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(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement' [1]

(1999/C 169/01)

On 23 April 1999 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 April. The rapporteur was Mr Stöllnberger.

At its 363rd Plenary Session (meeting of 28 April), the Economic and Social Committee unanimously adopted the following opinion.

1. **Introduction**

1.1. Council Directive 80/181/EEC [2] of 20 December 1979, as last amended by Directive 89/617/EEC [3], harmonises the use of units of measurement in the Community. It lays down as the legal units those of the Système International (SI).

1.1.1. The SI is a world-wide system, adopted by the Conférence Générale des Poids et Mesures (CGPM) in 1960. It is a coherent version of the metric system, and is described by the International Organisation for Standardisation (ISO) in its standards ISO 1000 and ISO 31.

1.1.2. A few specific exceptions are allowed for internationally agreed units for special purposes, e.g. mm of mercury for blood pressure measurement [4].

1.1.3. Use of the SI has the advantage of rationalising component and part manufacture and sourcing as well as providing clear and comparative information for consumers. The proposed amendment does not change the status of the SI in the Community.

2. **Commission proposal**

2.1. Since Directive 80/181/EEC was last amended, decisions have been taken at international level that affect the definitions of SI units or their use.

2.1.1. The 19th CGPM in 1991 extended the list of prefixes to be used for multiples and submultiples of SI units. The ISO revised the standard ISO 31 in 1992 regarding the units of plane angle and solid angle. In addition, the Codata bulletin of the International Council of Scientific Unions has been superseded by a publication in 1986, which gives new experimental values for the electronvolt and the atomic mass unit. In so far as the agreements and decisions of these bodies affect the content of the Directive it must therefore be amended to take account of the changes.

2.2. Article 3(2) of Directive 80/181/EEC provided that until 31 December 1989 supplementary units of measurement

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(1) OJ C 63, 5.3.1999 p. 8, OJ C 89, 30.3.1999, p. 8.
(2) Directive 80/181/EEC, 20.12.1979, OJ L 39, 15.2.1980, p. 40.
(3) Directive 89/617/EEC, OJ L 357, 7.12.1989, p. 28.
(4) Other examples are imperial units when used on the territories of the UK and Ireland for particular uses (e.g. pint of beer on draught). A derogation is also given for the fields of air and sea transport and rail traffic, where units other than those made compulsory by the Directive may be used when they have been laid down in international conventions binding the Member States.

in units other than the legal units of measurements could accompany the latter. This date was extended until 31 December 1999 by an amendment of the Directive in 1989 (89/617/EEC) [1].

2.2.1. After expiration of the transition period incompatibility will exist between the legislation in the Community and the US affecting the use of units when indicating values of quantities. On the one hand, the Community legislation will not permit supplementary indication in non-legal units anymore, on the other hand US legislation prescribes the simultaneous use of the units of the US customary inch-pound system and the SI.

2.2.2. It is the Commission's firm view that the solution to the problem of the use of units can only lie in the use of a global system based on the SI that is also adopted by the US. One has to keep in mind that the US is the only industrialised nation in the world not using the SI.

2.2.3. The Commission believes that as a short-term solution the US should amend its present legislation so as to permit the placing on their market of products bearing indications in SI units only. In the meantime, the EU should as an interim measure extend until 31 December 2009 the transition period during which supplementary indications in non-legal units are allowed.

3. **Comments on the proposal for a Directive**

3.1. It is quite appropriate for the definitions of SI units to be changed to ensure compliance with international agreements.

3.2. There is no doubt that if the deadline of 31 December 1999 is met without any changes being made to US legislation, some branches of industry will face substantial costs. These include the packaging, labelling and inventory lines. According to Commission estimates, the annual costs of compliance for one large multinational cosmetics company would be US$ 80 million. The annual costs for smaller companies are estimated by the coalition of industry representatives (representing the affected cosmetics and toiletries, artists' paints and foodstuffs sectors) would be between US$ 5 000 and several million US$.

3.2.1. Extension of the deadline will allow European manufacturers to continue to market products without the need to fulfil differing requirements regarding units of measurement.

3.2.2. The impact on Europe's consumers of extending the deadline should be limited, since they will not perceive any significant difference in labelling information from the current situation.

3.2.3. For these reasons the Committee welcomes the proposed deadline extension.

3.2.4. However, the Committee would urge the Commission to use the extra time gained to step up its efforts to achieve the removal of US provisions that require measurements to be given in units other than SI units.

3.2.5. The Committee also endorses the Commission's intention to view the application of Directive 80/181/EEC and to further examine issues concerning the implementation of the directive, in order to take appropriate measures towards the use of a global system.

[1] Directive 89/617/EEC, OJ 357, 7.12.1989, p. 28.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Green Paper on Radio Spectrum Policy in the context of European Community policies such as telecommunications, broadcasting, transport, and R&D'

(1999/C 169/02)

On 15 December 1998 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Communities, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, drew up its opinion on 13 April 1999. The rapporteur was Ms Thompson.

At its 363rd plenary session (meeting of 28 April 1999) the Economic and Social Committee adopted the following opinion by 66 votes to 1 with 1 abstention.

1. **Introduction**

1.1. The Green Paper on Convergence between telecommunication, media and information technologies [1] and other Community documents have in recent years highlighted the use of radio spectrum and the complex decision making that exists in this important economic and social area. There is massive expansion, major economic activity, and therefore a need for a review.

1.2. Countries historically co-ordinate the use of the radio spectrum in the framework of the International Telecommunication Union (ITU), a specialized body of the United Nations. In World Radiocommunications Conferences (WRC) of ITU, 186 countries biannually adopt measures in order to achieve international harmonization. In Europe, 43 countries, including the Member States, co-ordinate the use of the radio spectrum in the framework of the European Conference of Postal and Telecommunications administrations (CEPT) and its sub-committee, the European Radiocommunications Committee (ERC).

1.3. During the next two years there will be some important policy discussions: the '99 Review' for the Telecommunications Sector, important work in the transport sector, and the forthcoming World Radiocommunications Conference WRC – 2000.

1.4. The use of spectrum has become a major issue in Member States, the EU, the wider Europe, and globally. Technical improvements, and business and consumer demand over the last few years have made spectrum a very scarce resource. Inevitably different patterns of regulations and uses have developed nationally and internationally. In Europe CEPT has been able to ensure proper use and a reduction of technical problems. Any objective view of the current position would show that decisions about spectrum have a political, social, economic and technical component.

1.5. The European Union has a substantial interest in the development of a consistent radio spectrum policy as it is the backbone for a wide range of industrial activities in sectors such as telecommunications, broadcasting, transport, R&D and services of general interest.

1.6. The Green Paper seeks to identify how best to approach and implement spectrum policy at EU level.

1.7. In the changing environment Europe faces new challenges:

— The number of new systems both commercial and non-commercial is increasing.

— Globalisation increases the need for international co-operation.

2. **The Commission's Green Paper**

2.1. *The EU and radio spectrum*

2.1.1. The location and amount of radio spectrum allocated for each service may differ between countries and only a small amount of the radio spectrum is harmonized among countries.

2.1.2. EU action on radio spectrum differs significantly across sectors as the following examples show:

2.1.2.1. In telecommunications the number of applicants has increased due to technical innovation and the global liberalisation of telecommunications markets.

[1] COM(1997) 623 final; ESC opinion in OJ C 214, 10.6.1998, p. 79.

2.1.2.2. In contrast, radio spectrum availability for broadcasting has so far, except for a Council Resolution on public service broadcasting [1], not been addressed in the EU as an issue requiring political or legislative action.

2.1.2.3. Transport policies, in turn, benefit from radio spectrum being available on an almost exclusive and international basis.

2.1.2.4. Although earth observation and radio astronomy receive considerable EU funding, the radio spectrum available for these activities is under pressure.

2.2. *EU policy on radio spectrum. Issues for comments*

2.2.1. The European Commission invites comment on five key issues:

— strategic planning of the use of radio spectrum,

— harmonisation of radio spectrum allocation,

— radio spectrum assignment and licensing,

— radio equipment and standards,

— the institutional framework for radio spectrum co-ordination.

2.3. An overview of EU policies involving radio spectrum is given in Annex I of the Green Paper.

3. **General Comments**

3.1. The Committee welcomes the Commission's Green Paper and agrees that there is a need for a full debate on spectrum use.

3.2. In the light of the importance of the five areas mentioned in point 2.2.1 for a range of EU policies it is important that the EU plays an enhanced role in spectrum policy. This needs to build on the good work already undertaken particularly by CEPT and its sub-committees.

3.3. How spectrum decisions are currently taken through ITU, WRC and CEPT/ERC needs to be examined and there is a strong case for the EU to have more direct involvement in the development of radio spectrum strategies. The current process is clearly outlined in the Green Paper.

3.4. There needs to be a balance between the current technical assessment procedure and possible future more political, economic and social procedures for this scarce resource.

3.5. In spectrum policy today, the value of radio spectrum is not a predominant factor commonly taken into account, even though the relevant authorities increasingly use auctions and sales of defined and regulated licences for the use of spectrum. However, the Committee warns against this having a negative impact on employment or leading to increased costs for consumers.

3.6. Some of the key issues listed in the Green Paper conflict with each other; for example it is not always possible to reflect the economic value of radio spectrum and at the same time provide adequate spectrum for public interest, though it is apparent that the convergence of services using radio spectrum increasingly will become a reality.

3.7. Decisions in this area are of vast importance. Sometimes these are of a financial nature involving millions of Euros and sometimes of social importance such as old people's alarms or the use of radio frequencies for small scale community radio.

3.8. It is very apparent that EU objectives will not always be met within the current regulatory framework.

3.9. Areas that are particularly affected are:

— new developments and competition,

— establishing a clear legal framework,

— helping to balance Member States and European needs,

— strengthening the EU's role in global forum,

— technical standards and harmonization.

3.10. It is apparent that if the EU divides spectrum into five main areas strongly influenced by research [2]:

— telecommunications,

— broadcasting,

— transport,

— Government (defence, and law and order), and

— R&D,

the EU's ability to influence each area will be different.

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[1] Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting; OJ C 30, 5.2.1999, p. 1.

[2] See the Fifth Framework Programme of the European Community for research, technological development and demonstration activities (1998 to 2002), OJ L 26, 1.2.1999, p. 1. ESC opinion on the 'Fifth Framework Programme for RTD (1998 to 2002) — specific programmes' — OJ C 407, 28.12.1998, p. 123. ESC opinion on the 'Fifth Framework Programme for RTD (1998 to 2002) — scientific and technological objectives', OJ C 355, 21.11.1997, p. 38.

3.11. The Committee feels that there should be a mechanism to allow the EU a fuller role in spectrum policy. This is such a vast and complex area that it would be inappropriate for the EU to undertake a detailed management role, often undertaken competently by the CEPT/ERC and Member States Governments themselves. There is a role that needs to be played bringing in the important dimensions of economic, political and social considerations. This role will also enhance the single market, competitiveness, Europe's position in the global market and strengthen the EU's position in relevant international fora.

3.12. The Committee would support mechanisms that include this process, but would want to ensure that any new role the EU takes on in this field fully takes into account Member States activities and the mechanisms that currently exist.

3.13. The Committee will want any mechanism to be clear, open and transparent to ensure non-discrimination. Also current mechanisms must be made more open and transparent, so those that are applying to use spectrum have a clear understanding. This will also help to highlight how economic and social considerations are taken into account.

3.14. The Committee feels that it is important that good practice in spectrum management is shared across Member States and the EU should facilitate this. For example, in the allocation of radio licenses it is important to develop the social as well as the economic context. Socially there needs to be a commitment to diversity, which includes culture, type of program format and ownership. [1]

4. **Specific Comments**

4.1. The Green Paper underestimates national Government's potential concern about changes in spectrum allocation because increasingly spectrum allocation has been used to raise Government finance.

4.2. It is worthwhile considering that where the relevant authorities sell or auction licenses for the use of spectrum a significant percentage of these funds be earmarked for specific related activities such as R&D, rather than the funds going exclusively to national exchequers.

4.3. 'Re-farming' proposals should, in the main, be market led. Any other proposals need to clearly convince current users of the economic benefits of spectrum change if it directly involves them in additional costs.

4.4. Where spectrum harmonisation occurs economic benefits would accrue. Standardisation would enhance the EU's position, but it must be noted that the direct economic benefits would be marginal. Radio spectrum harmonisation and equipment standards can result in significant benefits for the end user and sometimes in economic terms. Standards development should to a large extent be market led.

4.5. The Green Paper does not fully quantify the potential benefits from the use of digital technology. Which frequency bands will be freed and how will they be used in the future?

4.5.1. Any improved framework needs to be able to accommodate the very fast rate of technological development. Though it is very difficult with any degree of certainty to predict future developments in this area, it is an appropriate role for the EU to undertake.

4.6. The Committee wants to ensure the highest level of protection and public health. The Committee is aware of the work undertaken concerning the health considerations of the electromagnetic fields [2] and looks forward to strong and clear policies and continuous monitoring and research in this area.

4.7. Any changes to the current decision making process must adhere to the EU's policy of subsidiarity.

5. **Conclusions**

5.1. Radio spectrum is the backbone for a very wide range of different important industrial sectors. Currently decisions are made mainly on technical grounds and it is the Committees opinion that future decisions need to reflect the economic, social and political importance of spectrum usage.

5.2. The Committee feels that a fund should be set up for specific activities such as R&D and that this fund is financed by taking a percentage of the money that authorities gain, when they sell or auction licenses for the use of spectrum.

5.3. Any changes to the current decision making processes need to take into account CEPT's and ERC's role and avoid the EU becoming involved in massive detail of spectrum management. The EU in the telecommunications sector does play a role in harmonizing the availability of radio spectrum.

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[1] The ESC is preparing an own-initiative opinion on 'Pluralism and concentration in the media'.

[2] COM(1998) 268 final 'Proposal for a Council Recommendation on the limitation of exposure of the general public to electromagnetic fields 0 Hz-300 GHz'.

5.4. The Committee is of the opinion that the EU needs to play an enhanced and better co-ordinated role in spectrum policy by developing a transparent framework that emphasizes the economic, social and political aspect. The technological side also needs to be integrated into this planning framework, so that it takes into account the latest development in technology and in some instances it will need to predict future technological developments.

Brussels, 28 April 1999.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No. 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation' [1]

(1999/C 169/03)

On 10 March 1999 the Council decided to consult the Economic and Social Committee, under Article 84 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 1999. The rapporteur was Mr Decaillon.

At its 363rd plenary session (meeting of 28 April 1999) the Economic and Social Committee adopted the following opinion by 76 votes to one, with one abstention.

1. **Introduction**

1.1. Council Regulation (EEC) No. 3922/91 [2] provides the instrument by which harmonized technical requirements and administrative procedures (JARs) worked out by the Joint Aviation Authorities (JAA) can be incorporated into Community legislation. An amendment proposed in 1996 [3] to include the new JARs on light aircraft and helicopters was blocked by some Member States who wish first to include a common certification procedure in the JAA administrative regulation (JAR 21), specifying implementation procedures for the JARs. Nevertheless, in 1996 the Commission made one amendment necessitated by scientific and technical progress [4] and plans another for 1999.

2. **Gist of the Commission document**

2.1. No technical revision of JAR 145 (approved maintenance organizations) was possible as the latest amendments adopted by the JAA on Member State recognition of certification established by third country organizations are incompatible with Community competencies in this area.

2.2. Given the European Community's external competencies as confirmed by European Court of Justice case law, it will have to negotiate and manage appropriate bilateral agreements. This will not be possible in the near future. Consequently, it is proposed (new Article 7 bis) that the Member States be

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(1) OJ C 44, 18.2.1999, p. 10.
(2) Council Regulation (EEC) No. 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation — OJ L 373, 31.12.91, p. 4 — ESC Opinion — OJ C 159, 17.6.1991.
(3) Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No. 3922/91 on the harmonization of technical requirements and administrative procedures in the field of civil aviation (COM(96) 186 final — 96/0119 (SYN) — ESC Opinion — OJ C 30, 30.1.1997.
(4) Commission Regulation (EC) No. 2176/96 of 13 November 1996 amending to scientific and technