 4056/86 was Article 83 (competition rules) in combination with Article 80(2) (transport policy) of the EC Treaty. The EESC would appreciate some information from the Legal Service of the European Parliament about whether the transport considerations are ancillary to the competition considerations and whether the Service maintains its view about the dual legal basis as per its previous opinion ([2]).

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). EESC Opinion: OJ C 155/2001; p. 73.

([2]) A6-0314/2005 of 1/12/2005.

1.8 The EESC, anticipating possible conflicts of law in the future resulting from legal instruments of other jurisdictions, urges the Commission to devise a provision in the guidelines tackling such problems. Such a provision regarding consultations will minimise frictions and lead to mutually acceptable solutions internationally.

1.9 The EESC notes that the Commission recognises that competition law is not applied in the same way in all jurisdictions throughout the world and that divergences exist. The Commission also recognises the increasing importance of international cooperation between competition law enforcement authorities.

1.10 The EESC welcomes the fact that the Commission is pursuing a dual policy of developing enhanced bilateral cooperation with the EU's main trading partners and of examining ways to expand multilateral cooperation in the field of competition. The EESC therefore encourages the Commission to accelerate efforts to ensure that such cooperation and dialogue will help to identify potential problems resulting from a repeal of Regulation 4056/86 in the EU and to solve such problems in a constructive way, thereby respecting the particularities of each others' legal system. Consistency in how liner services are dealt with between different countries is indeed vital to international trade.

1.11 The EESC calls upon the Commission to take into account the outcome of the dialogue and cooperation between the Commission and its main trading partners when drafting the guidelines on competition in the maritime sector.

1.12 The EESC acknowledges that the following elements have been referred to in the Explanatory Memorandum of the Commission proposal and maintains that they should be taken into account when drafting the guidelines on competition in the maritime sector:

— It is recognised that maritime transport services are key to the development of the EU economy with maritime transport carrying 90 % of its external trade and 43 % of intra-EU trade.

— The ongoing trend towards containerisation has profoundly changed liner transportation since the adoption of Regulation 4056/86. It has resulted in an increase in the number and size of fully cellular container vessels and in an emphasis on global route networks. This has contributed to the popularity of new operational agreements and to a decline in the significance of liner conferences.

— The conference system — which has operated for 150 years — is still subject to multilateral and bilateral agreements to which the EU Member States and the Community are contracting parties. The EESC notes that the Commission recognises that — as a consequence of these agreements, the date of repeal of the following provisions of Regulation 4056/86 (i.e. Articles 1(3), points (b) and (c), Articles 3 to 8 and 26) should be postponed for a period of two years, in order to denounce or revise these agreements with third countries.

1.13 The EESC believes that the Commission should also take into account the interests of small and medium-sized businesses in repealing Regulation 4056/86. Small and medium-sized businesses constitute the backbone of the EU economy and they play an important role in the context of the revised Lisbon Strategy. Markets should remain open to the current and potential competition, including small and medium-sized shipping operators.

1.14 The EESC maintains that although consolidation may have positive effects for EU industry (efficiency gains, economies of scale, cost savings), caution is needed to avoid that consolidation — which may follow the repeal of Regulation 4056/86 — results in fewer players in the relevant markets, i.e., less competition.

1.15 Under a new regime, the EESC invites the two interested parties at European level, — shippers and carriers — to engage in discussions on issues of mutual interest and significance.

2. **Introduction**

2.1 *Current trends and legislation*

2.1.1 Maritime transport services are key to the development of the EU economy with maritime transport carrying 90 % of the external trade and 43 % of the intra-EU trade. Maritime transport has been an international and globalised activity since antiquity. Basically, it is provided according to two types of services: liner and tramp which operate like buses and taxis of the seas respectively. The EU flagged fleet accounts for 25 % of the world fleet and EU shipowners control over 40 % of the world fleet. Another 40 % of the world fleet belongs to countries of the Pacific basin. EU shipping and its customers (charterers/shippers) operate in a highly competitive environment in overseas and European markets.

2.1.2 Regulation 4056/86 lays down detailed rules for the application of competition rules (Articles 81 and 82 of the Treaty) to liner shipping services to and from Community ports. Tramp vessel services, however, were excluded from the scope of Regulation 4056/86. Originally the Regulation had two functions. It contained procedural provisions for the enforcement of the EC competition rules in the maritime transport sector. This function has become redundant after 1 May 2004, when liner transport became subject to the general competition enforcement rules of Regulation 1/2003. Regulation 1/2003, however, does not apply to international tramp vessel services and cabotage services. Secondly, Regulation 4056/86 lays down certain specific substantive competition provisions for the maritime sector and notably a block exemption for liner shipping conferences allowing them under certain conditions to fix prices and regulate capacity.

2.2 *The liner sector*

2.2.1 The liner shipping market has changed considerably since Regulation 4056/86 was adopted. The continuing trend towards containerisation has led to an increase in the number and size of cellular container vessels and to an emphasis on global route networks in response to changes in global trade patterns. This has contributed to the popularity of new operational arrangements, to a decline in the significance of liner conferences and to a considerable increase in powerful outsiders. In other parts of the world, as in the US the introduction of the Ocean Shipping Reform Act (OSRA) 1999 has changed the rules for conferences serving the US trades allowing confidential service contracts. Today, global liner carriers operate mainly in East-West trades as well as in North — South trades, whilst small and medium-sized carriers mainly operate in the North — South trades and in European short sea shipping.

2.2.2 The UNCTAD Code of Conduct for Liner Conferences was originally devised to regulate the liner conference system in trades between developed and developing countries ([3]). Thirteen EU Member States and Norway have ratified, approved or acceded to the Code of Conduct and Malta signed but has not ratified it. It is ([4]) referred to in several EU agreements with third countries and in the acquis communautaire (Regulations 954/79, 4055/86, 4056/86, 4058/86). Despite its virtual redundancy in the deep-sea liner trades, legally speaking, the UNCTAD Code still exists.

2.2.3 Transport users (shippers and freight forwarders) have systematically questioned the conference system which they consider does not deliver adequate, efficient and reliable services suited to their needs. In particular, the ESC ([5]) believes removal of the block exemption of conferences will allow improved customer-provider partnerships focusing on logistics solutions that help EU businesses to compete internationally. Likewise, consumers would benefit from slightly reduced prices when rates charged on in-bound products to the EU declined. Shipowners, on the contrary, have been of the opinion that liner conferences have contributed to service stability and that the conference regime has enabled them — both globally and regionally — to cope with imbalances (whether seasonal or geographical or due to climate conditions) on most trades. Meanwhile, global carriers (members of ELAA ([6])) and the ESC have entered into a dialogue with the Commission assisting it in developing an alternative system that is compliant with EC competition rules.

([3]) For more information about the UNCTAD Liner Code and Regulation 954/79, cf. EESC opinion OJ C 157, 28.6.2005, p. 130.

([4]) See the document on the Status of multilateral treaties published by the UNCTAD Secretariat http://www.unctad.org/en/docs/tbinf192.en.pdf (page 4)

([5]) ESC= European Shippers' Council.

([6]) ELAA= European Liner Affairs Association.

2.2.4 In 2003, the Commission launched a review of Regulation 4056/86 with the aim of determining whether reliable scheduled maritime services could be achieved by less restrictive means than horizontal price fixing and capacity regulation. To that end, the Commission issued a Consultation Paper in March 2003 and organised a Public Hearing with the relevant stakeholders in December 2003. Furthermore, the Commission issued a discussion paper in June 2004 and a White Paper in October 2004 followed by extensive consultations with interested stakeholders. The European Parliament ([7]) and the EESC ([8]) delivered their opinions on the White Paper on 1 December 2005 and 16 December 2004 respectively and they both concurred that review rather than repeal was the preferable course of action. In December 2005, the Commission eventually issued a proposal for a Regulation repealing Regulation 4056/86.

2.3 *The tramp sector*

2.3.1 Although nearly 80 % of the entire maritime transport of dry and liquid bulk commodities worldwide operates on a tramp basis, this vast sector is a terra incognita to most. The basic characteristics of tramp shipping are: a globally competitive market, a close to perfect competition model, volatile and unpredictable demand, many small entrepreneurial companies, global trade patterns, ease of entry and exit, extreme cost effectiveness, and responsiveness to development of markets and shippers' needs. The tramp services market is highly fragmented and overall it has worked to the satisfaction of charterers and shippers without any major problems with competition rules, neither internationally nor within the EU. The absence of complaints regarding this sector is a further proof of its highly competitive and satisfactory characteristics. In view of the above, Regulation 4056/86 provides that tramp shipping services are activities to which it does not apply. Articles 81 — 82 of the EC Treaty apply directly to this sector. Moreover, international tramp vessel services (and cabotage services) do not fall within the scope of Regulation 1/2003 (procedural competition rules).

2.4 *The Commission's proposal*

2.4.1 In view of the changes to the structure of the market and industry since 1986, the European Commission has concluded that the four cumulative conditions, as laid down in Art. 81(3) of the EC Treaty, for granting a block exemption to liner conferences are no longer fulfilled. For this reason, the Commission has proposed to repeal Regulation 4056/86 in its entirety and notably the liner conference block exemption (Articles 3 to 8, 13 and 26). Certain provisions considered redundant are also repealed in line with the EC's overall policy to reduce Community legislation (Articles 2 and 9). The Commission takes the view that such a repeal will result in lower transport costs, whilst maintaining reliability of services on all trades and enhancing the competitiveness of European industry.

([7]) A6-0314/2005 of 1.12.2005.

([8]) EESC Opinion: OJ C 157, of 28.6.2005, p. 130.

2.4.2 Prior to repealing the block exemption for liner conferences, the Commission intends to issue guidelines on competition in the maritime sector so as to help smooth the transition to a fully competitive regime. The Commission intends to promulgate these guidelines by end 2007. Prior to this promulgation, the Commission — as an interim step in the preparation of the guidelines — will publish an 'issues paper' on liner shipping in September 2006.

2.4.3 The Commission proposal on repealing Regulation 4056/86 also contains a proposal to amend Regulation 1/2003 with a view to bringing international tramp vessel services and cabotage services under the scope of this Regulation.

3. **General comments**

3.1 The EESC believes that the current issue merits a balanced approach taking into account the following factors: the benefits of competition to the competitiveness of EU industry, the changing patterns of world trade and its effect on the provision of transport services, international transport implications for the EU's major trading partners as well as for developing countries, the views of global shippers and carriers, and the views of small and medium-sized carriers and shippers.

3.2 *The tramp and cabotage sectors*

3.2.1 Tramp shipping operates in a global market under conditions of perfect competition. This unique characteristic of the tramp sector, recognised by practitioners and academics, was also acknowledged by the EU in Regulation 4056/86. The EESC understands the need to bring this sector under the procedural competition rules of Regulation 1/2003 and, therefore, endorses the proposed approach. The EESC welcomes the Commission's initiative to launch a study on the economic and legal characteristics of the tramp sector. For the sake of legal certainty, the EESC urges the Commission to provide guidance (prior to lifting the exclusion to Regulation 1/2003) regarding the self-assessment of the compatibility with EU competition law of various forms of cooperation agreements in the tramp sector. The absence of complaints and legal precedents in the tramp sector is a proof of its operation under conditions of perfect competition. In order to provide legal yardsticks for its self-assessment under EC competition rules, more information will be required about its operation and agreements. The EESC also appreciates the ongoing discussions between the Commission and the shipping industry regarding the application of Articles 81-82 to tramp shipping.

3.2.2 Concerning maritime cabotage the EESC agrees with the proposed treatment, i.e. cabotage to become subject to the procedural rules of Regulation 1/2003. The vast majority of agreements in this sector would not affect intra — EU trades nor create any restrictions on competition.

3.2.3 In the light of the above, the EESC agrees with the Commission's approach on the future treatment of the tramp and cabotage sectors.

3.3 *The liner sector*

3.3.1 Regarding the liner sector, the EESC notes the Commission proposal to repeal the block exemption of liner shipping conferences from the EC Treaty competition rules on the basis that the four cumulative conditions of Article 81(3) of the EC Treaty are no longer fulfilled. The Commission takes the view that such a repeal will result in lower transport costs, whilst maintaining reliability of services on all trades, and enhance the competitiveness of European industry. The EESC reserves its position to see whether the proposed repeal will have sustainable effect.

3.3.2 The EESC notes the Commission's intention to issue appropriate guidelines on competition in the maritime sector so as to help smooth the transition to a fully competitive regime. The EESC calls upon the Commission to draw up the guidelines in close contact with the relevant stakeholders and to inform the relevant EU institutions accordingly.

3.3.3 The Commission's proposal is the result of a review process, which started in 2003, involving all relevant EU Institutions and stakeholders. The Commission also contracted three studies from independent consultants, who looked into the issues arising from a repeal of the block exemption regime and whose findings are published on the DG COMP website.

3.3.4 The EESC has also taken note of the fact that the Commission proposal to repeal the block exemption for liner shipping is based only on Article 83 of the EC Treaty (competition rules), whereas the legal basis of Regulation 4056/86 was Article 83 (competition rules) in combination with Article 80(2) (transport policy) of the EC Treaty.

3.3.5 The EESC notes that the Commission recognises that competition law is not applied in the same way in all jurisdictions throughout the world and that divergences exist. The Commission also recognises the increasing importance of international cooperation between competition law enforcement authorities.

3.3.6 The EESC welcomes the fact that the Commission is pursuing a dual policy of developing enhanced bilateral cooperation with the EU's main trading partners and of examining ways to expand multilateral cooperation in the field of competition. The EESC therefore encourages the Commission to accelerate efforts to ensure that such cooperation/dialogue will help to identify potential problems resulting from a repeal of Regulation 4056/86 in the EU and to solve such problems in a constructive way, thereby respecting the particularities of each others' system/jurisdiction. Consistency in how liner services are dealt with between different countries is indeed vital to international trade.

3.3.7 The EESC calls upon the Commission to take into account the outcome of the dialogue/cooperation between the Commission and its main trading partners when drafting the guidelines on competition in the maritime sector.

3.3.8 The EESC acknowledges that the following elements have been referred to in the Explanatory Memorandum of the Commission proposal and maintains that they should be taken into account when drafting the guidelines on competition in the maritime sector:

— It is recognised that maritime transport services are key to the development of the EU economy with maritime transport carrying 90 % of its external trade and 43 % of intra-EU trade.

— The continuing trend towards containerisation has profoundly changed liner transportation since Regulation 4056/86 was adopted. It has resulted in an increase in the number and size of fully-cellular container vessels and in an emphasis on global route networks. This has contributed to the popularity of new operational agreements and to a decline in the significance of liner conferences.

— The conference system — which has operated for 150 years — is still subject to multilateral and bilateral agreements to which EU Member States and/or the Community are contracting parties. The EESC notes that the Commission recognises that — as a consequence of these agreements — the date of repeal of the following provisions of Regulation 4056/86 (i.e. Articles 1(3), points (b) and (c), Articles 3 to 8 and 26) should be postponed for a period of two years, in order to denounce or revise these agreements with third countries.

3.3.9 The EESC recommends that the Commission should also take the human element into consideration (impact on employment for European seafarers) — in addition to purely competitive factors — when repealing the block exemption for liner shipping conferences. The EESC also requests from the Commission to evaluate the scope of this impact, especially through consulting the Sectoral Social Dialogue Committee on Maritime Transport.

3.3.10 The EESC recommends the Commission to take the safety aspect (loss of quality shipping as a result of flagging out from the EU) into consideration — in addition to purely competitive factors — when repealing the block exemption for liner shipping conferences.

3.3.11 The EESC believes that the Commission should also take into account the interests of small and medium-sized businesses in repealing Regulation 4056/86. Small and medium-sized businesses 'constitute the backbone of the EU economy' and they play an important role in the context of the revised Lisbon Strategy. Markets should remain open to the actual and potential competition, including for small and medium-sized shipping operators and shippers.

3.3.12 The EESC maintains that although consolidation may have positive effects for EU industry (efficiency gains, economies of scale, cost savings), caution is needed to avoid that consolidation — which may follow the repeal of Regulation 4056/86 — results in fewer players in the relevant markets, i.e., less competition.

3.3.13 Under a new regime, the EESC invites the two interested parties at European level — shippers and carriers — to engage in discussions on issues of mutual interest and significance.

4. **Specific comments**

4.1 *Legal basis*

4.1.1 The EESC notes that Regulation 4056/86 had a dual legal basis (Articles 80(2) and Articles 81-82 and 83 referring to transport policies and competition respectively), whilst the proposal maintains only one (Arts. 81-82). The EESC also notes that the single legal basis is upheld by the Legal Service of the Council. It would appreciate knowing from the Legal Service of the European Parliament whether the transport considerations are ancillary to the competition considerations and whether the Service maintains its view about the dual legal basis as per its previous opinion (December 2005).

4.2 *Conflict of Laws*

4.2.1 The Commission proposes to abolish Article 9 of Regulation 4056/86 on the basis that it does not believe that a repeal of the liner conference block exemption would create the risk of possible conflict of international laws. The Commission's reasoning is that such a conflict of law would only arise if one jurisdiction prohibits something which another jurisdiction requires. The Commission is not aware of any jurisdiction that imposes such an obligation on liner shipping operators.

4.2.2 The EESC, anticipating possible conflicts of law in the future resulting from legal instruments of other jurisdictions, urges the Commission to devise a provision in the guidelines tackling such problems. Such a provision regarding consultations will minimise frictions and lead to mutually acceptable solutions internationally.

Brussels, 5 July 2006

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on Air safety

(2006/C 309/11)

On 19 January 2006, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *Air safety*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 May 2006. The rapporteur was Mr McDonogh.

At its 428th plenary session, held on 5 and 6 July (meeting of 5 July 2006), the European Economic and Social Committee adopted the following opinion by 155 votes to 2 with 3 abstentions.

1. **Recommendations**

1.1 Cabin crew should be certified or licensed by a competent Authority in order to guarantee proficiency in their functions (safety, security, medical aspects, passenger management, etc), as well as technical qualifications on each aircraft type that they are required to work on.

1.2 Careful consideration must be given by the European Aviation Safety Agency (EASA) before allowing equipment suppliers autonomy to approve component designs without recourse to either EASA or the aircraft manufacturers.

1.3 Non European Airlines should be approved by EASA before they are allowed to fly into or to over fly EU airspace.

1.4 There should be only one rule maker and that must be EASA. This should allow for the future harmonisation of aerodrome regulations, and should as far as possible, avoid competitive distortion between EU and non-EU airports. EASA should be strengthened and given more powers, like those of the European Civil Aviation Conference (ECAC).

1.5 EASA should consider how best for the industry to protect the safety and integrity of communications, data links and onboard avionic systems such as electronic flight bags (EFB) from hacking.

1.6 EASA must ensure that future development of aircraft such as Light Business Jets (LBJs) are regulated to ensure that owners and fliers have sufficient flight hours before being allowed to commence flight operations. LBJs will have ceilings of 25 000 ft or more and should be required to meet the maintenance and operational standards of larger commercial jets.

1.7 EASA must have the necessary protocols in place before any consideration is given for the approval of unmanned aerial vehicle (UAV) flights outside segregated airspace.

1.8 Random drug and alcohol tests should be carried out on both flight and cabin crews.

1.9 EASA should also ensure that local regulators are properly qualified for the job, and also have enough staff and finance.

1.10 A detailed scientific study of the effect on flight and cabin crew of fatigue, stress, and deep vein thrombosis (DVT) should be undertaken by EASA.

1.11 A review of the policy and procedures for the granting of a General Aviation Pilots Licences and the certification of General Aviation aircraft should be carried out.

1.12 EASA should ensure that the introduction of a European General Aviation Licence, with endorsements, ratings, pertaining to the approved aircraft to be flown takes place.

1.13 Safety of crew, passengers and residents of areas affected by air corridors must over-ride political considerations in banning airlines using European air space.

2. **Introduction**

2.1 With the cooperation of member states and their experts, a black list of 96 airlines has been published. 93 of them are facing outright bans and three are facing operational restrictions. Separately, France is considering the introduction of a new system of safety labels that could be used in advertising.

2.2 Europe has been under pressure to improve its aircraft safety legislation since early 2004, when a charter aircraft owned by Flash airlines crashed in the Red Sea killing 148 people, mostly French tourists. That crash highlighted the lack of co-ordination among governments about sharing safety information, since it then emerged that Flash had been banned by the Swiss aviation authorities.

2.3 Consistency and harmonisation among member states in relation to the standards of operation of airlines is crucial, if the black list is to have the desired effect. Member states must avoid a situation where for economic and social reasons one state decides that an airline listed is 'marginally acceptable' to operate on its airports while the other member states see the airlines standards as unacceptable.

2.4 However, Brussels has been asked to intervene in some disputes, notably, when Turkey was angered about a decision by some European Governments, led by Netherlands, to withdraw temporarily the landing rights of Onur Air, a budget Turkish airline on safety grounds. Separately, Greece is under pressure to make progress in its investigation of the crash of the Helios Airways aircraft that was flying from Larnaca in Cyprus.

2.5 Areas of concern are general maintenance standards, crew training, crew flying hours, and rest periods and fuel saving practices, and noise commitment, also air traffic control.

2.6 Since the increased competition in the aviation sector, and the precarious financial position of many airlines, has brought about increased pressure in crews to take off in conditions which they would not normally fly in, and also to fly planes that are not completely air worthy. The crews are under increasing pressure to take off as the airlines under EU regulations have either put up the passengers for a night, or compensate them for delays. All this impinges on safety. There is also the added problem that many national aviation authorities tend to turn a blind eye to the enforcement of many regulations, where the national airline is concerned.

2.7 Despite a ban in a number of European countries, because of safety concerns, a certain airline is still flying into Brussels and Paris. Switzerland, with its stern cultural fixation with business confidentiality, had banned 23 aircraft from flying through its airspace, although the names, and even the number of companies, remained classified.

3. **Effects of fatigue and performance safety**

3.1 Fatigue has been blamed in numerous aviation accidents over the years and is a continuing problem facing crews flying aircraft of all sizes. But how can a pilot recognise when he or she is too tired to fly? What roles do sleep cycles, dehydration, nutrition and illness play in identifying and responding to fatigue?

3.2 Pilots going through various time zones are bond to suffer fatigue and impairment of judgement. They are supposed to be able to take rest periods on long flights, but for this they need proper facilities which should include flat beds, etc.

3.3 There is plenty of evidence to show that fatigue is a factor in safety. In a recent National Transportation Safety Board report on the fatal crash at Kirksville, Missouri on the 19 October 2004 — The NTSB outlined 'the less than optimal overnight rest time available, the early reporting time for duty, the length of the duty days, the number of flight legs, the demanding conditions — non-precision approaches flown manually in conditions of low ceiling and reduced visibilities — encountered during long duty days, it is likely that fatigue contributed to the pilots' degraded performance and decision making.'

3.4 True or not, no pilot with a modicum of experience can deny having occasionally had to battle a bout of fatigue or that it somehow affected their performance. The quality of sleep during rest periods is very important.

3.5 Diet and nutrition also play any important role. For example, any pilot from a brand new student to the about to retire captain will tell you that the beverage of choice among pilots is coffee. However, while coffee is a stimulant and causes a temporarily increased level of alertness, fatigue is symptomatic of its withdrawal. Furthermore, coffee is a diuretic, which causes the body to discharge more fluid than it is taking in, resulting in dehydration, which in turn can cause fatigue.

3.6 Boredom is a major problem with tiredness on long haul flights, where aircraft are almost completely automatic. To keep the crew alert, some airlines particularly in trans-Siberia flights insist that the automatic pilot is re-set every hour.

3.7 Many of the accidents in aviation are due to pilot error, and fatigue is a major cause of those errors.

3.8 It is planned for EASA to take over the licensing process and replace the current JAA in this area, however the use of International Civil Aviation Organisation (ICAO) licences obtained in the US and operated by pilots in Europe may not be affected by this change.

4. **Cabin crew**

4.1 All improvement regarding rest requirements for flight crew should — where practicable — also apply to cabin crew, who must be fully alert in preventing any safety or security occurrence as well as the case of emergency.

4.2 Cabin crew should have adequate training in resuscitation and be always competent in their native language, and at least ICAO level 4 English, and be able to facilitate communication with passengers in the event of an emergency.

5. **Air traffic control**

5.1 The EESC has already expressed its views on air traffic control (ATC) and problems associated with it ([1]). The proposed SESAR system, if and when it is introduced, should improve safety. This is subject to another paper of the EESC ([2]), but this does not get away from the fact that Europe needs a uniformed ATC system which transgresses boundaries of all countries and where Eurocontrol would be recognised as a 'Federal Regulator' similar to, e.g. the Federal Aviation Administration (FAA) in the USA. The awarding of the first contract in Eurocontrol's TMA2010+ programme is welcomed.

5.2 There is strong need for standardisation and integrated systems to be introduced throughout Europe in the interests of safety.

5.3 It is desirable to also introduce appropriate certification of air traffic safety electronics personnel (ATSEP).

6. **Aircraft maintenance**

6.1 There appears to be a difficulty for some member states to convert their national rules to European Part 66 standards. Maintenance licences issued by states are based on the requirements set by the Joint Aviation Authorities (JAA) and were adopted into national law to give them legal teeth. Under the EASA system, however, the licensing rules are subject to European Union law. Enforcing them appears to be a lengthy process and subject to appeal.

6.2 In 2005 all 25 EU members took up a derogation option under which they were given until September 2005 to meet Part 66. Dates set by EASA for states to comply with safety rules need to be enforced or at lease agreed dates should be made with all parties so as to avoid the need for extension of deadlines or transition periods.

6.3 The EESC wonders if there is a provision for EASA to monitor, if required, the outsourcing of maintenance by Low Cost Carriers (LCC) to maintenance facilities in third countries.

6.4 Adequate time needs to be allowed for inspection on the ground, particularly in the turn around of the aircraft. The 25 minutes on average for short haul can certainly not be considered as adequate in all cases.

6.5 Adequate resources need to be allocated also, and also qualified staff who use only certified parts to carry out maintenance.

6.6 Random inspections and audits should be carried out by the National Aviation Authority to see that standards are being maintained.

7. **Airline companies**

7.1 Airline companies must be financially sound and properly financed before a start up licence is granted, states should be also required to monitor financial performance on a regular basis to ensure that there is no 'corner cutting'.

7.2 They must have experience and have competent management available to them.

8. **Competencies of the European Aviation Safety Agency**

8.1 The current intention of the European Commission is to further extend the competencies of EASA in the field of regulation (including safety and interoperability) of airports, air traffic management and air navigation services.

8.2 We support EASA as created by regulations 1592/200/EC and believe that a European framework for procedures and authorisations for aircraft and appliances issued by a single authority certainly improve aviation safety and efficiency in Europe.

8.3 There is an opportunity for EASA to address the issue of standards and recommended practices (SARPS) and the anomalies that are created by the 'Recommended Practice' and 'Standard Practices' found in the ICAO Annex documentation.

9. **General aviation licensing**

9.1 Private pilot licensers (PPL) operating on FAA licences in European airspace should be required to have an EASA endorsement on their licence.

9.2 All general aviation aircraft (GA) must comply with EU standards set by EASA before being allowed to fly in European airspace.

([1]) Air transport: Community air traffic controller licence, single European sky package (rapporteur: Mr McDonogh), OJ C 234, 22/09/2005, p. 0017-0019.

([2]) Common enterprise — SESAR CESE 379/2006 rapporteur: Mr McDonogh.

10. **Avionics safety**

10.1 EASA should produce guidelines/rules for protecting specific equipment or networks against *'acts of unlawful interference'* as defined by ICAO.

10.2 Apart from the increasing use of Ethernet (LAN) and IP the other areas of vulnerability would be:

— increased use of air/ground data link technologies for communications by passengers, airlines and ATC;

— more general use of data and software transfer using networks on aircraft and between ground sites for production, delivery, maintenance or update purposes;

— the multiplication of software viruses and hacker attacks, plus the search for confidential data through interconnected networks.

11. **Unmanned Airborne Vehicles (UAVs)**

11.1 EASA must have the necessary powers to regulate this area of the industry not only from airworthiness and design but also the certification of ground operators, launching systems etc.

11.2 All regulations pertaining to conventional aircraft must be considered obligatory for UAVs and all airspace users should be consulted where this type of activity could affect those users.

12. **EASA**

12.1 EASA is the overall EU regulator. It lays down the principles and rules for airline safety in the EU. It is under financed, under staffed, and it has no power of enforcement.

12.2 It depends on various National Regulators to enforce rules and regulations.

12.3 This amounts to self-regulation. No national regulator would be likely to clamp down on an airline in its jurisdiction, unless there was an extremely serious problem.

12.4 National regulators are also responsible for all aircraft, which are registered in their country, and whose company have offices located there. These aircrafts and crews are very often based and operated out of other EU countries. This makes proper regulation more problematic.

12.5 The requirement by EASA to the National Regulators to implement its decisions could lead to an un-even implementation of the rules and regulations in the EU, due to different interpretations. This could lead in the airline industry to flags of convenience where one country appears more lax in the interpretation of regulations than others.

12.6 Meanwhile, the Airport Security Regulator, ECAC, has the power to audit local levels of compliance. EASA should have this.

12.7 EASA is currently funded from certification revenues which has left it with a forecast loss of EUR 15 million for 2006, it is critical that the necessary funding from central government be forth coming to ensure EASA's future.

Brussels, 5 July 2006

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 waste

COM(2005) 667 final — 2005/0281 (COD)

(2006/C 309/12)

On 24 February 2006, 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 24 May 2006. The rapporteur was Mr Buffetaut.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 114 votes with four abstentions.

1. **Conclusions**

1.1 The EESC endorses the Commission's desire to modernise, simplify and adapt the laws governing waste. It approves, in particular, the initiative in presenting the thematic strategy on the prevention and recycling of waste and the spirit of the strategy. It is essential to support the desire to ensure that the legislation in question is applied equally and on a general basis, in order to prevent distortions as regards the environment, public health and competition in the market for waste products. With a view to avoiding the lodging of appeals and the initiation of legal proceedings, the EESC stresses the importance of setting out clear and precise definitions and annexes to the proposal for a Directive. It does, however, regret that the provisions in respect of the prevention of waste lack ambition. The EESC draws attention to the fact that a prerequisite for any desire to achieve real sustainable development is the existence of an effective policy of preventing and reclaiming waste, bearing in mind the growing scarcity and increasing cost of raw materials; the EESC does, however, urge that instruments be developed at EU level in order to ensure that the goals which have been set can be achieved in both qualitative and quantitative terms. In this regard the proposal for a Directive displays real weakness. Furthermore, the Commission appears to believe that relaxing the procedures for obtaining permits to run processing installations will encourage recycling. This approach is misguided and will result in negative environmental consequences and health risks. Furthermore, it does not comply with the principles of the Aarhus Convention regarding public access to information on waste. Indeed, the permit comprises technical elements linked to environmental protection; it is a public document and is accompanied by requirements as to information and monitoring. It is in no way an obstacle to the development of processing or recycling but on the contrary provides the necessary guarantees, with the administrative bodies monitoring due respect for standards and the implementation of the best available techniques.

1.2 The introduction of the life-cycle concept into waste policy is also, in the EESC's view, a wholly appropriate course of action, as is the approach aimed at bringing about a reduction in the volume of waste sent for landfill, reclaiming compost and energy, promoting clean recycling and preventing waste.

1.3 As regards the proposal for a Directive, the EESC considers that too absolute an affirmation of the desire to respect the principle of subsidiarity runs the risk of being in contradiction with the desire to have legislation which is applied on a general and harmonised basis throughout the EU.

1.4 The EESC urges that the integration/repeal of the Directive on hazardous waste does not result in inferior regulation and inferior public health protection. The EESC considers that, as drafted at present, the text fails to provide adequate guarantees. At the very least, it should be specified that hazardous waste mixtures and permit exemptions are not authorised for this type of waste. It is the classification as 'hazardous' or 'non-hazardous' that governs the particular precautions and obligations for the transportation and treatment of waste. Any oversimplification in this field cannot be seen as a step forward for environmental protection.

1.5 The EESC stresses that the type of recycling which should be encouraged is that which does not have a damaging impact on the environment and which really does make it possible to reclaim materials.

1.6 The EESC really doubts whether the comitology process is an apposite means of defining a number of specific criteria for clarifying when certain waste ceases to be waste.

1.7 In the EESC's view, a number of definitions continue to give rise to uncertainty (such as the definitions of 'producer' and 'recovery'). Definitions should be provided in the case of the following terms: 'reclamation of materials' leading to the 'recycling of materials', on the one hand, (with the possibility for certain flows to be no longer classified as waste), and 'energy recovery', on the other hand (without the possibility of no longer being classified as waste). This would ensure that the incineration directive is uniformly applied to all waste heat recovered by incineration or co-incineration. With regard to waste incineration, high energy recovery yields should be encouraged in order for operations to qualify as 'recovery'; however, it is surprising that such a provision is applied only to incineration and not to other means of energy recovery. In this case, the incineration of waste should be regarded as a recovery operation only if it achieves a high level of energy efficiency.

1.8 The EESC strongly regrets that no proposals are made with regard to the introduction of standardised financial instruments throughout the EU.

1.9 The EESC deplores the fact that the proposal for a Directive fails to set out any obligations in respect of working conditions and health protection measures for employees in this sector.

2. **Introduction**

2.1 The policy on waste is one of the EU's oldest environmental policies since the current framework directive dates from 1975. Over a period of thirty years, however, the general economic and social context, practices, technologies, national and local policies and public awareness of the problem of waste have all changed considerably. EU legislation on waste, which had changed little in the period since 1975, started to develop at an accelerated pace in the 1990's, which witnessed the modification of the framework Directive in 1991, followed by the adoption of a series of Directives on processing procedures and the management of certain waste flows.

2.2 The current legislation has been subjected to the test of time; gaps and cases of a lack of precision have emerged, court proceedings and rulings have highlighted difficulties of interpretation and legislative complexity, brought about, in part, by the fragmentation of legislation in different texts which refer to each other.

2.3 At the same time, a real 'waste business' has come into being. The management and recycling of waste have become fully fledged economic sectors enjoying a high level of growth and having a turnover estimated at over EUR 100 billion for EU-25.

2.4 The EU has also been enlarged and will be further enlarged. The situation facing the new EU Member States with regard to waste is rather difficult because, inter alia, of the importance of landfills. The European Commission therefore, naturally enough, wishes to make a fresh appraisal of the question of waste whilst, however, not rejecting the spirit of the current legislation by subjecting it to a root and branch overhaul.

2.5 The European Commission has therefore recently published a Communication on a thematic strategy on the prevention and recycling of waste [1] and presented a new proposal for a Directive on waste [2]; the former document sets out the Commission's political guidelines and general philosophy, whilst the latter translates these measures into concrete legislation.

3. **A new policy**

3.1 The Commission's appraisal which underlies the thematic strategy is based on the observation that, whilst considerable progress has been made in the last thirty years in tackling the problem of waste, the volume of waste continues to increase, the level of recycling and recovery is inadequate and the corresponding markets are finding it hard to develop. It should also be pointed out in this context that, in addition to the specific texts relating to waste, the IPPC Directives have clearly played a positive role.

3.2 Furthermore, the treatment of waste does, to a certain extent, contribute to environmental problems and give rise to economic costs.

3.3 EU legislation lacks precision in a number of points and this gives rise to disputes and divergences in application of the law from one country to another.

3.4 How is municipal waste disposed of at the present time? The best statistics which are available concern municipal waste, which accounts for some 14 % of the total volume of waste produced. The statistics in respect of municipal waste are as follows: 49 % is sent to landfill, 18 % is incinerated and 33 % is recycled and composted. The situation differs enormously between those Member States in which 90 % of waste is sent to landfill and those in which this method of disposal is used for only 10 % of waste. Similar differences are, incidentally, noted in the case of other categories of waste.

3.5 From an overall perspective, the EU is therefore facing a situation in which, despite clear progress, the overall volumes of waste are increasing and the total amount sent to landfill is not being reduced, or barely being reduced, despite the increased use of recycling and incineration. As regards the prevention of waste, it may be said that the policies which have been pursued have not brought tangible results.

3.6 It is therefore clear that the goals of the policy currently being pursued in the EU — namely to limit waste and to promote the reutilisation, recycling and recovery of waste in order to reduce its negative impact on the environment and to help bring about more productive use of resources — have lost none of their validity but what is needed is to make the means of achieving these goals more effective.

3.7 With a view to achieving this aim, the Commission proposes a number of courses of action ranging from legislation, to reflection on the form which waste policy should take and the very concept of this policy, the improvement of information and the definition of common standards. The Commission therefore proposes, as part of its strategy for preventing and recycling waste:

— evolving towards a recycling society which avoids the production of waste, wherever possible, and which fully exploits the material and energy resources contained in waste;

— stressing the need for the legislation to be implemented on a general basis in order to prevent differences in the interpretation and the enforcement of laws and to ensure that the goals defined in the existing legislation are achieved in good time by the Member States;

— simplifying and modernising the current legislation;

— introducing the concept of life cycles into waste policy in such a way as to ensure that its potential contribution to reducing the environmental impact of the utilisation of resources is taken into account;

— implementing a more ambitious and more effective waste-prevention policy;

— improving the provision of information and the dissemination of knowledge in the field of waste prevention;

— developing common reference standards in order to regulate the European recycling market;

— fleshing out the recycling policy.

[1] COM(2005) 666 final.
[2] COM(2005) 667 final.

3.8 The Commission expects that the proposed changes in the legislation and the concept of waste policy will bring about a drop in the volume of waste sent for landfill, improved reclamation of compost and energy derived from waste and qualitative and quantitative improvements in recycling. It is therefore hoped that a greater volume of waste will be recovered, that the 'waste hierarchy' will thus be stepped up and that waste policy will consequently help to bring about a more effective utilisation of resources.

How have the goals set out in the thematic strategy been initially translated into legislation?

4. **The proposal for a Directive on waste: a change rather than a root and branch overhaul**

4.1 Article 1 of the proposal sets out the objectives pursued by the Commission. These objectives are twofold and interdependent:

— to lay down 'measures with a view to reducing the overall environmental impacts, related to the use of resources, of the generation and management of waste';

— set out, for the same reasons and for each Member State, the priority objective of taking measures for the prevention or reduction of waste production and its harmfulness, and secondly, 'for the recovery of waste by means of re-use, recycling and other recovery operations'.

4.2 With a view to achieving this goal, the Commission takes the view that there is no need for a root and branch overhaul of the existing legislative framework; modifications should rather be made in order to improve the current legal framework and to close the existing gaps. The proposal for a Directive represents only one aspect of the implementation of the strategy; other proposals, deriving from this one, will be issued at a later stage. European policy on waste is, at all events, of necessity based on the principle of subsidiarity. In order to ensure that measures are effective, there is a need for a series of actions to be taken, from EU level to municipal level, the level at which, in practice, much work is carried out. The Commission takes the view that respect for the principle of subsidiarity in no way implies having a lower level of ambition in the environmental field.

4.3 The proposal for a Directive therefore takes the form of a revision of Directive 75/442/EEC. Under the proposal, the Directive on hazardous waste (91/689/EEC) is integrated into the framework Directive and therefore, at the same time, repealed. The Directive on waste oils (75/439/EEC) is likewise repealed, whilst integrating the specific collection obligation into the Waste Framework Directive.

4.4 The main amendments to the Waste Framework Directive are as follows:

— the introduction of an environmental objective;

— the clarification of the notions of recovery and disposal;

— the clarification of the conditions for the mixing of hazardous waste;

— the introduction of a procedure to clarify when a waste ceases to be a waste for selected waste streams;

— the introduction of minimum standards or a procedure to establish minimum standards for a number of waste management operations;

— the introduction of a requirement to develop national waste prevention programmes.

4.5 The question which arises, therefore, is whether the proposed legislative modifications would make it possible to achieve the overall objectives set out in the strategy and to make good the current inadequacies and lack of precision.

5. **General comments on the proposal for a Directive on waste**

5.1 This new proposal for a Directive has long been expected. For all the parties concerned — the EU Member States, NGOs, the general public and professionals — this proposal should form the basis of EU environmental policy on waste management. It is with this aim in view that the ESC has been asked to give its views on the proposal. It was expected that the new text would bring improvements to the current situation, taking account of experience gained since 1991, the weaknesses in the previous provisions and the strategy to be adopted in the EU with regard to sustainable development. This strategy presupposes the introduction of a policy in respect of the management, reclamation, recycling and recovery of waste products, in view of the growing scarcity of raw materials and energy resources.

5.2 The current legislation has often been criticised for lacking in precision and clarity (especially with regard to the annexes and the definitions). Furthermore, the failure to achieve uniform implementation of the Directives and Regulations in the various EU Member States and the differing approaches adopted by the individual Member States have also frequently been deplored. The revision of the Regulation on the cross-border shipment of waste has recently highlighted the problems arising as a result of this situation.

5.3 What interpretation and analysis can the EESC make of the proposed changes to the framework Directive? There are grounds for wondering whether the level of ambition displayed by the Commission has not slipped somewhat since the publication in 2003 of its communication entitled 'Towards a thematic strategy on the prevention and recycling of waste' ([3]). The approach adopted in respect of the subsidiarity principle appears to be rather minimalist and may result in divergences in respect of the implementation of the legislation. Furthermore, the proposal for a Directive under review fails to address the action which the economic and social stakeholders may take in this context.

5.4 *Simplification of legislation:*

5.4.1 It is proposed that the Directive on hazardous waste be integrated into the framework Directive. In this context it is essential to ensure that hazardous waste will be subject to much stricter measures than those applicable to other waste materials, particularly since the Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) will, at the same time, have to be applied to all substances which are placed on the market. The Directive on waste oils, for its part, will be quite simply repealed since, in practice, the environmental benefit of these provisions had not been demonstrated, as regards the processing of these oils. The provisions covering their collection will, however, remain in place.

([3]) COM(2003) 301 final.

5.4.2 Attention may also be drawn to the fact that, since the setting out of criteria defining the degree of danger, the Commission has still not yet come up with the requisite back-up documents: standardised tests and concentration thresholds for ensuring that the waste material listed is properly exploited.

5.4.3 The proposed exemptions in respect of waste recovery appear to be risky and they should be questioned in a number of sectors. We all remember the incidents involving contamination by hazardous waste of natural substances used in the preparation of animal feed. Such incidents could become widespread if traceability and the requisite measures for monitoring the proper management of waste were to be abandoned. The Commission should consider whether the proposed exemptions (see Chapter V, Subsection 2 — Exemptions) do not run counter to the provisions of the Aarhus Convention on public access to information and participation in decision-making on the processing of waste.

6. **Specific comments**

6.1 *Improved definitions*

6.1.1 The Directive currently in force failed to provide good definitions of a number of points. The number of cases brought before the European Court of Justice provides convincing evidence of this fact. Does the new text bring improvements in this regard? There are grounds for doubt in some respects.

6.1.2 The definition of 'producer', which has been taken over from the previous text ([4]), should be amended. How can it be accepted that persons whose activities result in a change in the nature of waste become the new 'producer' of such waste? Such a person is simply a 'handler of waste' and must, in this capacity, form part of the traceability chain. Otherwise, this leaves the way open to the 'downgrading' of waste and dilution of the responsibility of the real producer of the waste. Furthermore, as a minimum requirement, reference should be made to the concept of the 'extended producer responsibility' (EPR) (in respect of products placed on the market).

6.1.3 In the cross-border Regulation ([5]) designed to maintain exports, the Commission insisted on referring to 'interim operations', which it failed to define, just as it failed to define the term 'dealers and brokers' which is also used in this same Regulation.

6.1.4 The term 'recycling' is defined, but the definition of the term 'reclamation', in the sense of 'recovery' is not clear. Definitions should be provided of the terms 'reclamation of materials' leading to the 'recycling of materials', on the one hand, and 'energy recovery', on the other hand. In the first-mentioned case, the end of the treatment cycle may result in the substance concerned no longer being classified as 'waste'; this is not applicable in the case of energy recovery. Energy recovery from waste is governed by the Waste Incineration Directive, as regards the environmental protection aspects of the process. In cases where substances are no longer classified as 'waste', the environmental protection rules would no longer apply to them.

6.2 *Aim of the Directive*

6.2.1 The aim of the Directive is, and must continue to be, to protect the environment and public health.

6.2.2 The Commission has a general tendency to attach considerable importance to the opening-up of the market, which constitutes only one aspect of waste policy.

6.2.3 The EESC considers that there is a need to unequivocally resolve the issue of how to define a regulatory framework which would make it possible for market mechanisms to direct waste management towards bringing about an improvement in the environment, by developing the concepts of 'eco-efficiency' and 'eco-management' in respect of EU productive activities and services. Waste management is indeed a regulated market, the primary objectives of which are to protect the environment and public health and to preserve resources; account is therefore taken of economic, social and environmental impacts. Protection of the environment is a key element which promotes the creation of jobs and competitiveness, whilst at the same time creating scope for innovation and the establishment of new markets. There are grounds for questioning whether subsidiarity represents the ideal approach in this context. Furthermore, it is symptomatic that, in its communication on the thematic strategy, the Commission agrees that a number of recycling operations may be damaging to the environment. It nonetheless proposes that the Member States ensure that recovery operations are carried out in respect of all waste. It should therefore be stipulated that what should be encouraged by means of common requirements spelled out at EU level is a clean recycling market.

6.2.4 The Commission also 'forgets' to affirm in the 'waste hierarchy' — as it also did in the previous text — that, under the right conditions, the disposal of waste may be beneficial to the environment, even though it retains the operational provisions designed to achieve this goal. As a result, the new text is less clear in this regard than the earlier text.

6.2.4.1 The Waste Framework Directive must continue to provide the basis for an effective and appropriate management of waste in all sectors. The way in which the Framework Directive is to be implemented — and thus the means to be employed for strengthening the recycling strategy — have yet to be defined.

6.2.5 As a possible line of approach, the Commission had proposed the establishment of financial instruments for the purpose of supporting and promoting the effective management of waste and the recycling and recovery of waste. The introduction of such instruments at EU level could indeed have been encouraged, on condition that a uniform approach was adopted. Nothing has been proposed in this regard because of the difficulty of securing unanimity on such a proposal at the Council. Opting to put forward no proposals on this matter is doubtless a realistic approach but it nonetheless points to a degree of timidness on the part of the Commission, which could have proposed the development of an open method of coordination.

([4]) Council Directive 91/156/EEC of 18.3.1991 amending Council Directive 75/442/EEC on waste.

([5]) Council Regulation (EEC) No 259/93 of 1.2.1993 on the supervision and control of shipments of waste within, into and out of the European Community.

6.3 *Hazardous waste*

6.3.1 The issue of the integration/repeal of the Hazardous Waste Directive has already been tackled, as regards the actual principle involved, in the general comments set out above.

6.3.2 It is curious to note that the article dealing with the separation of hazardous waste refers only to cases where such waste is 'mixed'.

6.3.3 Hazardous waste has to be regulated by robust legislation and a robust system of traceability; this need is more pressing in the case of hazardous waste than it is in the case of any other waste. The provisions which are introduced must clearly rule out the possibility that such waste is diluted in the environment. Furthermore, steps should be taken to ensure that the integration/repeal of the Hazardous Waste Directive does not reduce the level of public health protection. It could at least be clearly stipulated that, by definition, any 'mixture which includes hazardous waste' will itself be regarded as hazardous, except in cases where the mixture in question brings about real chemical detoxification. All forms of dilution must be outlawed.

6.4 *Network of disposal installations*

6.4.1 The draft Directive under review proposes that the EU Member States cooperate with each other in order to establish a network of disposal installations. How can a call be made for investments to be carried out in this field if the Member States are unable to introduce the requisite tools for ensuring that these installations do not continue to operate at below capacity? Operators could indeed 'export' waste in order to have recovery operations carried out in another country. It is therefore essential that the rules governing this field are particularly precise and do not have any perverse effects.

6.4.2 The proximity principle should be studied and explained, using the principle of self-sufficiency as the reference criterion. These two principles are to be treated as inseparable if waste management is to be sustainable.

6.5 *Prevention*

6.5.1 The draft Directive places no obligations upon the Member States with regard to the social aspects of prevention, i.e. the need to take account of the possible impact on working conditions and the health of workers and to introduce meaningful information campaigns. Waste prevention is also a civic behaviour issue. Two possible lines of approach should also be pursued: the qualitative approach and the quantitative approach since, from an economic standpoint, the former approach, whilst clearly being less doctrinaire than the latter, nonetheless, leads to progress and efficiency.

6.6 *Annexes*

6.6.1 Few changes have been made, with the exception of the adoption of an energy efficiency approach solely in the case of incinerators processing household waste. Rather curiously, no proposals have been set out in respect of the obligations to be met by 'co-incineration plants'. Furthermore, the incineration of household waste can only be regarded as a recovery operation in cases where it achieves a high level of energy efficiency. Although certain waste products cannot be reclaimed, steps should, however, be taken to avoid a situation in which rudimentary incineration plants, marked by inefficiency in the recovery of useful energy, are able to benefit from the recovery provisions. Incineration would then become the easy solution, which could lead to the exporting of waste, an outcome which we should, on the contrary, be seeking to avoid.

Brussels, 5 July 2006.

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 — 2006-2008 Action Plan for simplifying and improving the Common Fisheries Policy

COM(2005) 647 final

(2006/C 309/13)

On 23 January 2006 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 May 2006. The rapporteur was Mr Sarró Iparraguirre.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 164 votes to none with one abstention.

1. **Conclusions and recommendations**

1.1 As it has informed the Commission in previous opinions, the EESC supports the process of simplifying Community legislation and therefore welcomes the publication of the 2006-2008 Action Plan for simplifying and improving the Common Fisheries Policy. The aim of the present opinion is to contribute to the outstanding work the Commission plans to carry out, which is of vital importance to improving the Community's fisheries legislation.

1.2 For the simplification process to be successful, the Committee considers that close cooperation with the fisheries sector must be forged by supporting and intensifying links with the Commission's consultative bodies, i.e. the Regional Advisory Councils (RACs), the Advisory Committee on Fisheries and Aquaculture (ACFA), and the Fisheries Sectoral Social Dialogue Committee.

1.3 The EESC believes that the first thing the Commission should do is to consolidate the existing rules. Once this is done, the Commission must strive to meet the aims set out in its communication, which it fully endorses:

a) an improvement in the clarity of existing texts, making them simpler and more accessible;

b) a reduction of costs and constraints for public administrations; and

c) alleviation of administrative costs and constraints for fishermen.

1.4 The EESC also endorses the choice of the two areas and the legislative instruments on which the action plan focuses: conservation and management of fish stocks, and monitoring of fishing activities. The Commission will subsequently have to continue the process of simplifying and improving the rest of the CFP.

1.5 The Committee considers the measures put forward in Sheet 1 on TACs/Quotas-fishing effort to be appropriate: separate treatment of the different aspects of conservation policy, regulation on the basis of uniform groups and implementation through multiannual management plans. However, it considers that the time between the date of delivery of the scientific opinions and the December Council meeting which sets the TACs, quotas and other highly important management measures is very short and not enough to hold all the necessary consultations and reach agreement. The Committee therefore calls for more time between the publication of the scientific opinions and the final decision.

1.6 With regard to Sheet 2 which sets out to simplify technical measures, the EESC is concerned at the possibility of the European Commission assuming powers at present held by the Council.

1.7 Similarly, with regard to the possibility that Sheet 2 also provides of authorising Member States to adopt local technical measures, the EESC considers that the Council should also approve requests submitted by the Member States, in order to prevent inequalities and discrimination between fishermen of different countries.

1.8 The Committee agrees with the Commission on the measures set out in Sheets 3, 4 and 5 to simplify the process of data input and management and to make monitoring measures more effective. It considers coordination between the Commission and the European Fisheries Control Agency to be of the greatest importance for drafting such measures. The EESC also believes that a transitional period should be provided for bringing information technologies into use. This is necessary in order to define the process in agreement with the technical specialists, fishermen and the Member States, provide full guarantees of commercial confidentiality, secure the trust and support of stakeholders, test the process under real conditions, contribute to the increased financial cost of the new equipment to be introduced and, consequently, to ensure the success of the simplification reform.

1.9 The EESC warmly welcomes the Commission's proposal on Sheet 6 to remove all reporting obligations of little or no value, in order to reduce the workload of fishermen and the Member States.

1.10 The Committee considers the simplification measures contained in Sheet 7 to be necessary, and urges the Commission to give consideration to drawing up a standard agreement as a basis for negotiating fishing agreements with all third countries, as well as to granting and issuing fishing licences electronically.

1.11 The EESC considers that combating illegal, unregulated and unreported (IUU) fishing, which is one of the CFP's objectives, also merits mention in the action plan, in the form of an objective aimed at defining the simplest and most effective means possible of combating such IUU fishing. The EESC believes that this process should focus on access to consumer markets, strengthening the powers of the relevant port States, and banning high seas transshipment.

1.12 Lastly, the EESC considers that the scale of the work entailed by the 2006-2008 action plan is such that it may not be possible to complete it within the three year timeframe. It therefore recommends that the Commission review the plan before the end of 2007.

2. **Reasons**

2.1 Since the beginning of the 21st century, the European Union has embarked upon an ambitious mission to improve its entire legislative environment, in order to make it more effective and transparent.

2.2 With the development of the European Union during the second half of the past century, this legislative environment has turned into a substantial body of Community law constituting the Community *acquis*.

2.3 The Community *acquis* has grown in the wake of the many laws concerning each of the Community's various policies, together making up the regulatory environment of Community policy.

2.4 In accordance with the instructions of the European Council, the Commission is currently engaged in coordinated action with the other Community institutions to simplify and improve the regulatory framework of Community legislation.

2.5 This work to simplify and improve EU legislation is an integral part of the revised Lisbon strategy for growth and employment in Europe and therefore focuses on those aspects of the Community *acquis* which affect the competitiveness of businesses in the EU.

2.6 Given that European small and medium-sized enterprises (SMEs) represent 99 % of all EU businesses, and provide two thirds of employment, action to simplify and improve European Union law-making is of crucial importance to them, as it lightens the legal and administrative burden they presently bear.

2.7 As part of this strategy of simplification and improvement of Community legislation, the Commission has planned to set up a rolling simplification programme covering the agricultural, environmental, health and safety at work, fisheries, taxation, customs, statistics and labour law sectors.

2.8 The Communication from the Commission to the Council and the European Parliament, *2006-2008 Action Plan for simplifying and improving the Common Fisheries Policy*, the subject of the present opinion, brings the multiannual 2006-2008 rolling programme to bear on the fisheries sector, in order to simplify and improve the CFP.

2.9 As an institutional representative of organised civil society, the EESC — which has expressed its support for simplifying the European law-making process to the Commission in previous opinions — welcomes the publication of the Action Plan. The present opinion is intended to contribute to the Commission's outstanding work and to encourage it to continue its multiannual approach.

3. **Background**

3.1 The Lisbon European Council of 23 and 24 March 2000 asked the Commission to prepare an action plan 'for further coordinated action to simplify the regulatory environment'. This call was subsequently confirmed by the European Councils at Stockholm (23 and 24 March 2001), Laeken (8 and 9 December 2001) and Barcelona (15 and 16 March 2002).

3.2 The Commission accordingly presented a White Paper on European Governance, which was adopted in July 2001 ([1]), and contained a section on improving the quality of regulation. A wide-ranging consultation process on the white paper finished on 31 March 2002.

3.3 The European Economic and Social Committee's opinion on the white paper stated that 'the Committee supports the proposals of the White Paper to simplify and speed up the European legislative process, as Community rules are increasingly complex and sometimes tend to add to existing national regulations rather than actually simplifying and harmonising them' ([2]).

3.4 Under this approach, in June 2002 the Commission proposed an action plan to simplify and improve the regulatory environment. The proposal was in turn submitted to the other Community institutions for discussion ([3]).

3.5 The action plan clearly calls for the three main stages of the legislative cycle — presentation of a legislative proposal by the Commission, discussion of the proposal in the European Parliament and Council, and implementation of the regulatory instrument by the Member States — to be completed with a view to reaching an interinstitutional agreement to improve the quality of Community legislation.

([1]) COM(2001) 428 final of 30.7.2001.
([2]) OJ C 125 of 27.5.2002, p. 61 (COM(2001) 428 final *European Governance — a White Paper*).
([3]) COM(2002) 278 final of 5.6.2002 — *Action Plan 'Simplifying and improving the regulatory environment'*.

3.6 The simplification of EU legislation, which began some years ago, has picked up speed since February 2003, with the Communication from the Commission on *Updating and simplifying the Community acquis* ([4]). Using this communication as a starting-point, the Commission launched a wide-ranging programme to identify those legislative acts which might be simplified, consolidated and codified, and which is continuing today.

3.7 The Communication from the Commission *Better Regulation for Growth and Jobs in the European Union* ([5]), published in March 2005, gave new impetus to the Interinstitutional Agreement on better law-making signed on 16 December 2003 by the European Parliament, the Council and the Commission. Its main purpose is to improve the quality of Community legislation and its transposition into national law ([6]).

3.8 Lastly, in October 2005 the Commission published a Communication on *Implementing the Community Lisbon Programme: A strategy for the simplification of the regulatory environment* ([7]), which put in motion the action plans for the various Community policies by means of rolling simplification programmes.

3.9 In parallel with the intensive work to direct the simplification and improvement of the full range of Community legislation and its regulatory framework, the Commission forwarded a Communication on *Perspectives for simplifying and improving the regulatory environment of the Common Fisheries Policy* ([8]) to the Council and the European Parliament.

3.10 This latter communication, together with the one now being presented on the 2006-2008 Action Plan, provide a basis for the present opinion.

3.11 The EESC, aware of the complexity involved in simplifying and improving all Community legislation, urges the Commission to continue along the same path and to strive to comply promptly with the established deadlines in order to achieve the objectives set.

4. **General comments**

4.1 *Community fisheries legislation 1983-2002*

4.1.1 The Community's legislation on fisheries was grouped under the 1983 Common Fisheries Policy. The rules governing the policy fell short of the mark: fisheries management rules were based on translating scientific findings into legislative provisions, but with an almost total absence of communication with the Community fisheries sector; and the legislation was excessively complex as a result of the laborious Commission-Council-Parliament decision-making procedure.

4.1.2 Past and present evaluation must take into account the fact that legislation in this sector covers a varied group of fisheries and addresses several chapters: structures, conservation and the environment, external resources, markets and enforcement. This diversity necessarily results in numerous regulations or, in some cases, lengthy regulations which are difficult to interpret.

4.1.3 Furthermore, the Council's decision-making procedure at the end of each year for the annual setting of TACs and quotas, makes it difficult to hold all the necessary consultations and reach decisions in time for the measures to enter into force, in turn resulting in numerous amendments to the published regulations.

4.1.4 This inevitable accumulation of amendments to the various regulations governing the CFP means that neither laymen nor fishermen can easily understand texts drawn up by experts who draft legal provisions frequently based on scientific documents which are not readily comprehensible.

4.1.5 Council and European Parliament negotiations sometimes produce more complex final documents than the original proposals.

4.1.6 Lastly, in legal and political terms, some regulatory measures have been placed at a higher level than strictly necessary, making them harder to amend and simplify.

4.1.7 The EESC understands that although the root causes of many of these situations still persist, the Commission is aware of them and is taking the necessary measures to correct them, as it began doing as long ago as 1992 by amending the 1983 CFP, and with the 2006-2008 Action Plan which it is now presenting following the reform of the CFP on 31 December 2002.

4.2 *Current Community fisheries legislation*

4.2.1 Simplification is a natural part of the reform of the Common Fisheries Policy of 31 December 2002 ([9]). A number of steps — repeals, declarations of obsolescence, and screening of the legislative environment — are already under way.

4.2.2 The Proposal for a Regulation to set up a new European Fisheries Fund ([10]), on which the Committee has issued a favourable opinion, is a good example of programming for the simplification initiative, replacing or modifying, with a single regulation, the provisions of the four regulations making up the Multi-Annual Guidance Programmes (MAGP) and the Financial Instrument for Fisheries Guidance (FIFG) into a single regulation.

([4]) COM(2003) 71 of 11.2. 2003.
([5]) COM(2005) 97 of 16.3.2005.
([6]) OJ C 321 of 31.12.2003 and corrigendum OJ C 4 of 8.1.2004.
([7]) COM(2005) 535 of 25.10.2005.
([8]) COM(2004) 820 of 15.12.2004.
([9]) Council Regulation (EC) No 2371/2002.
([10]) COM(2004) 497 final.

4.2.3 Throughout 2004 and 2005, the Commission put in place a series of pieces of legislation which will help it to tackle the reform and simplification of the CFP. These include:

— the European Fisheries Fund;

— the European Fisheries Control Agency;

— establishment of the Regional Advisory Councils;

— Community financial measures to implement the CFP and the Law of the Sea.

Wide-ranging debates and discussions were also held with numerous contacts, culminating in the presentation of the above-mentioned Communication on *Perspectives for simplifying and improving the regulatory environment of the Common Fisheries Policy*.

4.2.4 The communication suggests that simply reducing the number of regulations is not enough to improve the regulatory environment of the CFP; there must be, at the same time:

— an improvement in the clarity of existing texts, making them simpler and more accessible,

— a reduction of costs and constraints for public administrations,

— alleviation of administrative costs and constraints for fishermen.

4.2.5 The EESC believes that, with regard to any work to make texts clearer, a special effort should be made to consolidate them. Continual reference to other regulations from previous years makes the documents much more difficult to understand.

4.2.6 The latter communication highlights the fact that some chapters of the CFP are particularly difficult to carry through: this applies to fisheries enforcement, because of the differences between Member States concerning implementation, and resource conservation measures, due to the combined implementation of different management tools.

4.2.7 Overall analysis reveals that while allowing for the inherent complexity of CFP management, the existing rules have gradually become excessively complex.

4.2.8 The EESC considers that the Commission should approach the improvement and simplification of CFP legislation by putting particular emphasis on enforcement and resource conservation measures. The action of the recently-established European Fisheries Control Agency should be stepped up in this direction.

4.3 *2006-2008 Action Plan for simplifying and improving the Common Fisheries Policy*

4.3.1 As a result of the all the work carried out under the above-mentioned communications, the Council called on the Commission to prepare a multiannual action plan meeting all the requirements to achieve simplification and improvement of the CFP. In response, in December 2005 the Commission published the Communication *2006-2008 Action Plan for simplifying and improving the Common Fisheries Policy* ([11]).

4.3.2 The 2006-2008 Action Plan presented by the Commission comprises:

— a methodology for simplifying and improving the CFP; and

— an indication of the initiatives that should, as a matter of priority, be simplified and improved.

4.3.3 The action plan's approach is straightforward, providing an overall picture of the areas (enforcement, fishing effort, funding, etc.) in which action is to be taken to simplify and improve legislative texts. For each of them, it indicates the necessary measures, who should be involved in the simplification process and the relevant deadlines within the 2006-2008 timeframe. Lastly, it lays down three types of legislation for each of these areas:

— instruments whose review has already been started;

— new legislation to be drawn up in the coming years; and

— legislative instruments now in force which must however be simplified as a matter of priority.

4.3.4 The legislative instruments now in force as the main focus for the start of the CFP simplification plan for the 2006-2008 period. They all concern measures for the management and monitoring of fishing activities.

4.3.5 The EESC endorses the choice of these two areas for priority action under the plan, as they account for much of the complexity of current legislation. The Commission will subsequently have to continue the process of simplifying and improving the rest of the CFP.

4.3.6 Legislative instruments whose review has already started and for which simplifying principles have been implemented will continue to be treated in accordance with the plan to improve legislation. This is the case with the European Fisheries Fund, and with the general provisions concerning the authorisation of fishing in the waters of a third country under a fisheries agreement. Both of these legislative instruments, which have already been simplified by the Commission, have met with a positive response in Committee opinions.

([11]) COM(2005) 647 final of 8.12.2005.

4.3.7 Under the action plan, the simplification objectives set for new legislation to be drawn up in the coming years will be systematically observed.

4.3.8 The EESC supports the general approach of the 2006-2008 action plan, considering it to be appropriate. Implementing the plan, as set out in the Annex to the action plan, however, will require a major simplification drive if the deadlines are to be met. It is crucial that the efforts and understanding of the Member States, the European Parliament and the fisheries sector, through its RACs and the ACFA, together with the Fisheries Sectoral Social Dialogue Committee, be combined.

4.3.9 Implementation of the action plan focuses as a priority on the following areas and legislative instruments:

Conservation of fish stocks

— TACs/Quotas, fishing effort

— Technical measures for the protection of juveniles of marine organisms

— Collection and management of data for the CFP

Monitoring of fishing activities

— Monitoring — Body of legislation

— Monitoring — Computerisation

— Reporting obligations

— Authorisation to fish outside Community waters.

4.3.10 Each of these seven legislative instruments is detailed in the Annex to the action plan through sheets which set out the planned simplification measures to improve the existing regulatory framework and administrative environment concerned. For each measure, it specifies the programming envisaged with details of the different actors involved in the measures and a list of the instruments to be simplified together with reference documents necessary for considering simplification.

4.3.11 The EESC, having examined each of the seven sheets in detail, assures the Commission that it considers its handling of reform and simplification to be appropriate and that, if all the steps indicated in each of the sheets are completed within the deadlines set, the 2006-2008 action plan will bring very significant improvements to the Community's fisheries legislation.

4.3.12 In Sheet 1, the action plan proposes simplification measures concerning TACs/Quotas-fishing effort. It fundamentally addresses the annual Council regulations which fix the fishing opportunities for the following year, altering the structure of the provisions laying down conditions for the exploitation of fishery resources, of targeting the decisions at uniform groups, and of drawing up multiannual management plans.

4.3.13 The EESC considers the simplification measures put forward in Sheet 1 to be appropriate, with separate treatment of the different aspects of conservation policy, regulation on the basis of uniform groups, and implementation through multiannual management plans being crucial.

4.3.13.1 Nevertheless, the Committee considers that the lack of time between the date of delivery of the scientific opinions and the December Council meeting which sets the TACs, quotas and other highly important management measures such as limits on fishing efforts, makes it difficult to hold all the necessary consultations and reach agreement. The rules resulting from this rushed and complex decision-making process may contain technical or legal shortcomings that require amending regulations, further complicating the rules and their implementation. The inadequate consultation of fishermen and other stakeholders is highly detrimental to the understanding, acceptance, application and, consequently, the effectiveness of these rules.

4.3.13.2 Similarly, the EESC is of the opinion that the decision-making process of the regional fisheries organisations also suffers from the lack of time between the delivery of the scientific opinion and the meeting of the decision-making body. The effects of this lack of time are the same as those outlined in the previous point.

4.3.13.3 Regarding the 'uniform groups' approach proposed by the Commission, the EESC sees this as entirely appropriate particularly if, as it hopes, this means a 'uniform fishery' approach and a two-fold regulation: a horizontal framework regulation and an implementing regulation for each fishery.

4.3.13.4 In the Committee's view, moreover, experience shows that recovery plans and multiannual management plans have generated wide-ranging consultation and a high level of agreement. Once such plans are adopted, they lighten the decision-making procedures for the years in question. However, the EESC considers that they must be in keeping with the present division of powers between the Council and the Commission, and must be open to revision, given the shifting nature of the criteria used to evaluate the state of the relevant stocks.

4.3.14 The EESC believes that reform of the decision-making procedure for resource management measures, guaranteeing that the rules are simplified and made more effective, depends on bringing forward the date of delivery of the scientific opinions and recommendations (from ICES-ACFM for Community waters, and the scientific committees of the regional fisheries organisations for non-Community waters), enabling real consultation to take place with the RACs and ACFA. It may also require spreading the TACs/Quotas package over several Councils, as well as adjusting the management year to bring it closer into line with the biological year and to take account of a better match with the market. This process is

therefore a comprehensive one, going beyond front-loading alone. The EESC considers that every aspect will have to be examined in detail, leading in turn to the widest possible consultation with the Member States, fishermen and the other stakeholders.

4.3.15 The purpose of Sheet 2 is to reform existing legislation on the protection of juveniles of marine organisms, by gradually grouping together technical measures by fishery. While the EESC welcomes this fishery-by-fishery approach for all management measures, it feels it is primarily applicable to the technical measures. The system put forward by the Commission is based on an adjustment of the structure of the legal rules relating to technical measures, proposing that the Council should regulate the general guiding principles in succinct form, while the Commission should stipulate the technical aspects in greater detail. The EESC is concerned at a simplification which would result in the Commission making laws by assuming powers at present held by the Council of Ministers. The Committee therefore considers that while the legislation should be drawn up as proposed in the simplification measure, the final decision should be submitted to the Council.

4.3.16 Regarding the possibility of authorising Member States to adopt local technical measures, as outlined in Sheet 2, the EESC believes that such authorisation could generate inequalities and instances of discrimination between fishermen of different Member States if the measure were to be used improperly or not sufficiently monitored, clashing with the necessary harmonisation of CFP rules. Member States' requests in this regard should therefore be approved by the Council.

4.3.17 The Commission considers that, in order to implement the proposed measures, prior consultation of the sector should be increased, the performance of the technical measures applied assessed, certain existing technical provisions clarified, leaflets and information documents produced, information technology used, and fishermen's reporting obligations reduced. The EESC, while convinced that all these actions are necessary, would point out to the Commission that the use of information technologies for data input and management inevitably requires a process of adjustment and financial support allowing vessels to adopt these new technologies. A reasonable transitional period must therefore be granted in order to define the process in agreement with the technical specialists, fishermen and the Member States, provide full guarantees of commercial confidentiality, secure the trust and support of stakeholders, test the process under real conditions, contribute to the increased financial cost of the new equipment to be introduced and, consequently, to ensure the success of the simplification reform.

4.3.18 Sheet 3 proposes to reduce the number of legal texts on the collection of management of data for the CFP. As for Sheet 2, simplification entails adjusting the current legal structure on the basis of a Council regulation for the general approach and a Commission implementing regulation for the technical and administrative aspects. The EESC restates its concern, expressed in point 4.3.14 above, regarding the powers which the Commission proposes to assume.

4.3.19 As part of its simplification approach, in Sheet 3 the Commission proposes a multiannual programme to collect and manage data in order to reduce the administrative workload of the Member States. The Committee considers the Commission's proposal to be both timely and necessary, subject to the comments set out in point 4.3.17 above.

4.3.20 Sheet 4 sets out to reform the current legislation on monitoring by revising the current regulations and bringing them into line with CFP reform. The EESC views the revision of the monitoring regulations as being of the utmost importance to harmonising the various rules in order to prevent diverging interpretations. All inspection and monitoring provisions must be very explicit in defining inspection, implementation methods and forms of practice. In any case, the EESC calls on the Commission to ensure that in simplifying monitoring legislation, the existence of the European Fisheries Control Agency is never overlooked.

4.3.21 In Sheet 5, the Commission proposes a review of all provisions on monitoring and computerisation. It envisages drawing up regulations once the Council has decided on the proposal from the Commission on electronic recording and reporting of fishing activities and on means of remote sensing [12]. It also envisages the computerisation of the management of fishing agreements with third countries with regard to fishing licences, and catch and effort data associated with these agreements. The EESC, agreeing that computerisation of monitoring systems is necessary, would repeat its views set out in point 4.3.16 above on the need for a transitional period in applying information technologies.

4.3.22 Sheet 6 provides for simplification of the entire body of CFP legislation in order to remove provisions introducing reporting obligations of little or no value to the satisfactory implementation of the CFP. The EESC considers the removal of such provisions to be a necessary part of the simplification process, reducing the workload of those involved and of the Member States.

4.3.23 Lastly, Sheet 7 envisages simplifying authorisation to fish outside Community waters, by means of a reform of the arrangements for the management of fishing agreements with third countries. Simplification entails adjusting the current legal structure to earmark the basic principles for the Council and the technical and administrative aspects for the Commission. The Committee considers such simplification to be necessary, and urges the Commission to give consideration to drawing up a standard agreement as a basis for negotiating fishing agreements with all third countries, as well as to granting and issuing fishing licences electronically.

[12] COM(2004) 724 final.

4.3.24 The EESC believes that simplifying and improving the CFP for fleets operating outside Community waters also requires a fishery-by-fishery approach, and particular treatment at all levels: fleet, authorisation, licences, permits, declarations, etc. The EESC is convinced that vessels flying EU Member State flags and operating in waters outside Community jurisdiction should be subject to rights and obligations adapted to the resource they are fishing and the zone in which they are located. The EESC therefore asks the Commission to include this objective in its action plan, which must not be restricted to the 'fisheries agreements' (or partnership agreements) alone. In this connection, the EESC would emphasise the need for compliance with the social clause accepted by the Community social partners.

4.3.25 Lastly, the EESC considers that combating illegal, unregulated and unreported (IUU) fishing, which is one of the CFP's objectives (particularly in its external aspect), also merits mention in the action plan, in the form of an objective aimed at defining the simplest and most effective means possible of combating such IUU fishing. The EESC believes that this process should focus on access to consumer markets, strengthening the powers of the relevant port States, and banning high seas transshipment.

5. **Specific comments**

5.1 The 2006-2008 action plan, as set out in the Commission's communication, is of vital importance in improving the Community's fisheries legislation. No further important legislative instruments have been identified in the fields of monitoring or fishery resource management which need to be added to those proposed by the Commission. The Committee therefore urges the Commission to implement them without delay.

5.2 The Committee believes that among all the legislative instruments which it is proposed to improve and simplify, that on TACs/Quotas and fishing effort is of particular importance to the implementation of multiannual management plans.

5.3 Carrying out the 2006-2008 action plan may require the Commission to draw up new implementing regulations. The EESC does not think that this increase will pose any problems. What is important is that, even if the Community *acquis* grows, regulations should be clearer, targeted on the relevant fisheries, easily understood and as consolidated as far as is possible.

5.4 With regard to the latter aspect, the Committee would draw the Commission's attention to the difficulty in interpreting the current fisheries legislation, with repeated references to other regulations, directives and communications. Consolidation of documents is crucial is they are to be easily read and understood.

5.5 Coordination between the Commission and the European Fisheries Control Agency is very important in applying the monitoring rules. The European Fisheries Control Agency will have to work to standardise criteria in order to resolve differing interpretations of fisheries monitoring legislation by the Member States — a frequent source of complaint by fishermen.

5.6 Lastly, the Committee sees computerisation of Community fisheries legislation as important for electronic access to Community texts. The introduction of new information technologies to fishing vessels must however be carried out gradually, and without cost to fishermen, since some computer methods may not be appropriate to them.

5.7 The Committee calls upon the Commission to resolve any difficulties which may arise regarding the 2006-2008 action plan, being convinced that the plan is essential and will be of benefit to the Community fisheries sector.

Brussels, 5 July 2006.

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 — Thematic Strategy on the sustainable use of natural resources

COM(2005) 670 final — [SEC(2005) 1683 + SEC(2005) 1684]

(2006/C 309/14)

On 21 December 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 May 2006. The rapporteur was **Mr Ribbe**.

At its 428th plenary session held on 5-6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 157 votes to two with six abstentions.

1. Summary of EESC conclusions and recommendations

1.1 The EESC welcomes the Commission communication *Thematic Strategy on the sustainable use of natural resources* in principle and supports the broad aims described therein of improving the productivity and efficiency of resource use, i.e. further decoupling economic growth from resource use and, at the same time, also reducing the environmental impact of such resources as are used.

1.2 The EESC once again refers to its view communicated to the Commission two years ago, that such a Commission strategy must also give thorough consideration to the issue of non-renewable resources. One of the EESC's main criticisms is that the Commission document does not do so.

1.3 In the EESC's view, clear statements on non-renewable resources, which would certainly need to go beyond the 25-year planning horizon of this strategy, are also necessary. The EESC therefore believes that the strategy should be broadened and its timeframe extended to 50 to 100 years, though of course intermediate steps would then have to be determined.

1.4 Conversely, it is obvious that for the preservation of certain natural resources (such as fish stocks) there is no more time to waste, so that concrete and immediate action is needed in these areas.

1.5 For a true strategy to succeed, it is indispensable firstly to specify clear and achievable goals, which can then be reached with similarly specified, concrete instruments (which make up the actual strategy). However, one can search in vain in the Commission document for clear goals and specific instruments. One reason for this is doubtless that it is simply not possible to have an all-encompassing strategy for the large number of natural resources that exist. What is needed instead are individual, sector-specific strategies, which the Commission is to some extent working on.

1.6 The EESC therefore looks on the Commission communication not as a strategy in the true sense, but rather as a very welcome and proper basic philosophy, which will not be possible to implement by means of the proposed databases and panels of experts.

2. Main elements and background of the opinion

2.1 On 1 October 2003, the European Commission published a communication to the Council and the European Parliament entitled *Towards a Thematic Strategy on the sustainable use of natural resources* ([1]). This set out the basis for an appropriate strategy and launched an initial consultation process with those parts of society that were affected or interested.

2.2 At the time, the EESC, in its opinion of 28 April 2004 on the sustainable use of natural resources ([2]), welcomed in principle the Commission's proposal to draw up an appropriate strategy.

2.3 On 21 December 2005, the Commission submitted this *Thematic Strategy on the sustainable use of natural resources* to the Council, the European Parliament, the EESC and the CoR: The relevant Commission document ([3]) is the subject of this opinion.

2.4 Of course, the EESC also welcomes the publication of the 'strategy', which it sees as tying in with the strategy for sustainable development. A European strategy for preserving the various renewable and non-renewable natural resources is, in the EESC's view, urgently needed in order to sustainably address the challenges we face. The communication definitely goes in the right direction, but the EESC does not believe that the initiatives and actions it describes go far enough.

3. Comments on the content of the Commission communication

3.1 Understandably, there is no difference between the two Commission communications in terms of the Commission's analysis of the problems to be addressed. It is stated that

— the functioning of our economy is dependent on the existence and thus the availability of both renewable and non-renewable resources;

— natural resources are crucial to our quality of life;

([1]) COM (2003)572 final, 1.10.2003.
([2]) OJ C 117, 30.4.2004.
([3]) COM (2005)670 final, 21.12.2005.

— current patterns of resource use cannot be maintained, even though *'Europe has significantly improved material efficiency'*;

— consequently, an even greater decoupling of the consumption and use of resources from economic growth is imperative, and

— inefficient use of resources and overexploitation of renewable resources constitute long term brakes on growth.

3.2 However, the current paper emphasises much more heavily that it is not only a matter of decoupling economic growth from resource use, but also of a reduction in the environmental impact of the (reduced or yet to be reduced) use of resources; in other words, a twin-track strategy as described by the Commission years ago, before the sustainability strategy was adopted, with the Factor 10 concept.

3.3 To cite one example: greater efficiency means that modern coal-fired power stations now use less resource input for each kilowatt-hour of electricity they produce. However, efforts are currently under way to reduce the environmental impact still further, e.g. by reducing the climate impact of each tonne of coal used, e.g. through the development of 'climate-neutral' power stations in which the CO_2 that is produced is captured and then stored underground.

3.4 The 'strategy' that is being proposed here states that this efficiency approach should be adopted as a principle for the use of all natural resources. The EESC warmly welcomes this.

The EESC's critical observations

3.5 However, although the EESC fully supports this approach by the Commission, it must nonetheless make some very critical comments about the 'strategy' that has been submitted.

3.6 The Commission states in its communication that a distinction needs to be made between renewable and non-renewable resources, and that the major problems are to be sought mainly in renewable resources (such as fish stocks and fresh water).

3.7 It points out that resource use has already been, and still is, a key issue in European environment policy discussions over the past thirty years, and that *'a major concern in the 1970s, following the first oil crises, was natural resource scarcity and limits to growth'*. However, '*scarcity has not proven to be as environmentally problematic as then predicted. The world has not run out of fossil fuels and the market, through the price mechanism, has regulated scarcity*.'

3.8 In reality, the environmental problem is not primarily a matter of whether, for example, a non-renewable resource is scarce, still available or no longer available. The environmental problem arises — and this is the Commission's starting point, too — from the consequences (for example for the climate) of use or overuse. Consequently, it should not be perceived as an environmental problem if the solar energy that is stored as oil, coal or gas runs out. However, the EESC points out that the impending non-availability of non-renewable resources will prove to be a serious problem for our economy and thus also a social problem — with significant effects on people's standard of living. Thus, it is not simply a matter of the environmental consequences of resource use, but it must also be a matter of the potential availability of natural resources to current and future generations. Therefore, as part of the debate on sustainability, one of the key challenges of the coming decades will be to ensure the availability of resources for future generations. The EESC therefore believes that the increasing scarcity of resources is not an exclusively environmental issue, but one of sustainability, which includes ecological, social and economic aspects.

3.9 The Commission's reference to the 'market', which responds to increasing scarcity of supply with higher prices, is absolutely right. The — at times dramatic — oil price rises of recent months, which have had a significant impact on the European economy, are of course not exclusively down to the foreseeable long-term decline in the availability of certain non-renewable resources, but are related to the market power of — in some cases monopolistic — suppliers and to political instability in the countries in which most of these resources are to be found.

3.10 The EESC wishes to refer to the comments that it made two years ago in its opinion on the draft document: Putting forward a 'strategy' that looks forward only 25 years and does not address, or only inadequately addresses, the entirely foreseeable shortage or indeed exhaustion of certain key non-renewable resources (such as fossil fuels) in the long term sends the wrong political signal to society. The EESC believes that the availability of non-renewable resources is a key criterion for taking responsibility for the required sustainability criteria.

3.11 In this context, the EESC recalls that many sectors of the economy rely not only on the availability of fossil fuels in general, but on those fuels being available *cheaply*. Those economies that are structured in that way will in future have the greatest difficulties adapting. On that basis, the EESC once again endorses the Commission's statement that '*inefficient use of resources… constitute[s a] … brake on growth*'.

3.12 Rising resource prices can in the short run be partially offset by efficiency measures. However, in many sectors, such as transport and energy, shortages and/or extremely high prices may make major structural changes necessary. As this may imply extremely significant investment, the necessary decisions should be taken as soon as possible so as to avoid the inappropriate allocation of resources.

3.13 An example for such strategic long-term thinking is the Swedish government's announcement that it intends both to pull out of nuclear power and to move away from mineral oil. Of course, such aims can only be achieved in the long term, but it is important to start early so as to avoid disruption to the economy and society later on.

3.14 The EESC therefore believes that the EU's strategy should actively examine such questions; sadly, it does not. The Committee wonders whether this is because the 25 year period set by the European Commission for the strategy is perhaps (much) too short. The EESC cannot accept that the Commission points out that it is unlikely that there will be serious problems with shortages of non-renewable resources within this time period, and that the issue of non-renewable resources consequently gets barely a mention. The Commission needs to make clear statements about non-renewable resources that go beyond the current timescale of the strategy. It is therefore necessary to lengthen the period covered by the strategy, for instance to 50 or even 100 years, which is a relatively short period in terms of resource use. Of course, in the case of such a long timescale, intermediate steps towards the long-term goals would need to be determined. The EESC points out that the Commission announced such a way of doing things in a communication ([4]) in 2005.

3.15 Next, the Commission says in its paper that the overall objective of the strategy is to *'reduce the negative environmental impacts generated by the use of natural resources in a growing economy'*. To be sure, there is no one in Europe who would disagree with such a general, but also vague, objective.

3.16 The Commission's strategy consciously does not *'at this initial stage … set quantitative targets'*. The EESC believes that this is fundamentally wrong. For one thing, we are not at an initial stage: the problems have been known for years, in some cases for decades. For another, the EESC has already stated on many other occasions that a strategy must have clear aims if it is to be truly successful. A strategy is a plan to achieve specific goals. If goals are missing or are phrased so as to be non-binding or vague, policymakers lack guidance as to which policy instruments to use where.

3.17 The EESC therefore takes the view that the proposed *Thematic Strategy on the sustainable use of natural resources* is not really a strategy, but rather an — it should be clearly emphasised — absolutely right basic philosophy for which specific implementation strategies for each natural resource need to be drawn up.

3.18 The EESC is also willing to recognise that one cannot really expect all natural resources to be dealt with comprehensively and exhaustively in a single strategy. The subject matter is far too complex. It is therefore indispensable to integrate this quite correct basic philosophy into specific strategies and/or policy in general. It is precisely for this reason that the Commission, almost at the same time as producing this 'strategy', has published a thematic strategy on the prevention and recycling of waste ([5]) (which is indirectly a natural resource) and has announced a thematic strategy for the protection of soil. Strategic target-led decisions must primarily be rooted in the respective sectoral policies.

3.19 This would help all those involved to be clearer about which strategy starts where. Concrete examples would enable interconnections to other strategies and policy areas at EU and Member State level to be created and thus establish responsibilities more clearly, which would help improve implementation of the strategic goals.

3.20 *Four initiatives to achieve the objectives*

In all, the Commission mentions four new initiatives in its communication that are intended to form the basis of the strategy for the next 25 years:

— 'Building the knowledge base', which includes setting up a 'Data Centre for policy-makers';

— 'Measuring progress', which means developing various indicators by 2008;

— the 'internal dimension', under which the Commission firstly suggests that individual Member States develop national measures and programmes on the sustainable use of natural resources, and secondly proposes a *'High-Level Forum composed of senior officials'*, which is to be *'responsible for the development of natural resource policy'* in the Member States; this forum is also to include representatives of the commission and, *'as appropriate'* (whatever that is supposed to mean), consumer organisations, environmental NGOs, industry, academia, etc.;

— the 'global dimension' under which it is proposed to '[set] up an international panel'.

3.21 The EESC does not doubt the sense or the usefulness of such databases or new bodies. The more we know and the more people, especially people with political responsibilities, concern themselves with the subject, the better.

3.22 However, the EESC must ask the Commission whether it really believes that this amounts to a 'strategy' that will really influence policy. There is no way that the problems described above will be solved with the measures described above.

3.23 Rather, such announcements give the impression that the knowledge base first needs to be expanded so as to lay the foundations for political action. The EESC sees this not so much as a strategy for coherent action, but rather a strategy for putting off political decisions. The Commission should do everything possible to avoid creating such an impression.

([4]) COM(2005) 37 final; see relevant references in the EESC opinion on the Communication from the *Commission to the Council and the European Parliament on the review of the Sustainable Development Strategy — A platform for action* (CESE 361/2006).

([5]) COM(2005) 666 final.

3.24 For example, it has been known for years that fish, a natural resource, is being massively overexploited. The Commission responds to this threatening situation every year with the — doubtless entirely justified — demand that lower fishing quotas be set in order, for example, to stop overfishing of cod ([6]). Such calls have gone unheeded. Neither a new database nor new bodies will solve this problem in the future.

3.25 The EESC therefore expects there to be less talk about preserving certain natural resources, and action finally to be taken, for example to preserve fish stocks.

3.26 What the EESC is trying to reiterate here is that it does not consider the 'instruments' proposed by the Commission to be anything approaching adequate.

3.27 In its opinion on the Commission's preparatory document, and in other Committee opinions such as those on sustainable development or energy and transport issues, the Committee has called on the Commission:

— to specify clear, i.e. quantifiable, objectives that the policy seeks to achieve;

— to clearly specify the instruments — not least fiscal ones — that are to be used to achieve those objectives. For instance, the Committee has repeatedly requested the Commission to set out how it intends to achieve the much-discussed internalisation of external costs.

3.28 To date, the Commission has not given so much as a whisper of advice on this matter. It has shied as far away from specific goals such as the concept of 'factor ten' ([7]) as it has from describing and discussing instruments.

3.29 The EESC therefore believes that the Commission must clearly set out clearly defined aims, and the policy instruments and measures with which they are to be achieved, whenever it talks about a 'strategy'.

3.30 In this context, the EESC refers to its opinion, adopted in May 2006, on *The review of the Sustainable Development Strategy — A platform for action* ([8]) in which it also addresses this problem.

Brussels, 5 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([6]) This, incidentally, has not led to the disappearance of endangered cod from the menus of the canteens of the European institutions.

([7]) See COM(1999) 543, 24.11.1999, p. 16 point 4.4: Efficient use and management of resources, and also the opinion of the Economic and Social Committee on the Communication from the Commission on *Europe's Environment: What directions for the future? — The Global Assessment of the European Community Programme of Policy and Action in relation to the environment and sustainable development, 'Towards Sustainability'*, OJ C 204, 18.7.2000, pp.59-67.

([8]) COM(2005) 658, NAT/304 — Draft opinion on the Communication from the *Commission to the Council and the European Parliament on the review of the Sustainable Development Strategy — A platform for action* (CESE 361/2006).

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive on control of San José Scale

COM(2006) 123 final — 2006/0040 (CNS)

(2006/C 309/15)

On 2 May 2006 the Council decided to consult the European Economic and Social Committee, under Articles 37 and 94 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 24 May 2006. The rapporteur was **Mr Siecker**.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 166 votes to two with one abstention.

1. **Introduction**

1.1 The purpose of this proposal is to undertake a codification of Council Directive 69/466/EEC of 8 December 1969 on control of San José Scale. The new Directive will supersede the various acts incorporated in it; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

2. **General comments**

2.1 The Committee regards it as very useful to have all the texts integrated into one Directive. In the context of a People's Europe, the Committee, like the Commission, attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to ordinary citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

2.2 It has been ensured that this compilation of provisions contains no changes of substance and serves only the purpose of presenting Community law in a clear and transparent way. The Committee expresses its total support for this objective and, in the light of these guarantees, welcomes the proposal.

Brussels, 5 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on Risks and problems associated with the supply of raw materials to European industry

(2006/C 309/16)

On 14 July 2005 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *Risks and problems associated with the supply of raw materials to European industry*.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 May 2006. The rapporteur was Mr Voss. The co-rapporteur was Mr Gibellieri.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 157 votes with seven abstentions.

1. **Summary and recommendations**

1.1 The recommendations must be seen as guidelines for political decisions to implement forward-looking resource, research and development, and external policy at both EU and national level. Achieving the Lisbon objectives, which are designed to make the European Union the most competitive and dynamic economy in the world by the end of the decade, requires an innovative industrial policy, that is in tune with social and environmental conditions and on which the readiness to embrace structural change is contingent. The necessary industrial change must be shaped proactively and in a way that reflects a coherent strategy for sustainable development. This means making the value-added process more materials-efficient and ensuring the sparing use of all resources, as well as progressively replacing finite resources by renewable ones. As part of both these strategies, a new industrial outlook is developing based on technological innovation. The result will be high-quality and secure jobs in industry and industry-related services.

1.2 In market economies, the private sector bears primary responsibility for ensuring the supply of raw materials, although governments must help to establish the basis for high security of supply and work towards achieving a sustainable supply of raw materials through industrial, research, employment and environmental policies. More effective promotion of new technologies will not only boost competitiveness and have a favourable impact on jobs, but will also further the switch to a sustainable economy.

1.3 As the basis for a sustainable raw materials policy, life-cycle analyses help to ensure that mineral and metallic raw materials are extracted and processed efficiently and with a low environmental impact, that recycling processes are further developed, and that raw materials whose availability is limited and which aggravate the greenhouse effect are — where technologically possible –increasingly and gradually replaced by low-carbon, renewable and climate-neutral energy sources, or are consumed using efficient technologies with low carbon emission, so as to protect the environment. This can be achieved above all by a targeted policy both by the EU and by Member State governments. The Committee feels that both strategies — efficiency improvement and replacement — offer an opportunity to cut the import dependency of raw materials supply.

1.4 The significant growth in worldwide raw materials consumption may lead to supply bottlenecks in the future, at least in the case of certain raw materials. Changes on the world market require a proactive policy on the part of industry in the EU and its Member States. The EU institutions can help to guarantee the supply of raw materials, which is managed mainly by industry, through pro-active trade, research and external policies, while the Member States can also help in this regard through their national raw materials and energy policies, with the aim of preventing production from moving outside the Union. The Committee calls on the Member States to help frame the basic tenets of a European raw materials and energy policy and to shoulder their responsibility for a sustainable raw materials policy in Europe.

1.5 The Committee believes that the EU, working closely with the Member States and all stakeholder groups, must ensure that the supply of raw materials to European industry does not come under threat and that raw materials are available on the world market at reasonable prices. To achieve these objectives, the European Union should take action to counter unfair competitive practices and any moves towards protectionism, both through multilateral organisations such as the WTO, OECD and ILO, and bilaterally. A key part of attaining these objectives is intensive dialogue with the political and industrial players that exert an influence over the raw materials market.

1.6 The Committee firmly believes that European industry meets all the conditions necessary to tackle with determination the challenges — both present and future — arising from structural changes against the backdrop of global competition. Europe is and will remain a competitive location for industry, while at the same time developing into a sustainable economic area, if a comprehensive innovative policy is pursued that places equal weight on economic prosperity and social and environmental effects.

1.7 In conclusion, it must be stressed that, because Europe is so highly industrialised, raw materials supply is of key importance for achieving the Lisbon objectives. Europe's relatively high dependence on imports of fossil, metallic and mineral materials jeopardises not just security of supply but also raw materials prices, given global consumption levels. Industry and

policy-makers can make provision by ensuring that measures are actively taken to increase resource efficiency, promote technological innovation in the raw materials and recycling sectors, substitute renewable for non-renewable raw materials, and diversify the supply of raw materials by promoting sources within Europe. With respect to coal it also has to be seen whether a climate-neutral 'clean coal' approach can be implemented. Merely taking steps to ensure that enough raw materials are available at competitive prices would, in contrast, fall short of the mark. As to the external dimension, significant curbs on the growing use of fossil fuels must be a global political objective. The EU's role in this process will have to be determined over the next few months.

2. **Outline of the issue**

2.1 Raw materials are the first stage of a complex value-added chain. In a time of increasing globalisation they are essential to the performance and to the development and growth potential of a country's economy. This applies to energy sources and to many metallic, mineral and biological raw materials, which are essential primary inputs for industry. Europe depends on imports for a large number of its raw materials, a fact to which too little attention has been paid to date, though now that raw materials prices are rising, there is greater awareness of this. Price explosions in fossil fuels and coke and steel are notable examples.

2.2 The importance of specific raw materials is often only vaguely realised. This may be due to the fact that raw materials are less important than factor allocation as a whole, even though raw materials cannot usually be substituted in the short term, unlike other factors of production. This means that supply shortages, or even interruptions, often lead to production cuts. Price trends on raw materials markets have an almost immediate knock-on effect on the costs of downstream production sectors, and therefore affect the whole economy. Nor should the social aspects of this issue be neglected.

2.3 Rampant economic growth in other parts of the world (China, India, etc.) has caused the consumption of energy sources and industrial raw materials to soar over the past decade.

2.4 It is also important to mention the regional distribution of raw materials and the discrepancy between the location of reserves and place of consumption. Europe in particular is a region that already shows high import needs for raw materials and fossil fuels, and whose dependence on imports will rise even further in the future.

2.5 Energy supply is the driving force behind the European economy. For a number of reasons — the finite nature of many energy sources; dramatic price rises; the impact of military conflicts and political events on security of supply; and the fact that the national 'energy policies' in place are, from a global standpoint often ineffectual — supply is, in Europe, under a very high threat.

3. **Global situation**

3.1 The situation with regard to energy sources is analysed below by way of example (although the comments also apply to many raw materials) since critical developments are now taking place in this area (oil price fluctuations, suspension of Russian natural gas deliveries), particularly good data are available and political measures are already being discussed.

3.2 In 2004 world crude oil production reached 3 847 megatonnes. By the end of 2004 a total of around 139 gigatonnes of oil had been extracted since the start of industrial crude oil production, half of it during the last 22 years. This means that over 46 % of proven reserves of conventional crude oil have already been extracted.

3.3 China's role in this context requires particular mention, since that country has changed in the last 20 years from a net exporter of crude oil to a net importer, and will draw increasingly on worldwide available oil resources in the future to support its meteoric economic growth.

3.4 In addition, other events such as the Iraq war, the hurricanes in America, stagnating investment leading to bottlenecks in production and transport capacity, temporary supply breakdowns due to strikes, and speculation have contributed to significant increases in the price of crude oil and — with a time lag — natural gas. Despite this, real prices, i.e. prices corrected for inflation, are still lower now than at the beginning of the 1980s.

3.5 As well as these price movements, the question of fossil fuel availability obviously also arises. At the end of 2004, total conventional crude oil potential was around 381 gigatonnes. The countries of the Middle East have about 62 % of global reserves, America 13 % and the CIS just under 10 %. It should be noted that in North America almost two thirds of total expected potential has already been recovered, whereas in the CIS the figure is a little over one third and in the Middle East just under a quarter.

3.6 The situation is not very different for natural gas. The total global potential of conventional natural gas is about 461 trillion cubic metres, which in energy terms corresponds more or less to the total potential of crude oil. Over one half of natural gas reserves are concentrated in three countries (Russia, Iran and Qatar). An additional 207 trillion cubic metres of natural gas reserves are expected. This means that so far almost 18 % of proven natural gas reserves have been extracted. In 2004 natural gas consumption reached a historic high at 2,8 trillion cubic metres. The biggest consumers of natural gas were the United States, followed by Russia, Germany, the United Kingdom, Canada, Iran and Italy.

3.7 The largest reserves are still those of coal. Estimating from global coal consumption in 2004, reserves of hard coal should last another 172 years from the beginning of 2005, and reserves of lignite another 218 years. In 2004, coal accounted for 27 % of global primary energy consumption. Only crude oil consumption was higher. 24 % of this was accounted for by hard coal and 3 % by lignite. Coal was the most important energy feedstock for electricity production, with a worldwide share of around 37 %.

3.8 The distribution of hard coal deposits is more even than that of crude oil and natural gas. Although here, too, Russia has a considerable share of global reserves, North America, Asia, Australia and South Africa, which have significantly less crude oil and natural gas, possess large coal deposits. But global coal reserves are highly concentrated. Almost three quarters of reserves are found in just four countries: the United States, Russia, China and India. The EU has considerable coal reserves — in contrast with the oil and gas situation. But it is important to note that quality varies widely. In the case of coking coal, which is only supplied by a few regions and for which global demand is relatively steady, about 35 % of total production is traded worldwide. Only 16 % of all world coal produced is currently traded internationally. Exports also come from a small number of countries, and the industry is becoming increasingly consolidated. Export supplies of coking coal are particularly concentrated, with 60 % coming from Australia alone; 50 % of all coke exports come from China.

3.9 Price trends for coal over the past few decades have been similar to those for crude oil and natural gas, but at a considerably lower level per energy content. Thinking of raw materials especially, it is important not to forget that coal can be used not just as an energy source and essential reducing agent for pig iron production, but also in a whole series of ways as fuel in various chemical applications or in the construction industry. It must be borne in mind, however, that for environmental reasons coal is, as far as possible, used with modern, clean and efficient technologies, including, given the very high levels of greenhouse gas emissions, technologies to sequestrate and store CO_2.

3.10 The volatility of the supply situation is further illustrated by the continuing escalation in global energy consumption, as reported by the International Energy Agency (IEA) in its November 2005 *World Energy Outlook* report. If there is no change in consumer behaviour, worldwide energy demand will rise by more than 50 % by 2030, to 16,3 billion tonnes of oil equivalent. Events at the beginning of 2006, when gas supply to central and western Europe was reduced because Russia cut off gas supplies to Ukraine, could be a harbinger of future supply scenarios if Europe's dependency on energy imports continues to increase. A key objective must therefore be to implement the Commission's two green papers on *security of energy supply* and *energy efficiency*, and to conduct a wide-ranging and constructive debate on the new Green Paper on *A European energy strategy*.

3.11 It should be noted that the IEA figures are incompatible with climate protection. Rather than the reduction in greenhouse gas emissions required for climate protection, the IEA projection would mean an increase in CO_2 emissions of at least 52 % by the year 2030. Significant curbs on carbon emissions from the growing use of fossil fuels must therefore be a global political objective. The EU's role in this process will have to be determined over the next few months.

3.12 Nuclear energy is seen by very disparate groups as a possible solution to the greenhouse effect. In addition to the risks of the nuclear option, there is the question of supply security. The world's uranium reserves are found in a small number of countries. The most important regions of uranium extraction are currently Australia, North America, some African countries, and the CIS countries. It is also thought likely that deposits will be found in China and Mongolia. An expansion of nuclear energy for peaceful applications, especially in China, could lead to a shortage of uranium within 30 years.

3.13 About 12 % of crude oil is used to make petrochemical products. Plastics are a major petrochemical product group. 224 million tonnes of plastic were produced worldwide in 2004, of which 23,6 % came from western Europe. According to current forecasts, global consumption of plastics will continue to rise: per capita use is expected to increase by 4,5 % per year up until 2010. Key growth markets are eastern Europe and south-east Asia.

3.14 As well as fossil fuels, ores are also an important raw material for the European economy. Iron ore is particularly important. Over 1 billion tonnes of steel were produced across the world in 2004. Steel production is thus considerably higher than that of other materials. Iron ore consumption was 1,25 billion tonnes in 2004 — one if not two orders of magnitude ahead of the next most widely used ores: bauxite (146 million tonnes), chrome ore (15,5 million tonnes), zinc ore (9 million tonnes) and manganese ore (8,2 million tonnes).

3.15 According to the US Geological Survey, in 2005 economically viable iron ore reserves stood at about 80 billion tonnes of iron equivalent, which is more than 100 times greater than current demand. If deposits that are not currently considered economically viable are included, the total volume of deposits increases to around 180 billion tonnes of iron. Despite these large deposits, it is assumed that iron ore prices will, in future, continue to be high. One reason for that is undoubtedly the dominant market position of three large firms

(CVRD, BHP and Rio Tinto) which, together, have a good 75 % market share of global iron ore production. Bottlenecks are also expected in maritime transport, leading to increased transport costs and thus to higher ore prices for the European steel industry.

3.16 The availability of coke and coking coal must also be seen as a factor in safeguarding European iron and steel production. Coking coal exports from the USA are set to drop; this will in turn expand the market position of Canada and Australia. To safeguard supplies worldwide, however, steady growth is needed in these countries' capacity. With the expansion of coking plants in China, that country too is set to become an increasingly important coke supplier, although other countries are also building up new coking capacity for the domestic market.

3.17 Another important raw material in steel production is scrap metal. The worldwide trade in scrap metal has expanded considerably over the past few years. Because of the durability of steel products, however, the supply of scrap metal cannot keep pace with demand, which means that the already tight market for scrap metal is set to expand considerably. Further still it is assumed that, despite the fact that the situation does appear to have eased over the past few months, scrap metal prices, which tripled between 2002 and 2004, will increase again in the longer term.

3.18 Other metallic raw materials such as manganese, chromium, nickel, copper, titanium and vanadium are important alloys which have a strong effect on the properties of the basic material. These metals — as well as palladium, which is an important raw material for high-tech applications — have to be imported into Europe.

3.19 The fact that the raw materials described, and many other raw materials, are still available in sufficient quantities means that the price rises now being observed do not signal the depletion of resources in the medium term. However, this does not rule out the possibility of demand and supply shifts, or make price movements random. In the short term, the supply of raw materials is not very flexible owing to the long lead times of capital-intensive exploration projects. When demand for raw materials is high, it is quite possible that shortages and price rises will occur. The same applies to transport capacity, which also limits the availability of (imported) raw materials. Sufficiency of global reserves and resources may limit the risk of quantitative supply disruptions, but they do not provide a guarantee against marked short-term and medium-term price rises. A complete evaluation of supplier and price risks on international raw materials markets means taking into account political measures, and monopolistic or oligopolistic behaviour of companies with a strong market position.

3.20 This is particularly important given that a considerable proportion not just of major energy sources, but also of metal raw materials are concentrated in certain regions of the world and with certain companies, and this concentration has increased significantly since the early 1990s, at least in the case of metals. Thus Chile has almost tripled its share of copper ore production since 1990, and almost 40 % of the world's bauxite is produced in Australia. Brazil has also substantially increased its importance as a bauxite supplier, and is now the second-largest bauxite producer, highlighting South America's key role in the production of metal ores. The same goes for iron ores, about 30 % of which are produced in Brazil. Of the EU Member States, only Sweden is of any importance as an iron-ore producer, but it accounts for only 1,6 % of total world production.

4. **European industry**

4.1 Industry continues to be very important to the economy of the EU because of its contribution to employment and value added. It is the key link in the value-added chain for producing material goods. Without goods manufactured in the industrial sector many services are pointless. This means that industrial production will not lose its position as a source of wealth. A secure supply of raw materials for industry is therefore essential. There is an imbalance in the case of fossil and many metallic raw materials between reserves and consumption, which means that oligopolies among the supply countries can distort markets, including in Europe. Appropriate measures must be taken for all raw materials in order to reduce Europe's dependence on imports in the future, as set out in the Green Paper on security of energy supply.

4.2 Statistics show that substantial differences exist between European manufacturers with regard to both raw material and energy efficiency. Thus energy-saving potential can be said to exist across Europe, and savings should be pursued urgently so as to cut overall dependence and boost development activity.

4.3 The future of one industrial sector does look positive, despite being dependent on imports of its raw material. Europe's steel industry can compete on the world market because it has already successfully restructured and drawn the right lessons from that process. This consolidation has achieved a structure that allows companies to make adequate profits, even during periods of economic difficulty. Countries like China and India still have to go through the necessary structural transition.

4.4 In the EU especially, the steel industry has sound, efficient value-added chains, in which steel plays a central role. There are also infrastructure and logistical advantages: on the European steel market producers and customers come together in a relatively small area with good transport connections to international rail, water and road networks, which in turn brings competitive advantages.

4.5 In addition, European steel companies have mounted a considerable effort and invested large sums in environmental protection and energy efficiency. They have the highest recycling rate after the United States, which means they use large quantities of scrap metal in their production and thus save on resources. Use of reducing agents in blast furnaces is also markedly lower than in many countries outside of Europe.

4.6 Despite this positive mood in the European steel industry, however, it should be borne in mind that as a result of the dependency on raw materials imports, high energy prices and enhanced environmental protection measures, the liquid phase in particular could, in the medium term be shifted from Europe to regions that can offer secure raw materials supplies and reasonably priced energy. As this phenomenon affects not only iron but also aluminium and other metals, a considerable number of European jobs may be lost that can only be recouped through research and development in the fields of resource and energy efficiency, and through innovative product development and industrial services. Nor does shifting the liquid phase to countries with lower environmental standards and lower energy prices help to further sustainable development across the world; it merely worsens the European position.

5. **Alternative raw materials scenarios and technological trends**

5.1 If, as in the past, the global economy continues to grow primarily through the use of fossil raw materials, then climate problems must also be expected to increase — even before the sources of these raw materials dry up — as a result of higher greenhouse gas emissions. Thus, in its *World Energy Outlook 2006*, the IEA expects global CO_2 emissions worldwide to be up more than 52 % by 2030 over 2004 levels. Yet, according to other estimates, industrial countries' CO_2 emissions will have to be cut by 80 % across the world by 2050 in order to be able, in the long term, to keep climate change at tolerable levels both for man and the environment. There is thus a demand for technologies that emit considerably lower levels of greenhouse gases than those used at present.

5.2 Increased use of renewable energy is often regarded as the first option for reducing greenhouse gases. The EU is a pioneer here: its White Paper on renewable energy sources [1] sets the objective that by 2010, 12 % of primary energy should come from renewable energy sources. However, achieving this goal will require not just new biomass, wind and solar energy plants. It is also of prime importance to substantially reduce the present rate of growth in energy consumption. Energy-saving potential should be tapped at all levels of added value and consumption, as well as disposal. Targeted moves to foster technical progress thus provide an opportunity for securing lower greenhouse gas emissions in the future while at the same time boosting the competitiveness of European industry.

5.3 In 2005, the European Environment Agency concluded that by 2030 between 230 and 300 Mtoe per year (equivalent to 9,6 or 12,6 × 10^{19} joules) of biomass could be made available, without harming the environment and preventing the EU from being largely self-sufficient in agricultural products. This would be amount to about 20 % of current primary energy use in the EU 25. A total 100 Mtoe per year will be obtained from waste, 40-60 Mtoe from forestry products, and 90-140 Mtoe from agricultural products. Biogenic raw materials could be used not just as energy sources, but also to make broad range of products that for price reasons are still only a niche business. Intelligent combinations of raw materials and processes, and new processing strategies, could soon make bioplastics competitive for example.

5.4 Use of regrowing raw materials must increase worldwide. In the context of promoting research and technology not enough attention has so far been paid yet to renewable energy and fuel sources. Current price-cost ratios mean that various market launch measures must be used to ensure broader market and technology development.

5.5 As regards the potential for agricultural biomass, it is important to bear in mind that the world's available per capita arable area is shrinking dramatically. Today about the same amount of land is available for grain cultivation as in 1970, but then there were almost three billion fewer people, which means that in 1970 around 0,18 hectares of arable land was being cultivated per capita, whereas now the figure is barely 0,11 hectares. This trend is increasing because some 7 million hectares of agricultural land are lost every year to erosion, salination or desiccation and over one quarter of all cultivated land is considered to be at risk.

5.6 According to FAO estimates, the developing countries will have to double their grain imports over the next 20 years. This means that grain will in future be scarce and more expensive. The feed requirements of productive livestock and demand for renewable raw materials in the industrialised world will therefore increasingly conflict with the food needs of the developing countries. Livestock feed requirements could be contained by reducing high meat consumption, which would make more calories available given that about 90 % of food energy is lost through fodder consumption. It will thus be particularly important to promote better use of plants, plant components and by-products containing lignocellulose (wood, straw and grasses being classic examples). The great need for research and development here also means that a sea change is urgently required in the EU research framework programme to promote a renewable energy and raw materials basis and to boost efficiency.

5.7 In these circumstances it is clear that switching to renewable energy sources and industrial raw materials can be only part of the solution. It will be essential to employ technologies that use substantially less energy and raw materials to

[1] Communication from the Commission — Energy for the future: renewable sources of energy — White Paper for a Community Strategy and Action Plan.

deliver equivalent services. Thus, in the steel industry during the past four decades energy consumption and CO_2 emissions have been cut by around 50 %. To permit further savings, the consortium ULCOS (*Ultra Low CO_2 Steelmaking*) launched by the European steel industry, working together with research bodies, is planning a considerable cut in emissions and thus a breakthrough on the road towards more energy-efficient steelmaking. A smelting reduction technique developed in the 1980s is already making it possible to use lower-grade coal and reduce CO_2 emissions by up to 30 % compared with the blast-furnace process.

5.8 Efficiency improvement is a promising strategy to reduce costs, protect resources and ensure jobs. Raw materials costs account on average for 40 % of total costs, and are thus the biggest cost factor. Without changing economic performance, efficient use of raw materials helps to reduce costs and, because resource consumption is lower, damage to the environment. Incentives to improve efficiency based on government initiatives and programmes, such as research projects and competitions, can motivate companies to use this potential. Small and medium-sized companies in particular should be made aware of possible efficiency and savings potential in raw materials use, by promoting appropriate management methods such as EMAS and ISO 14001.

5.9 Technical standards for the use of raw material stocks available in the European Union must be high. This applies in particular to coal. Backing may be given to the further expansion of capacity only if, also for reasons of climate protection, the 'clean coal' option is actually implemented.

5.10 Higher recycling quotas, especially ones developed through technological innovation with improved properties as regards production, processing and use, provide a further solution to the problem of import dependency. Here substantial increases in raw material efficiency should be combined with innovative product development. This could bring about changes in market demand for various raw materials, creating an industrial growth potential, driven by research initiatives, that offers advantages over traditional processes in terms of both industrial and employment and environmental policies.

5.11 It is important to remember that, in addition to direct energy-saving in industry, major potential also exists for savings to be made in the home and in transport. Low-energy and passive-energy houses make it possible to save substantially on primary energy use in both heating and cooling. Combining such measures with efficient energy delivery technologies such as condensing boilers or heat pumps could save up to 90 % compared with the current average. Nor is it unrealistic to expect a fourfold reduction in energy consumption in private car transport by optimising propulsion technologies and user behaviour.

Brussels, 5 July 2006

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 the European system of integrated social protection statistics (ESSPROS)

COM(2006) 11 final — 2006/0004 (COD)

(2006/C 309/17)

On 10 February 2006 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 June 2006. The rapporteur was Ms Sciberras.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July 2006), the European Economic and Social Committee adopted the following opinion by 162 votes in favour and 5 abstentions.

1. **Recommendations**

1.1 The EESC points out that in order to reinforce the social dimension of the Lisbon Strategy, Member States should lend more political weight through the new framework to the goal of modernising and improving social protection. The social dimension is key to meeting the challenges arising from globalisation and an ageing population. The different objectives of the Lisbon Strategy, namely sustainable economic growth, more and better jobs and greater social cohesion, must be equally endorsed and upheld ([1]).

1.2 The EESC believes that the European system of integrated social protection statistics (ESSPROS) is important in the context of the open methods of coordination in the fields of social inclusion and pensions.

1.3 There is a need for an analytical approach based on reliable and comparable indicators. This is essential for creating a reliable picture of the progress or otherwise made towards meeting the objectives. The EESC believes that in addition to statistical streamlining the development of qualitative indicators is also required.

1.4 A Member State may find it difficult to fund the collection of the necessary statistics. Consideration has thus to be given to the capacity of all Member States to gather the information. In addition, the costs to each Member State of such an unfunded mandate, although minimal, should be estimated in advance. The EESC is pleased that the Commission foresees financial help for the Member States to introduce developments in the existing system.

1.5 It is also important that non-monetary criteria, based on human needs, are reflected in the choice of indicators, such as access, quality and participation ([2]).

1.6 Accurate collation of statistics is also important for the governments of Member States in order to adapt current social security systems to the needs of the respective societies and in order to address the needs of sections of society which do not fall under current social protection systems.

1.7 It also contributes to establishing and raising awareness of targeted programmes for the vulnerable and excluded social groups aimed in particular at eradicating child poverty.

1.8 Policy cooperation in the field of social protection in all Member States has, in recent years, taken a huge step forward. The objective of the proposed action to harmonise data on Community social protection statistics can only be achieved by the Community and not by Member States acting alone.

1.9 The outcomes of the Lisbon Strategy can be assessed by means of indicators and by evaluation of economic performance and the jobs and growth programme. There is a need to link these indicators to the indicators of social protection. This is the best way to evaluate the results of the whole Lisbon strategy.

2. **Introduction**

2.1 In order to achieve the goals set in the Lisbon Strategy, the social protection dimension has to be analysed and its different targets and elements made visible and comparable. The Commission's new Framework for the Open Coordination of Social Protection is a tool for the Member States and EU in this process. As the Committee stated in its opinion on the Strategy for open coordination on social protection ([3]), there is a need to create proper indicators for this tool.

([1]) EESC opinion of 20.4.2006 on Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union. Rapporteur: M. Olsson. OJ L 185, 8.8.2006

([2]) See footnote 1.

([3]) See footnote 1.

2.2 Social security systems in all Member States have evolved according to the States' history and any particular circumstances resulting in different systems in different States.

2.3 Social protection encompasses all actions by public or private bodies intended to relieve the community, be it households or individuals, of the burden of a defined set of risks or needs ([4]).

2.4 Social protection has developed a great deal since the beginning of the 1990s when confusion arose following the two Council recommendations, the first (92/442) aimed at harmonising objectives and policies for social protection, the second (92/441) aimed at determining common criteria to guarantee sufficient resources in the systems of all EU Member States ([5]).

2.5 Further communications on social protection have pushed social protection up the European agenda 'and have contributed positively to a common understanding of European social protection' (de la Porte 1999 a) ([6]).

2.6 This has led to the need for effective benchmarking, based on cooperation (already in force) and on coordination which consists mainly of exchanging views and recommendations based on best practices.

2.7 The most sensitive issue remained the establishment of commonly agreed indicators. Existing systems of comparative statistics needed to be revised. An analysis of the features, causes and development of social exclusion had to be carried out and the quality of the data improved.

2.8 The outcomes of the Lisbon Strategy can be evaluated by means of indicators and by evaluation of economic performance and the jobs and growth programme. There is a need to link these indicators to the indicators of social protection. This is the best way to evaluate the results of the whole Lisbon Strategy.

3. **Summary of the Commission document**

3.1 Social protection systems are highly developed in the EU. The organisation and financing of such systems is the responsibility of the Member States.

3.2 The EU has a distinct role to play in ensuring protection for citizens **in each Member State and for citizens** moving across borders on the basis of EU legislation coordinating national social security systems.

3.3 Therefore, it is essential to establish an agreed set of common indicators which requires a commitment from Member States to develop key instruments such as ESSPROS. A legal framework for ESSPROS, as specified in the Commission's proposal 'will improve the usefulness of current data collection in terms of timeliness, coverage and comparability'.

3.4 It was agreed at the European Council of October 2003 ([7]) that an annual Joint Report on Social Inclusion and Social Protection will be the core reporting instrument for streamlining the open method of coordination (OMC) ([8]).

3.5 The Communication from the Commission regarding *A new Framework for the open coordination of social protection and inclusion policies in the EU* spelt out the need to define a new framework to make the OMC a more visible and a stronger process ([9]).

3.6 The Commission proposal for a regulation of the European Parliament and of the Council on ESSPROS highlights the importance of the Social Dimension as one of the pillars of the Lisbon Strategy.

3.7 The objective of the regulation is to establish a framework for collation of data on social protection by Members States, which is currently carried out using different methods and definitions vary in each state making it impossible to compare data. This comparability diminishes the usefulness of such data when it comes to the analysis of social protection systems in the EU.

3.8 The objectives of the Commission proposal will be better achieved if the statistics and analysis thereof are undertaken at EU level on the basis of a harmonised collection of data in the different Member States.

3.9 The EESC agrees that a legal framework for ESSPROS will contribute to achieving the goals of competitiveness, employment and social inclusion set out in the Lisbon Strategy and consequently help to improve social protection systems in the different Member States.

3.10 The open method of coordination (OMC) which will facilitate work on social protection also presupposes the need for comparable and reliable statistics in the field of social policy ([10]).

3.11 The main elements of the Commission regulations are:

— the ESSPROS core system which covers the financial flows on social protection expenditure and receipts;

— apart from the core systems, modules on pension beneficiaries and net social beneficiaries will be added.

4. **Methodology of ESSPROS**

4.1 Developed in the late 70s the ESSPROS methodology was a response to the need for a specific instrument to statistically monitor social protection in the EU Member States ([11]).

([4]) Social Benchmarking policy making, Caroline de la Porte.
([5]) Definition from ESSPROS MANUAL (1996).
([6]) Social Benchmarking policy making, Caroline de la Porte.
([7]) Brussels European Council, 16 and 17 October 2003, Presidency Conclusions.
([8]) COM(2006) 11 final, 2006/2004 (COD).
([9]) COM(2005) 706 final.
([10]) COM(2003) 261 final.
([11]) COM(2003) 261 final.

4.2 The 1996 ESSPROS Manual established an extremely detailed system for classifying social benefits.

4.3 The revised methodology in the ESSPROS Manual increases flexibility, which to a certain extent is missing in the Eurostat compilation of statistics.

4.4 One way in which this flexibility is increased is by moving over to a core system and modules ([12]).

4.5 The core system corresponds to the standard information on social protection receipts and expenditure published annually by Eurostat.

4.6 The modules contain supplementary statistical information on particular aspects of social protection. The themes covered by the modules are determined by the requirements of the Commission and the different Member States ([13]).

4.7 Although the objectives of ESSPROS provide a comprehensive description of social protection in the EU Member States, the ESSPROS methodology does not include statistics on important issues as health services, housing, poverty, social exclusion and immigration. There is significant collation of these statistics by Eurostat and comprehensive exchange of information regarding social protection between the Member States of the European Union on the basis of MISSOC ([14]). However, a legal framework for ESSPROS would ensure a more comprehensive and realistic description of social protection in the Member States.

Brussels, 5 July 2006

5. **Trends in the field of social protection**

5.1 *Housing*

5.1.1 Housing affordability is an area that requires assessment. Measurement of true housing affordability has to be quite comprehensive.

5.1.2 Issues like this further underline the importance of collating social and economic statistics in Member States for the benefit of the public; sustainability indicators should be kept as a warning.

5.2 *Pensions*

5.2.1 Collation of statistics in this field is conducted in many EU countries.

5.2.2 However measurements of projected population changes are made more difficult by the problem of estimating immigration numbers. It may be important to include projected immigration figures and the likely impact on the sustainability of publicly funded pension funds. Consequently the more accurate the data regarding immigration flows, the better the contribution of statistics to proper decision making.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([12]) ESSPROS Manual 1996.
([13]) ESSPROS Manual 1996.
([14]) MISSOC 2004 Manual.

Opinion of the European Economic and Social Committee on EU-Andean Community relations

(2006/C 309/18)

On 14 July 2005 the European Economic and Social Committee decided to draw up an opinion on:, under Rule 29(2) of its Rules of Procedure, on *EU-Andean Community relations*.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 June 2006. The rapporteur was Mr Moreno Preciado.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 156 votes to two, with ten abstentions.

1. **Introduction**

1.1 The final declaration adopted by the Third Meeting of EU-Latin American-Caribbean civil society proposed the '… establishment of a genuine partnership based on a network of agreements between the European Union (EU) and the various bodies in the region', and calls for negotiations to be opened with the Andean Community ([1]).

1.2 The Guadalajara declaration adopted by the Third Summit of Heads of State and Government of Latin America and the Caribbean and of the European Union ([2]) considered it their 'common strategic objective' to reach an EU-Andean Community association agreement (like those already reached with Mexico and Chile and currently under negotiation with Mercosur) that would include a free trade area.

1.3 This EU-Latin America-Caribbean Summit also decided to carry out a joint assessment of the state of economic integration in the Andean Community, which was begun in January 2005.

1.4 Thus far, the EU Member States have not taken advantage of the economic and trade potential of the Andean Community; despite the EU being its second largest trading partner after the USA, trade has not reached significant levels. The Andean Community's efforts to further integration (despite the difficulties and limitations mentioned in this document) increase the prospect of an association agreement, which could greatly boost trade between the EU and the Andean Community, as has already proved to be the case in other areas.

1.5 Moreover, in the context of its relations with Andean civil society, the EESC maintains regular relations with the two bodies representing social players from the entire region: the Andean Labour Advisory Council (Consejo Consultivo Laboral Andino — CCLA) and the Andean Business Advisory Council (Consejo Consultivo Empresarial Andino — CCEA).

1.6 On 6 and 7 February 2006, the EESC, together with the General Secretariat of the Andean Community, held a hearing in Lima. The Labour and Business Advisory Councils took part, as well as other Andean civil society associations, whose valuable contributions have been incorporated into this document. The participants welcomed the opening of negotiations with the EU, although they warned that the association with the EU should take account of the imbalances between the two regions, *avoid models of dependent development and help to reduce social debt in the region and promote effective social cohesion*.

1.7 This opinion will serve to inform the authorities of the position of organised civil society towards relations with the Andean Community, in line with the proposals of the Final Declaration of the Fourth Meeting of EU-Latin American-Caribbean civil society organisations held in Vienna in April 2006 (which reiterated the need for the EU to help strengthen the integration processes in Latin America), and the final recommendations of the Summit of EU-LAC Heads of State and Government (May 2006) on the possibility of an EU-Andean Community association agreement, referred to in the Final Declaration:

> Recalling the common strategic objective established in the Declaration of Guadalajara, we welcome the decision adopted by the EU and the Andean Community to initiate during 2006, a process leading to the negotiation of an Association Agreement which will include political dialogue, cooperation programmes and a trade agreement.

2. **The situation in the five Andean nations**

2.1 It is hard to give a concise summary of the situation of five countries which, despite their common geographical location (the Andes mountains), vary greatly in terms of economic levels, demography, political trends, etc. This document will therefore only highlight some of the more noteworthy aspects of each country's current situation.

2.2 Bolivia is the poorest of the five Andean partners, and is one of the least advanced countries in all Latin America. This is partly due to its lack of direct access to the sea, although there are other contributory factors, such as its low population (more and more of whom are emigrating), the lack of land suitable for competitive farming, traditional dependence on undiversified natural resources, the exclusion of indigenous peoples

([1]) Mexico City, 13-15 April 2004. Also known as the Andean Community of Nations, although this is less common.

([2]) Guadalajara (Mexico), 28-29 May 2004.

(who account for over half of the population) and growing tensions between the traditional centre of political power on the high plateau and emerging areas of economic power in the eastern plains. Bolivia has managed to find democratic solutions, but the prolonged situation of uncertainty has hampered its economic development. The new government, which took up office in January 2006, is carrying out extensive reforms in order to find the right path for development, but without undermining the legal certainty of investments and compliance with the international and bilateral agreements currently in force.

2.3 The situation in Ecuador has a lot in common with Bolivia, with a large indigenous population and considerable political and cultural differences between the coastal plain and high plateau. Although in recent years it has not suffered the same degree of open social conflict, political instability has been even greater. 49 % ([3]) of the population lives below the poverty line. The economic crises of the last decade and the 'dollarisation' of the economy have contributed to the country's high poverty levels, as has the emigration of 10 % of its active population. Remittances, which totalled USD 1,74 billion in 2004, constitute the second greatest source of foreign currency income, after oil.

2.4 Peru has followed a different path, undergoing a period of terrorism (in the eighties and early nineties) followed by a government (during Fujimori's presidency) which became authoritarian and corrupt. Although the economy is growing fairly quickly, the current government has not managed to set up a sound programme of political and social reform, and enjoys very little popular support. When it comes to the Andean Community, whose General Secretariat is headquartered in Lima, Peru has shown some reluctance towards certain aspects of subregional integration.

2.5 The case of Venezuela ([4]) is monitored throughout the region and elsewhere in the world: in recent years the country has suffered serious social and political tensions, with intense rivalry between the followers and detractors of President Chávez. Venezuela's economy is increasingly dependent on oil exports, whose international price is high, enabling the government to develop an active international policy and devote a substantial budget to internal policies.

2.6 Despite suffering great political and social violence, exacerbated by drug trafficking, Columbia has managed to keep its democratic institutional structure intact, an uncommon feat in Latin America; in addition to these political efforts, its economic progress is also noteworthy. However, despite the relative decrease in violence in Colombia, the murder and kidnapping of trade unionists, journalists, businessmen and members of other human rights associations continue.

([3]) United Nations Statistics Division Millennium Indicators (15.10.2003).

([4]) This document (and the indicators contained in it) has been drawn up considering Venezuela to be a member of the Andean Community.

3. **Andean integration**

3.1 *Institutional development*

3.1.1 The Andean Community is the oldest model of integration in South America. Its founding countries (Bolivia, Colombia, Chile, Ecuador and Peru) signed the Cartagena Agreement in 1969, creating what was then called the Andean Pact. Three years later, Venezuela joined the Pact; in 1976, Chile withdrew. The current five members (Bolivia, Columbia, Ecuador, Peru and Venezuela) have a combined population of 120 million and a total GDP of approximately USD 265 billion. The internal market is worth around USD 8.6 billion.

3.1.2 In its 35 years of existence, the group has moved from a protectionist model (based on the replacement of imports), as was common in the 60s and 70s, to a model geared towards 'open regionalism'. Meanwhile, it has undergone various institutional reforms designed to take it towards an ever-closer model of integration, culminating in the creation of the Andean Community in 1997. As a result, the Andean Community has a highly developed institutional structure, and a fairly comprehensive body of Community legislation.

3.1.3 The purpose of the Andean Integration System (Sistema Andino de Integración — SAI) ([5]), which was established under the Trujillo Protocol in 1996, is to ensure coordination between its bodies, in order to deepen and strengthen Andean integration. The System is made up of intergovernmental, Community bodies that have executive, legislative, jurisdictional, decision-making and tax-levying powers.

3.1.4 The System has two main decision-making bodies: the Andean Council of Foreign Ministers, and the Commission of the Andean Community, both of which are intergovernmental. The Commission's role is to draw up economic, trade and investment legislation. The Andean Council of Foreign Ministers deals with all aspects not in the remit of the Commission, particularly political, social and environmental issues, migration policy, free movement of people, and coordination of the external activity of the various Community bodies.

3.1.5 The highest political body of the Andean Integration System is the Andean Presidential Council, comprising the heads of state of the member countries. It expresses its opinion through Declarations or Guidelines that set the pattern for the System's other bodies and institutions. The presidency of the Andean Presidential Council changes halfway through each year, in alphabetical order, and this rotation also applies to the other intergovernmental bodies.

([5]) In principle, the Andean Community refers to the set of institutions and bodies, including the Member States, while the Andean Integration System refers to the relations between those bodies. However, in practice, there is no clear distinction between the Andean Integration System and the Andean Community of Nations.

3.1.6 The General Secretariat of the Andean Community (Secretaría General de la Comunidad Andina — SG-CAN) is worth noting among the Community bodies and institutions of the Andean Integration System. It is based in Lima, Peru ([6]), and acts as a technical support body for the intergovernmental institutions. It has legislative powers in certain areas (adoption of resolutions), the right of initiative and other specific tasks.

3.1.7 Other Community bodies include the Court of Justice of the Andean Community and the Andean Parliament, while the recognised complementary institutions include the Andean Business Advisory Council and Andean Labour Advisory Council, the Andean Development Corporation (Corporación Andina de Fomento — CAF), the Latin American Reserve Fund (Fondo Latinoamericano de Reservas — FLAR), the Simón Rodríguez and Hipólito Unanue Agreements and the Simón Bolívar Andean University.

3.2 *Current state of Andean integration*

3.2.1 Any assessment of Andean integration should take two points into consideration. Firstly, although the Andean Community has been in existence for over three decades, it still consists of five developing countries (with an average per capita income of EUR 2 364, against an EU-25 average of EUR 20 420), with all the implications that this has in institutional and economic terms.

3.2.2 Secondly, and in relation to the above, although the conventional aspects of integration (those relating to the creation of a common market) may not seem very advanced in the Andean Community, other areas are fairly well developed. In spite of the difficulties holding back trade integration, other dimensions of the Andean Community (cultural, social, financial, etc.) have been strengthened.

3.2.3 In order to understand how the Andean Community works, it is usual to start by looking at economic integration. In this respect, the Andean Community has had a bumpy history. It did not manage to create a free trade area until 1993, which Peru immediately opted out of. The plan to create an Common External Tariff for all members has still not been completed, although there has been progress towards trade harmonisation. In this context, in order that both sides fully benefit, it is essential that, in the future EU-Andean Community association agreement, the countries of the Andean Community develop a real customs union.

3.2.4 This limited progress with a regulatory architecture has resulted in reduced levels of intra-Community trade, which varies greatly from one year to the next. During the 90s, trade increased considerably between Andean Community members, rising from 4,1 % of the total in 1990 to 14,2 % in 1998 ([7]). However, in comparison with the trade levels recorded within the group in the 70s, this figure is still low, remaining under the Latin American average (20,2 %). Since 1998, trade within the Andean Community has been on the decrease (10,4 % in 2004), although an upturn was registered in 2005.

3.2.5 Internal trade in the Andean Community has been lower than trade with the USA (46,6 % of total trade in 2004) and is almost equal to trade with the European Union (11,0 % in 2004). Three of the Andean Community's current five partners send less than 12 % of their exports to the subregional market.

3.2.6 Although some progress has been made with integration, there have been many difficulties, caused partly by a lack of political will, together with other factors such as market structure, differences between economic models, different levels of economic development, geographical location (which makes trade within the Community difficult), and internal political problems. Despite all this, the Andean Community has managed to stay on the path towards integration for over three decades. The lack of modern communication and transport infrastructure linking the five Andean countries is one of the biggest obstacles to the completion of an intra-Community market and the general development of the Andean Community.

3.2.7 Importantly, the Andean Community countries show little commitment when it comes to coordinating their external relations. Bolivia and Venezuela have moved closer towards Mercosur, while Peru and Colombia have signed free trade agreements with the USA.

3.2.8 These disparities were heightened on 22 April 2006 when Venezuela announced it was leaving the Andean Community. This, together with the signing of the FTAs, has sparked a deep political crisis within the Andean Community, which will be addressed during an extraordinary summit.

3.3 *Challenges of social cohesion*

3.3.1 Nonetheless, as stressed earlier in this opinion, the Andean Community of Nations does not stop at trade integration. There has always been a broader aspiration to incorporate the political and social dimensions into the Andean integration process. This is a reflection both of the recent struggle for democracy experienced by many of the countries, and of the need to strengthen the Andean voice in the Latin American arena and beyond. It is also a product of the socio-economic reality of the Andes.

3.3.2 The statistics on the lack of social cohesion are overwhelming: 50 % of Andeans — some 60 million people — live beneath the poverty line. The five Andean Community nations are among the most unequal in the world (in accordance with the Gini index), not only in terms of income but also as regards other forms of exclusion, through ethnicity, race, place of origin, etc.

([6]) Article 30 (a) of the Agreement.

([7]) Data from the Economic Commission for Latin America and the Caribbean (ECLAC), *Latin America and the Caribbean in the world economy, 2004*. Trends 2005. Santiago de Chile, 2005.

3.3.3 Here, it is important to stress the high levels of informal work, internal and external migration (which greatly affects women), and other phenomena such as the marginalisation of the indigenous populations which form significant minorities (Ecuador and Peru) or majorities (Bolivia) in the region. It is also in this region that most of the world's cocaine is produced, contributing to illegal economies and high levels of population displacement, violence and corruption which, in Columbia's case, come in addition to a long history of armed conflict.

3.3.4 Against this backdrop, trade liberalisation cannot be the only instrument for boosting cohesion between Andean countries. The new Strategic Design spearheaded by the General Secretariat of the Andean Community ([8]) places less emphasis on dismantling tariffs and more on other challenges such as improving competitiveness, intellectual property, removing non-tariff barriers, infrastructures, free movement of people, energy, the environment and security.

3.3.5 One of the focuses of this new strategic plan, which proposes integration for development and globalisation, is social development. To this end, one of the Andean Community's most important initiatives of recent times has been its Integrated Social Development Plan ([9]) (Plan Integrado de Desarrollo Social — PIDS), which was adopted in September 2004 in order to tackle poverty, exclusion and social inequality in the area. In the medium term, the PIDS could form the basis of a general social (and economic) cohesion strategy. The open method of communication, used by the EU in the social context, is of great interest to the Andean Community, and the idea of a social fund similar to the EU Structural Funds is also an attractive option. This means that the Andean Community is the first subregion that intends to adopt aspects of the European social model.

3.3.6 The social dimension has proved to be an increasingly common theme in political declarations and Andean Community decisions since 1999 ([10]), and in the last five years, certain specific initiatives have begun to take shape.

3.3.7 The Andean Presidential Dialogue on Integration, Development and Social Cohesion recognised that within the context of their internationalisation efforts, the Andean economies should strive to diversify production and achieve inclusive competitiveness in a process that would incorporate micro, small and medium-size businesses, promote cooperative and Community efforts, and create favourable conditions for local development and regionalisation through the use of territorial development approaches.

3.3.8 The General Secretariat of the Andean Community states that the main Community objectives are globalisation with integration, development with competitiveness and social inclusion, and social cohesion with the reinforcement of democratic governability. The pending social agenda covers all these issues and will be viable provided that it prioritises the Andean region in trade liberalisation negotiations with third parties, particularly those negotiations which could, by definition, cause greater imbalances in the region and within Andean societies (which are characterised by the exclusion of certain sectors on ethnic and gender grounds).

4. **Civil society involvement in the Andean institutional framework**

4.1 *The Andean Business and Labour Advisory Councils*

4.1.1 Although the Andean integration process is several decades old, civil society participation was only formalised during the most recent phase in the Andean Community's history, with the creation of the Andean Labour and Business Advisory Councils. Previously, employers and trade unions, as players in Andean integration, had had little opportunity to participate on a regional level, although they had been involved in Andean integration via the national governments.

4.1.2 The Andean Labour Advisory Council (CCLA) was created by Decision 441 ([11]), and comprises four delegates from each of the Andean countries. These top-level delegates and their alternates are chosen from among the heads of the representative organisations in the labour sector designated by each country. The most representative trade union federations and confederations from each country participate in the Andean Labour Advisory Council. At present 16 federations are represented from the five countries ([12]).

4.1.3 The Andean Business Advisory Council (CCEA) was created by Decision 442, and is made up of employers' organisations operating in the Andean region, comprising four top-level delegates elected from among the heads of the representative employers' organisations of each of the Andean countries.

([8]) See, for example, Globalization *through Integration*, Speech by the Secretary-General of the Andean Community, Ambassador Allan Wagner Tizón, during the official swearing-in ceremony Lima, 15 January 2004 (available at: http://www.comunidadandina.org/index.asp).

([9]) See text at: http://www.comunidadandina.org/normativa/dec/DEC601.pdf

([10]) Article 1 and Chapter XVI of the Cartagena Agreement on economic and social integration and cooperation; Andean Social Charter, adopted by the Andean Parliament in 1994 but not yet ratified by the governments; Cartagena Declaration of the XI Presidential Council instructing the Council of Foreign Ministers to present a proposal for participation of civil society in addition to business and labour participation stipulated in Decisions 441 and 442; Andean Presidential Dialogue on Integration, Development and Social Cohesion, Cuzco, 2004.

([11]) Cartagena de Indias, Colombia, 26 July 1998.

([12]) MARCOS-SÁNCHEZ, José, *La experiencia de participación de la sociedad civil en el proceso de integración andino* (The experience of civil society participation in the Andean integration process), 1st EU-Mexico Civil Society Forum, Brussels, Belgium, March 2005. http://europa.eu.int/comm/external_relations/andean/conf_en/docs/jose_marcos-sanchez.pdf.

4.1.4 The tasks of both Advisory Councils were redefined by Decision 464 ([13]) which states that they can express their opinion to the Andean Council of Foreign Ministers, the Commission or the General Secretariat, attend the meetings of the Andean Council of Foreign Ministers and the Commission of the Andean Community, as well as the meetings of government experts or working groups connected with the Andean integration process, and participate in them with a right to speak.

4.1.5 The Andean Labour Advisory Committee has drawn up many opinions to date, some of which relate to the Andean Community's social agenda or external agenda. In particular, it is worth noting Opinion No. 27 ([14]) on Following up the conclusion of a possible association agreement between the EU and the Andean Community, in which the CCLA *'shares expectations for progress towards a political, economic and social alliance with the EU'*.

4.1.6 Meanwhile, the CCEA stressed, in one of its declarations ([15]), that *'the issue of association with the EU is essential; the publicity given to these negotiations with the EU must be carefully designed so as not to endanger these negotiations.'*

4.1.7 Both the CCLA and the CCEA have stressed the need to step up cooperation with other civil society players in the Andean region, on the one hand, and with the European Economic and Social Committee (EESC) on the other, in order to coordinate common positions and boost initiatives aimed at guaranteeing basic labour standards in all agreements between the EU and the Andean Community.

4.2 *Other methods of participation*

4.2.1 In addition to the aforementioned forums for institutional representation of civil society, the Andean Community has other participatory instruments for social policy, such as the Simón Rodríguez Agreement (1973; one of the 'Social Agreements' ([16])), which consists of a tripartite forum for debate, participation and coordination between labour ministers, employers and workers, in order to address socio-occupational policies at regional level..

4.2.2 This Agreement was one of the first instruments of Andean socio-occupational integration, and directly addressed the issues of social and labour development. The implementation of the Agreement was not devoid of success, attracting constant interest from all the sectors interested in making progress in the socio-occupational field. However, on balance, it is clear that adverse — mainly institutional — circumstances had a strong impact on the integration process and, in 1983, the Agreement came to a standstill.

4.2.3 The Agreement took on its current format with the Protocol of Substitution of the Simón Rodríguez Agreement adopted by the Andean Presidential Council on 24 June 2001. The Agreement aims:

a) To put forward, and debate on, proposals on topics linked with the social and labour environment, which may signify an effective contribution to the development of the Subregion's Social Agenda, contributing to the activity of the other bodies of the Andean System of Integration.

b) To define and coordinate Community policies on promotion of employment, vocational and labour training, health and safety in the workplace, social security, labour-related migration; as well as any other topics that the Member Countries may deem fit;

c) To propose and design activities for cooperation and coordination among the Member Countries on Andean social and labour issues.

4.3 *Role of NGOs and civil society organisations*

4.3.1 National and global social dynamics are not excluded from the Andean dimension: in addition to the labour situation, the interests of society are also represented in other ways, based on specific areas such as human rights, rights of indigenous populations, women's rights, culture, the environment, consumers, family farming and smallholdings, etc.

4.3.2 These particular interests are represented in numerous 'various interests' organisations which already play a very active role in regional integration. Their role will become even more important in view of the future EU-Andean Community association.

4.3.3 The importance of other types of civil society organisation is also worth noting, whether they be associations or movements (of indigenous peoples, for example) and non-governmental organisations (NGOs), platforms and networks of NGOs, coalitions or platforms for action, research centres, universities, etc.

4.3.4 The social dynamic of these movements and of 'non-organised' civil society is very active in the Andean region, although its organisation and activities are often restricted to the national level, or it is unable to find channels for access or participation in the formal Andean integration system. In this context, the General Secretariat of the Andean Community has announced the forthcoming creation of a subregional Andean network of academic bodies and NGOs.

4.3.5 In order to help bring these other players within the formal dynamic of the Andean integration process, the Andean Community created various Working Groups. The Working Group on the Rights of Indigenous Peoples ([17]) was established as a consultative body within the Andean Integration System to promote the active participation of indigenous peoples in the economic, social, cultural and political spheres of subregional

([13]) Cartagena de Indias, Colombia, 25 May 1999.
([14]) CCLA, Lima, Peru, 7 April 2005.
([15]) 7th ordinary meeting of the CCEA (Lima, April 2005).
([16]) Others being the Andrés Bello Agreement, which tackles education policy in the Andean Region, and the Hipólito Unanue Agreement, which addresses health policy.
([17]) Decision 524, 7 July 2002.

integration. The Working Group deals with delicate issues such as the occupancy of communal and indigenous lands, rural communities and production, economic development, social equality and political involvement, cultural identity and institutionalisation, etc.

4.3.6 The Andean Working Table on Consumer Rights ([18]) was also set up as an advisory body within the Andean Integration System. Its aim is to promote the active involvement of public and private institutions working in the field of consumer rights in the Andean Community member states in the social consultation and decision-making processes relating to regional integration in their areas of interest.

4.3.7 These advisory bodies ([19]) are not allocated any of the Andean Community budget to support their operation. Therefore, the only organisations able to participate are those that can mobilise their own personnel and resources in order to attend meetings of Andean Community Working Groups and bodies.

5. **EU-Andean Community relations**

5.1 *The first EU-Andean Community agreements*

5.1.1 The first Cooperation Agreement between the European Community and Latin America was signed with the Andean Pact in 1983, 14 years after the latter was set up.

5.1.2 The agreement formed part of the so-called 'second generation of cooperation agreements'. Unlike the first generation, which was essentially trade-based (and non-preferential), this new generation of agreements was more comprehensive, including political and cooperation-related aspects, which would become key in later agreements. These treaties were also a clear indication of the importance that the European Community gave to regional integration in Latin America.

5.1.3 The dynamism of EU-Latin American relations in the 80s soon sparked the need for a new generation of agreements, as from 1991. In 1993, the EU signed a third-generation Framework Agreement with the Andean Group. One new feature of this agreement was the inclusion of a 'democratic clause' expressing the joint commitment to democracy, and a 'future developments' clause which would allow for cooperation areas to be extended.

5.1.4 In tandem, another issue was bringing relations with the Andean Community to the fore in the 1990s: the campaign against drug-trafficking. The EU wanted to offer a different approach to that of the USA, which focused on crackdown tools. This approach was twofold: firstly, in response to a request from the Andeans themselves, it was agreed that the Generalised System of Preferences would be extended to include the Andean countries via a special scheme, GSP-Drugs, which allowed 90 % of Andean products to enter the EU without tariffs. Secondly, a High-Level Specialised Dialogue on Drugs was set up.

5.1.5 The 1993 agreement was quickly superseded by a new framework for relations which the EU began to promote during the mid-90s, when fourth-generation agreements were negotiated with Mercosur, Chile and Mexico. These texts were drawn up as the first step towards association agreements that would incorporate a free trade agreement. The Andean Community was hoping for a similar agreement, but the EU felt that it would be better to work gradually towards that goal, starting with an intermediate agreement; the EU's proposal was adopted at the Second EU-Latin America-Caribbean Summit held in Madrid in May 2002.

5.2 *The 2003 agreement: an intermediate step*

5.2.1 On 15 December 2003, the EU-Andean Community Political Dialogue and Cooperation Agreement was signed. While this was a step up from the previous agreement, it did not quite live up to the expectations of the Andean countries ([20]). One of the problems that the Andeans had with this model was that it did not improve access to the EU market. However, this agreement does include one important new feature: the institutionalisation of political dialogue. It also includes new fields for biregional cooperation (migration, terrorism, etc.) and boosts civil society involvement therein ([21]).

5.3 *EU-Andean Community trade*

5.3.1 As illustrated in the table below, trade relations between the EU and the Andean Community have experienced a degree of stagnation. Although the EU is currently the Andean's second biggest trading partner, it barely represents 12-13 % of the region's external trade, compared to the USA's 40 %. Andean exports to the EU dropped from 19 % of total exports in 1994 to 12 % in 2004. As a supplier, the EU generated 19 % of Andean Community imports in 1994, compared to 13 % in 2004.

([18]) Decision 539: Andean Working Group on the Participation of Civil Society for the Defense of Consumer Rights, Bogota, Colombia, 11 March 2003.

([19]) A consultative working table of local authorities was also set up.

([20]) Some authors refer to the agreement as 'third generation *plus* or fourth generation *minus*' in reference to its intermediate position between the 1993 agreements and those signed with Mercosur, Chile and Mexico: Javier Fernández y Ana Gordon, 'Un nuevo marco para el refuerzo de las relaciones entre la Unión Europea y la Comunidad Andina' (A new framework for strengthening relations between the European Union and the Andean Community), *Revista de Derecho Comunitario Europeo*, 1989, No 17, January-April 2004.

([21]) Article 52(3) of the Agreement provides for the creation of a Consultative Committee to 'promote dialogue with economic and social organisations of organised civil society'.

EU TRADE WITH THE ANDEAN COMMUNITY

(millions of Euros)

	Imports (Imp.)			Exports (Exp.)			**Balance** (for EU)	Imp+Exp
	Volume	Yearly % change	Share of total EU imports	Volume	Yearly % change	Share of total EU imports		
2000	8 153		0,82	7 020		0,82	-1 134	15 173
2001	8 863	8,7	0,90	7 908	12,6	0,89	-955	16 771
2002	8 853	-0,1	0,94	7 085	-10,4	0,79	-1 768	15 938
2003	7 911	-10,6	0,84	5 586	-21,2	0,64	-2 325	13 497
2004	8 904	12,6	0,87	5 988	7,2	0,62	-2 916	14 892
Average annual growth %		2,2			-3,9			-0,5

Source: Eurostat

5.3.2 The EU is the biggest source of direct investment in the Andean Community, although flows have decreased steadily since 2000 when they reached over USD 3.3 billion, against barely USD 1 billion in 2003.

5.3.3 The outlook for trade relations looks uncertain. The new GSP that came into force in 2006 does not seem to bring any significant increase in access to the EU market, although it does raise the number of products covered. Also, the extension of the scheme to ten years allows for greater predictability (which could boost investment). In this context, an association agreement would help to forge much stronger economic links between the EU and the Andean Community.

5.4 *Towards an association agreement*

5.4.1 Despite some significant progress, EU-Andean Community relations could become deadlocked in their current state — characterised by fairly substantial cooperation but stagnant economic links, and political dialogue with an institutional framework but no shared agenda. Therefore, despite the current difficulties, the EESC proposes that steps be taken as soon as possible towards an association agreement like those signed with Chile and Mexico and currently being negotiated with the Mercosur countries.

5.4.2 This agreement would include a free trade agreement, broader political dialogue and new cooperation possibilities. It should also include a more ambitious social dimension, with greater opportunities for the involvement of social players and civil society.

5.4.3 The agreement should also include the equally important subjects of boosting competitiveness, the legal certainty of investment and the development of a real Andean internal market in which business can operate with guarantees.

5.4.4 The European Union finally agreed to consider this possibility at the Third Biregional Summit in Guadalajara (Mexico) in May 2004, but it included a series of prior conditions (for example, any free trade agreement would take account of the results of the Doha Development Programme and a sufficient level of Andean regional economic integration) which would be jointly assessed by the EU and Andean Community.

5.5 *The social content of the EU-Andean Community partnership*

5.5.1 In line with the goal of full partnership, the negotiating parties must focus on the monitoring of fundamental socio-labour rights and the defence of democracy and human rights, and set up mechanisms for promoting all these rights, expressly showing their determination to fight drug trafficking and corruption, and to temper economic development with justice and social cohesion.

5.5.2 The future agreement should be organised in such a way that it meets the stated aim of political, economic and social partnership. The text should therefore include a social chapter which would complement and counter-balance the sections devoted to trade relations and political dialogue.

5.5.3 This social chapter should cover workers' and employers' rights, based on the criteria mentioned above, expressly mentioning freedom of association, social dialogue and social consultation ([22]).

([22]) This point is acknowledged in point 6.8.3 of the EESC opinion on Social cohesion in Latin America and the Caribbean: 'Strengthening independent representative economic and social organisations which are capable of compromise is a key condition for bringing about social dialogue and fruitful civil dialogue and, therefore, for the very development of LAC countries;' (OJ C 110, 30.04.2004, p.55).

5.5.4 The clear lack of security affecting the exercise of human rights and freedom of the press and trade unions in some Andean countries makes it all the more necessary for there to be a stronger contribution from the EU.

5.5.5 The agreement should commit the signatory parties to biregional promotion of social rights through technical cooperation and other assistance programmes.

5.6 *Cooperation*

5.6.1 The EU has been a clear leader in the field of development cooperation with the Andean countries. Just over one third of EU cooperation with Latin America has been devoted to the Andean Community and its member states. Bolivia and Peru were among the top three recipients of official EU aid between 1994 and 2002.

5.6.2 The European Commission is currently drawing up a new subregional cooperation strategy for the Andean Community and a specific strategy for each of the five Andean countries, in order to give focus and direction to its efforts from 2007 to 2013.

5.6.3 The European Commission's draft Regional Strategy Paper for the Andean Community (2007-2013) is based on three areas: regional integration, social cohesion and the fight against drugs.

6. **Participation of organised civil society in EU-Andean relations**

6.1 This opinion aims to provide the EU institutions with the basic criteria for a social dimension and civil society involvement which the EESC believes should underpin relations with the Andean Community, and should be studied by the future negotiating committee for the association agreement.

6.2 Although there are no previous EESC opinions or resolutions on Andean Community relations, the abovementioned criteria could be based on the following:

a) the points already set down in this respect in the Political Dialogue and Cooperation Agreement, especially Articles 42 (social cooperation), 43 (participation of organised civil society in cooperation) and 44 (cooperation against gender discrimination), which should be adapted to meet the objectives of the future association agreement;

b) certain documents and declarations referring to the more general context of relations with Latin America produced by the EESC or by civil society in either region.

6.3 In this context, it is important to bear in mind the implicit commitment by participants in the Third Meeting of EU-Latin American-Caribbean civil society, calling for 'agreements with the EU to contain a vigorous social dimension and provide for the promotion and reinforcement of the role of social organisations and participative and consultative bodies representing organised civil society' and reaffirming 'their determination to give impetus to relations between the regional consultative bodies within the LAC and between the EESC and these bodies' ([23]).

6.4 Moreover, the EU and Andean Community countries have adopted the principles and values expressed in the ILO Constitution and its key social instruments, such as the Declaration of Fundamental Principles and Rights at Work (1998), the Tripartite Declaration on Multinational Enterprises and Social Policy (1977, amended in 2000) and the resolution of the International Labour Conference concerning trade union rights and their relation to civil liberties (1970). They also subscribe to the Universal Declaration of Human Rights (1948) and the International Pact on Economic, Social and Cultural Rights (1976).

6.5 The EESC and the Andean Advisory Councils should form the pillars of this joint action between Andean and European civil societies and their participation in negotiations between the two areas and involvement in the future consultation and participatory structures, which the EESC believes should be established through the future association agreement.

6.6 The three bodies have taken an important first step towards institutionalising their relations by signing an Interinstitutional Cooperation Plan. This plan will bring an improvement in the quality of understanding between the EESC and the Advisory Councils, in order to reinforce and stabilise mutual cooperation.

6.7 *The Interinstitutional Cooperation Plan sets out to:*

1) support the participatory civil society organisations of the Andean Community;

2) contribute to civil society dialogue between the Andean Community and the European Union;

3) promote the importance of including a social dimension in the future association agreement between the EU and the Andean Community;

4) support the CCEA and CCLA's initiative to work on the proposal to create an Andean Economic and Social Council (CESA);

5) achieve greater participation from Andean civil society organisations equivalent to those comprising the EESC's Group III;

6) forge stronger economic links between both regions.

([23]) Points 4 and 5 of the Final Declaration of the Meeting.

6.8 The two Andean Advisory Councils have made a joint proposal ([24]) to the Andean Community authorities to initiate discussions that will, as swiftly as possible, lead to creation of the Andean Economic and Social Council.

6.9 The EESC welcomes this initiative and the consensus surrounding it, and believes that basing this Andean Economic and Social Council on a multipartite model, representing employers, workers and the various interests of organised civil society, would facilitate the recognition and creation of a much-needed joint consultative committee for the participation of EU and Andean Community civil society organisations in the institutional framework of the future association agreement.

6.10 On 3 March 2005, the European Commission organised an initial conference on the future of EU-Andean Community relations, which was attended by various social organisations and representatives of the EESC. With the initiation of negotiations a possibility, this event should be repeated and extended so that in the future it would include existing Andean civil society organisations (CCLA, CCEA, Andean Working Groups on consumers and indigenous peoples).

6.11 The EESC believes that in order to develop the partnership between the two regions, the organisations representing different sectors of civil society in the EU and the Andean Community should step up bilateral relations and joint action, building on the progress already made towards this objective ([25]).

7. **Conclusions and economic and social proposals**

7.1 In line with previous EESC opinions, stronger democratic stability will be contingent upon the reinforcement of state institutions and relations between state and society, the improvement of social welfare, the reduction of inequalities, the promotion of development and economic growth, social integration of sectors with a history of exclusion, and the creation of platforms for broad political dialogue at local, national and regional levels.

7.2 The EESC believes that it would be beneficial for the common interests of the EU and the Andean Community to start negotiations (without these having to depend on the result of the Doha Round) for an association agreement between the two regions, and it urges the parties to take steps to achieve this.

7.3 The EESC considers that this agreement should lay the foundations for a full and balanced partnership, incorporating a free trade area and allowing for dialogue on political and cooperation-related aspects. The social dimension of this partnership should be expressly included in the text of the future agreement, based on the commitment to comply with the ILO conventions on fundamental rights and the other instruments cited herein.

7.4 In economic terms, the agreement should:

a) re-evaluate the role of business in Andean society as a decisive factor in economic and social development;

b) boost competitiveness through R+D and the development of infrastructure;

c) promote investment and protect the legal certainty thereof;

d) facilitate access to funding, particularly for SMEs, and other means of increasing economic growth rates;

e) boost development of the social economy sector;

f) promote the creation of a real Andean customs union.

7.5 In social terms, the agreement should particularly support and protect:

a) education and vocational training and inter-university cooperation as a means to develop scientific research and higher education;

b) equality and the absence of discrimination on grounds of gender, race, ethnicity, religion, disability etc.;

c) gender equality in the workplace through plans for equal pay and other socio-occupational aspects;

d) integration of migrants and respect for their rights, including guarantees for the sending of remittances to their countries of origin. On this basis the EU and the Andean Community should agree an immigration policy;

e) plans for the eradication of child labour;

f) social dialogue between employers and workers and the strengthening of their organisations;

([24]) Fifth joint meeting of the Andean Business Advisory Committee and the Andean Labour Advisory Committee in Lima, Peru, 2-3 November 2004.

([25]) On 7 April 2003, the European Trade Union Confederation (ETUC) and the CCLA signed a declaration establishing regular relations and announcing a cooperation agreement. On 17 February 2005, in Lima, the Latin American NGO network ALOP and the Catholic University of Lima organised a meeting of NGOs from the EU and the Andean Community.

g) other types of occupational or social association (peasant workers, consumers, etc.) and all civil society organisations;

h) fair working conditions with regard to occupational health and the environment, gradually eliminating informal work.

7.6 The European Union should build on its — already considerable — cooperation activity with Andean countries, as a key factor for improving conditions within these countries conducive to an association agreement, in line with the priority that the recent Commission Communication gives to social cohesion ([26]). The EESC supports the proposal for the European Investment Bank to extend its funding for Latin America, so that a significant proportion of these funds goes to small and medium-sized enterprises. In order to achieve this and other goals, the Andean Development Corporation could be a useful partner.

7.7 The EESC also urges the Commission to closely analyse the European Parliament's proposal to set up a biregional solidarity fund, which would be particularly beneficial for Andean (and Central American) countries. The Committee also believes that the Ibero-American Programme of Institutional Cooperation for the Development of SMEs (IBERPYME) serves as a good example of boosting business activity and that the experience gained in this programme could be applied to a similar project between the EU and Andean Community.

7.8 Given the Andean Community's difficulties in implementing the twenty projects that make up its Integrated Social Development Plan, it should receive technical or financial support from the European Commission, especially since EU ministers have congratulated the Andean Community on the plan, calling it a 'very useful instrument for driving social cohesion in the Andean Community' ([27]).

7.9 The EESC highlights the decision taken by the CCLA and CCEA to set up an Andean Economic and Social Council similar to the European model, and will support this through the measures agreed within the Interinstitutional Cooperation Plan.

7.10 The EESC believes that a joint committee should be set up between the EESC and the Andean advisory councils (and, eventually, between the EESC and the Andean Economic and Social Council), which could be created prior to the signing of the association agreement under the terms of the Political and Social Dialogue Agreement of 2003, once this is ratified.

7.11 The European Commission and the General Secretariat of the Andean Community should — with the cooperation of the EESC and the Andean advisory councils — together promote a regular EU-Andean civil society forum where social organisations and associations from both regions could expound their views on EU-Andean Community relations.

Brussels, 5 July 2006

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([26]) Communication from the Commission to the Council and the European Parliament 'A stronger partnership between the European Union and Latin America' Strategy for a stronger partnership between the European Union and Latin America. Brussels, COM(2005) 636 final.

([27]) EU-Andean Community ministerial meeting (Luxembourg, 26 May 2005).

Opinion of the European Economic and Social Committee on The future of the Northern Dimension policy

(2006/C 309/19)

On 17 November 2005, in connection with the activities of the upcoming Finnish Presidency of the European Union, H.E. Mari Kiviniemi, Minister for Foreign Trade and Development of Finland, requested by letter an opinion of the European Economic and Social Committee on *The future of the Northern Dimension policy*.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 June 2006. The rapporteur was Mr Hamro-Drotz.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 162 votes, with five abstentions.

Summary

— At their meeting in November 2005, ministers from the Northern Dimension (ND) countries (EU, Iceland, Norway, Russia) agreed on guidelines for the continuation of the ND policy which were to serve as the basis for drawing up a common policy to take effect from 2007 onwards.

— Finland, as the country due to hold the EU presidency in the second half of 2006, asked the EESC to deliver an exploratory opinion on how the ND policy could be strengthened and how civil society involvement in the policy could be improved.

— The EESC supports the guidelines and calls on Finland, as the country holding the EU presidency, to press for the achievement of the new policy.

— The EESC proposes the following priority areas:

  — existing cooperation projects in the environmental and national health sectors;

  — infrastructure, transport and logistics;

  — energy and related safety matters;

  — strengthening civil society and civil society cooperation networks and improving public information.

— Following on from the previous point, attention needs to be drawn to the need to establish constructive and open relations with civil society in Russia and effective social dialogue. In addition, cross-border civil society networks should be supported and public information efforts stepped up.

— The EESC stresses the need for adequate funding for ND projects and a related project application procedure which is clear, swift and simple.

— The EESC proposes that strong, joint mechanisms be established for administering the Northern Dimension and that a decision be taken on where its operational centre be located. It further suggests that the existing regional bodies represent a natural starting point for administering the Northern Dimension.

— The EESC proposes that civil society be involved in a consultative capacity in the formal mechanisms for administering the Northern Dimension, along the lines of the Barcelona Process for the Mediterranean. The EESC is prepared to make an active contribution to such an arrangement.

1. **Background**

A meeting of ministers from the EU Member States and Northern Dimension partner countries (Iceland, Norway, Russia) was held in November 2005 at which new guidelines for the continuation of the Northern Dimension (ND) from 2007 onwards were agreed (*Guidelines for the development of a political declaration and policy framework document*) ([1]).

The ND parties have set up a joint steering group to carry out the preparatory work in line with these guidelines. In autumn 2006 the parties will decide on the continuation of the Northern Dimension on the basis of this work.

With a view to its EU presidency in the second half of 2006, Finland asked the EESC in November 2005 — with reference to its previous contributions on the Northern Dimension policy — to present an exploratory opinion on the future of the policy. Finland requested that the opinion set out views and recommendations in particular about how the policy should be strengthened from the beginning of 2007 and how civil society involvement in the policy and its implementation could be improved.

Brief background information on the Northern Dimension and the EESC's previous contributions is provided in the Appendix.

([1]) http://europa.eu.int/comm/external_relations/north_dim/doc/guidelines05.pdf.

2. **The EESC's recommendations for developing the Northern Dimension**

The EESC issued an opinion on the development of EU-Russia relations ([2]) in July 2005 and an opinion on the future of the EU's Northern Dimension ([3]) in September 2005. The conclusions and recommendations presented in these documents remain topical and relevant even though they are not restated here. The present opinion complements the above-mentioned opinions, and these will also be referred to when the recommendations set out in this opinion are presented to the Northern Dimension parties.

As part of the preparatory work for the present opinion, the EESC made a fact-finding mission to St. Petersburg to hear the views of local stakeholders on the future of the Northern Dimension. Norwegian and Icelandic stakeholders were consulted through the EESC's EEA contacts.

2.1 *The EESC supports regional cooperation consistent with a high-profile, common ND policy involving the EU, Iceland, Norway and Russia*

Northern Europe has become increasingly important at European and global level, for example in terms of the energy resources it possesses and environmental and climate policy issues. Northern Europe needs close multilateral regional cooperation, with non-EU states in the region also taking part. Such cooperation complements bilateral relations between countries in the region and the EU's relations with non-EU states. Regional cooperation can help to promote stability, economic growth, well-being and sustainable development in the region and Europe as a whole.

It is clear that the Northern Dimension needs to be given a higher profile in the European Union and the partner countries. It should be made into a clearly structured, high-profile policy in EU (and EEA) institutions, national governments and civil society.

The EESC asks Finland, as the Member State holding the EU presidency, to give high prominence to this issue and to seek to ensure that resolute decisions are taken and a political commitment is made to dynamic policy. With EU enlargement, Member States have joined which constitute a welcome new resource for developing the Northern Dimension. The EESC also endorses the proposed guidelines according to which the Northern Dimension would become an ongoing policy.

The EESC supports the strengthening of the Northern Dimension as a common policy of the EU, Iceland, Norway and Russia. It should be firmly based on key existing instruments for cooperation: the ND policy should form a regional dimension of the four Common Spaces between the EU and Russia, with Iceland and Norway participating in this new overarching framework in accordance with the EEA Agreement.

At the EU-Russia summit in May 2006, the parties stated that they were considering the start of negotiations on a new agreement between the EU and Russia. This would provide further opportunities for developing regional and cross-border cooperation based on a dynamic ND policy. A common ND policy would also provide a framework for building a more soundly based EU Baltic Sea strategy, which is currently under preparation by the European Parliament.

The EESC is pleased to note the adoption by the EEA Consultative Committee in June 2006 of a resolution and report on *The future of the Northern Dimension Policy*, which were drawn up in close cooperation with the EESC during the preparation of the present opinion.

The idea of the 'co-ownership' of the Northern Dimension process is crucial and should be emphasised from the outset. Non-EU Northern Dimension countries should play a full part in the process and be allowed to participate on equal terms in the planning, implementing and monitoring of policy.

This requires strong mechanisms, namely: a joint standing ND governing committee, an appropriate number of sub-bodies working under it and an effective body responsible for operational functions. The parties should meet annually to monitor and provide guidance for the implementation of ND cooperation.

As Northern Dimension activities are frequently local initiatives it is important that links between local, sub-regional and national levels of government and regional cooperation bodies function effectively in planning and implementing the ND policy.

2.2 *The EESC's recommended priority areas*

The EESC believes that the experience obtained to date from cooperation in the various priority areas of the Northern Dimension should serve as the starting point for future policy. There is a need to build upon the positive practical experience gained from private-public partnership projects.

2.2.1 Increased focus on existing cooperation projects in the environmental and national health sectors

As regards existing environmental cooperation within the Northern Dimension, the main emphasis should be on stopping water pollution in the Baltic and the Gulf of Finland, immediate action to reduce the risk of pollution caused by nuclear waste in the Kola Peninsula and support for cross-border cooperation projects in the environmental field in the Pskov region.

The prime concern in national health cooperation is action to combat communicable diseases, in particular HIV/AIDS.

([2]) EESC opinion on *EU-Russia relations*, OJ C 294 of 25.11.2005, p.33.
([3]) EESC opinion on the *Northern Dimension and its Action Plan*, OJ C 24 of 31.1.2006, p.34.

The EESC urges the ND parties to devote greater efforts to these priority areas within the framework of existing partnership projects (NDEP and the Vodocanal project in St. Petersburg, NDPHS). Determined action should be taken to strengthen and expand these projects and ensure that increasing attention is paid to them in the EU.

2.2.2 Developing regional infrastructure, transport and logistics is a pre-requisite for promoting entrepreneurship, investment and economic growth

A pre-requisite for entrepreneurship, investment and economic growth in the Northern Dimension region is an efficient transport and logistics system. This calls for dialogue within the ND framework on how to improve transport and logistics in the region so as to create effective links to meet the needs of growing goods and passenger transport in northern Europe. Joint action should be taken to develop land, sea and air transport routes and to link them together across national borders. Special attention needs to be paid to transport safety (e.g. at sea) and cooperation between border authorities (customs clearance, standards, health requirements, visa procedures, etc.) so as to facilitate legal border crossings. Efforts should also be made within the ND framework to find effective ways of preventing all kinds of illegal border crossings (including human trafficking, smuggling and illegal immigration).

A new private-public cooperation project is needed in the area of infrastructure, transport and logistics in the implementation of the Northern Dimension policy and the EESC proposes that the parties do all they can to develop a joint project of this kind.

2.2.3 Promoting energy cooperation and security

EU enlargement and international energy trends underline the importance of increased cooperation in Northern Europe in the field of energy. The EESC calls for coordination of regional cooperation and the EU-Russia energy dialogue so as to improve energy security and availability. The Committee recommends that a ND partnership in energy be established under the new ND policy, with a focus on sustainable use of existing natural resources, energy efficiency and renewable energy resources, and the safety and environmental aspects of energy transport.

As a region with vast energy resources, the Northern Dimension area is not only important for the countries in the area itself, but has considerable impact on the EU as a whole. In view of its potentially crucial role in ensuring the security of future supplies of oil and gas to the EU, it deserves the attention of all EU Member States. The increased focus on Northern Europe in the new energy policy for Europe (EPE) points to the importance of the new Northern Dimension policy. Indeed, the Commission in its new green paper on energy ([4]) specifically mentions Russia and Norway as important partners in a new, coherent external energy policy for the EU.

The Northern Dimension is an important element in the balanced development of Europe's energy infrastructure. A considerable level of investment will be needed in the Northern Dimension region to secure a sufficient level of energy supplies in the future, both with regard to infrastructures for energy transport and with regard to the exploitation of the area's gas resources. Increased investment means economic growth, including increased employment and higher activity levels in industries not directly linked to the exploitation of the resources in the sea. However, it is important that the exploitation of, in particular, the region's vast gas and oil resources be based on sustainable development, the highest level of environmental standards and respect for the wishes of the indigenous people.

A coordinated system for monitoring the marine ecosystems in the north is needed and should be part of ND cross-border cooperation. It is important that the exploitation of gas and oil resources go hand in hand with a viable fishing industry and a healthy marine environment. The highest possible safety levels for maritime transport of oil and gas in the ND region need to be ensured; this need will increase with growth in the transportation of liquid natural gas (LNG) in the future.

The proposal put forward by the Norwegian government in March 2006 for a new and more coordinated system for monitoring the marine ecosystems in the north is welcome in this context. In addition, the EESC notes with satisfaction the resolution adopted by the EEA Joint Parliamentary Committee in May 2006 on *Europe's High North: Energy and Environmental Issues*, the conclusions of which are in line with the views presented in the present opinion.

The EESC would stress that energy cooperation in the Northern Dimension region must also pay serious attention to energy transport in the Gulf of Finland and the Baltic, which is growing at a rapid pace, particularly with regard to the organisation and safety of transport, and to minimising environmental damage.

2.2.4 Focusing efforts on civil society, cooperation networks and public information

2.2.4.1 Strengthening civil society, common democratic values, human rights and open social dialogue

A precondition for successful cooperation between the Northern Dimension partners is the application of common values in each ND country. Democratic pluralism, a vibrant civil society, open social dialogue and a functioning market economy complement each other. Determined efforts should be made to promote these aspects, particularly in Russia, where there is a need for active civil society involvement and democratic institutions.

([4]) Commission Green Paper on *A European Strategy for Sustainable, Competitive and Secure Energy*, 8 March 2006.

In its opinion on EU-Russia relations issued in July 2005, the EESC drew serious attention to the prevailing situation in Russia with regard to this important issue. The Committee notes that the new law governing civil society organisations has evidently led to a further deterioration in the situation. This must be rectified in future application of the law. When the Russian authorities start developing, in a credible manner, their policies and practices aimed at building constructive and open relations with the country's civil society players, broad support is likely to emerge for close cooperation with Russia. For example, it would be important for the Civic Chamber set up in Russia to develop into credible instrument for strengthening effective social dialogue. Efforts to strengthen the capacity of civil society players in Russia should be supported so as to also improve their capability to engage in constructive dialogue.

Efforts to try to find a way forward on these issues should also be made in the context of ND regional cooperation, with Russia as a participating party.

2.2.4.2 Promoting cross-border networks for civil society cooperation

Efforts need to be made to strengthen effective and open cross-border dialogue so as to promote progress in the areas identified in the previous point. Civil society players have a key responsibility and role in this regard, and it is essential that civil society groups themselves put forward initiatives for strengthening relations and cooperation in their respective areas of activity. It should be emphasised that the 'co-ownership' of the Northern Dimension is not a matter for governments alone but that it also applies to civil society and civil society players in the ND countries. Effective implementation of the ND policy can only be achieved if civil society players are actively involved in the process.

Determined action must be taken in the context of the Northern Dimension policy to support the establishment of networks, dialogue and cooperation between civil society players in various ND countries and sub-regions, such as North-west Russia. Cross-border people-to-people cooperation must be a policy priority. Efforts must be made to promote mobility, development of human resources, exchange of experience, know-how and information, and mutual recognition of diplomas. Cross-border cooperation should cover all civil society stakeholders, including entrepreneurs, SMEs and other enterprises, employees, young people and students, women, scientists and cultural circles, members of minorities, environmental protection groups, farming and forestry circles, and consumers. Cross-border activities should be geared to promoting practical projects and proposals for joint projects involving civil society stakeholders. There must be simple procedures enabling players to make proposals for joint projects within the framework of the Northern Dimension.

The development of effective tripartite relations and labour markets in all parts of the ND area should aim at striking a balance between fair competition for businesses and decent working conditions for workers. Tripartite relations and labour markets are already well developed in many countries and the associated skills and competence should be shared with organisations in countries where they are less developed. The Northern Dimension policy would be a suitable framework instrument for initiating cross-border projects in this field. The social partners in each ND country should seek to ensure that initiatives and legislation aimed at economic and social change and improving employing take their interests into account in a balanced manner. For this to happen, they should be involved in all discussions dealing with labour market issues.

2.2.4.3 Strengthening public information efforts

The Northern Dimension's public profile is very poor. In all countries, both within the EU and in non-EU countries in the ND region, very little is known about it. Therefore the ND parties should try to significantly improve information efforts and information channels. Adequate public information on the Northern Dimension is essential because it is through this that it is possible to stimulate wider interest in the ND within civil society and encourage civil society players to participate in and contribute to the process. Civil society players should also be involved as disseminators of information in society, and necessary education and training measures must be taken to this end.

It is clear that a centre is needed in the Northern Dimension region to take care of the information needs referred to above and the practical coordination of networks, contacts and funding. The ND parties should take a decision on the establishment of such a centre. The EESC suggests that the European Commission office in St. Petersburg, which was recently closed down, be re-opened for this purpose and that it be assigned the operational functions which are jointly recognised as falling under the Northern Dimension. The possibility should also explored that these functions could be entrusted to the secretariat of one of the regional bodies referred to in point 2.4.

2.2.5 Attention needs to paid to relations with Belarus

In discussions about the future development of the Northern Dimension policy it has been suggested that it should also cover Belarus in one way or another. Although this is justified for geographical reasons, the country's current political situation rules out the possibility of official cooperation. However, the EESC would stress that the issues mentioned above, particularly in point 2.2.4, are relevant to Belarus as well.

The Committee feels that these issues can be influenced by promoting contacts between civil society players and their counterparts in Belarus. The Committee, for its part, intends to continue to consolidate such contacts and suggests that action along these lines also be supported within the framework of the Northern Dimension.

The EESC is in the process of drawing up a separate opinion on EU-Belarus relations.

2.3 *Consultation of civil society as an essential element of the Northern Dimension's cooperation mechanism — EESC ready to lend its expertise*

An effective consultation mechanism must be created within the Northern Dimension so that key civil society players can influence the implementation and monitoring of the Northern Dimension through their views, recommendations and expertise.

The EESC feels that an annual meeting of civil society stakeholders, with a role similar to that which for years has been a feature of cooperation in the Mediterranean, would be an effective solution here. The experience gained from cooperation in the Mediterranean has been very positive, as too has been the experience with the Consultative Committee in the context of EEA cooperation. In addition, it would be appropriate to set up a civil society consultative body subordinate to the ND governing committee proposed in point 2.1.4, which would participate regularly in policy monitoring and prepare the annual meeting.

This arrangement would enable those responsible for the ND policy to benefit from the contributions of civil society players to the implementation of the ND in the economic and social sphere.

The EESC has already organised two conferences bringing together civil society stakeholders from ND countries. Over the years the Committee has strengthened its contacts with key civil society players in all non-EU ND countries. It therefore has a pool of practical experience of civil society cooperation in the region which can be drawn upon immediately.

Consequently the EESC is prepared to take an active part in involving civil society players in the implementation of the future ND policy. The Committee intends to set up a special monitoring group and would play a leading role in organising annual meetings of civil society stakeholders. At the same time, existing cooperation within the framework of the EEA would be taken into account. The purpose of the meetings would be to set out guidelines for the implementation of the ND, mainly in the areas identified in point 2.2.4, which have a bearing on the functioning of civil society. The Committee proposes that this arrangement be incorporated into the formal ND cooperation mechanisms.

2.4 *Regional bodies — a natural starting point for administering the Northern Dimension*

The EESC supports the idea that the existing mechanisms for regional cooperation, mainly the Council of Baltic Sea States (CBSS), the Barents-Arctic Council (BEAC), the Nordic Council of Ministers (NMC) and the Arctic Council, should play a central role in implementing the Northern Dimension. Steps should be taken to actively promote closer coordination and cooperation between these bodies and between them and the proposed ND governing committee referred to in point 2.1 as they constitute a natural starting point for the overall administration of the Northern Dimension.

This framework would give civil society players a genuine opportunity to participate in ND cooperation through the contributions they make via their own regional cooperation networks (e.g. the BASTUN for employees, the BAC for the business community, the BCCA for chambers of commerce and various NGO circles) and the links these networks have established with the above-mentioned organisations.

2.5 *Arrangements for financing ND activities must be clear*

The priority areas should be given practical expression in the form of ND private-public partnerships (PPP), with clearly defined partners, programmes, timetables and budgets.

Even where, for a given priority area, the partners are not yet in a position to undertake a partnership project, they should, for example, try to agree annually on programmes of measures that are as specific as possible and on their implementation and funding.

As far as concerns measures that are proposed and implemented by civil society players (see, in particular, point 2.2.4), it is of the utmost importance to create a procedure for financing small-scale activities that is based on an application process which is as simple as possible. Technical assistance will be needed to provide advice and guidance on application skills. Similarly, it is essential that the process for handling and approving project proposals be swift and simple. The EESC believes that civil society representatives could also share in the responsibilities involved in operating this procedure.

The European Neighbourhood and Partnership Instrument (ENPI) should be a key source of EU financing for ND activities. An adequate share of ENPI funds should be earmarked for ND projects and activities and adequate resources should also be provided for administering the Northern Dimension.

Funding from Russia and Norwegian and EEA funding mechanisms are needed for implementing regional and cross-border cooperation in the ND region. Similarly, other international and national financing sources that already participate in the ND projects (EBRD), EIB, NIB, etc.) will continue to be crucial for ensuring the implementation of a meaningful and successful common ND policy in the future.

There is a need for the effective dissemination in civil society of readily understandable information on the availability of funding, the sources of this funding and the procedures for applying for funding for project proposals.

Brussels, 5 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on European neighbourhood policy

(2006/C 309/20)

In a letter of 22 April 2005 from Commissioner Ferrero-Waldner, the Commission formally consulted the European Economic and Social Committee under Article 262 of the Treaty establishing the European Community on the *European Neighbourhood Policy*.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 May 2006. The rapporteur was Ms Cassina.

At its 428th plenary session, held on 5-6 July 2006 (meeting of 5 July 2006) the European Economic and Social Committee adopted the following opinion by 160 votes to two with nine abstentions.

Preamble

The EESC has already produced two partial assessments of European Neighbourhood Policy (ENP): one deals with central and eastern European and the other with Mediterranean countries ([1]). This opinion will therefore only touch briefly on certain aspects of these two documents; nevertheless, they will be submitted, together with this opinion, to the relevant EU and state authorities for information purposes.

0. Summary and conclusions

0.1 The EESC considers that the ENP is a policy of immense strategic importance, and that its potential for peace, stability, the sharing of values and policies and the promotion of exchanges at all levels with neighbouring countries should be enhanced through consistent and responsible implementation.

0.2 In particular, the EESC stresses the need to ensure consistency between:

— the Member States' foreign policies and the ENP;

— other actions related to the EU's external actions and the ENP;

— the foreign and domestic policies of the partner countries and the ENP;

— the actions of the various Commission DGs involved in implementing the ENP;

— the EU'S budget choices and the strategic importance of the ENP;

— application of the principle of differentiation (which can bring about positive competitiveness between countries and areas) and the opportunity to create synergies both within the area itself and between different areas (which promotes cooperation and greater understanding);

— those concrete measures which have been identified as priorities and the main objectives pursued.

0.3 The EESC urges all the institutional players to recognise in practice that the principle of joint ownership implies a strong reference to democratic values, which must be respected and promoted and not merely formally shared: joint ownership must be the guiding principle of relations not only between the EU and the partner countries but within the EU itself, and between national administrations and civil society representatives in the partner countries. An effective and adequate representation of the ENP can only be achieved by systematically involving civil society organisations, and social and socio-occupational players in particular, whose consultative role and negotiation skills need to be explicitly recognised and promoted. Thus, it is necessary to ensure:

— clear, transparent, documented and timely information on decisions relating to implementation of the ENP;

— consultation areas, instruments and mechanisms and participation in developing these decisions, in order to pursue an effective civil dialogue;

— information, instruments and harmonised data to evaluate the implementations, not least by resolving to develop regular initiatives with a view to achieving this goal;

— training opportunities which would enable these organisations to contribute to the implementation of the ENP and to maximise their contribution, not least through access to Community resources and programmes;

— opportunities to set up networks for dialogue, cooperation and the monitoring of ENP implementation among organisations in the various countries and areas.

([1]) The first is on *Wider Europe — Neighbourhood: A new framework for relations with our eastern and southern neighbours* (Opinion, rapporteur: Ms Alleweldt (OJ C 80 of 30/3/2004 p. 148 — *0155*); the second is on *The role of consultative bodies and socio-occupational organisations in implementing the Association Agreements and in the context of the European Neighbourhood Policy* (providing a thematic contribution to the Euro-Mediterranean socio-occupational summit to be held in Jordan on 16 and 17 November 2005 (rapporteur: Ms Cassina), drawn up in cooperation with the consultative bodies in Greece, Israel and Tunisia and Moroccan socio-professional representatives).

0.4. The EESC undertakes to build, maintain and develop relations with consultative bodies and/or socio-occupational organisations in the partner countries, to consider their views and cooperate with the European Parliament and the Committee of the Regions with a view to contributing towards a joint, effective and consistent implementation of the ENP and achieving the objectives of peace, stability, security and shared and sustainable development.

1. **Introduction**

1.1 Throughout the integration process, the EU authorities have taken account of the circumstances of bordering countries for at least two pertinent reasons:

— the first, which is related to the main political impetus which led European countries to form a community, was the need for peace, freedom and stability both within and outside the integration area;

— the second reason is related to the process of economic and market integration, which prompted the need for a trade area that extended beyond the territory of the Member States, in which they would be dealing with countries whose economic growth and human development were or became comparable to their own, so that trade would be mutually beneficial and would not be liable to distortions, dumping and/or protectionist measures on either side.

1.2 During the long period when the world was split into two blocs, the heterogeneous economies of eastern and western Europe, but particularly their different political systems, unfortunately reduced exchanges (not just economic, but human, cultural and social exchanges too) to a minimum; moreover, for over four decades, contact between the people of the two parts of Europe was limited to diplomatic and superficial relations between organisations and local government authorities. This had the dual negative effect of entrenching the stereotypes produced by the cold war and giving the Soviet regime's government systems an aura of international democratic legitimacy, which they did not have and could not have had.

1.3 However, during this time, the European Community improved its relations with neighbouring democratic European countries (or countries that had moved from a dictatorship to a democracy, such as Greece, Spain and Portugal) and had four enlargements ([2]). Through agreements, stable relations were created with those countries which had no prospect of joining or did not intend to join the Community: for example, the European Free Trade Association (EFTA), set up in 1960, the European Economic Area (EEA), set up in 1994, and a wide range of bilateral agreements (in particular with countries bordering the Mediterranean).

([2]) Denmark, the United Kingdom and Ireland joined the EU in 1973; Greece in 1981; Spain and Portugal in 1986; and Austria, Sweden and Finland in 1995.

1.4 Between the end of the 1980s and the beginning of the 1990s, the neighbouring area of the southern and eastern Mediterranean basin gained increasing importance in the eyes of the European Community, culminating in the 1995 Barcelona Interministerial Conference. This established a strategic partnership that would be structured through association agreements and regional projects, the objective being to create an area of free trade, peace, security and shared prosperity by 2010.

1.5 The event which radically changed the geopolitical condition of the Community — which, by now, had established market integration and was preparing to create the single currency — was the liberation of central and eastern European countries from the Soviet system and their transition to democracy and a market economy.

1.6 The reunification of the European continent as a result of the enlargement of 1 May 2004, represents Europe's most important post-war political achievement. It has made the EU richer in terms of human, cultural, historical, economic and social resources and provided it with a totally new outlook. This major quantitative and qualitative change calls for an in-depth understanding of the new situation, which we must uphold and promote by adapting all EU policies, including that on relations with neighbouring countries. The European Neighbourhood Policy has grown out of this conviction and the EESC, which has contributed towards these achievements through its broad commitment to cooperation and dialogue with civil society organisations in the candidate countries, fully supports it.

2. **The initial phase of the European Neighbourhood Policy (ENP)**

2.1 The need for a neighbourhood policy was first put forward by the General Affairs and External Relations Council in November 2002 and by the Copenhagen European Council in December of that year; the latter called on the EU to strengthen relations with its neighbouring countries on the basis of common values in order to avoid further divisions in Europe and to promote stability and prosperity both within and outside its borders. Initially, the major focus was on relations with Russia, Ukraine, Belarus and Moldova, as well as on the Mediterranean partner countries.

2.2 The Commission published two Communications in 2003 and 2004 and, also in 2004, a proposal for a regulation to establish a European neighbourhood and partnership instrument ([3]).

([3]) COM(2003) 104 final — Communication from the Commission to the Council and the European Parliament: Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours — Brussels, 11.3.2003.
COM(2004) 373 final — Communication from the Commission: European Neighbourhood Policy — strategy paper — Brussels, 12.5.2004.
COM(2004) 628 final — Proposal for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument — Brussels, 29.9.2004.

2.3 In addition to the countries mentioned above, in 2004, upon a formal request from the three countries of the Southern Caucasus, the ENP was extended to include Armenia, Azerbaijan and Georgia. Russia had previously stated that it would not take part in the ENP but it would continue relations with the EU within the framework of the 'strategic partnership'. The ENP does not even apply to the Balkan countries which form part of the Balkan Stability Pact and/or have applied for EU membership such as Croatia or Turkey (previously incorporated in the Euro-Mediterranean Partnership policy and an applicant country which began its accession negotiations on 3 October 2005).

2.4 Under the ENP, the EU and its neighbouring countries are to share a substantial set of policies, which implies a strong commitment on the part of the EU and partner countries to promote common values (the principle of joint ownership): the rule of law, good governance, respect for human and minority rights and the principle of gender equality, a market economy and sustainable development. The partner countries are also called upon to make a particular commitment to combat terrorism and the proliferation of weapons of mass destruction and to promote respect for international law and peaceful conflict resolution.

2.5 National Action Plans (NAPs) are drawn up in cooperation with the partner countries, in line with the specific circumstances and needs of the various countries involved (principle of differentiation), but they are essentially geared towards promoting the values mentioned in the previous paragraph. Each NAP is then approved by the respective Association Council and applied in cooperation between the partner country concerned and the EU. The implementation of the NAPs will be monitored by the EU through periodic reports drawn up by the Commission so that the strategy can be fine-tuned in line with the results obtained by each country.

2.6 Until the current financial budget comes to an end (end 2006), the resources will be those allocated to the TACIS and MEDA programmes. However, in the financial perspective for 2007–2013, there should only be one ENP financing instrument (European Neighbourhood and Partnership Instrument). Its budget has not yet been decided, but according to the Commission's proposal it should be double the current amount allocated to the two programmes mentioned above.

2.7 However, the EESC considers that, so far, the Commission has not proposed any elements, either in its documents, or in its negotiations for setting up NAPs, which actually underpin Community development and which have supported the integration process and made it more democratic and dynamic: in particular, the concepts of 'social dialogue' and 'consultative role' are missing. The EESC has already, on several occasions, pointed out these shortcomings to the Commission and trusts that all Community authorities will take the necessary steps to ensure that these concepts become the general rule in the implementation of NAPs.

3. **The concept of 'neighbourhood' and general issues**

3.1 Though the concept of 'neighbourhood' would intuitively seem to be clear, it is less clear how a highly ambitious policy based on this intuition could have the necessary strategic rigour. The EU, as such, has in fact developed a foreign policy that is still limited, given that many competences in the area are jealously guarded and exercised by the Member States. Developing an EU external relations policy is not a matter of taking over Member States' international strategies: it can in fact consolidate them and bring added value if the Member States develop the will to act together and acquire instruments for coordinating their foreign policy actions, so as to ensure that the action taken by all the players operating in a given area is consistent and efficient. In the case of the ENP, this goal can be achieved only if the Member States and the EU ensure consistence with the European framework and present themselves to their partners as an entity having the same shared objectives and proposals.

3.2 In the EESC's view, the concept of 'neighbourhood policy' cannot be seen merely in geographic terms. On the contrary, the very formulation of the ENP — in the various documents mentioned in the third footnote — lends the term a markedly strong sense of a community (or search for a community) of values, cultures and intent ([4]). Thus, although the principle of neighbourhood also has geographical connotations, it is underpinned by policies and values. It is therefore possible that other countries may be included in the ENP in the future.

3.3 A difficulty that may arise in connection with the principle of joint ownership of the action to be undertaken is the fact that the partner countries in the ENP are not viewed as prospective Member States. The prospect of EU membership would certainly be more motivating but it is true to say that the content, methodology and, proportionately, the resources made available for the NAPs are similar to — if not the same as — those used during the recent enlargement. Even the mechanism for implementing policies for the development of the partner countries should have as its model the experience of structural policies and be based on a very close partnership between the EU and the partner countries. One of the methodological characteristics of the ENP is to proceed on a step-by-step basis which allows ample room for the identification of the methods and instruments used, but above all for the assessment of significant developments that could possibly change the objectives identified so far. The 'new phase' of the ENP would allow for even more significant relations with those partner countries which make optimal use of the NAPs: it is a sort of 'reward' which should make economic and political relations even closer, and, one hopes, also relations between societies, thereby meeting the, at times, enthusiastic expectations of the populations of the partner countries. The EESC therefore believes that it would be a mistake to have in place a rigid framework that would exclude any possibility of EU membership or raise false hopes.

([4]) The fact that Armenia, Azerbaijan and Georgia (which are not adjacent to the EU) have asked to be involved in the ENP is a practical demonstration of this statement.

3.4 In March 2005 the Commission published a Communication containing the recommendations for countries with which NAPs have not yet been approved ([5]): it concerns 3 countries of the Southern Caucasus, as well as Egypt and Lebanon. The European Council of 25 April 2005 supported the document and expressed the hope that the definition of the NAPs could be completed shortly so that the relevant bodies (Association Councils) could rapidly approve them and the plans could be implemented. The Council also drew attention to the need to apply the principle of differentiation but, at the same time, emphasised the declaration by the three Southern Caucasus countries, which intend to make the best possible use of the ENP instruments to strengthen regional cooperation (see also point 4).

4. **Problems facing the various areas**

4.1 The ENP focuses on bilateral relations between the EU and the individual partner countries. However, each of the main areas covered by the ENP (which can be roughly defined as central and eastern Europe, the Mediterranean and the Southern Caucasus) presents specific issues; the implementation of the ENP should thus aim to promote local synergies and relations within the area itself: this objective can be achieved through targeted actions and incentives which make it suitable and desirable to develop relations and cooperation within each area, but also between areas. What counts is that the implementation of the ENP should always pursue a balance between bilateral actions and those to be promoted between the countries of a region and between the regions themselves. As well as benefiting the countries in the three areas, which often explicitly call for this, it would promote stability, security and peace across the EU and even in countries outside the ENP area. It is nonetheless important to remain both flexible and pragmatic in order to ensure the right balance between bilateralism and the development of local and interregional cooperation.

4.2 The ENP implementation arrangements imply a certain degree of competition between the various partner countries. Thus, as a country moves further towards the objectives that have been jointly established with the EU, its status as an EU partner can improve (more favourable terms, greater support for key actions, greater market access, easier movement of people, etc.). This competitiveness may also emerge at regional level and, in this case, care will be needed in order to ensure that the areas facing major difficulties — or the countries within such an area — do not suffer frustration and entertain thoughts of quitting. It is crucial to encourage contacts between different countries and areas because, if ENP players firmly believe that the work would not only be to their benefit but would also further a major shared undertaking, it would help develop mutual understanding and identify possible cooperation arrangements which, perhaps, have not yet been contemplated. The contribution of civil society can be a strong driving force in this scenario.

4.3 At the same time it is right to point out that in all three of the large areas covered by the ENP there are explicit, latent or potential conflicts. Some partner countries, particularly where democracy is not well established, face other conflicts. The concern about the possible repercussions of these within the EU is legitimate, but even more important must be the concern for the security and stability of the partner countries and their populations. Special, continuous attention must therefore be given to targeted actions which, in applying the NAPs, are explicitly intended to defuse sources of tension and conflict, create conditions for overcoming difficulties and promote cooperation between countries, economies and peoples. It is obvious that these measures must involve civil society organisations as players in the economic, social and cultural cooperation which is an essential instrument of peaceful co-existence.

4.3.1 It is also important that the various EU external relations initiatives are developed in such a way as to ensure consistency with the different aspects of the ENP. In this connection, relations with Russia within the framework of the strategic partnership and the northern dimension, are particularly delicate, as the recent gas crisis has shown. Moreover, it is useful (and not only in the case of the Ukraine) to thoroughly examine all the implications — not least of a social and economic order — of recognition of market economy status, both for the country concerned and the EU.

4.3.2 It is also important that the various EU external relations initiatives are developed in such a way as to ensure consistency with the different aspects of the ENP. In this connection, relations with Russia within the framework of the strategic partnership and the northern dimension, are particularly delicate, as the recent gas crisis has shown. Moreover, it is useful (and not only in the case of the Ukraine) to thoroughly examine all the implications — not least of a social and economic order — of recognition of market economy status, both for the country concerned and the EU.

4.4 In line with these ideas and objectives, cross-border cooperation between Member States of the EU and partner countries has a central role to play. Most of the new Member States directly border on countries of the ENP area and are therefore exposed both to the difficulties and to the opportunities of this proximity. Implementation of the ENP must therefore seek to reduce the risks of instability to the minimum (in political, economic and social terms) but above all to encourage the transition from potential positive opportunities to practical policies and mutually useful results. This will have a positive effect throughout the Community territory — now to a large extent open and homogenous — in terms of greater and better trade, increased security and better understanding between peoples.

([5]) COM(2005) 72 final, Communication from the Commission to the Council: European Neighbourhood Policy, recommendations for Armenia, Azerbaidjan and Georgia, and for Egypt and Lebanon, Brussels, 2 March 2005.

4.5 This opinion does not set out to evaluate the particular circumstances of the various countries or areas, given that, as mentioned at the beginning, the EESC has already produced some specific contributions on the Mediterranean and its new neighbours to the east. The EESC's initiative, launched in Kiev in February 2006 with the Ukrainian civil society organisations, has shed light on the vigorous interest of these organisations — which show enthusiasm for the EU and have high expectations with regard to the ENP — and has shown that the work carried out through the above-mentioned opinion on the eastern neighbours has begun producing concrete results. The EESC is resolved to set itself more structured and longer-term objectives of dialogue and cooperation with the Ukrainian civil society organisations.

4.5.1 The EESC is deeply concerned about recent events in Belarus and condemns the repressive and anti-democratic measures and persecution which are damaging civil and social rights. The EESC, which will continue forging even closer relations with Belarusian civil society organisations, is drawing up an opinion on this subject ([6]).

4.5.2 However, the truth is that the EESC has neither conducted a direct analysis nor developed stable contacts with civil society organisations in the countries of the southern Caucasus. These shortcomings could be overcome in the short term through in-depth work in the form of an information report and a specific opinion on the subject, if necessary.

5. **Methodological and financial instruments**

5.1 The methodology for implementing the NAPs involves an ongoing process of dialogue and negotiations between the authorities of the EU and the countries concerned. In implementing the actions, all parties are to follow the procedures in use within the Community framework. The EESC has already signalled its concern — in the context of the MEDA programme — with regard to the difficulties faced by the beneficiaries, and civil society organisations ([7]) in particular, in accessing the relevant funds. Rigorous allocation and control procedures are needed to avoid any illicit use of resources, but these procedures must also be clear-cut, transparent (e.g. by translating forms into the beneficiaries' languages), simple and in keeping with the political goals of the ENP. Entangling the procedures for accessing funds in a surfeit of red tape does not achieve priorities any more effectively or make the action taken any more efficient. It also fosters the 'professional cooperation' provided by consultancy undertakings which ultimately stifles the richness of individualism and the partners' capacity for initiatives. EU authorities insist that the ENP must be approached as a tailor-made policy: this is very important, but on condition that it also applies to the implementation methodologies, ensuring that these systematically and consistently reflect the economic and social circumstances of the various countries, thereby being comprehensible by the various sectors of society.

5.1.1 Often the difficulties which civil society organisations have in accessing programmes and related resources arise at least in part from inadequate knowledge of the regulations and procedures. Access to a Community programme or to the measures of a policy promoted by the EU cannot be regarded in the same way as a tendering procedure in which the competitors must provide themselves with the knowledge and organisation needed for participating. The Community institutions must take on a precise responsibility and support the social and socio-occupational organisations in their efforts to develop adequate capability and professionalism. Such action was carried out up to a few years ago by the Commission which held courses for 'planners' at an accessible cost. Recently these costs have tripled and are becoming prohibitive for most of the people who need this sort of help. In the EESC's view, the spread of this type of know-how among civil society organisations is as essential as the capacity building of the ENP partner countries' administrations; it must therefore be regarded as an essential service to be provided free of charge if civil society is to contribute to implementing the ENP.

5.2 Since the NAPs contain all the policies dealt with by the various Commissioners, it is essential for the ENP to become a project understood and supported by all the DGs, which will need to network in a responsible way to contribute to its success.

5.3 For the periodic evaluation mechanism to be effective, it too must be reduced to the essential, avoid being repetitive and focus on the priorities. This can help make the participation of organised civil society — which remains an irreplaceable player in ensuring the success of this and any other policy (see point 6) — in the implementation and evaluation of the ENP more effective and fruitful. A priority of merit must be the criteria for assessing the democratic progress made by the partner country involved and the respect for values and fundamental rights. A priority of method must be the construction of a networked system for surveying data and statistics which makes it possible to assess the achievements of each country involved in a reliable and if possible comparable way. It would also be desirable for the assessment reports to cover roughly the same period of time, as this would be useful both for the process of assessing the best achievements and for identifying the priorities which need more support or support of a different kind.

([6]) See the working document by Mr Stulik (REX/220).

([7]) See the Dimitriadis report submitted to the Malta Euromed Summit — REX 113, points 35 and 36.1 in particular.

5.4 Notwithstanding the fact that the EU is the main trading partner of the partner countries/ENP, the EU's budget for cooperation are, at times, and in some countries, less than those of other international players, but our partners have shown on several occasions that the Union's involvement has great qualitative importance for their development, as it can consolidate certain achievements, provide significant capacity building and create a partnership that looks upon each party as a fully responsible player with equal dignity and never as an aid recipient who is more or less obliged to accept the objectives imposed upon them by others.

5.5 Our partners' expectations must not be thwarted. All the Community actors must assume their responsibilities, and the Member States in particular, since they have the prime responsibility for budgetary matters. The current uncertainty about the EU's future financial framework clouds the conditions which, in the future, could lead to a successful ENP. It is important that the 2007-20013 financial perspectives promote this policy, which is crucial both for the EU's internal development and security and for the development of its role as a partner on the international stage. Alongside the coordination of foreign policies within the ENP framework, the EU should scrutinise the use of current and future resources to be allocated to this policy. This will also make it easier to mobilise funds from private resources, given that the investors will be able to move forward in a climate of stability and certainty.

6. **The contribution of civil society to the ENP**

6.1 The EESC is convinced that the success of the ENP is closely linked to the capacity of all the institutional players to involve civil society organisations in the implementation of the NAPs, and has fully explained this view in its earlier opinions and, by analogy, in all the opinions relating to the enlargement process ([8]). It is to be hoped that the Commission may give a clearer pointer in this direction, by proposing criteria, procedures and instruments with a view to involving civil society organisations in the implementation of the NAPS. Without prejudice to point 3.3, the experience of enlargement is an important reference point, both in terms of the involvement of the social and socio-occupational players of the applicant countries in the negotiating process and in terms of dialogue between the civil society organisations of the EU countries and those of the applicant countries. If the first of these dynamic processes has been achieved, especially in certain applicant countries which are now members, the second has been left to the voluntary initiative of organisations, foundations and consultative bodies, particularly the EESC. Implementation of the ENP, however, requires that this involvement be structured and guaranteed.

6.2 On the basis of the EESC's experience and work, and of the proposals contained in the opinions listed in footnote 1, we shall simply list here the actions which the EESC regards as essential for achieving the objective of effective implementation of the ENP with social participation.

6.3 The EESC calls upon the Commission to:

— ensure internal consistency between the different DGs dealing with the various aspects of the ENP, by stimulating synergies, networking and promoting best practice;

— impress on the governments of the ENP partner countries the need to involve civil society organisations in the implementation of the NAPs, not least by, to this end, establishing a criterion on the involvement of civil society organisations in evaluating the results obtained by the various ENP partner countries;

— provide social and socio-occupational players with the know-how needed to make the best, and correct, use of the resources intended for the ENP, not least to enable people to monitor the application of the NAPs in their countries and to make proposals for the follow-up;

— provide clear-cut and effective criteria for assessing shared values, which is the main discriminating factor when implementing the ENP;

— provide information and documentation on the meetings planned under the Association Agreements to discuss the implementation of the NAPs (in particular, publish the timetable and agendas of such meetings), and promote the holding of information and consultation sessions before and after these meetings;

— propose an instrument to facilitate the granting of visas to citizens of ENP partner countries intending to visit the EU for the purposes of study, training and research initiatives, contacts with corresponding organisations, business etc.;

— support the EESC's efforts to ensure the coordination of the consultative bodies and civil society organisations committed to participating in the implementation of the NAPs, in particular by financing the holding of an annual socio-occupational summit (similar to that which the EESC has been organising for 10 years in the Euro-Mediterranean context) which would assess the overall implementation of the ENP and enable the organisations involved to compare notes on a general basis and not just at bilateral or area level.

([8]) See, among the most recent, the REX Opinion on the subject REX/208 (rapporteur Mr Pezzini).

6.4 The EESC calls upon the governments of the EU Member States to:

— devise a method for systematic comparison in order to ensure consistency and efficiency between individual national foreign policies and the ENP, with a view to creating a critical mass of resources, but mostly of initiatives that can help to achieve results that benefit all the stakeholders;

— orientate their foreign policies towards an application of the ENP which would make the most of organised civil society's contribution both in ENP partner countries in general and at national level, partly through the contribution of cooperation policies to the development and creation of partnerships and networks with the civil society organisations involved;

— ensure consistency between the commitments undertaken within the framework of the ENP and the initiative of multilateral international organisations;

— provide all information on national government positions on the agenda points for the meetings to be held under the Association Agreements;

— commit themselves to promoting and facilitating access to the national universities for students from the ENP partner countries;

— organise, at national level, information days at regular intervals (about two a year) on the results of ENP implementation and on the assessments which the government itself makes of the implementation of this important policy.

6.5 The EESC calls upon the governments of the ENP partner countries to:

— ensure a high degree of consistency between their bilateral and multilateral foreign policies and the ENP commitments;

— guarantee clear and constant information on progress in applying the NAPs to the social partners' organisations and the socio-occupational organisations of their countries, and provide access to documentation relating to developments in the application of the NAPs;

— consult systematically the consultative bodies — where they exist — on decisions in preparation, whether on the application of the NAPs or on the assessments and any further stages which would lead to progress in relations between the country concerned and the EU;

— set up, in ENP partner countries where consultative bodies do not yet exist, an instrument to encourage and coordinate the participation of civil society organisations in formulating decisions on the implementation of the NAPs and the monitoring of the actions undertaken;

— coordinate consultation and the participation of civil society at various territorial levels so that the ENP can work as an instrument for developing the economic and social system in a balanced way throughout the national.

6.6 The EESC calls on civil society organisations in the ENP partner countries to:

— undertake to familiarise themselves with the ENP, evaluate it and contribute towards its implementation in their country, by pressing for information and opportunities for participation from their government and by cooperating with the EESC in order to identify priorities and bring them to the attention of the Community authorities;

— be open to structured dialogue with both the EESC and consultative bodies in the EU Member States and other ENP partner countries, with a view to creating a wide network for monitoring implementation of the ENP, and promoting mutual understanding between organisations and the dissemination of participatory best practice.

6.7 The EESC undertakes to follow closely the implementation of the ENP in the different areas and to develop more effective forms of cooperation with the European Parliament and the Committee of the Regions in order to contribute to the involvement of civil society organisations in this important policy.

Brussels, 5 July 2006.

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 Decision on the system of the European Communities' own resources (//EC, Euratom)

COM(2006) 99 final — 2006/0039 (CNS)

(2006/C 309/21)

On 26 April 2006, the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the abovementioned proposal.

The EESC Bureau assigned preparation of the Committee's work on the subject to the Section for Economic and Monetary Union and Economic and Social Cohesion.

In view of the urgency of the work, the European Economic and Social Committee decided at its 428th plenary session of 5 and 6 July 2006 (meeting of 5 July 2006) to appoint Ms Cser as rapporteur-general, and adopted the following opinion by 84 votes to 2, with 2 abstentions:

1. Summary of the opinion

1.1 Pursuant to Article 9 of the Council Decision on the system of the European Communities' own resources ([1]), the Commission was required to undertake a general review of the own-resources system for the 2007-2013 period by 1 January 2006 and to submit appropriate proposals. The EP submitted a request for a review of the contribution criteria. In agreement with the Council, the Commission drew up its proposal and submitted it for review.

1.2 The European institutions assessed the proposal, including the EESC, which (ECO/148) discussed it in the light of its own previous opinions and repeatedly drew attention to the important link between EU budgetary policy and Community policies in general.

1.3 The Committee discussed the future use of the three own resources and evaluated the proposal for an own, direct resource of the EU set out in the Commission's document.

1.4 The Committee outlined the historical development of the own resources and the changes which they had undergone; it also analysed the 'fourth resource' and evaluated the UK rebate and the generalised correction mechanism.

1.5 In December 2005 under the UK presidency, the Council of the EU, in the course of evaluating the financial perspective for the 2007-2013 period, reached a political agreement. The earlier European Council decision was revised and new guidelines were set. The Commission was asked to draw up a new proposal, and to amend the accompanying working document on the UK rebate together with the Commission's proposal for a generalised correction mechanism.

1.6 Notwithstanding the Commission's amended proposal, the EESC stands by the concluding observations of its previous opinion, as the amended proposal merely reflects a political deal and not a fundamental change. At the same time, the change in the method used to calculate the UK rebate for the first time in twenty years is of historic importance, as it could represent the first step towards doing away with the rebate.

2. The EESC's approach, as the representative of organised civil society

2.1 As an active and dynamic player, our Committee has a key role at EU and Member State level in bridging the gap between the European institutions and citizens. The Committee mediates and evaluates the objectives set out in the Commission's documents concerning the period of reflection, and promotes active participation by citizens with a view to implementing Community policies (Action Plan, Plan D and the White Paper on a European Communication Policy).

2.2 According to these documents, EU citizens have a right to know what the EU is doing and why. In its opinion on the period of reflection, the EESC outlined public expectations with regard to imbuing policies on the EU's future with appropriate content. In this context, the Committee welcomes the interinstitutional agreement of 4 April 2006, which provided for an increase in total funding in the financial framework for the 2007-2013 period relative to what was originally agreed on by the European Council. However, referring to its previous opinion ([2]), it notes that this increase is limited and that the financial perspective does not provide scope for implementation of objectives in such a way as to entirely match their ambitions.

3. Introduction

3.1 The 2004 enlargement was an historic event, given that over 450 million Europeans are now reunited after a period of 50 years. The enlargement involved significant work on the institutional system, which until then had only served a community of 15 countries. Adoption of Community policies for an EU of 25 and soon of 27 Member States, as well as decisions on and the creation of the requisite funding represented a serious challenge for cooperation between 'old' and 'new' Member States. Against the backdrop of these developments, the Commission's Communication of 2004 on *Building our*

([1]) OJ C 253, 7.10.2000

([2]) OJ C 74, 23.3.2005.

common future: Policy challenges and budgetary means of the enlarged Union 2007-2013 and the Commission's proposal for the 2007-2013 financial perspective drawn up on the basis of that Communication would have helped to achieve the objectives of a shared future.

3.2 Adoption of the Commission's Communication represented the starting point for the decision on the new financial perspective. The EP's position took the EU's priorities into account. The European Council's decision of June 2005 set tighter priorities for expenditure and spending needs.

3.3 The EU budget is limited compared to national budgets; on average, these account for 45 % of national income, whereas the EU budget is barely over 1 %. The Commission proposed that the ceiling for resources included in the 2007-2013 financial perspective should remain unchanged at 1,24 % of GNI.

3.4 Expecting more Europe for less money is simply unrealistic; new Community policies require additional financial backing. The proposed expenditure on policies offering European added value in the new financial perspective was decided on the basis of the triple requirements of effectiveness, efficiency and synergy.

3.5 To achieve the objectives, reference should be made to guidelines on greater financial transparency, more targeted and effective expenditure, and a more accurate assessment of European added value.

3.6 The need for reform of the system of own resources has become more pressing, due to its lack of transparency, limited financial autonomy, complexity and sheer impenetrableness. The adjustment mechanism applied exclusively to the United Kingdom since the mid-1980s has given rise to calls for generalised correction or a change in the system.

4. **The EU's financial perspective for 2007-2013 subsequent to the December 2005 European Council decision**

4.1 As the European Council acknowledged in its conclusions of December 2004, there is a close link between the financial perspective and the issue of own resources, the correction mechanism, and the need to reform the current system.

4.2 The March 2005 European Council reaffirmed the objectives of the Lisbon strategy, and focused the strategy on boosting growth and employment.

4.3 The informal Hampton Court summit of October 2005 focused on the challenges of globalisation rather than the European social model; the new financial perspective for 2007-2013 was to reflect new priorities, such as research and development, innovation, energy, politics, education (including investment in higher education), promoting economic migration between regions, and dealing with demographic change.

4.4 The December 2005 European Council agreed on the financial framework for the 2007-2013 period. Taking account of this political agreement and based on the Commission's amended proposal, the interinstitutional agreement concluded by the European Parliament, the Council and the Commission laid down the seven-year framework. The signing of the agreement was crucially dependent on the outcome of dialogue with the EP. The structure of the financial framework only partially reflected the dual requirement of, on the one hand, financing the new challenges facing the EU while, on the other hand, meeting budgetary needs arising from enlargement.

4.5 In December 2005, the Council decided that the review of the system of own resources should be completed as part of the overall review of EU expenditure and revenue in the multi-annual financial perspective, a review which is due for 2008-2009. In May 2006, provision for this was incorporated into the interinstitutional agreement.

4.6 The Commission has proposed drawing up a White Paper providing a comprehensive summary of the financial perspective, revenue and expenditure. The expectation is that the EU's current system of own resources will be replaced by more transparent and autonomous revenues. The Commission notes the EP's plan to hold a conference with the involvement of national parliaments. The EESC declares its willingness to take part in this work.

5. **The system of own resources**

During two years of negotiation on the financial perspective, little attention was paid to the system of own resources as a whole.

5.1 To get a full picture of the own resources system, we need to look at how budgets supporting the European integration process have evolved; between 1957 and 2006, four stages can be identified:

1957-1969, a period of separate budgets for each of the Communities;

1970-1987, a period of single annual budgets;

1988-1999, the period of the first two financial perspectives, in which Community policies were the deciding factor;

2000-2006, a period in which Community policies were determined by the budget.From the very start, the way in which budgets evolved in the course of European integration was shaped by the pursuit of common goals and Member States' interests.

In general, it can be observed that during the period of the first two financial perspectives commitment appropriations increased in step with the development of Community policies, and this development was the deciding factor in the Community financial framework.

5.2 During the debate on Agenda 2000, net contributors to the EU budget, rallying to the call for 'stabilisation of expenditure', succeeded in limiting the room for budgetary manoeuvre. Net contributors backed their case for stabilising expenditure by invoking the budgetary discipline stipulated by the Stability and Growth Pact.

5.3 After the failure of the June 2005 summit, a review of joint expenditure and own resources became a key issue. However, there was, as yet, no real debate on own resources. At the initiative of the UK presidency, a review clause was adopted. This initiative was in turn based on the Commission's June 2005 proposal, which had already been incorporated by the Luxembourg presidency in its final proposals. Member States were divided as to the content of the review clause and the timescale of the reforms arising from it. The debate on the review focused on the future of the EU budget, and once again divided Member States, whose opinions were determined by their positions as net contributors or net beneficiaries. It became clear that there would be no major reforms before 2013.

5.4 If we examine the situation of Member States in relation to the common budget **simply from an accounting perspective, taking only the balance of allocated expenditure and payments into account**, we will find significant and highly misleading differences. Merely looking at countries' positions as net contributors or beneficiaries does not give any idea of the benefits at European level, of the contribution of Community policies to additional growth in macroeconomic income in the internal market.

5.5 The EESC, as it pointed out in its earlier opinions, cannot accept the view that Member States' positions as net contributors should take precedence over Community policies, which contribute to achieving common goals.

5.6 We feel that the role of Community policies in shaping the budget is compatible with budgetary discipline at EU level. Budgetary discipline initially appeared on the agenda in the first Delors package; however, this does not preclude Community policies from playing a decisive role in terms of the balance between budget and policies.

5.7 The growing GNI-based resource, whose role will continue to develop after 2007, is an example of how an equitable solution can be reached. However, there is an inherent risk that the growth of GNI-based contributions will strengthen the tendency to focus on countries' positions as net contributors. The GNI resource is derived from national budgets by means of direct transfers, and is not intended to ensure genuine own resources for the EU.

6. **The working document on the UK rebate**

6.1 The changes to the decision on own resources have enabled the drafting of a new document, which could enter into force from 1 January 2007 or no later than early 2009, perhaps even with retroactive effect. The document maintains the 'standard rate' of call of VAT at 0,30 %, as in the previous proposal, but in contrast to that proposal allows for two exceptions: for the period 2007–2013, the rate of call of the VAT resource for Austria is fixed at 0,225 %, for Germany at 0,15 % and for the Netherlands and Sweden at 0,10 %; for the same period, the Netherlands benefits from a gross annual reduction in its GNI contribution of EUR 605 million and Sweden from a gross annual reduction in its GNI contribution of EUR 150 million.

6.2 Starting no later than 2013, the United Kingdom will pay its full share of the enlargement costs relating to countries which acceded to the EU after 30 April 2004, with the exception of CAP-market-related expenditure. During the period 2007–2013, the UK's additional contribution relative to the decision currently in force may not exceed EUR 10,5 billion. This additional contribution will be adjusted in the event of enlargement to countries other than Romania and Bulgaria. In its decisions to review the system of own resources, the Council again emphasises the need for a comprehensive review of the financial perspective; the review of the EU's own resources is to include the CAP and the British rebate, and a report is expected in 2008-2009.

6.3 According to the Commission's proposal, the reduced VAT rates of call should be taken into account before calculating the UK rebate, whereas the GNI-based contribution should only be reduced after calculating the rebate. In the view of 17 Member States, both of these steps should be taken after calculation of the UK rebate, while the UK insists that both should precede it. The UK proposal would mean a higher rebate, and thus impose a heavier burden on the other Member States.

6.4 The EESC concurs with the Court of Auditors that the existence of any type of correction mechanism undermines the simplicity and transparency of the own resources system. The Court of Auditors has frequently commented on the current own resources system and its shortcomings. In particular, it has pointed to and highlighted a lack of management, consistency and transparency. It has also noted that budgetary imbalance cannot be rectified through numerical rules.

6.5 Among the modest alterations in the own resources system, the change in the method of calculating the UK rebate is of particular importance. Under the December 2005 agreement, expenditure allocated to the new Member States will be gradually phased out from the rebate from 2009, and fully excluded from 2011, with the exception of CAP-market-related expenditure and direct payments to farmers — thus ensuring that the UK rebate does not grow at the same rate as enlargement expenditure.

7. **General comments**

7.1 The EESC concurs with the EP on the VAT and GNI-based resources, which, at the time of their creation, were intended to complement the EU's own resources, and which have gradually become the main source of funding for the Community budget: adding derogations to the current own resources system has merely made it more complex, less transparent for citizens and less equitable, resulting in a system of funding which has created unacceptable disparities between the Member States.

7.2 The EESC agrees with the EP that, as the EU enlarges, it must be endowed with adequate financial resources in line with its growing political ambitions. The financial perspective is a financial framework aimed at ensuring that the EU's priorities are developed, while taking budgetary discipline into account; it is not a multi-annual budget for the next seven years.

7.3 The EESC would point out that the own resources ceiling set in 1993 for 15 Member States at 1,31 % of EU GNI for commitment appropriations and 1,24 % of EU GNI for payment appropriations has remained unchanged since then.

8. **Summary**

8.1 With the above in mind, the Committee would interpret the political agreement reached by the European Council in December 2005 to mean that the fourth stage of the evolution of the common budget, i.e. the period of budget-driven Community policies which started in 2000, will continue up to 2013.

8.2 The key to the future budget is to move away from an approach based on countries' net positions as contributors or beneficiaries; what we need is a common budget which is autonomous or virtually autonomous from national budgets. Only genuine own resources are capable of ensuring such autonomy.

8.3 The EESC feels that an own resources system based either on common policies, or on a genuine Community own resource in the form of a Community tax, or on a combination of both of these, would make it possible to set an autonomous common budget. From the perspective of the Community's future, the solution which ties in best with the Community method is to pursue common policies as a means of generating resources.

8.4 Despite strong opposition to a Community tax based on the principle of financial sovereignty, we feel that it is necessary to create the requisite own resources for the implementation of common objectives, instead of GNI-based contributions.

8.5 In adapting the own resources system, it is vital to ensure its consistency with the principles of transparency, efficiency, flexibility and proportionate financing.

— Effectiveness of resources: resources must have a significant impact on the size of the budget

— Transparency and simplicity: Member State contributions to the EU budget must be readily comprehensible to EU citizens

— Efficient expenditure: the administrative costs of raising revenue should not be too high relative to resources

— Equal gross contributions: Member States should share the burden fairly, taking into consideration the actual situation of their citizens.

Brussels, 5 July 2006.

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 Directive on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

COM(2006) 76 final — 2006/0021 (CNS)

(2006/C 309/22)

On 22 February 2006 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 June 2006. The rapporteur was Mr Burani.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee unanimously adopted the following opinion.

1. **Introduction**

1.1 The Commission's proposal concerns the harmonisation of provisions relating to the import from third countries of goods in travellers' accompanied baggage that are, by their nature, subject to VAT or excise duties. Up to certain limits, such goods have always been imported duty free: the original provision is in Directive 69/169/EEC of 28 May 1969, which has since been modified 17 times and is now to be replaced by the initiative under discussion.

1.2 The system needs to be maintained *'in order to prevent double taxation, as well as in cases where, in view of the conditions under which the goods are imported, the usual need to protect the economy is absent'* ([1]). The Commission believes that, whilst the guiding principle remains unchanged, the number of modifications that have been made since the directive was first passed, enlargement, and the configuration of the new external borders constitute a sufficient reason for a complete revision and replacement of the original directive.

1.3 The problem, which *per se* is a simple one, is complicated by the need to regulate the import of 'sensitive' products, i.e. tobacco and alcoholic beverages. Although the problem has always existed, the enlargement of the EU, while leaving the fundamental issues unchanged, introduces new perspectives: the different geographic and social situations of the Member States, the different positions and the wide differences between levels of taxation. The final result will depend on whether it is possible to reach agreement on the Commission's proposal for harmonisation.

2. **General comments**

2.1 Originally, the directive applied to people travelling within the Community; since 1993, in line with the principles of the single market, the restrictions on the movement of goods between Member States have, in principle, been abolished. The changes to the **external borders** of the EU following enlargements mean that new aspects have to be considered; as the Commission says, those borders *'now include, inter alia, Russia, Ukraine and Belarus'*.

2.1.1 The EESC takes note of this, but observes that, in addition to the borders mentioned, there are other borders to the east that raise a problem for the new accession countries because of significant differences in price levels with some neighbouring third countries; nor should it be forgotten that **new sea borders** have been created **since the accession of Cyprus and Malta.**

2.1.2 The derogations given to some Member States at different times, in consideration of particular problems, have now all expired, with the exception of that granted to Finland, which is still permitted, until 2007, to apply a limit of not less than 16 litres to the import of beer from third countries. The EESC, which has always expressed its opposition to the system of derogations, welcomes this; however, in this instance, a uniform system for all 25 countries may cause a few problems, which will be described below.

2.2 The proposed directive **increases the current duty-free thresholds**: from EUR 175 to **EUR 500 for air travellers** and to **EUR 220 for all other travellers.** The Commission's explanatory memorandum justified this measure by saying *'The cost and effort of travelling by air would suggest that such travel is likely to be less frequently undertaken by individuals compared to those choosing to travel by land or ferry. Additionally, air passengers are by their nature limited to what they can buy and transport, i.e. they would not be able to transport* ***bulky items****.'* The **real reason**, however, seems to be a different one: the fourth 'whereas' states that *'The monetary thresholds should take account of the difficulties faced by Member States which share their borders with third countries with significantly lower prices…'.*

2.2.1 The EESC believes that the reason for the discrepancy between what is stated in the explanatory memorandum and the fourth 'whereas' quoted above is to be found primarily in a **tax consideration**. It would not make sense to talk about 'bulky items' (see previous point): there are goods that are small in size and high in value (cameras, laptop computers, watches, jewels, etc.) that **air travellers would be allowed to import, but those travelling by car, rail or cruise ship would not**. The other statement, which says that air journeys are 'less frequent' than those by sea or land and would require 'cost and effort', would appear to be referring to *specific situations* rather than the phenomenon in general: air journeys (in particular

([1]) See COM(2006) 76 final — 2006/0021 (CNS), first 'whereas'.

those with low-cost airlines) are part of everyday life for millions of business people and tourists who travel to third countries each year.

2.2.2 The EESC **considers it unacceptable** that consideration for particular situations leads to harmonisation standards that **discriminate between citizens on the basis of the means of transport** they use. Although, as already stated in point 2.1.2 above, the EESC has on several occasions opposed the system of **derogations** and remains opposed to it in principle, it believes that in this case that system seems to be the **only possible way ahead**. However, it should be used only when one or more Member States can prove — in accordance with the proportionality principle — that a **general limit of EUR 500** will lead to an intolerable loss of their tax revenues.

2.3 The proposed directive keeps the **quantitative limits for tobacco and alcohol.** With regard to tobacco, reference is made to the WHO Convention, ratified by the EU on 30 June 2005, which recommends that **the import of tobacco products by international travellers be prohibited or restricted**. In view of this recommendation, the Commission proposes a **uniform system of reductions in the quantitative limits** on such products *'in order to ensure **equal treatment** of all citizens entering the European Union'*.

2.3.1 The EESC expresses its **agreement,** although it has some reservations about the motives relating to tobacco, which, like the other motives, seem to be based on tax rather than health considerations; in effect, Article 9(2) gives Member States the right to apply minimum tobacco import levels which are much lower than normal. Without calling into question the harmful effects of tobacco, the — absurd — implication is that the level of harm varies according to the Member State.

2.4 In addition, the Commission proposes the **abolition of quantitative limits for perfumes, coffee and tea.** This takes account of the fact that perfumes are no longer subject to excise duty based on EU law, that coffee is subject to such duty in five Member States and tea in just one. In this regard, the explanatory memorandum states a *fundamental principle* ([2]): the abolition of quantitative limits is necessary *'since they **no longer reflect the real pattern of taxation of excisable goods in the … 25 Member States**'*. In other words, the limits are abolished because only a few of the 25 Member States still apply excise duties to the above-mentioned products.

2.4.1 The EESC **agrees** unreservedly with the abolition of these measures, and incidentally notes that in this case the rule has been applied whereby, **keeping in mind the proportionality principle, the common interest prevails over that of individuals**.

2.5 It is precisely from the point of view of **proportionality** that the proposed directive opens itself up to criticism in a number of respects. In general terms, and with reference to the rule mentioned in point 2.4, the EESC draws attention to the need for any initiative to be based on **consistent application of a given principle to all the aspects of legislation** and not just to some of them. This statement will be explained more clearly in the comments relating to the individual articles.

([2]) See ibid, 1) **CONTEXT OF THE PROPOSAL — Grounds for and objectives of the proposal**, 4th bullet point.

3. **Specific comments**

3.1 **Articles 2, 4, 5 and 7: scope of the directive**. These articles state that exemption from VAT and excise duty shall be granted for goods imported in a traveller's personal luggage ('accompanied luggage') which has passed through a third country. The directive applies only if the person concerned **is unable to establish** that the goods were acquired in an EU country and do not qualify for any refund of VAT or excise duty. Personal effects which are imported temporarily or re-imported following their temporary export are not taken into account when calculating the value of the goods.

3.1.1 This rule already existed, and still imposes a considerable burden on travellers, who are required to **carry invoices** proving that articles they already own, especially the more expensive articles, were acquired in an EU country, or to obtain a **declaration of temporary export** on leaving.

3.1.2 The EESC is aware that no easier solutions exist, but it would point out that in the implementing regulation, or in some other way, the Commission could usefully advise the Member States **to publicise this rule as most appropriate**, through notices at exit border points and by including it in the general instructions issued by tourist operators and in air and sea tickets.

3.2 **Article 8: monetary thresholds**. The total value of imported goods qualifying for exemption is **EUR 500 for air travellers and EUR 220 for all other travellers.** Member States may reduce the threshold to **no less than EUR 110 for travellers under the age of fifteen**. The value limits apply to all goods, except for tobacco and alcohol, to which quantitative limits apply.

3.2.1 The EESC has already expressed its concern (see point 2.2.2) about this discrimination between citizens according to the mode of transport used. It seems obvious that this distinction is based on the particular situation of certain Member States bordering on third countries where prices are very low, e.g. because of wide tax discrepancies. The problem would be solved by applying the **principle of proportionality** (see points 2.4.1 and 2.5), **with derogations** granted in specific cases of proven necessity.

3.2.2 In line with point 2.2.2 above, the EESC confirms its proposal that **the EUR 500 threshold be extended as a general principle to include all travellers without distinguishing between the modes of transport used**. A higher threshold would have the advantage of freeing up customs officials from the burdensome task of inspecting the wider travelling public, particularly at times of heavy tourist traffic, thus enabling them to pay attention more effectively to genuine cases of smuggling. On this subject, it should be emphasised that the experience and professionalism of customs officers enables them to distinguish relatively easily between tourists (who may at most be guilty of a minor offence) and smugglers, whose actions are punishable under criminal law. The issue of 'regular' travellers (neither tourists or workers nor frontier-zone residents), whose imports are part of small-scale local trafficking for profit, has yet to be resolved.

3.3 **Article 9: quantitative limits for tobacco**. Exemption from VAT and excise duties for tobacco is subject to quantitative limits. The ***normal* limits** are 200 cigarettes, 100 cigarillos, 50 cigars or 250 grammes of smoking tobacco. Member States may fix ***minimum* quantitative limits** (of 40 cigarettes, 20 cigarillos, 10 cigars or 50 grammes of smoking tobacco) which may be applied by the Member States to *all* travellers, or **only to travellers other than air travellers**.

3.3.1 While it **disagrees** with the concept of different quantitative limits, as noted with regard to monetary thresholds, the EESC would also add that the minimum limits would cause **considerable inconvenience to EU *tourists* travelling by car** passing through different countries (EU or non-EU) whose final destination is not the country in which the minimum limits are applied. Considering the importance of tourism and the need to promote rather than hamper it with measures requiring the adoption of *rigorous border controls*, the EESC suggests that an **exemption clause** be adopted specifically for these cases.

3.4 **Article 10: quantitative limits for alcohol**. As with tobacco, the existing **quantitative limits** are maintained for alcohol, adapted and subdivided into two categories as follows: (a) 1 litre of distilled beverages and spirits of an alcoholic strength exceeding 22 % vol. *or* undenatured ethyl alcohol of 80 % vol. and over, (b) 2 litres of 'intermediate products' and sparkling wines. The two limits cannot be cumulated. **In addition** to the above quantities, **4 litres of still wine and 16 litres of beer** may be imported free of tax or duties. These exemptions do not apply to travellers under the age of 17.

3.4.1 The EESC **broadly endorses** the measures proposed, but would draw attention to certain **important details**. First, alcohol above 80 % vol., which falls into category (1), is generally sold only at 98 % or 99 % vol., and 1 litre of such a product can be used to make 3 litres of alcoholic beverage at 33 % vol. Thus there is no particular logic in equating this with 1 litre of distilled beverages or spirits. As regards the category of 'sparkling wines', which includes both high-value wines (e.g. champagne) and wines of a very different nature, the EESC considers that a distinction should no longer be made between 'sparkling' and 'still' wines as they both concern 'wines' with no bearing on their value.

3.4.2 However, we have an **explicit reservation** with regard to the quantities of **wine and beer** exempted: there is a definite lack of proportion between the 4 litres of wine and 16 litres of beer, which penalises travellers from countries where beer is not regularly consumed. Rather than establishing the same limit, it is necessary to fix **separate quantitative and alternative limits for each of these beverages**.

3.5 As regards **fuel**, the exemption applies to the fuel contained in the vehicle's tank and to 10 litres in a portable container, but **derogations are allowed where restrictive national provisions exist**.

3.5.1 The EESC asks the Commission to **radically revise** this rule. In the first place, the position of fuel distributors does not justify extending the exemption to **portable containers** in addition to fuel tanks; this option should be **removed**, if only in consideration of the danger involved in transporting fuel outside of fuel tanks. It should also be borne in mind that in many countries this practice is forbidden under the highway code. The prohibition should be extended to any additional containers built in to the vehicle; for lorries, which often have two containers, the prohibition should apply to any container not approved at the time of their registration.

3.5.2 Secondly, **restrictive national provisions**, even where justified by the price disparities between neighbouring countries, should not be extended to **tourists from countries other than those where the restrictions apply**, for the same reasons given in point 3.3.1. If they are still considered necessary, restrictions could be included with those covering **residents of border regions** and cross-border workers, as provided for in Article 14 of the proposal for a Directive.

3.6 **Article 14: frontier zone residents and workers**. Special arrangements, which underpin the existing rules, apply for **people residing in a frontier zone** and for **frontier workers** (workers living in an EU country who work in the frontier zone of a neighbouring third country, or residents of a third country who work in the frontier zone of a neighbouring EU country). For these categories, the Member States **may lower the monetary thresholds and/or quantitative limits**. The proposal defines a 'frontier zone' as an area which, as the crow flies, does not extend more than 15 kilometres from the frontier. The EESC feels that this delimitation is arbitrary and does not take into account the geographical, economic and social characteristics of each frontier zone: each Member State should be able to delimit its own zones according to circumstances; moreover, greater flexibility would allow some Member States to address the worrying issue of the 'unconventional smuggling' that takes place at the land borders of Eastern European countries.

3.7 Finally, the date on which the Directive should enter into effect is set as **31 December 2006**. This can be considered reasonable only if the legislative process proves to be rapid and smooth.

Brussels, 5 July 2006.

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 Implementing the Community Lisbon Programme: Fostering entrepreneurial mindsets through education and learning

COM(2006) 33 final

(2006/C 309/23)

On 5 April 2006 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned 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 2 June 2006. The rapporteur was Ingrid Jerneck.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 6 July 2006), the European Economic and Social Committee adopted the following opinion by 122 votes to 16, with 10 abstentions.

Key points of the EESC's position

Entrepreneurship refers to an individual's ability to turn ideas into action. Entrepreneurial training promotes innovation, creativity and self-confidence. To foster entrepreneurial mindsets through education and learning:

— Early start, with the basis for entrepreneurial training and education

— Supplementary entrepreneurial programmes within the national curriculum from primary school to higher education

— Positive and effective cooperation between schools/universities and businesses

— Involvement of teachers benefits their personal development

— The drawing up of educational programmes for entrepreneurship should involve both employers and employees

— Strong involvement and presence of civil society in the learning process

— The importance of female entrepreneurs must be taken into account in schools with the aim of fostering a positive balance between women and men

— Entrepreneurship must be fostered equally amongst disabled persons

— Exchange of best practice is important and progress could be monitored through annual stock-taking conferences organised by the Commission

— Media activities and the image they convey of business are important

— An 'Entrepreneurial staircase' can be used as one of several models in the Member States

— The importance of creating one-stop-shops to facilitate the setting-up of companies

— Launch of a European Year for Entrepreneurship upon a proposal by the Commission

— Entrepreneurial mindsets for education and training can play a role in communicating Europe and bringing the EU closer to its citizens

1. Gist of the Commission document

1.1 In February 2005, the Commission proposed a new start for the Lisbon Strategy focusing the European Union's efforts on two principal tasks — delivering stronger, lasting growth and providing more and better jobs. The new Partnership for Growth and Jobs stresses the importance of promoting a more entrepreneurial culture and of creating a supportive environment for SMEs.

1.2 The need to create a more favourable societal climate for entrepreneurship is based on an integrated policy with a view to not only changing the mindsets but also improving the skills of Europeans and removing obstacles to the start-up, transfer and growth of businesses.

1.3 Entrepreneurship is a key competence for growth, employment and personal fulfilment. While recognising that the entrepreneurship competence should be acquired throughout lifelong learning, the Communication focuses on education from primary school to university, including also secondary level vocational education (initial vocational training) and technical institutions of tertiary level.

1.4 Traditionally, formal education in Europe has not been conducive to entrepreneurship and self-employment and although numerous initiatives on entrepreneurship education are under way, they are not always part of a coherent framework. The Commission's proposals, based on evidence and good practice, aim to help formulate more systematic approaches to entrepreneurship education and to enhance the role of education in creating a more entrepreneurial culture in European societies. Most of the action needs to be taken at national or local level.

1.5 The Communication will serve as a reference for reviewing progress in policy development, notably through the Lisbon Reports that the Member States will submit under the Integrated Guidelines for Growth and Jobs.

2. **The EESC's general comments**

2.1 The Committee welcomes the Commission's proposal. More entrepreneurial activity is important if the economic growth needed to successfully maintain Europe's social model and to turn the Lisbon strategy into a success is to be fostered. Europe needs more entrepreneurs equipped with the appropriate skills to successfully compete in the markets. As the Commission recognizes, the benefits of entrepreneurship education are not limited only to more start-ups, innovative ventures and new jobs. An entrepreneurial mindset should be seen as a basic skill and a career opportunity as well as an essential part of personal development. It fosters creativity and innovation as well as self-confidence as it develops a spirit of initiative and helps individuals to learn to cope with failure. It is a matter of instilling an enterprising attitude, and not just learning how to be a businessman or woman. Entrepreneurial training can also enable employees to become more aware of what their jobs are about and to seize any opportunities that may arise. Entrepreneurship refers to an individual's ability to turn ideas into action ([1]).

2.2 The EESC supports the idea that a change in mindsets or attitudes is crucial to achieving an increase in entrepreneurship rates and needs to start at an early age. An entrepreneurial mindset also needs to be conceived as a lifelong learning process that begins in primary school. That is where specific entrepreneurial skills are fostered over and above the general knowledge and culture acquired in formal education, thus promoting creativity, a sense of initiative and a proactive approach to knowledge and learning, etc. This can offer increased flexibility at different stages of a persons life, helping to facilitate the work-life balance for women and men. The role of families and their attitudes towards entrepreneurship needs to be taken into account.

2.3 The Committee welcomes the Conclusions of the Spring Council ([2]). The European Council underlines the need to create a positive entrepreneurial climate overall, and invites the Member States to strengthen respective measures, including through entrepreneurship education and training. Measures to improve the business environment for SMEs of all types and sizes and encourage more people, in particular women and young people, to become entrepreneurs should be explicitly mentioned in the National Reform Programmes as well as in the reporting.

2.4 The Committee appreciates the suggestion concerning the establishment of one-stop-shops so that companies set up in a quick and simple way. This is an important issue for general growth and more jobs. However, as the Committee has already stated, the barriers to entrepreneurship before and after the setting-up process are far more significant than has been assumed. Too much focus on making company registration quick may inadvertently curtail the appropriate period of important research, planning, capacity-building and overall deliberation by an entrepreneur that precedes the launching of a new business venture ([3]). In this context the Committee reiterates that, not only start up, but also the transfer of business is involved.

2.5 Regulatory, fiscal and financial issues, factors which all influence entrepreneurship, have been addressed in previous Committee opinions ([4]).

2.6 Though the Committee supports and agrees with the proposals and recommendations in the Communication, it would like to make the following comments:

3. **The EESC's specific comments**

3.1 *Entrepreneurial mindsets in education*

3.1.1 Achieving an entrepreneurial mindset is a lifelong learning process, which needs to start at an early age and which should run like a 'red thread' throughout the whole education system. Primary, Secondary and Higher education should all provide a better basis for acquiring the skills and ability to develop independence and an entrepreneurial spirit at a later stage. A thorough and high standard of education will open the way to effective specialised entrepreneurial training in the future. A recent survey ([5]) shows that entrepreneurship training programmes play a crucial role in encouraging young people to consider self-employment as a future career option. These programmes have also shown to improve the students problem-solving capabilities, develop self-confidence and taught the value of co-operation and teamwork. Entrepreneurship education entails an active participation in education and not just passive absorption. A study from Lund University ([6]) shows that entrepreneurial skills are learned primarily by work experience and practice and not just by formal education.

3.1.2 Developing an entrepreneurial mindset is important in theoretical as well as vocational secondary and higher education, and can also have additional positive implications helping to raise interest in various forms of education. In this context,

([1]) COM(2005)548 — Proposal for a Recommendation of the European Parliament and of the Council on key competences for lifelong learning.

([2]) Brussels European Council 23/24 March 2006 — Presidency conclusions.

([3]) EESC opinion on the 'Green Paper — Entrepreneurship in Europe' (rapporteur Mr Ben Butters) — OJ C 10, page 58, 14.1.2004.

([4]) EESC opinion on the 'Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Action Plan: The European agenda for Entrepreneurship' (rapporteur Mr Ben Butters) — OJ C74, page 1, 23.3.2005, and the EESC opinion on the 'Green Paper — Entrepreneurship in Europe' (rapporteur Mr Ben Butters) — OJ C10, page 58, 14.1.2004.

([5]) Enterprise 2010 the next generation, survey from Junior Achievement Young Enterprise, September 2005.

([6]) 'Entrepreneurship, Career Experience and Learning — Developing our Understanding of Entrepreneurship as an Experiential Learning Process' dissertation by Diamanto Politis 2005, School of Economics and Management, Lund University.

the Committee notes that there are different types of business culture which need to be taken into account when drawing up education programmes.

3.1.3 One of the solutions is to develop concrete and timely contacts between schools, businesses, government, relevant authorities and the local community. Education administrations and entrepreneurs should cooperate to develop the best education possible. Employers and employees should be visible and play an appropriate role in education. The Committee agrees with the Commission that the importance of entrepreneurship must be clearly stated and become a natural part of curricula. It should be accompanied by appropriate measures for implementation. Entrepreneurship's horizontal character calls on close co-operation between all ministries involved (education/industry/economy) to ensure a coordinated approach.

3.1.4 Different national and local initiatives, as well as the exchange of good practice, should be supported. Organised civil society (including social partners, family organisations etc.) should be consulted in this work.

3.1.5 Full support must be given to teachers in this process. They need to be made sufficiently aware of the benefits of entrepreneurial education and shown ways in which such programmes can be implemented, starting in primary school. Schools must, therefore, have not only the necessary human and financial resources but also sufficient independence to be able to fulfil this and other tasks they undertake. Teachers have to understand that the all-round education of their students must encompass the elements of independence, curiosity and a critical approach which can stimulate them and help develop an entrepreneurial mindset. To this end, teachers must be supported and feel that this form of education can also be a source of personal enrichment.

3.1.6 The Committee regrets that the female perspective has not been dealt with further in the Communication, though it is mentioned in the introduction. The ratio of girls taking part in mini-company activities in secondary school is the same as that for boys, and in some countries it is even higher. Despite this, men are more likely to start and own businesses and are more confident in their entrepreneurial skills according to surveys ([7]). This phenomenon merits further consideration and concerns the education system in general.

3.1.7 The possibility of becoming an entrepreneur should be the same for disabled and able-bodied persons. Entrepreneurship education and training should take this into account providing appropriate support to the person concerned. Relevant disability organisations at European, national and local level should be involved in this process.

([7]) Global Entrepreneurship Monitor, 2005 Executive report.

3.2 *Dissemination of best practice and follow-up*

3.2.1 The Commission Communication identifies and brings together what has been done, based on best practice. The focus should now be put on how to further implement and disseminate these findings, proposals and recommendations.

3.3 *Dissemination of best practice*

3.3.1 The Committee is aware that there is an enormous repository of good practice in Member States and numerous cases of curricula being extended to include subjects and activities aimed at forming the competences required for future entrepreneurship. It would like to add another example to those already mentioned in the Communication. Public authorities, as well as private actors, are involved in entrepreneurship training. Whether educational experiments such as the 'Entrepreneurship Staircase' ([8]) can be employed more widely and effectively needs to be verified. This model has different steps from primary education up to research level and has proven to be a successful way of introducing entrepreneurship education to a person early in life and continuing with it throughout later stages of education:

— Seven year old 'Flashes of genius' create simple and practical innovations

— 15-year olds: information and active participation in schools by businesses, organisations and authorities

— 18-year olds: become Young entrepreneurs and start mini-companies

— Higher education: special faculties and programmes for entrepreneurship

3.3.2 The establishment of a forum for best practice is important. The initiatives already taken to identify and exchange good practice should be further developed in the Member States and coordinated by the Commission. The annual conferences within the European Charter for Small Enterprises are an important part of this. The Committee is also looking forward to the Conference the Commission will organise in the autumn of 2006 as a follow-up to the Communication on fostering entrepreneurial mindsets. The Committee demands that all relevant public and private actors be associated with this conference and suggests that different models, for example the 'Entrepreneurship Staircase', could be introduced as a case study. At this forum it is important to discuss successful models which, even at primary school, help to form the (mental and personal) prerequisites for future entrepreneurial skill and can be developed to suit other Member States national criteria and curricula. The Committee also proposes that this kind of stocktaking conference become an annual event to assess the implementation of the Commission's recommendations.

([8]) Introduced by the Confederation of Swedish Enterprise.

3.3.3 The Commission makes comparison with the United States in its communication, where entrepreneurial activities are encouraged more than in Europe. In a previous Committee opinion it was stated that, compared with the USA, proportionately fewer Europeans are involved in start-ups and significantly more prefer employment to self-employment. Many observers believe that the European social model is one of the key reasons why more people in Europe prefer to be employees. One should consider a) whether this data is itself adequate to be used in the benchmarking of EU activity in Member States and against standards in the rest of the world b) the effect of this preference for employment over self-employment, c) whether it is directly related to the lack of entrepreneurial dynamism in Europe and d) whether the solutions are acceptable to European society ([9]).

3.3.4 Entrepreneurship is important to society as a whole. To promote and raise the awareness of the culture of entrepreneurial thinking as well as an understanding of the importance of entrepreneurship for a country's overall development the Committee proposes that the year of 2009 be declared European Year of Entrepreneurship. In this context the Committee notes that the mid-term review of several relevant Community programmes will take place in 2010. Positive public attitudes on entrepreneurship need to be established. The Year would also provide an opportunity to consolidate and reinforce existing exchanges of best practice. A European Year of Entrepreneurship could also play a role in communicating the EU and bring it closer to its citizens.

3.3.5 As the Committee has already stressed, the media play a key role in conveying the spirit of entrepreneurship and an understanding of how business works. However, there tends to be an over-emphasis on big business and multinationals. Strategies to highlight the role of the entrepreneur should be defined to promote the image of small businesses and micro-enterprises, of specialised trades, services, and traditional and craft activities ([10]).

3.4 *Follow-up*

3.4.1 Since education and training are amongst the areas for which the Member States are competent, the question of follow-up and implementation is of crucial importance. The Committee notes that the former evaluation reports under the Charter for small companies are being replaced by the general reports set up as part of the Lisbon strategy (Integrated guidelines for Growth and Jobs, guideline No 15). However the Committee considers that national scoreboards could still be established. The Commission needs to define qualitative and quantitative targets to assess progress in an efficient way and on a long-term basis, while respecting the principle of subsidiarity and each country's specific situation. The proposals in the final report of the Expert Group 'Education for Entrepreneurship' ([11]) are valid.

3.4.2 The Committee notes that several community training programmes could contribute financially to efforts to enhance entrepreneurial spirit, in particular the Erasmus and Leonardo programmes, the structural funds, especially the European Social Fund, and the future Competitiveness and Innovation Programme, CIP. However, these support possibilities do not seem to be coordinated. A coherent Community level strategy to enhance entrepreneurial spirit is required. Methods and funding need to be clearly identified and players at all levels informed about the various possibilities for securing community funding.

3.4.3 The Committee intends to follow-up priority action taken by the Finnish presidency to unlock business potential as called for by the European Council ([12]).

Brussels, 6 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([9]) EESC opinion on the 'Green Paper — Entrepreneurship in Europe' (rapporteur Mr Ben Butters) — OJ C 10, page 58, 14.1.2004.

([10]) See also EESC opinion on the 'Green Paper — Entrepreneurship in Europe' (rapporteur Mr Ben Butters) — OJ C10, page 58, 14.1.2004.

([11]) Final report of the Expert Group 'Education for Entrepreneurship' — Making progress in promoting entrepreneurial attitudes and skills through Primary and Secondary education, completed in February 2004.

([12]) Brussels European Council 23/24 March 2006- Presidency conclusions.

APPENDIX 1

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Key points of the EESC's position, indent 14

Amend as follows:

~~Launch of a European Year for Entrepreneurship upon a proposal by the Commission~~

Voting

For: 48

Against: 62

Abstentions: 15

Point 3.3.4

Amend as follows:

'Entrepreneurship is important to society as a whole. To promote and raise the awareness of the culture of entrepreneurial thinking, as well as an understanding of the importance of entrepreneurship for a country's overall development the Committee ~~proposes that the year of 2009 be declared European Year of Entrepreneurship c~~ calls on the Commission to launch appropriate measures. ~~In this context the Committee notes that the mid-term review of several relevant Community programmes will take place in 2010. Positive~~ to establish positive public attitudes to entrepreneurship. ~~need to be established. The Year would also provide an opportunity to consolidate and reinforce existing exchanges of best practice. A European Year of Entrepreneurship could also play a role in communicating the EU and bring it closer to its citizens.~~'

Voting

For: 60

Against: 73

Abstentions: 13

Opinion of the European Economic an Social Committee on the White Paper on a European communication policy

COM(2006) 35 final

(2006/C 309/24)

On 1 February, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *White Paper on a European communication policy*

And under Rule 19, paragraph 1 of its Rules of Procedure, the Committee decided at its 424th plenary session held on 15 and 16 February to establish a subcommittee to prepare its work on the matter.

The Subcommittee on European communication policy, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2006. The rapporteur was Ms Jillian van Turnhout.

At its 428th plenary session held on 5 and 6 July 2006 (meeting of 6 July), the European Economic and Social Committee adopted the following opinion by 108 votes with 4 abstentions.

1. **Conclusions and recommendations**

The Committee's detailed views on the five questions put in the European Commission's White Paper are set out below. In summary, the Committee does not favour an additional charter or code of conduct setting out general principles but it reiterates its call for the Commission to address face on the problem of a missing legal basis for communication policy. The Committee draws attention to a twin resource problem; lack of funds and discouragingly complicated bureaucratic procedures for the disbursement of these. The Committee applauds the practical proposals concerning such issues as civic education, points out that primary responsibility for many of these lies with the Member States, and calls *inter alia* for Education Ministers to debate a common approach to the history of the European Union. In order to reach citizens, we need (i) a clear and attractive set of messages, a clear vision which citizens accept as their vision, and (ii) an appropriate design and instruments for communication The EESC is ready and willing to work together with the other institutions and, indeed, notes the many positive inter-institutional developments at the central level. However, the Committee, which strongly supports a decentralised approach, would urge the Commission to reflect further on how genuine synergies and interinstitutional cooperation may be facilitated at the decentralised level. The Committee proposes that the promised post-White Paper addendum to the protocol of cooperation between the European Commission and the European Economic and Social Committee should focus on this particular issue.

2. **Explanatory statement**

2.1 The European Commission's White Paper on a European Communication Policy (COM(2006) 35 final) was adopted on 1 February 2006. It represented the third document adopted on communications issues by the European Commission in the space of seven months. The other two were: an internal Action Plan (SEC(2005) 985 final), adopted on 20 July 2005; and its Communication 'Reflection and beyond: Plan D for Democracy, Dialogue and Debate' (COM(2005) 494 final), adopted on 13 October 2005. The White Paper invites the European Union's institutions and bodies to respond 'through the normal institutional channels'. It sets a period of six months for consultations, after which it proposes to take stock 'with a view to proposing plans of action for each working area'.

2.2 For its part, the European Economic and Social Committee has adopted two recent opinions in the communications field: the first on The Reflection Period: structure, themes and framework for an evaluation of the debate on the European Union (CESE 1249/2005 ([1])), adopted on 26 October and addressed to the European Parliament; the second its opinion on the Commission's 'Plan D' Communication (CESE 1499/2005 ([2])), adopted on 14 December 2005. Both these opinions proposed a series of operational recommendations. At its 6 April 2006 meeting, the EESC's Communication Group commenced a process of systematic review of the implementation of those operational recommendations.

2.3 The current opinion on the White Paper should not, therefore, go over ground which the Committee has already covered and is still covering. Rather, it should seek to respond to the five basic areas identified in the White Paper. These are:

— Defining common principles: which way forward?

— How to reach out to the citizen?

— How to involve the media more effectively in communicating on Europe?

— What more can be done to gauge European opinion?

— Doing the job together.

([1]) OJ C 28 from 3.2.2006, pp. 42-46.
([2]) OJ C 65 from 17.3.2006, pp. 92-93.

2.4 In addition to the Committee's two opinions cited above and the Commission's White Paper, the Sub-Committee and its rapporteur have several additional sources of input:

— the summary records of the debates held in the EESC's plenary sessions since June 2005, including the 20 April 2006 debate which was specifically geared to the issues raised in the White Paper and listed above,

— the recommendations arising out of the working groups at the EESC's 7-8 November 2005 stakeholders' forum on 'Bridging the Gap' (Brussels),

— the summary records of the various discussions held in the Communication Group,

— the Committee's own-initiative opinion addressed to the June 2006 European Council, as adopted on 17 May 2006,

— the recommendations arising out of the working groups at the EESC's 9-10 May 2006 decentralised stakeholders' forum on 'Bridging the Gap' (Budapest).

2.5 This Opinion on the White Paper is divided into five sections, matching the five issues identified in the Commission's document, and is restricted to addressing one, or just a few, key questions in each section.

3. **General comments**

3.1 *Defining common principles: which way forward?*

3.1.1 In the specific field of communicating Europe the role of the Member States is essential. In many other areas it is business, the social partners, parts of civil society. In short, it is dynamic society itself that successfully plays a decisive role. This is not the case for communicating Europe at large.

3.1.2 The fundamental question here is whether or not the Committee would agree to the Commission's suggestion that 'the common principles and norms that should guide information and communication activities on European activities could be enshrined in a framework document — for example, a European Charter or Code of Conduct on Communication. The aim would be to engage all actors (EU institutions, national, regional and local governments, non-governmental organisations) in a common commitment to respecting those principles and ensure that EU communication policy serves the citizens' interest'.

3.1.3 The Committee understands that the European Commission's underlying concern in this context is the absence of a true legal base on which EU information and communication activities can be based. The Committee has already pronounced itself clearly on this issue. Notably, in Paragraph 3.7 of its 26 October 2005 opinion to the European Parliament on the reflection period [3], the Committee called upon the Commission: 'to consider putting forward a legislative proposal for a true Communications Policy, and thereby to confront the' hidden 'issue of the absent legal base which has resulted in so many informal mechanisms and an unbalanced approach. The tabling of such a proposal would, in the Committee's opinion, itself encourage debate'.

3.1.4 The White Paper states that, at the end of the consultation period, the Commission will 'present the results of the consultation and then consider whether to propose a Charter, a Code of Conduct or other instrument.' The Committee is concerned by this language and sees risks in what would appear to be the potential approach the Commission might propose.

3.1.5 The Commission refers to 'common principles and norms', basing itself on the practice in some Member States, but such principles and norms go beyond communication and information. A simple declaration of principles to which all could agree — because in effect they *already* agree — would bring no added value. On the other hand, a code or charter could risk seeming restrictive. Moreover, such principles are already enshrined in a number of basic texts. If, on the other hand, the intention is to draft a code of conduct for the media and other communication actors, this could risk being seen as an attempt to manipulate the debate or to stifle Euro-sceptical approaches. In addition, the aim of engaging all actors seems unrealistic, since one of the lessons all institutions need to draw from the referendum experiences in France and the Netherlands is that a growing number of actors do not automatically support the European integration process. Lastly, if all of the actors the White Paper lists were to sign up to such a code, it would imply that all had equal responsibility for the communication challenge facing the European Union. In the Committee's opinion it would be misleading to give this impression since the primary responsibility lies — and should be seen to lie — with the Member State governments.

3.1.6 The Committee notes with concern the Commission's launching of a special web-based forum to seek views on the desirability of such a framework document. Not all European citizens have access to such a web-based approach. It would be essential to back up the consultation exercise through other, more traditional media.

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[3] The reflection period: structure, themes and framework for an evaluation of the debate on the European Union, OJ C 28 from 3.2.2006, pp. 42-46.

3.2 *How to reach out to the citizen?*

3.2.1 The Committee notes that financial resources are extremely limited. Moreover, the procedures imposed for the disbursement of funds, following the adoption of the new Financial Regulation, are undoubtedly impeding and discouraging many well-intentioned civil society actions.

3.2.2 Successfully reaching out to citizens requires acting on the reasons for their scepticism: first, parts of society are increasingly critical with the results and impacts of political decisions on their living and working conditions. Second, there is effectively a lack of political discourse and thus a need for communication, but the design for this communication needs to be changed to be successful.

3.2.3 Effective communication first of all requires a set of clear and attractive messages, a clear vision that citizens accept. Citizens want Europe to be a political project, including a socio-economic project, a European model, maintaining social cohesion and improving competitiveness. Some countries have shown that this is possible.

3.2.4 Communication is centralised and Europe centred. It mainly takes place at European level between European actors and institutions and people who are already close to the European project. In addition, it uses instruments — such as web-based consultations — that tend to reach only selective groups of citizens. To reach beyond them, communication activities need to be developed that involve actors other than the European Union's institutions and those already close to the EU, and debates need to be genuinely decentralised — that is, they need to take place at the national, regional and local level, involving decision-makers and the media at those levels (who in some cases need first to be convinced themselves).

3.2.5 In this context, the White Paper makes a number of practical proposals, ranging from civic education to joint open debates. The Committee is particularly supportive of the arguments in favour of civic education. However, as the White Paper acknowledges, TEC Article 149 states quite clearly that the Member States alone remain responsible for the content of teaching and the organisation of education systems. Once again, therefore, there is a dual risk involved in the European institutions arguing for enhanced civic education. On the one hand, they risk being accused of interfering in the sovereign affairs of the Member State governments, and on the other they would be implicitly accepting the responsibility for something for which, in reality, they have no responsibility.

3.2.6 However, the European Union needs its citizens' acceptance of a common destiny. To that end, it would be desirable that, as a part of education programmes in the Member States, the European Union should be presented and explained historically and currently as a common political project of all of the member states and their populations. This issue should be openly discussed in the Council of Education Ministers.

3.2.7 This does not mean that the EU's institutions should do nothing. On the contrary, all should concentrate more on informing the European citizen about the way in which the European Union adds value. Target audiences should be identified, and the EU's undoubted success stories should be promoted.

3.2.8 More generally, citizens should be made to feel that they are part of fully transparent regulatory and decision-making processes.

3.3 *How to involve the media more effectively in communicating on Europe?*

3.3.1 Under this section the Commission suggests that the EU institutions should be better equipped with communication tools and capacities and explores ways of closing the 'digital divide'. The Committee regrets the fact that the Commission's intended suggestion for a European press agency was dropped from the final draft of the White Paper since, as initial reactions demonstrated, this would have provoked a broad-ranging debate about the nature of the relationship between the Brussels-based media and the EU's institutions.

3.3.2 The Committee is supportive of the measures set out in this section. However, it calls for the Commission to make a distinction between the specialised media and the general media. As a rule, the specialised media are well informed and provide informative coverage. The Committee would also stress that television remains the primary vector for information for most European citizens. It urges the Commission to take this, and the way in which digital television is rapidly evolving, into account in the elaboration of any overall strategy. In this context, the Committee stresses the essential importance of communicating with citizens in their own language.

3.3.3 For its part, the Committee continues to update and implement its strategic communication plan. This includes continuous review of its communication tools and their use, and the exploration of innovative methods (the use of 'Open Space Technology' in the 7-8 November 2005 (Brussels) and 9-10 May 2006 (Budapest) stakeholders' forums on 'bridging the gap' were notable examples of this).

3.4 *What more can be done to gauge European opinion?*

3.4.1 The Commission proposes networks of national experts and an Observatory for European Public Opinion. The Committee agrees with the basic thrust of the White Paper in this area. It agrees in particular that the European Union has a viable tool in the form of Eurobarometer, although it believes that the Commission should also seek to develop links and synergies with national opinion polling organisations.

3.4.2 The Committee also feels that the Commission in particular is not yet sufficiently exploiting existing mechanisms for sounding out public opinion, such as the European Economic and Social Committee. In that context, the Committee was happy to note the declarations of intention set out in the new Protocol of Cooperation between the European Commission and the European Economic and Social Committee (signed on 7 November 2005). More structured use of the Committee as a sounding board is something that should be developed in the context of the post-White Paper addendum to the 7 November 2005 protocol of cooperation.

3.5 *Doing the job together*

3.5.1 Here, the Commission lists a number of new, structured forms of cooperation. It notes the role already being played by the European Economic and Social Committee and refers to the 7 November 2005 new protocol of cooperation between the two institutions. Cooperation between the two institutions is good at the central level. However, the Committee feels that much more could be done to encourage synergies between the resources of the Commission and the Committee at the decentralised level. Once again, this is an area that should be fleshed out in the addendum to the post-White Paper addendum to the 7 November 2005 protocol.

4. **Recalling the Committee's previous recommendations**

4.1 The Committee recalls its previous recommendations to the Commission in the communication context, particularly those set out in the annex to its opinion on The Reflection Period: structure, themes and framework for an evaluation of the debate on the European Union (CESE 1249/2005 ([4])) and its May opinion addressed to the 15-16 June 2006 European Council.

Brussels, 6 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([4]) OJ C 28 from 3.2.2006, pp. 42-46.

Opinion of the European Economic and Social Committee on Social cohesion: fleshing out a European social model

(2006/C 309/25)

On 19 January 2006, the European Economic and Social Committee, acting in accordance with Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *Social cohesion: fleshing out a European social model*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 June 2006. The rapporteur was Mr Ehnmark.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 6 July 2006), the European Economic and Social Committee adopted the following opinion by 91 votes to one with five abstentions.

1. **Conclusions and recommendations**

1.1 The European Social Model is a reality, based on unity in overarching objectives, and on diversity in applications. The model has proved its value in providing inspiration to the European countries in building societies of cohesion, solidarity and competitiveness. In coming years, the model will be confronted with major new challenges. The task today is to flesh out the contents of the social model and prepare for the future.

1.2 The strength of the European Social Model has been determined by the way in which competitiveness, solidarity and mutual trust have interacted. In this way, the model is both a reality and a vision for the future. But it can never be regarded as 'final' in any sense. It must be dynamic and responsive to new challenges.

1.3 The European social model, in the present analysis, is not confined to the traditional meaning of the term social. As the linkages between various sectors have developed, the term social has to connect to both economic and environmental issues. Only by accepting this wide definition can the social model give the necessary inspiration in addressing future challenges. With this wide interpretation, the model could as well be labelled a European societal model, of which the social aspect constitutes one element. In this analysis, however, the term social is used.

1.4 All national systems of the EU are marked by the consistency between economic efficiency and social progress. Properly designed social and labour market policies have been a positive force both for social justice and for economic efficiency and productivity. Social policy is a productive factor.

1.5 The EESC identifies a set of core elements of the European Social Model, starting with the role of the state as guarantor and often also provider of action for promoting social cohesion and justice, by aiming for high levels of employment and providing high-quality public services. Other core elements relate, inter alia, to measures for productivity and competitiveness, for meeting environmental challenges, and for research and education.

1.6 The achievements of the European Social Model, which has evolved over long time, are substantial in economic, social and environment terms. The emergence of a European Welfare Area is the most tangible result. This cannot, however, conceal weaknesses of the model, such as continued social segregation, persistent poverty areas, and sustained high unemployment, particularly among the young.

1.7 For Europe, and for the European Social Model, the challenges ahead are substantial. They cover competitiveness and employment, social inclusion and combating poverty, and the effects of globalisation. Other challenges concern gender issues, migration and demographic development.

1.8 If the European Social Model is to be of value in the shaping of the European society of tomorrow, it has to be a dynamic model, open for challenge, change and reform.

1.9 The European Social Model will be relevant only as long as it is appreciated and supported by the citizens of Europe. The analysis and the key issues of the European Social Model should be used as a basis for debate and dialogue in Member States, and thus provide citizens with a new means for presenting their views on what kind of Europe and what kind of social model they want.

1.10 In a condensed phrase, the hypothesis of this opinion is that the European Social Model should provide an idea of a democratic, green, competitive, solidarity-based and socially inclusive welfare area for all citizens of Europe.

2. **Analysis and comments**

2.1 *Background and definitions*

2.1.1 Introduction

2.1.1.1 The European Social Model and its characteristics have become the subject of lively debate. This is not surprising, as a number of recent events have provided fuel for the discussion. The draft constitutional treaty has not won the support of the public and the visions it outlined have failed to materialise.

Other developments and events, too, have inspired a debate on the European Social Model: Europe's sluggish economic performance and failure to raise employment, the demographic development, the continuing globalisation and its consequences, and the intense debate on the draft services directive. The integration of new Member States is further inspiring debates on the future of the EU.

2.1.1.2 With this opinion, the EESC makes its contribution to the ongoing debate. The opinion will be used as a basis for further dialogue with the social partners and organised civil society.

2.1.1.3 The starting-point of the opinion is a recognition of the fact that there exists a set of values and visions, but also a social reality, that together can be called a European Social Model. The purpose is to examine the contents of this model and to outline ideas and challenges for its further development.

2.1.1.4 As a vision for Europe, the social model has to develop in a symbiosis with other visions for Europe, primarily that of sustainable development and the vision of Europe becoming the most competitive knowledge-based society on earth, providing more and better jobs and social cohesion.

2.1.2 Definition and scope of the European Social Model

2.1.2.1 The analysis of the European Social Model has to start with the value systems as developed in the European countries. The value systems provide the basis for any discussion on common features of a social model The European Union is founded on certain common values: freedom, democracy, respect for human rights and dignity, equality, solidarity, dialogue and social justice. The fact that the model is partly a rights-based model — as illustrated by the Social Charter — underlines that the model is value-based.

2.1.2.2 In this analysis, the European Social Model is seen in a broad sense. The social model cannot be confined to the traditional meaning of the term social. The interrelationship between economic, social and environmental issues necessitate a wide interpretation of the social model.

2.1.2.3 Moreover, in this analysis of the European Social Model a double approach has been chosen: a focus on values and visions, in combination with core policies for reaching the visions. The social model is not confined to formulating visions; it is also very much an exercise in transferring vision into political reality. The role of the model is to give inspiration and to provide a framework for addressing new issues.

2.1.2.4 A hypothesis for the following analysis is that the European Social Model of today is basically composed of three main blocks: economic, social and environmental objectives. It is in the interaction between these sectors — against the background of trends such as globalisation — that the concrete development of the social model takes place. The strength of the European Social Model has been determined by the way in which competitiveness, solidarity and mutual trust interacted. In this perspective, the European Social Model can never be regarded as 'final' in any sense. It must be dynamic and responding to the challenges from inside or outside.

2.1.2.5 This vision could be summarised in the following sentence: The European Social Model provides an idea of a democratic, green, competitive, solidarity-based and socially inclusive welfare area for all citizens of Europe.

2.1.2.6 It is relevant, in this context, to highlight the connection between economic efficiency and social justice and cohesion. The European Social Model is founded on both. Despite the diversity between national systems, there is a distinct European Social Model in that all national systems of the EU countries are marked by the consistency between economic efficiency and social progress. At the same time, the social dimension functions as a productive factor. For instance, good health and good labour law accounts for good economic results. Properly designed social and labour market policies, supported by the social partners, can be a positive force both for social justice and cohesion and for economic efficiency and productivity. Unemployment benefits coupled with active labour market policies stabilise economies and promote active adjustment to change through skill enhancement and efficient job search and retraining. Well-targeted government investment in physical infrastructure and human capital can serve economic and social aims. The two aspects can and should be mutually reinforcing. Active participation by social partners and civil society can improve cohesion while raising economic efficiency.

2.1.2.7 Another way of looking at this is to point out that not having a social Europe brings both economic and political costs with it. A study of the costs of non-social policy for the European Commission identified substantial economic benefits of social policy in terms of allocative efficiency, labour productivity and economic stabilisation. The study concluded that 'social policies based on investments in human and social capital are conducive to higher economic efficiency for they improve productivity and the quality of the labour force. Social policy is therefore a productive factor, even though its costs are generally visible in the short term while its benefits are often only apparent in the long term' ([1]).

([1]) Dr Didier Fouarge (2003, January 3). Cost of non-social policy: Towards an economic framework of quality social policies — and the costs of not having them (URL: http://www.lex.unict.it/eurolabor/documentazione/altridoc/costs030103.pdf).

2.1.2.8 European countries and in some cases even regions have had their specific historical experiences, conflicts and forms of conflict resolution. The social consensus on the right 'balance' of values also differs somewhat, although not fundamentally. These have given rise to a myriad of institutional forms by means of which the 'social constitution' of countries is implemented — i.e. values which have been transformed into legal rights and entitlements — and in which the market economy and the legal and constitutional and governmental apparatus are embedded. The European treaties both emphasise the common values underpinning the social model and insist on the importance of respecting national diversity.

2.1.2.9 To this must be added the environment issues. Rapidly rising energy prices, continued contamination of the atmosphere, and ensuing effects on housing, transport and work-life will aggravate the balances between economic efficiency and productivity and social justice and cohesion. Nevertheless, here too there are examples in which policies that promote sustainability can go hand in hand with the pursuit of economic and social objectives. This is valid also for issues like public health and security. Environmental degradation is creating new health problems, both for young and adults. The example illustrates the need for a better integration of environmental issues in the European Social Model.

2.1.2.10 Some have concluded from this institutional variety that there is actually no such thing as a European Social Model. Either there are (at least) as many models as there are countries, or, at best, they can be grouped into 'families'.

2.1.2.11 While by no means wishing to play down this diversity, the EESC notes the following reasons why it can make sense to speak of a single European Social Model:

1) in contrast to previous approaches, which explicitly sought to identify families **within** European capitalism, substantial differences in outcomes emerge, when taking a global view, between the European countries as a group and those of non-European advanced capitalist countries (and especially the US);

2) institutional diversity is much more significant than the diversity of social outcomes across Europe, because many institutions are functional equivalents;

3) European economies are increasingly closely integrated, far more so than is the case in other regions, creating the need for joint approaches in many policy areas;

4) uniquely, the countries of the European Union also have supra-national, namely a European, dimension to their social models in that the EU has an established 'social acquis' ([2]).

([2]) The European social acquis comprises directives on issues like information on individual employment conditions (91/533/ECC), pregnant workers (92/85/EEC), parental leave (96/34/EC), working time (2003/88/EC), young people at work (94/33/EC) and part time work (97/81/EC).

2.1.2.12 The EESC would like to propose that the following features — a social reality, not just a set of values, albeit differently institutionalised — be taken as constituting core elements of a European Social Model that are either already embodied in EU countries or should be done so as a matter of policy:

1) the state takes responsibility for promoting social cohesion and justice by aiming for high levels of employment, and providing or guaranteeing high-quality public services (services of general interest), and instituting redistributory budgetary policies;

2) governments and/or social partners or other agencies provide social protection systems that provide suitable insurance or social protection against major risks (such as unemployment, ill health, old age) at levels that prevent poverty and social exclusion;

3) fundamental legal (or quasi-legal) rights — as reflected in international agreements — such as the right of association and the right to strike;

4) the involvement of employees at all levels together with systems of industrial relations or autonomous social dialogue;

5) a strong and clear commitment to pursue gender issues in all parts of society, and particularly in education and working life;

6) necessary policies for addressing migration issues, particularly in the context of the demographic development in EU countries;

7) a set of social and employment legislation that ensures equal opportunities and protects vulnerable groups, including positive policies to address the specific needs of disadvantaged groups (the young, the elderly, the disabled);

8) a set of macroeconomic and structural policy measures that promotes sustainable, non-inflationary economic growth, promotes trade on a level playing field (single market) and provides support measures for industry and service providers and particularly for entrepreneurs and SMEs;

9) necessary policies programmes for promoting investments in areas that are essential for Europe's future, particularly life-long learning, research and development, environmental technologies etc.;

10) a continued priority for promoting social mobility and providing equal opportunities for all;

11) a responsibility for launching necessary policies for addressing the environmental issues, particularly those related to health and the supply of energy;

12) a broad agreement that public and private investments in Europe have to be sustained at a very high level in order to promote competitiveness and social and environmental progress;

13) a commitment to sustainable development, such that the economic and social achievements of the current generation are not achieved at the cost of restrictions on coming generations (inter-generational solidarity);

14) a clear commitment to solidarity with the developing countries and for providing assistance to their economic, social and environmental reform programmes.

2.2 *Achievements of the European Social Model*

2.2.1 The establishment of the European Union and its successful enlargement is an event of historic proportions. A continent torn by war and conflict has managed to turn over a new leaf and steer itself away from belligerent nationalism. The European Social Model must be seen in this context.

2.2.2 Europe can be justly proud of the social outcomes it has achieved by virtue of the institutions and policies it has put in place, in their myriad forms, at national and, to some extent, European level. On key welfare indicators, including poverty and inequality, life expectancy and health, European countries top the world rankings.

2.2.3 Many European countries lead international rankings of productivity and competitiveness, although there are considerable variations between the EU Member States. It is a significant achievement that a number of EU countries place themselves in the absolute global forefront as to competitiveness and investments in research. The vision of a knowledge-intensive society, with research and lifelong learning as key ingredients, has become a strongly supported part of the European model.

2.2.4 Europe has gone furthest in implementing the Kyoto protocol — even if the overall results remain disappointing. Europe has also become one of the leading global regions in investing in environment-friendly technologies and in developing new energy solutions to heating and transport.

2.2.5 Comparing indicators of social cohesion and security and employment/unemployment rates across OECD countries reveals that countries that offer high levels of security to their citizens and workers tend to have higher employment with the Nordic countries being prominent positive examples.

2.2.6 It is becoming increasingly apparent that political support for further European integration is contingent on a perception that this goes beyond mere market integration. As economic borders are broken down, Member State governments and the European institutions, together with the social partners at national and European level, are developing appropriate mechanisms that ensure social cohesion and justice in the new circumstances and, in particular, prevent regime competition from leading to a race to the bottom within Europe that would seriously lower social standards.

2.2.7 Enlargement of the EU has contributed in a very constructive way to the emerging identity of a European Social Model. Enlargement has enriched the Union with a large group of countries with a long history of cultural, social, economic and industrial achievements. It has firmly established the cultural dimension of the social model. The cultural dimension will be one of the key mechanisms for promoting EU cohesion.

2.2.8 Social dialogue, at all levels, has become a vital expression of the European Social Model. With the social dialogue, an emerging consensus has developed that the high ambitions of the Lisbon strategy and of the social model as such will be extremely difficult to realise without the participation of the social partners. The European way of addressing employee participation ensures that the continuous structural changes that businesses undergo is a success for all parties concerned.

2.2.9 The social partners have played a decisive role in implementing EU policies. This role is unique in the world. It has even been suggested that the social partners, at EU level, should take responsibility for all regulatory work concerning working life issues.

2.2.9.1 As regards the basic architecture of the European social model, too high a value cannot be placed on the fundamental role played by the social partners in the fields of economic and social policy. In this context, attention should be drawn to the particular importance of the regulatory role played by employers' and employees' associations in connection with collective agreements and wage agreements. The well-established right of participation enjoyed by representatives of employees in factories and enterprises is also one of the fundamental institutions of the European social model.

2.2.10 Participation of citizens and their organisations is a fundamental part of shaping the European Social Model. Civil society organisations give voice to the aspirations of their members and are often also important social service providers. The future of the European Social Model and its dynamism will depend on more involvement of the organised civil society by extending civil dialogue and thereby participatory democracy.

2.2.11 High quality public sector services is another issue of importance for the identification of the social model. The overall picture of the situation in the EU is that the public sector, as guarantor and/or provider of essential services equally distributed, has a wider support and role in the EU than elsewhere. In areas such as education and training, health care and care for the elderly, the public sector has a decisive role in all Member States. At the same time, a debate is growing concerning the alternate roles of the public sector, as guarantor of specific services, or as both guarantor and provider.

2.2.12 Closely related to the public sector is the build-up of social economy entities in a number of EU countries. The social economy fulfils a double role: it manages essential tasks, particularly in the care sector while at the same time providing jobs for citizens who do not easily fit into regular employment, such as the handicapped. The social economy is expanding in more or less all EU countries, partly because of the demographic development and the need for care for the elderly. The social economy plays a vital role in combating poverty. The social economy has many 'faces' and a rich variety of organisational forms and is not necessarily intended to become part of the competitive system.

2.3 *Weaknesses and challenges*

2.3.1 While it is right to emphasise the achievements of the European Social Model, it would be wrong not to recognize its weaknesses and also to the challenges it faces in a changing environment. Pride in the social model must not be confused with complacency.

2.3.2 It is often said that a model cannot be called 'social' if it condemns a tenth or a twelfth of the workforce to unemployment. In one sense this is correct: unemployment in much of the European Union is unacceptably high, creating social and economic hardship, threatening social cohesion and wasting productive resources. However, implicit in the challenge claim is often that Europe, by choosing to have a social model is at the same time choosing to have high unemployment, that unemployment is a price to be paid for social cohesion. The EESC rejects this view. Europe does not have to choose between social cohesion and high employment.

2.3.3 Unemployment remains the key threat to the European Social Model, raising costs, reducing financing opportunities, and creating inequalities and social tensions. Getting unemployment down remains the key priority. This is particularly the case with youth unemployment, which in many countries is substantially higher than the average unemployment rate and, with a high risk of long-term exclusion from the labour market and society more generally, is particularly damaging both socially and economically. To solve this problem a broad package of supply-side measures is required together with a demand-side policy towards achieving the maximum possible output.

2.3.4 Geographical inequality and poverty (calculated at 70 million citizens) remain pronounced across the European Union and has increased since enlargement. Even in wealthy European countries too many people suffer (relative) poverty. Child poverty is particularly scandalous, ruining life chances and entrenching inequalities across generations. Even with present high ambitions, policies for social cohesion in EU Member States have not succeeded in arresting poverty and unemployment. This is a major task ahead.

2.3.5 These and other weaknesses in European economy and society, in our social model, are often seen as being exacerbated by new challenges, in the form of economic globalisation, the rise of new technologies and demographic ageing. Longer life expectancy and falling birth rates raise serious issues about the financing of social security systems — pension systems being a prime example. The EESC cautions against drawing simplistic policy conclusions from a number of popular beliefs:

— While globalisation does mean that more and more goods and services are traded internationally, it is important to be aware that, taking the EU-25 as a single economic entity, only just over 10 % of European output is exported (or imported). This makes the EU no more open an economy than the US (which is usually seen as much more independent of global forces). Member States must make social and political choices about their welfare systems and necessary reforms. A badly designed benefit system should be reformed for the higher productivity or employment it enables, by providing greater security for beneficiaries, not because of 'globalisation'.

— Similarly, technological change is to be welcomed as raising the productivity of labour, and helping to create the wealth necessary to finance high living standards and levels of social protection. The correct response to technological change is to invest in workers and support adjustment processes through well designed social policies in order to move European companies and workers up the skill ladder.

— Demography certainly influences the European Social Model — but the reverse is also true. Sensible childcare policies allow women and men to work without having to choose between a career and a family; active ageing policies keep elderly workers in the labour force, enabling them and society as a whole to benefit from longer life expectancy. Life-long learning promotes adaptability and raises productivity and employment. Moreover, all societies are confronted with demographic problems.

— Finally, it is a well-acknowledged fact that Europe needs to develop and coordinate, rather than to limit, European economic policies, as instruments for countering market disturbances such as harmful tax competition. Such disturbances put pressure on social systems and their financial bases. On the other hand, European integration is a powerful force for trade and economic efficiency and, moreover, creates the possibility to regulate some aspects of

working and social life at the more relevant European level. Achieving this in the face of institutional diversity is a major challenge to policymakers and not least the social partners.

2.4 *A dynamic model*

2.4.1 If the European Social Model is to survive, and be able to influence policies ahead, it has to be dynamic and open to debate and reform. History gives us plenty of examples of challenges to the model that could not be foreseen: threatening environmental catastrophes, drastic demographic and family-structure changes, energy supply crises, the knowledge revolution, the new and powerful information and communication technologies, and changing patterns of production and work-life.

2.4.2 Looking forward, the key challenge facing the European Social Model is to identify aspects of the model that promote win-win or win-win-win solutions. In other words, the focus should be on identifying existing and new policies that promote social cohesion and economic performance as well as sustainable development.

2.4.3 At the same time, steady, measured reforms are needed of those institutions for which there is substantial evidence that they are having negative effects in economic, social or environmental terms. Policy impact assessments can be useful here, the aim being to produce better regulation, rather than simplistic deregulation.

2.4.4 Where are the new challenges to the European Social Model to be found? Primarily in three sectors: competitiveness and employment, social inclusion and combating poverty, and effects of globalisation. In a longer perspective, the environment challenges can result in far-reaching relocations of production and workplaces. To this should be added migration issues (internally and externally) and gender issues; both will strongly influence the future outlook of the European Social Model.

2.4.5 It will be essential to further develop the knowledge-intensive society, both in research and in lifelong learning. Knowledge will become, even more than today, a crucial factor for achieving competitiveness and thereby creating resources for social policies. In this context, it will be important to continue supporting entrepreneurship and the growth of small enterprises. The social effects of the knowledge revolution are potentially an item that could be usefully addressed by the Social Dialogue. To develop new and efficient systems for lifelong learning will be a specific challenge for governments and for the social partners.

2.4.6 There is an important need to investigate the establishment of a new balance between flexibility and security which promotes employment and innovation, as was also stressed by the social partners in their recent joint work programme ([3]). It is particularly important that the social partners can agree on measures to reduce youth unemployment. Unemployment as such is a tragedy; unemployment among the young generations is a threat to the very fabric of the democratic European society.

2.4.7 In the perspective of environment challenges, there will be needed more investments in transports and housing, and in community planning and reform. The rise of the energy prices will have profound effects on social cohesion and structural policies. This is a key area promising win-win-win-solutions.

2.4.8 The macroeconomic governance system must give better support to the Lisbon targets. In a longer perspective, post-Lisbon, it will be vitally important to establish a growth-oriented balance between a supply- and a demand-side economic policy.

2.4.9 Globalisation is a challenge not only in terms of trade and prices. Globalisation is also an opportunity, for instance in opening up new markets for environment-friendly technologies. Europe must invest far more in modern technologies, particularly in the environmental sphere, as other countries, such as the US, are rapidly recognising these opportunities. Globalisation is not only a matter of trying to cope; it is very much a matter of acting proactively and identifying the opportunities.

2.4.10 The most serious of possible challenges ahead would be a return in Europe to more nation-state policies with protectionism and closing markets. That would effectively be damaging both economically and socially.

2.4.11 No social model has reached its final stage, nor will any ever do so. The basic idea behind a social model is that it generates ideas and insights as it moves forward. A social model must be dynamic or it will petrify — and perish. The social model has to be tested and debated in a continuous democratic process. Assessments have to be made and the appropriate governance instruments developed and refined.

2.5 *Is the European Social Model a global reference model?*

2.5.1 It is possible to see the European Social Model as an attempt to draw up a blueprint for shaping a sustained welfare Union for the future, marked by highly competitive industry, very high social ambitions and a high level of responsibility for environmental challenges. Described in this way, and with emphasis on its democratic functions, the European Social Model can be a source of ideas and experiences for other countries or groups of countries.

([3]) 'Work Programme of the European Social Partners 2006-2008'. See also EESC opinion of 17 May 2006 on 'Flexicurity — the case of Denmark', rapporteur: Ms Vium (not published in OJ as yet).

2.5.2 Can the European Social Model become a global reference model? Every country and every group of countries have to develop their own social model, and develop their own applications. What have proved valuable in Europe is not necessarily valuable in another country and in another set of challenges. But even so, the European Social Model could have an inspiring role, not the least because it tries to integrate the economic, social and environmental issues in an 'idea of a democratic, green, competitive, solidarity-based and socially inclusive welfare area for all citizens of Europe'. It will be judged by other countries in terms of its success in achieving these goals.

2.5.3 There is a growing interest among EU partners in the approach that is combining economic, employment, social and environmental objectives in a reinforcing way. The European economic and social model in regional integration can be used as a source of inspiration for our partner regions and countries. The three pillar approach has proved its value in the EU.

2.5.4 In its study on the social dimension of globalisation, the ILO explicitly referred to the European Social Model as a possible inspiration for newly industrialising countries ([4]). One example could be China which has achieved sustained rapid economic growth, but is increasingly becoming aware of social tensions and the environmental problematic.

2.6 *Take the issues to the citizens of Europe*

2.6.1 The European Social Model will persist, and survive, only as long as it is supported by the citizens of the Union. If the model is to remain valid, it must meet the citizens in debate and dialogue. This would, for the citizens, offer an essential opportunity for adding their voices to the overarching debate on the future of the European society.

2.6.2 In this opinion, the EESC has presented a basic analysis of the European Social Model. This analysis should be further developed. There is a particular need for clear linkages between ideas and reality. In this way, the model could be a basis for further discussions concerning what kind of European society citizens want. In the framework of the new EU information and communication strategy, it would be possible to use the social model as a basis for dialogue.

2.6.3 Ultimately, it is on the basis of debate, dialogue and growing awareness that citizens of Europe will commit themselves to the defence of the European Social Model and to support its further development.

2.7 *The role of the EESC*

2.7.1 The members of EESC are an important channel to the constituencies they represent. The EESC regularly organises stakeholder forums in a wide context, for exchange of opinions and views.

2.7.2 The EESC will consider using the European Social Model as a basis for a wider communication effort in the Union. In this way, the EESC can give a concrete contribution to the debate on what kind of Europe, and what kind of social model, the European peoples want in the future. Social partners, organised civil society, and the national economic and social councils will be invited to take part.

Brussels, 6 July 2006

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

([4]) URL: http://www.ilo.org/public/english/wcsdg/globali/synthesis.pdf.

Opinion of the European Economic and Social Committee on the Role of civil society organisations in the implementation of EU cohesion and regional development policy

(2006/C 309/26)

On 13 and 14 July 2005 the European Economic and Social Committee decided to draw up an opinion, under Rule 29(2) of its Rules of Procedure, on the: *Role of civil society organisations in the implementation of EU cohesion and regional development policy*.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 June 2006. The rapporteur was Ms Mendza-Drozd.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 6 July 2006), the European Economic and Social Committee adopted the following opinion by 47 votes to 36 with 6 abstentions.

1. **Introduction**

1.1 Cohesion policy has long been an area of particular interest for the European Economic and Social Committee, which has repeatedly given its opinion on this matter, with regard to the Structural and Cohesion Fund rules ([1]) and to one of the main principles of the Funds' implementation — the partnership principle.

1.2 The Committee's interest in the partnership principle has always been based on the belief — shared by the European Commission — that *'the effectiveness of cohesion policy is closely dependent on involvement of economic and social actors, and other civil society organisations concerned (…)'* ([2]).

1.3 However, the EESC takes the view that much remains to be done to include civil society organisations in the implementation of cohesion policy. The Committee, in drawing up this opinion, would like to help ensure the better implementation of the partnership principle in the coming period and hopes that the Commission and the Council will still be able to introduce the necessary changes and to take concrete action to ensure the involvement of civil society organisations in the implementation of cohesion policy. The Committee hopes that, given the work currently underway on the Member States' programming documents, this opinion will provide civil society organisations with a useful instrument in their contacts with national and regional authorities.

2. **Civil society organisations**

2.1 The Committee would prefer a broad definition of civil society including *'all organisational structures whose members have objectives and responsibilities that are of general interest'* ([3]) and that meet the representativeness criteria it has set out in earlier opinions ([4]). The wording of this definition implies the inclusion of such civil society organisations as:

— the social partners — trade unions and employers' organisations;

— NGOs whose official, legal statutes define the purpose of their activities and mission: associations, socio-occupational organisations, federations, forums, networks and foundations (in many new Member States the latter differ from associations only in their legal basis). These various types of organisations are described as 'non-governmental organisations', 'non-profit organisations' or the 'third sector' and their activity covers such areas as environmental protection, protection of consumer rights, local development, human rights, social assistance, combating social exclusion, enterprise development, the social economy and many other fields.

2.2 The Committee is aware that the use of such a broad definition of civil society can lead to practical difficulties, particularly as regards the issue of cohesion. The EESC is nonetheless of the opinion that a clear definition of representativeness could give civil society organisations a better right than at present to participate in the various phases of the implementation of cohesion policy. In its opinion on the representativeness of European civil society organisations, the Committee outlined

([1]) Recent opinions: Opinion on the proposal for a Regulation of the EP and of the Council establishing a European grouping of cross-border cooperation (OJ C 255 of 14.10.2005, p. 76), General Structural Fund Regulation (OJ C 255 of 14.10.2005, p. 79), ERDF (OJ C 255 of 14.10.2005, p. 91) and ESF (OJ C 234 of 22.09.2005, p. 27), opinion on the *Partnership for implementing the Structural Funds* (OJ C 10 of 14.01.2004, p. 21) and the opinion on the Third Cohesion Report (OJ C 302 of 7.12.2004, p. 60)as well as the opinion on *Strategic guidelines cohesion policy 2007-2013*.

([2]) Opinion on the *Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund*, OJ C 255 of 14.10.2005, p. 79.

([3]) Opinion on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Civil Society Dialogue between the EU and Candidate Countries*, OJ C 28 of 3.02.2006, p. 97.

([4]) Opinion on *The representativeness of European civil society organisations in civil dialogue*, OJ C 88 of 11.04.2006, p.41.

certain basic criteria, inviting others to make use of its findings ([5]), particularly in areas such as programming or monitoring at EU level. The Committee believes, however, that an appropriate list of criteria can also be drawn up at Member State or regional authority level, on the basis of the EESC's proposals particularly when it comes to participation in programming and monitoring. In the Committee's opinion, this list could include such criteria as:

— direct access to expertise;

— activity for the public good and in the general interest;

— having a sufficient number of members to ensure the effective and expert nature of its action as well as the exercise of democracy (appointment of officials, internal discussions and information, transparency of decision-making procedures, financial transparency …);

— having sufficient and independent financing to enable autonomy of action;

— possessing and demonstrating independence in the face of outside bodies and pressures;

— transparency, especially financially and in decision-making structures.

2.3 This issue of representativeness is absolutely fundamental. However, it should also take into consideration the qualitative criteria as set out in the above-mentioned EESC opinion. It should also make a clear distinction between participation and consultation in policy-shaping and eligibility for projects financed by the cohesion funds. All organisations that can contribute to the objectives of the policy in a special field shall be eligible for funding.

2.4 As regards the effective implementation of cohesion policy, the Committee believes that all efforts should be made to make greater use of the potential within civil society organisations which, according to their purpose, may more often than not have assets important for the implementation of cohesion policy, namely:

— experience and competence in economic and social fields;

— good knowledge of local and regional needs;

— direct contact with citizens and their members and, hence, the ability to speak on their behalf;

— direct contact with target groups and understanding of their needs;

— ability to mobilise local communities and volunteer workers;

— great effectiveness and readiness to apply innovative methods;

— monitoring role vis-à-vis government;

— good contacts with the media.

2.5 Furthermore, in the Committee's opinion the involvement of civil society organisations that have the support of the public generally represents the closest point of contact between the public and the EU and can help increase the transparency of procedures for the use of available funds. Their involvement could mean that decisions become more transparent and are taken only on the basis of specific criteria. The involvement of these organisations can also ensure that the action implemented does indeed reflect the needs of society. Lastly, civil society organisations can be important partners in the debate on the future of various areas of European policy, including cohesion policy, by bringing the discussion to the local level, closer to ordinary people.

2.6 The Committee also draws attention to the potential of civil society organisations, according to their specific nature and their statutory aims, in a number of specific fields, e.g.:

— the labour and employment market and enterprise — where they can lead to a better identification of priorities and action with an impact on economic development;

— in the field of economic change — where their competences can help combat negative, unintentional and unanticipated consequences;

— in the environmental protection field, where they can provide a guarantee that the strategic aims, priorities and project selection criteria are determined in accordance with the principles of sustainable development;

— in the field of social exclusion and gender equality issues, where their practical knowledge can ensure that cohesion policy is implemented with respect for the principle of equal opportunity, in compliance with the relevant laws, and with due regard to the social aspect of the proposed solutions;

— in the area of local development — where their knowledge of the problems and needs represents the first step towards their resolution;

— in the field of cross-border cooperation — where they can be a very good partner for implementing projects;

— in the monitoring of the use of public funds, identifying and publicising cases of corruption.

([5]) To be considered representative, a European organisation should meet nine criteria, i.e. it should:
— exist permanently at Community level;
— provide direct access to expertise;
— represent general concerns that tally with the interests of European society;
— comprise bodies that are recognised at Member State level as representative of particular interests;
— have member organisations in most of the EU Member States;
— provide for accountability of its members;
— have authority to represent and act at European level;
— be independent, not bound by instructions from outside bodies;
— be transparent; especially financially and in its decision-making structures.

3. **Role of civil society organisations in the implementation of cohesion policy**

3.1 The Committee agrees with the proposals of the European Commission and the Council that the partnership principle must be applied throughout all stages of the implementation of cohesion policy, starting with planning, through implementation, right up to the impact assessment. The Committee also stresses that the involvement of civil society organisations can help ensure a better quality of implementation and achievement of the anticipated results. In the Committee's view, the involvement of civil society organisations should be assured in the following areas:

— programming at Community level;

— programming at national level (creation of National Strategic Reference Frameworks and operational programmes);

— promotion of the Structural Funds and information on fund utilisation opportunities;

— implementation of the Structural Funds;

— monitoring and assessment of fund utilisation.

3.2 Lastly, the Committee draws attention to the fact that civil society organisations can fulfil a threefold role during the process of the implementation of cohesion policy: an advisory role — by identifying objectives and priorities; a monitoring role — over action taken by public administration; and, lastly, an executive role — as the bodies responsible for implementing and partners of projects jointly financed via the Structural Funds.

3.3 The Committee wishes to reiterate that it was critical of the handling of the partnership principle in its opinion on the general provisions of the Structural Funds [6], although it welcomes the fact that the Commission's proposal [7] contains the first ever reference to civil society and NGOs. However, the removal of this clause during the course of the legislative work at the Council, the new text being simply limited to the phrase 'any other appropriate body', was noted with concern by the Committee. It is therefore all the more pleasing that the latest version of the document (April 2006) has reinstated the clause listing civil society organisations, environmental protection partners, NGOs and organisations working for gender equality among the organisations covered by the partnership principle. The Committee hopes that its comments contributed to these changes.

4. **Fund programming at Community level**

4.1 Conscious of the fact that programming at Community level is the first step in the implementation of the Structural Funds, the Committee would like to stress the importance of all consultations conducted at this level. The consultation on the draft Strategic Guidelines for Cohesion 2007-2013, recently carried out by the Commission, confirms the interest shown in this issue by civil society organisations [8]. The Committee, which is itself making efforts to involve civil society organisations in its work, believes that such active involvement should be used to maximum possible effect in the drawing-up of strategic documents.

4.2 The Committee also believes that the active involvement of civil society organisations could be extremely valuable for all advisory bodies active at European level. The Committee is aware that the issue of representativeness and the need to establish appropriate criteria are clearly relevant to such involvement. The criteria for European NGOs recently outlined by the Committee could be very successfully applied here [9].

5. **Structural Fund programming at national level**

5.1 Although the simplifications planned by the Commission may well make cohesion policy more transparent, the EESC once again draws attention to the dangers inherent in these proposals. The EESC fears above all that civil society organisations may be ignored by national and regional authorities, which are not always open to the inclusion of such organisations in procedures for the use of the Structural and Cohesion Funds (as confirmed by the report prepared by environmental groups [10] and the ETUC [11]), and, as a result, of restricting social monitoring of fund use.

5.2 The experiences of drawing up key programming documents for the years 2004-2006, as described in the report drawn up for the European Citizen Action Service by Brian Harvey [12], although referring only to new Member State NGOs, sadly do not provide much scope for optimism. Frequent changes in consultation dates, far-reaching modifications to programming documents after consultation (e.g. in environmental impact forecasts), delays in starting the consultation process and, as a result, a short timeframe for raising comments are just some of the shortcomings in the process which have been raised by representatives of civil society. In cases where the preparation of documents was outsourced to consulting agencies, which had no contacts with civil society organisations, the situation was even worse.

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[6] Opinion on the *Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund,* OJ C 255of 14.10.2005, p. 79.

[7] COM(2004) 492 final.

[8] Working document of Directorate General Regional Policy summarising the results of the public consultation on the Community Strategic Guidelines for Cohesion, 2007-2013, 7 October 2005.

[9] Opinion on *The representativeness of European civil society organisations in civil dialogue,* OJ C 88 of 11.04.2006, p.41.

[10] 'Examples of Best Practice. Social participation in programming and monitoring of EU funds.' Institute of Environmental Economy, CEE Bankwatch Network, Friends of the Earth Europe, report from September 2004.

[11] Partnership in the 2000-2006 programming period — Analysis of the implementation of the partnership principle — Discussion paper of DG REGIO November 2005.

[12] Brian Harvey, 'Illusion of inclusion' ECAS.

5.3 This not only leads to waning interest in the consultation process, but, more significantly, also represents a wasted opportunity to introduce significant changes to programming documents. At this point, the Committee would like to particularly stress that the consultation process, appropriately implemented, must not only provide all organisations concerned with access to the documents under discussion but also allow enough time for raising comments (not so much as to affect the work timetable but enough for familiarisation with the documents).

5.4 Positive experiences — such as, for instance, the method used for holding consultations on the 2005 National Development Plan in Poland, where the national authorities adopted detailed rules for holding consultations, documenting their progress, maintaining registers of comments and for providing justifications for acceptance or rejection — represent examples of good practice and are proof that it is possible to carry out the whole process in a thorough and effective manner.

5.5 Information from various countries also shows that civil society organisations do not usually take part in the work of working groups involved in the preparation of programming documents, which already significantly limits their ability to raise comments from the very beginning.

5.6 Accordingly, the Commission takes the view that the definition by the Commission of a minimum set of requirements (or at least guidelines) to be complied with by Member States in the field of consultation and the need to present information on progress made could have a positive impact on changing the situation. Such action on the part of the Commission could at least help reduce the risk of situations arising where a good plan for including civil society organisations in the preparation of a National Development Plan in one of the Member States turns out to be little more than just a piece of paper.

6. **Promotion of the Structural Funds**

6.1 The Committee notes that whilst there has been some improvement in recent years in access to information on the Structural Funds, e.g. as far as its publication on official websites is concerned, it would point out that not all countries make use of other forms of promotion and information, such as the press, television, seminars or conferences, which are addressed specifically to target groups. It appears that this situation could be significantly improved by taking advantage of the opportunities offered by civil society organisations in this area.

6.2 In the Committee's view, the promotion of the Structural Funds is, unfortunately, no better at regional level. Promotion and information plans are drawn up with no consultation of these organisations at all except, on occasion, such consultation as is required for the purposes of maintaining a good image, even though the involvement of civil society organisations in this process, by making use of their knowledge of the various groups and problems, could lead to the preparation of more realistic promotional-information strategies.

6.3 Taking into account the fact that Structural Funds are allocated for specific socio-economic objectives, and that funds for promotion and information activities are only a method leading to their implementation, one should approach the issue of the effectiveness of promotional and information activities with particular caution.

6.4 Naturally, it is difficult to establish conclusively which mechanism for utilising promotional and information resources is the most effective way of reaching beneficiaries. It is possible to find both good examples of promotional and information activities carried out independently by implementing institutions, as well as of activities outsourced to advertising agencies or PR firms. However, one can also point to cases where none of these options is effective in reaching the beneficiaries concerned, or where the product on offer is not adapted to the needs of the end users.

6.5 Consequently, this often leads to an absurd situation where, given the unavailability of funds allocated for promotion, civil society organisations are often forced to carry out their own information initiatives, at their own expense.

6.6 It would therefore appear that guaranteeing civil society organisations, able to conduct information activities well adapted to the needs of end users and prepared to carry out given activities, often for a smaller budget, access to promotion and information resources is one of the conditions for their effective utilisation.

6.7 The Committee is aware that the issue of promoting the Structural and Cohesion Funds involves more than just deciding who is responsible for the process and its organisation; the objectives behind the use of the Structural Funds and the problems they help resolve are also of key importance. The Committee believes that this issue must be examined in more detail through a public discussion ahead of the process for Structural and Cohesion Fund use.

7. **Implementation of the Structural Funds**

7.1 In its previous opinions, the EESC has drawn attention to the significance of global grants. It notes with concern that, of the ten new Member States, the only country to have adopted a system of global grants is the Czech Republic, and that even here the significance of this mechanism has been limited by the introduction of a whole range of formal barriers by the public authorities. The Committee, wary of such situations recurring in subsequent programming periods, would like to highlight the very positive experience of those countries that have adopted this mechanism, particularly where there was a need to reach particularly disadvantaged groups e.g. the long-term unemployed.

7.2 Another issue, which the Committee has already drawn attention to, is the availability of technical assistance for civil society organisations. The United Kingdom is an example of a country where the budget allocated for technical assistance

(including the European Regional Development Fund) has, to a large extent, been used to get these types of organisation more involved in the implementation of the Structural Funds. Such technical assistance has been used, for example, to finance the activities of umbrella organisations providing advisory and training services to NGOs, enabling them to carry out programmes and projects using Structural Fund resources. However, this is not a common situation. The Committee therefore believes that where no such situation has previously occurred, **civil society organisations should be specifically recognised as eligible to apply for technical assistance resources** ([13]).

7.3 The Committee would like to draw attention to the fact that the requirement for co-financing to be realised from public funds can place civil society organisations at a disadvantage. As a result, this restricts their access to Structural Fund financing, and, consequently, limits their opportunities to implement projects. The Committee wishes to state very clearly that, in its view, civil society organisations' own (private) funds should be allowed to constitute part of the co-financing (at Member State level) for Structural Fund projects. The Committee calls for NGOs to be added to this clause as, in many cases, they implement projects financed from the Structural Funds.

7.4 The Committee would also like to draw attention to the need to ensure that civil society organisations are explicitly defined as final beneficiaries under operating programmes, which is, sadly, not usually the case. And yet the experiences of those countries in which civil society organisations have been able to benefit from the funds available — e.g. from Spain — bear witness to just how effective they can be for, among other things, tourism, local development and combating social exclusion. The Committee believes that, in the context of achieving the objectives of the Lisbon Strategy and the Strategic Guidelines for 2007-2013, it is particularly important to ensure that civil society organisations are able to implement projects with financing from the Structural Funds.

7.5 The Committee is aware that, ultimately, it is the type of projects to which additional financing is allocated which is of key importance for the implementation of cohesion policy. It is these projects which, in reality, contribute — or not, as the case may be — to ensuring greater economic and social cohesion. The EESC takes the view that the institutions involved in the project selection process may make use of the competences of civil society organisations, which have an excellent understanding of local and regional needs, focusing in particular on potential conflicts of interest.

8. **Monitoring and assessment of use of resources**

8.1 The EESC firmly believes that monitoring and assessment are very important elements of the implementation of the Structural Funds; they not only ensure the efficient management of resources but also make it possible to achieve the planned objectives and results of cohesion policy. Accordingly, all efforts should be made to allow civil society organisations to put forward their opinion on the implementation process and its results where this is not yet standard practice, and for these views to be taken into account during the decision-making process. For this to be possible, it is necessary for monitoring committees for the implementation of National Reference Frameworks and individual operating programmes to include representatives of civil society organisations among their members.

8.2 In its 2003 opinion on partnership in the Structural Funds ([14]), the EESC drew attention to the fact that the information on the membership of monitoring committees varied significantly from country to country. And whilst it is not the Committee's intention to standardise the solutions used, it would like to ensure that all Member States apply certain minimum standards.

8.3 Of the new Member States, Poland and the Czech Republic, for example, have ensured the participation of civil society organisations on virtually all monitoring committees. With regard to non-governmental organisations, it was the NGOs themselves that proposed the recruitment procedure, which involved calling for applications from candidates with appropriate qualifications, voting via the Internet, and the appointment of those candidates who received the most votes. The EESC is conscious that this is not the case in all Member States. Moreover, even such positive experiences (which are often the result of protests) do not necessarily guarantee similar results in future programming periods. Accordingly, the extent and effectiveness of the involvement of representatives of civil society in the process currently depends to a very high degree on the goodwill of the various governments, and not on the need to observe any clearly defined principles. The EESC believes that, in the future, the recognition, by national and regional authorities, of the role of civil society will, on the one hand, arise from the need to comply with specific rules (or guidelines) and, on the other hand, from the ability of civil society organisations (primarily NGOs) to organise themselves and appoint their own representatives. The EESC emphasises that the place of civil society actors and national authorities' respect for their role can only be achieved through incontestable representativeness, which confers legitimacy and thus eligibility for Structural Fund programmes allocated to their activities.

8.4 The Committee also believes that all efforts should be undertaken to increase the effectiveness of the monitoring committees to ensure that they are not simply formal bodies or — as is often the case — arenas for presenting decisions that have already been taken by the public authorities. It would also be worth ensuring that they represent a real forum for discussion and for identifying the most effective solutions possible. In the Committee's view, one way in which this could be achieved would be to involve civil society organisations, which can introduce a new point of view to such a debate.

([13]) Opinion on the *Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund,* OJ C 255 of 14.10.2005, p. 79.

([14]) EESC opinion on *Partnership for implementing the Structural Funds* OJ C 10 of 14.1.2004, p. 21.

8.5 The Committee draws attention to the fact that among the most frequently encountered problems of involvement in Structural Fund monitoring are also: limited access to documents; the lack of funds required to carry out such functions as well as the non-transparent system for appointing representatives from civil society organisations. In the Committee's view, these observations are an important signal that efforts should be made to change the situation in the coming programming period. It believes that national and/or regional economic and social councils, where they exist, could be an advisory resource for civil society organisations that ask them for help in this area.

8.6 The EESC also believes that the representatives of civil society organisations in monitoring committees should have access to training (and be reimbursed for costs incurred e.g. travel expenses) to ensure that they are able to fulfil their role effectively.

9. **The Committee's proposals**

9.1 The Committee has repeatedly issued opinions on cohesion policy and the Structural Funds, drawing attention to the vital role of civil society organisations. Many other institutions have also commented on this. Given the objective set out in the Third Cohesion Report: 'to promote better governance, the social partners and representatives from civil society should become increasingly involved, through appropriate mechanisms, in the design, implementation and follow-up of the interventions', the Committee hopes that this view will be reflected in the rules that are ultimately adopted and in the next programming period. The EESC also hopes that the European Union will draw up guidelines for the Member States based on the comments contained in this opinion.

9.2 The Committee believes that it would be very useful to carry out a review of the solutions currently used in the Member States guaranteeing the effective implementation of the partnership principle. The EESC is also considering the possibility of setting up a partnership observatory within its framework.

9.3 The Committee is, however, conscious that whether its recommendations and proposals are taken into account or not will be largely dependent on the Member States. It therefore calls on both national and regional authorities to ensure the greater involvement of civil society organisations in the implementation of cohesion policy, whatever form the rules adopted take.

10. **Taking the above into account, the Committee addresses the following recommendations to the Commission and the Council, and appeals to the Member States (national and regional authorities) as well as to civil society organisations:**

10.1 *Programming at Community level*

— The Committee, which has performed an advisory role for the European Commission, Parliament and Council for many years, would like to emphasise that it strives to include other organisations in its work, so that its opinions take maximum possible account of the views and opinions of representatives of civil society.

— In its opinion on the representativeness of civil society organisations, the Committee outlined certain basic criteria for representativeness, inviting others to make use of its findings ([15]). A clear definition of representativeness could give civil society organisations a better right than at present to participate in the implementation of cohesion policy.

— The Committee proposes supplementing the Strategic Guidelines for 2007-2013 with details of a framework for the involvement of civil society organisations.

— The Committee hopes that the clause in the general Structural Fund regulation (of April 2006) on consultations at Community level will guarantee other representative European organisations the right to participation.

— The Committee requests that the Commission and the Council clearly specify in the rules concerning cross-border cooperation that civil society organisations may be partners in the activities undertaken.

— The Committee requests that the Commission promote and observe minimum standards for consultation on cohesion policy issues, and make wider use of electronic media.

10.2 *Programming at national level*

— The Committee requests that the Commission formulate guidelines for the process of consultation on strategic and programme documents drawn up in the Member States. The Committee believes that not only is the presentation of plans for social consultation of major importance, but also the provision of feedback on its implementation.

— The Committee wishes to encourage the Member States and the national and regional authorities responsible for the preparation of programming documents to undertake to conduct the consultation process in an appropriate manner, by taking into account such factors as: establishing an appropriate time frame within which the civil society organisations concerned can raise comments, ensuring the availability of documents which are the subject of consultation, documenting the consultation process or keeping records of comments put forward.

([15]) that, to be considered representative, a European organisation should meet nine criteria, i.e. it should:
— exist permanently at Community level;
— provide direct access to expertise;
— represent general concerns that tally with the interests of European society;
— comprise bodies that are recognised at Member State level as representative of particular interests;
— have member organisations in most of the EU Member States;
— provide for accountability of its members;
— have authority to represent and act at European level;
— be independent, not bound by instructions from outside bodies;
— be transparent, especially financially and in its decision-making structures.

— The Committee wishes to encourage civil society organisations to take active part particularly in the consultation process.

— The Committee wishes to encourage the Member States and the national and regional authorities responsible for the preparation of programming documents to listen carefully to the views and comments of civil society organisations and to take them into account in the documents produced.

10.3 *Promotion of the Structural Funds*

— The Committee believes that the Member States and regional authorities should make greater use of the potential existing within civil society organisations by involving them in the preparation of promotion plans; grass-roots initiatives should also be supported by allocating adequate financial resources for this purpose from the funds available for the promotion of and information about the Structural Funds.

— The Committee calls on civil society organisations operating at national or regional level to become actively involved in informing their circles about the objectives of cohesion policy and the opportunities provided by the Structural Funds.

10.4 *Implementation of the Structural Funds*

— The Committee believes that efforts should be made to encourage Member States to use the global grants mechanism. The European Commission is most suited to this task but civil society organisations operating in the various countries could also take part in this process.

— The Committee calls on the Member States, particularly those that have, to date, opted not to introduce the global grants mechanism, to benefit from the valuable experience of others and to apply the mechanism during the period 2007-2013.

— The EESC believes that all efforts should be made to ensure that eligible civil society organisations within the meaning of point 2.2 of this opinion have access to technical assistance resources.

— The Committee, given the positive role that eligible civil society organisations within the meaning of point 2.2 of this opinion can play, calls on national and regional authorities in the Member States to simplify the procedures of the application process for technical assistance funds.

— The Committee also calls on the Member States to take account in the budgets drawn up of the own funds of eligible civil society organisations within the meaning of point 2.2 of this opinion (social partners and NGOs), as part of project co-financing.

— The Committee calls on the Member States to clearly define eligible civil society organisations within the meaning of point 2.2 of this opinion as final beneficiaries in operating programmes. At the same time, the Committee requests that the Commission make sure that the documents submitted by Member States guarantee civil society organisations access to Structural Fund resources.

— The Committee calls on the Member States to use the knowledge and experience of eligible civil society organisations within the meaning of point 2.2 of this opinion in the project selection process, and draws attention to the need to undertake efforts to avoid potential conflicts of interest.

— The Committee also draws attention to the need to remove or reduce certain formal or technical barriers that make it difficult for eligible civil society organisations within the meaning of point 2.2 of this opinion to use the Structural Funds.

10.5 *Monitoring and assessment of use of resources*

— The Committee takes the view that the Commission should set out guidelines for involving civil society organisations in the monitoring and assessment process and, in particular, including them in monitoring committees with full rights, taking into account the need to ensure the objectivity and impartiality of the individuals and organisations taking part.

— The Committee expects the reports presented by the Member States to include information on how the partnership principle is implemented in the context of the monitoring committees.

— The Committee calls on the Member States to provide representatives of civil society organisations with access to training to ensure that they can effectively fulfil the role of monitoring committee members.

The Committee calls on civil society organisations to remain in constant contact with their representatives on the monitoring committees and to ensure a mutual exchange of information.

Brussels, 6 July 2006.

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 establishment of a Joint Undertaking to develop the new generation European Air Traffic Management System (SESAR)

COM(2005) 602 final — 2005/0235 (CNS)

(2006/C 309/27)

On 4 January 2006 the Council decided to consult the European Economic and Social Committee, under Article 171 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 30 May 2006. The rapporteur was Mr McDonogh.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 6 July 2006), the European Economic and Social Committee adopted the following opinion by 37 votes to one with three abstentions.

1. **Introduction**

1.1 SESAR is the technological part of the single European sky initiative, launched in 2004 to reform the organisation of air traffic control. It will introduce new communication, control, and computing technologies between the ground and aircraft which will optimise the work of air traffic controllers and pilots. Today, while the cockpit is becoming increasingly automated, controllers and pilots still communicate by radio.

1.2 SESAR is a new generation air traffic management system, which will be vital for managing the growth in air traffic. SESAR will boost the safety and the environmental performance of air transport and will ensure that Europe remains at the forefront of the world aviation market. The Commission will develop this major industrial project together with Eurocontrol and with industrial partners.

1.3 Europe will have the most effective air traffic control infrastructure in the world. By making air transport more efficient SESAR is estimated to have a net present value of EUR 20 billion. The direct and indirect effects of the project are estimated to EUR 50 billion. The project will create almost 200 000 highly skilled jobs.

1.4 Growth forecasts for air traffic in Europe show that traffic will increase significantly by 2025. This growth will not be possible without a complete overhaul of the air traffic control infrastructure to optimise air routes and eliminate congestion. SESAR will also enhance air transport safety, which today is hampered by ageing technologies and fragmented air traffic control.

1.5 The European Commission and Eurocontrol jointly funded the EUR 43 million (US $50,5 million) contract, awarded to a consortium of 30 airlines, air navigation organisations and aerospace manufactures. The contract covers the definition phase of the Single European Sky ATM (Air Traffic Management) Research, previously known as SESAME but now renamed SESAR. The two-year definition phase will include not only the design of the future ATM system, but also a timeline for its introduction through 2020.

1.6 The total cost of the definition phase, including the EUR 43 million contract will be EUR 60 million. The EC and Eurocontrol are each providing half of the cost, with Eurocontrol's contribution including cash, staff expertise and research. The EC stated that the development phase will require about EUR 300 million a year, with funding to come from the Commission, industry and Eurocontrol. EUR 200 million a year is already spent on ATM research and development, and this will be channelled to SESAR.

1.7 The definition phase is fully funded by the Commission and Eurocontrol. For the development phase, it is foreseen that industry at large will fund one third of the programme, which represent something like EUR 100 million per year for seven years. The EU will contribute EUR 100 million per year and Eurocontrol will contribute EUR 100 million per year.

1.8 It is not clear yet who will fund how much of the industry EUR 100 million per year. The contribution from industry has to be defined, but first we will have to solve difficult issues such as IPRs (Intellectual Property Rights), competition clauses, etc.

1.9 An indication of the amount of money that industry will contribute to SESAR is, however, provided by the current level of R&D expenses in ATM. EUR 200 million per year, from which around EUR 75 million is provided by ANSPs (Air Navigation Service Providers). A substantial part if not all of this money will go into SESAR instead of being used in a fragmented manner.

1.10 The Project Associates are Air Traffic Management Research and Development (ATM R&D) Centres, Eurocontrol Military Domain (EURAMID), United Kingdom Civil Aviation Authority (UK CAA), Non-European Industry (Boeing, Honeywell, Rockwell-Collins) professional organisations International Federation of Air Traffic Controllers Associations (IFATCA), European Cockpit Association (ECA) and European Transport Workers Federation (ETF).

1.11 The following are the list of companies involved in the definition phase:

USERS: Air France, Iberia, KLM, Lufthansa, Association of European Airlines (AEA), European Regional Airlines Association (ERAA), International Airline Transport Association (IATA), International Aircraft Owners and Pilots Association (IAOPA).

Air Navigation Service Providers (ANSPs): Aeropuertos Espanoles y Navegacion Aerea (Spain) (AENA), Austrocontrol, DFS, Directorate of Air Navigation Services (France) (DSNA), Italian Company for Air Navigation Services (ENAV), Luftfartsveket (Swedish Airport Operator) (LFV), Luchtverkeersleidins Nederland (Dutch Air Traffic Control Provider) (LVNL), National Air Traffic Services (UK) (NATS), NAV.

AIRPORTS: Aeroports de Paris, BAA, Fraport, Amsterdam, Munich, AENA, LFV.

INDUSTRY: Airbus, BAE Systems, European Aeronautic Defence and Space Company (EADS), Indra, Selex, Thales ATM, Thales Avionics, and Air Traffic Alliance.

2. **Recommendations and comments**

2.1 Any initiative which would modernise Air Traffic Control in Europe, has to be welcomed as a constructive move.

2.2 It should result in more efficient routing, enhanced fuel savings and reduce flight times for the travelling public.

2.3 The establishment of functional airspace blocks (FAB) should enable optimum use of airspace while at the same time respecting regional agreements and taking into consideration the living conditions and interests of local communities (cities, towns and villages) under the FABs.

2.4 By avoiding the duplication of research and development activities, the SESAR project should not lead to an increase in the overall volume of air users' contribution to research and development efforts.

2.5 Following the Community's accession to Eurocontrol, the Commission and Eurocontrol have signed a cooperation framework agreement for the implementation of the Single European Sky and for research and development activities in the field of ATM. This should improve both safety and the operational effectiveness of ANSPs.

2.6 The Joint Undertaking must take an integrated approach, with the combined effort of the public/private partnership on all issues (technical, operational, regulatory and institutional) ensuring a seamless transition from the Definition Phase to the Implementation Phase and from Research and Development to Deployment.

2.7 The scope of financing for the Joint Undertaking should be reviewed when the Definition Phase is completed. All parties will need to consider the impact of any additional costs to be financed by the Private sector through the User Charges mechanism, as this could lead to knock on effects for the travelling public.

2.8 The public budget for the implementation phase of the SESAR project should be supplemented by contributions from the private sector.

2.9 Taking into account the number of players who will need to be involved in this process, and the financial resources and technical expertise needed, it is vital to set up a legal entity capable of ensuring the coordinated management of the funds assigned to the SESAR project during its implementation phase.

2.10 The companies involved in the definition phase are limited and not representative of the European Aviation Industry as a whole. The European Commission should extend participation in the definition phase to smaller size holders, and in particular to the new EU Member States.

2.11 SESAR will require a step-by-step implementation. The final, implementation phase should be fully implemented as quickly as possible. The Commission should establish clear milestones in order to accelerate the realisation of the project and reduce the length of implementation.

2.12 European Air Traffic charges should be reduced, because of increased efficiency brought about by SESAR.

Brussels, 6 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on The future of services of general interest

(2006/C 309/28)

On 14 July 2005 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *The future of services of general interest*.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 May 2006. The rapporteur was Mr Hencks.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 6 July), the European Economic and Social Committee adopted the following opinion by 46 to nine, with seven abstentions.

1. **Conclusions**

1.1 Services of general interest defined as such by the public authorities on the basis of and in reference to social and civic action, meet basic needs and play a key role in promoting social and territorial cohesion in the EU and in the success of the Lisbon Strategy.

1.2 In response to the European Council's call for a period of reflection on the major issues facing Europe, civil society must become a resolute and challenging actor, in order to guarantee efficient services of general interest and to make them an essential component of the Union.

1.3 The EESC reiterates its call for the common basic principles to which all SGIs must adhere to be defined at Community level. These should be set out in a framework directive and, if necessary, in individual sector-specific directives.

1.4 In accordance with the principle of subsidiarity, each Member State must be able to define, by means of an official instrument to be notified, the types of sovereign service or services of national, regional or local interest not covered by SGEI and to which the rules on competition and State aid do not apply.

1.5 Where other services of general interest are concerned, both the framework directive and sector-specific laws must clearly uphold Member States' or local authorities' freedom to define management and funding methods, the principles and limits of Community action, evaluation of their performance, consumers and users' rights and a basic platform for public service missions and obligations.

1.6 To ensure that the measures adopted are acceptable to all those affected by services of general economic and non-economic interest, stakeholders from all levels — national, regional and local authorities, the social partners, consumers' and environmental protection organisations, social economy bodies and those combating exclusion, etc. — must play their part alongside regulators and operators at national, regional or local level in making services of general interest work and be involved at every stage, in other words in organising, drawing up, monitoring and implementing quality standards.

1.7 At European level, wherever sectoral directives governing services of general interest have a social impact on employees' working conditions and terms and conditions of employment, organisations representing the two sides of industry must be consulted via the new sectoral committees for structured European social dialogue.

1.8 The changing nature of services of general interest and their importance in achieving the Lisbon strategy mean that regular evaluation is imperative, not only of the services of general economic interest already covered by Community rules, but also of services of general interest in keeping with the Union's aims. The EESC proposes that a monitoring centre be set up to evaluate services of economic and non-economic general interest, with a membership consisting of political representatives from the European Parliament and the Committee of the Regions and representatives of organised civil society from the European Economic and Social Committee.

1.9 The EESC emphasises that the principles set out above also determine the Union's stance in trade negotiations, in particular at the WTO and in the GATS process. In the context of international trade negotiations, it would be unacceptable for the European Union to give commitments to liberalise sectors or areas of business that have not been decided in line with internal market rules specifically governing services of general interest. The need to maintain Member States' power to regulate services of general economic and non-economic interest in order to achieve the social and development aims that the Union has set for itself means that services of general interest must be excluded from the scope of the negotiations referred to above.

2. **Subject of the own-initiative opinion**

2.1 Services of general interest are at the heart of the European model of society and play a defining role in promoting the EU's social and territorial cohesion. They complement and go beyond the single market, and are an essential component of the social and economic well-being of citizens and businesses.

2.2 Services of general interest, whether economic or non-economic, meet basic needs, give the public a sense of belonging to a community and, being such a part of everyone's daily life, embody one aspect of all European countries' cultural identity.

2.3 The focus of all of these considerations is thus the public interest, the pursuit of which requires guaranteed access to services deemed to be essential and the ability to pursue priority aims.

2.4 Despite this community of values, services of general interest are organised differently from one country to another, from one region to another and from one sector to another. National authorities may define what are services of general interest, with reference to a given social or civic activity.

2.5 This variety of situations poses a challenge for European integration. Nevertheless, far from being an insurmountable obstacle, it provides an opportunity to create — by establishing a set of principles that can be applied to all services of general interest — a suitable framework for promoting the general good in a constantly changing economic and social climate.

2.6 Achieving a healthy balance between the single European market on the one hand, with its requirements for freedom of movement, free competition, efficiency, competitiveness and economic dynamism, and on the other the need to take account of public interest objectives, has proven to be a long and complex process. Efforts to this end have met with a large measure of success, but some problems remain and they need to be remedied.

3. **Background**

3.1 The only articles in the Treaty of Rome that refer to public services are Article 77 (now Article 73 of the current Treaty), which addresses public service in the transport sector and Article 90(2) (now Article 86(2) of the current Treaty), which accepts that services of general interest can be exempt from the competition rules under certain circumstances.

3.2 Article 86(2) of the EC Treaty allows Member States to establish legal arrangements that derogate from ordinary law, in particular the rules on competition, for companies providing a service of general economic interest: *'Undertakings entrusted with the operation of services of general economic interest or having the character of an income-producing monopoly shall be subject to the provisions of the Constitution, in particular to the rules on competition, insofar as the application of such provisions does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the Union's interests'* ([1]).

3.3 On the basis of this Article, the Court of Justice of the European Communities has (since 1993) recognised that, in order to fulfil the particular task entrusted to it, the operator entrusted with public service missions may take liberties with the competition rules set out in the Treaty, and can even exclude all competition, where such restrictions are necessary to enable the undertaking to perform its task of general economic interest in economically acceptable conditions ([2]).

3.4 The Court has furthermore stated that allowing competitive advantages in profit-making activities, to offset losses suffered by the undertaking in activities that are non-profit-making but which are in the general interest, is compatible with the Treaty ([3]).

3.5 Similarly, the Court has ruled that where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, such a measure is not caught, in certain circumstances, by the Treaty's provisions on State aid ([4]). At the same time, the Court states that services of general interest — whether economic or non-economic — must comply with the general principles set out in the Treaty, i.e. transparency, proportionality, non-discrimination and equal treatment.

3.6 Following the Single European Act of 1986, which created a single market, European integration started to have an impact on services of general economic interest, in particular by challenging the special rights granted to Member State service operators (both public and private) and by launching a far-reaching process of opening up the major public service networks.

3.7 Article 16 of the 1997 Treaty of Amsterdam highlights the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion. It calls on national and European institutions to take care that such services operate *'on the basis of principles and conditions which enable them to fulfil their missions'* whilst remaining broadly subject to the principles of competition.

3.8 The aforementioned Article 16 has no operational bearing on the Commission policy on public service operators. Nonetheless, in March 2000, the Lisbon European Council decided to *'achieve a fully operational internal market'*, advocating that the liberalisation of public network services be speeded up and that competition be extended in national markets to encompass railways and postal, energy and telecommunications services.

([1]) Article III-166(2) of the Treaty establishing a Constitution for Europe, reproduced almost word for word in Article 86(2) of the EC Treaty.

([2]) See judgments: 'Poste Italiane', 'Corbeau', 'Commune d'Almelo', 'Glöckner' and 'Altmark'.

([3]) See the 'Glöckner' judgment of 25.10.2001.

([4]) 'Altmark' judgment of 24.7.2003.

3.9 The Charter of Fundamental Rights, unveiled in Nice in 2000, for the first time established a link between services of general interest and fundamental rights. Thus 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 Articles II-34 to II-36 of the Charter of Fundamental Rights.

3.10 The Barcelona European Council of 15-16 March 2002 explicitly planned to *'specify the principles on services of general economic interest, which underlie Article 16 of the Treaty, in a proposal for a framework directive, while respecting the specificities of the different sectors involved and taking into account the provisions of Article 86 of the Treaty'*.

4. **The current situation**

4.1 Although some progress has been made, many representatives of civil society consider this to be insufficient, given the importance of services of general interest to the lives of the European public. As part of the process of drawing up the future European constitution, they put forward numerous initiatives aimed at placing the principles of services of general interest firmly amongst the common aims of the Union, in order to promote and guarantee security and social justice through high-quality services founded on the principles of universality, equal access, neutrality of ownership and affordable pricing.

4.2 Article III-122 of the draft constitutional Treaty was to enact the bases of secondary law on services of general economic interest, stating that, without prejudice to the competence of Member States, European law shall establish the principles and set the conditions, *'in particular the economic and financial conditions, which enable them* [SGEI] *to fulfil their missions'*.

4.3 Article III-122 was also intended to recognise the principle of administrative freedom for local authorities and raise to the level of a constitutional principle the possibility of local authorities providing 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.

4.4 Because the ratification of the constitutional Treaty has been postponed, the EESC considers that the process of drafting the framework directive on services of general interest (economic and non-economic), for which it has been calling for years in its opinions [5], should be started without further delay, on the basis of the current treaties.

4.5 The only possible legal basis today is the completion of the internal market, although this basis must be complemented by taking account of other provisions in the Treaty, specifying the type of internal market involved — which must be one in services of general economic interest:

— Article 16, which entrusts the Union with the task of ensuring that SGEI are able to fulfil their missions;

— Article 36 of the Charter of Fundamental Rights, which calls on the Union to respect universal access to SGEI;

— Article 86, which states that in the event of conflict between the rules on competition and the general interest of the Community, the latter shall prevail;

— Article 5, concerning respect for the subsidiarity principle;

— Article 295, which states the Union's neutrality with regard to the ownership of undertakings;

— Title VIII on employment, given the number of jobs directly or indirectly concerned by SGEI;

— Title XIV on consumer protection, which sets out specific rules for SGEI;

— Title XV on Trans-European networks, which gives powers to the Union;

— Title XVI on industrial competitiveness, which requires SGEI that are modern, efficient and of high quality;

— Title XVII on economic and social cohesion, which calls for existing imbalances to be redressed;

— Title XIX on environmental protection, which is of particular importance to SGEI, given their externalities.

4.6 Combining these articles will help to establish a specific law for SGEI, as an integral part of a framework directive on all services of general interest, that takes account of the completion of the internal market and of SGEI's specific characteristics whilst meeting the aims of the Treaty.

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[5] EESC own-initiative opinion on Services of general interest, OJ C 241, 7.10.2002 pp. 119-127; EESC opinion on the Green Paper on Services of General Interest COM(2003) 270 final, OJ C 80, 30.3.2004 pp. 66-76; EESC opinion on the White Paper on services of general interest COM(2004) 374 final, OJ C 221, 8.9.2005 pp. 17-21.

5. **The distinction between services of general interest and services of general economic interest**

5.1 Unlike services of general economic interest, services of general interest are not grouped together and referred to as such in the Treaties.

5.2 Services of general interest of a non-economic nature are not governed by specific Community regulations and are not subject to the rules covering the internal market, competition or State aid. They do, however, form part of a set of EU objectives (respect for fundamental rights, promoting people's well-being, social justice, social cohesion, etc.) that are crucial to society. The result is that the Union, which has responsibilities for promoting the standard of living and quality of life throughout Europe, therefore also has some responsibility for the instruments whereby fundamental rights and social cohesion are implemented, in other words services of general interest. It must, therefore, at least ensure that these SGI are universally accessible, affordable and of high quality.

5.3 The distinction between economic and non-economic services remains vague and unclear. Almost any service of general interest, even a service provided on a not-for-profit or charitable basis, entails some economic value, although this does not automatically bring it within the scope of competition law. Furthermore, a service can be both commercial and non-commercial. Similarly, a service can be commercial without the market necessarily being in a position to provide that service in a manner which is consistent with the principles governing services of general interest.

5.4 It is thus to be expected that there are ambiguities and contradictions between competition and SGI, the economic or non-economic nature of which remains subject to the legal interpretations and re-interpretations of the Court of Justice of the European Communities. This:

— weakens the position of many public service operators, in particular those working in the social sphere or in non-commercial sectors or which operate at local level;

— exposes operators to the risk of sanction by the Commission or the European Court of Justice;

— is a source of concern to citizens/consumers, who fear that public services will disappear.

5.5 There are also ambiguities in the terminology used by the different European institutions. The Commission takes the view that the concept of services of general interest covers all services of general interest, whether commercial or otherwise, whereas the European Parliament only considers non-economic services to be services of general interest. The EESC therefore calls for the different institutions to work on finding a common language.

6. **Guidelines for the future**

6.1 In response to the European Council's call, following the referendums on the Constitutional Treaty, for a period of reflection on the major issues facing Europe, civil society must become a resolute and challenging actor, in order to guarantee efficient services of general interest and to make them an essential component of the Union.

6.2 In this connection, the question must be asked as to what initiatives should be taken in Europe in order to achieve a balanced combination of market mechanisms and public service missions in areas in which such complementarity a) is compatible with the objectives of services of general interest and b) can offer added value for improving the quality of life of Europe's citizens, as part of a European social model approach based on economic growth, job creation and sustainable well-being.

6.3 One of the most striking features of the social model is social dialogue. Informing, consulting and involving the social partners and civil society stakeholders are prerequisites for upholding and successfully modernising the European social model. The aim is to achieve a social Europe, founded on constructive interaction between regulation and social dialogue.

6.4 Stakeholders from all levels — national, regional and local authorities, the social partners, consumers' and environmental protection organisations, social economy bodies and those combating exclusion, etc. — have a place alongside regulators and operators in making services of general interest work.

6.5 It should thus be guaranteed that when it comes to regulating services of general interest at the national, regional and local level, the stakeholders referred to above are involved at every stage, in other words in organising, drawing up, monitoring and implementing quality standards and also in ensuring that they are cost-effective.

6.6 At European level, wherever sectoral directives have a social impact on employees' working conditions and terms and conditions of employment, structured European social dialogue must take place before the European Commission draws up its legislative initiatives.

6.7 In other words, the approach of Article 139 of the EC Treaty, giving the Commission the task of ensuring that workers' and employers' organisations are consulted on the social dimension of the policies it puts forward, must also be implemented at sectoral level, wherever services of general economic interest are regulated.

6.8 Structured sectoral social dialogue committees will thus be responsible for ensuring that sectoral or inter-sectoral social dialogue takes place, leading to the conclusion of the European collective bargaining agreements which can be applied in order to protect employees' rights and their jobs against social dumping and the use of unskilled labour.

6.9 This should not exempt the Commission from having to carry out an impact study of the workings of services of general economic interest for each of its proposals aimed at amending an instrument of Community law concerning a particular sector or at establishing a new instrument for services of general economic interest.

7. **Establishing a European concept of services of general interest**

7.1 The Europe that the citizens wish to see is a common living space, committed to a high quality of life, solidarity, employment and the creation of wealth that is not merely material. SGIs are a crucial means of achieving this.

7.2 There is now a need for the common basic principles to which all SGIs must adhere to be defined at Community level. These should be set out in a framework directive and, if necessary, in individual sector-specific directives.

7.3 It is crucial that a horizontal framework directive be adopted in order to give all the necessary legal certainty to undertakings entrusted with the operation of services of general economic and non-economic interest and to the public authorities, and also to provide the necessary guarantees for users and consumers.

8. **Objectives for services of general interest**

8.1 In keeping with their role as a pillar of the European social model and of a social market economy, SGIs should, through the interaction and integration of economic and social progress:

— guarantee the right of every individual to basic goods or services, such as education, health, security, employment, energy and water, transport, communications, etc.);

— ensure economic, social and cultural cohesion;

— ensure justice and social inclusion, build up solidarity and promote the general interest of the community;

— create conditions for sustainable development.

9. **Definition of the general interest**

9.1 The first task will be to establish an institutional framework forming a solid base for creating legal stability as to the distinction, in line with the Treaty, between services of general economic interest and non-economic services of general interest, it being understood that the Charter does not require that the rules on competition and State aid be applied to the latter.

9.2 Given the difficulties in providing an exhaustive definition of this concept on the one hand, and the danger entailed by a restrictive approach on the other, this definition must focus on the specific mission of the services in question and on the requirements (public service obligations) imposed on them in order to achieve their purpose, and which must be clearly set out.

9.3 In line with Article 86(2) of the EC Treaty, in cases of conflict, the duty to serve the general interest will prevail over applying the rules of competition, in accordance with Community case-law.

10. **The role of national public authorities**

10.1 In accordance with the principle of subsidiarity, each Member State must remain free to make its own distinction between economic services of general interest and non-economic services of general interest. Where there has clearly been a misinterpretation, the Commission must nevertheless be able to take action.

10.2 Member States must therefore be able to define by means of an official instrument, to be notified to the European institutions, the types of sovereign service covered by overriding public interest requirements, and services of national, regional or local interest which are not SGEI and to which the rules on competition and State aid do not apply.

10.3 Without prejudice to national authorities' freedom of choice, the EESC considers that these services of national, regional or local interest should include services relating to mandatory education, health and social protection systems, cultural activities and charitable work, whether this be of a social nature or operating on the basis of solidarity or donations, as well as audiovisual services and water supply and sewage disposal services.

10.4 Where other services are concerned, both the framework directive on services of general interest and sector-specific laws must clearly define the principles and arrangements for regulation, which will supplement ordinary competition law; this definition in law should help to bring requirements into line with users and consumers' changing needs and concerns and with changes in the economic and technological climate.

10.5 The EESC considers that the special status of water, the continuity and sustainability of the services linked to its supply, along with pricing and investment policy, mean that the water sector is covered by the general interest and does not lend itself to being systematically liberalised in Europe.

10.6 This regulatory framework must therefore safeguard the existence of services of general interest, Member States' or local authorities' freedom to define and organise, the freedom to choose management and funding methods ([6]), the principles and limits of Community action, evaluation of their performance, consumers and users' rights and a basic platform for public service missions and obligations.

10.7 These public service obligations, which are the obligations that Member States impose on themselves or on providers, consist mainly of equal and universal access, the absence of any discrimination, continuity of service, quality, transparency, security and the ability to adapt to necessary changes.

10.8 Whilst wishing to ensure compliance with Article 295 of the Treaty, which makes no prior judgment as to the public or private nature of the management of services of general economic interest and does not encourage Member States to liberalise services, the EESC wishes to promote the broadest range of forms of management and partnership between the public authorities, the operators running these services, the social partners and users and consumers.

11. **Regulation**

11.1 Regulation is a dynamic process, which evolves in line with developments in the market and industrial change.

11.2 The way in which competition should work in a liberalised market depends on the particular characteristics of the sector; it can take the form of tenders, public/private partnerships, price controls, preventing discriminatory treatment in access to networks or of creating competition between networks.

11.3 A comparison of the different regulatory systems operating in the Member States demonstrates that no model can be used as a blueprint, because it is always tied to a country's history, institutions and traditions, to a particular sectoral or geographical situation and to technological developments in a specific sector.

11.4 What is needed, therefore, is to combine respect for the diversity of regulatory methods tied to history, traditions, institutions and types of service, with clear Community-wide aims and limited common rules, designed to elicit differentiated responses in order to promote maximum effectiveness at the trans-European, cross-border, national, regional or local levels.

11.5 Whilst attaching priority to trade and coordination at Community level, no one solution should be imposed at European level and it is up to Member States to define the most suitable method for regulating services of general economic interest in keeping with the principles of subsidiarity and neutrality, regarding the public or private nature of the management method for a particular service.

12. **Evaluation**

12.1 The changing nature of services of general interest, the aims assigned to them and their importance in achieving the Lisbon strategy mean that regular evaluation is imperative, not only of the services of general economic interest already covered by Community rules, but also of services of general interest in keeping with the Union's aims (respect for fundamental rights, promoting public wellbeing, social justice, social cohesion, etc.).

12.2 The EESC does not, therefore, share the Commission's opinion ([7]) to the effect that services of non-economic general interest must remain outside the scope of the horizontal evaluation of SGI performances.

12.3 This type of evaluation should help to make services of general interest more efficient, to enable them to adapt to the changing needs of individuals and businesses and to provide the public authorities with the information they need to make the best choices.

12.4 The European Parliament asked the Commission ([8]) to organise the debate within the various existing forums (Economic and Social Committee, Committee of the Regions, consultative bodies, associations involved in services of general interest initiatives and consumer associations). The results of this debate should be taken into account and provide guidance for the annual horizontal evaluation, and the evaluation should itself be the subject of debate.

12.5 This means that the commitment given by the Commission in its communication COM(2002) 331 to involve civil society in the horizontal evaluation of the performance of SIG by establishing a *'permanent mechanism for the monitoring of citizens' opinion and their evolution'* must now be put into practice and that — still in the Commission's words, *'Stakeholders, including the social partners, will also be consulted on an ad-hoc basis for specific issues'*.

12.6 The Union will then have the task of boosting the evaluation's dynamic, in keeping with the principle of subsidiarity by drawing up, in dialogue with the representatives of the stakeholders concerned, an evaluation method that is harmonised at EU level on the basis of common indicators.

12.7 This method of evaluation must take account not only of purely economic results but also of the social and environmental impact and must seek to uphold the general interest in the long term.

([6]) Article 295 TEC enshrines the principle of neutrality as regards public or private ownership of an undertaking (COM(2004) 374 final of 12.5.2004.

([7]) COM(2002) 331 point 3.2.

([8]) EP report A5/0361/2001: rapporteur, Werner Langen; 17 October 2001.

12.8 The users for whom services of general economic and non-economic interest are intended will thus have the means to express their needs and aspirations, in particular by participating, through their representatives, in drawing up evaluation methods and in assessing the results.

12.9 Against this background, the EESC proposes that a monitoring centre be set up to evaluate services of general economic and non-economic interest, with a membership consisting of political representatives from the European Parliament, the Committee of the Regions and representatives of organised civil society from the European Economic and Social Committee.

12.10 The monitoring centre should have a steering committee, which will define the aims and the terms of reference of the evaluations, select the bodies entrusted with the task of carrying out the studies and examine and deliver an opinion on the reports. The committee will be able to call on the services of a scientific advisory group, which will study the methodology used and make recommendations on the matter, as and when required. The steering committee will ensure that presentations are given and public discussions held on the evaluation reports in all Member States, with the involvement of all stakeholders. The evaluation reports must consequently be available in all of the Union's working languages.

13. **Funding**

13.1 Long-term funding security for investments and public service obligations remains key to guaranteeing universal access, throughout the Union, to high-quality and affordable services of general interest.

13.2 The general interest and public service obligations imposed by public authorities on one or more providers of services of general economic interest, with set conditions and specifications, require appropriate methods of funding.

13.3 It is therefore up to the Member States to guarantee the long-term funding of firstly, the investment needed to ensure the continuity and sustainability of services, and secondly, the appropriate compensation for public service or universal service obligations; Community rules must facilitate rather than restrict such security of funding.

13.4 The lack of a European directive on the definition, organisation and funding of public service obligations gives Member States total discretion in choosing their methods of funding, in accordance with the principles of subsidiarity and proportionality.

13.5 Member States must be able to use a wide variety of methods for funding public service missions and obligations, such as direct compensation from the national, regional or local budget, social or territorial donation-based funding between uses or users, contributions from operators and users, tax credits and exclusive rights, etc. Member States can also use combined public and private financing initiatives (public/private partnerships), especially for income-generating public infrastructures.

13.6 Given that methods of funding vary considerably according to the State or sector concerned and that these change continually in line with technological developments, the EESC considers that it would not be appropriate at Community level to restrict potential sources of funding or to favour any one source over another. Instead, Member States should be given the flexibility, at national, regional or local level, to decide, on the basis of their own political priorities and of their assessment of the economic returns, how to fund the services for which they are responsible.

13.7 In the light of the limited funding capacity of some of the new Member States, however, the Union should provide them with the means necessary to promote the development of efficient services of general economic and non-economic interest.

Brussels, 6 July 2006.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND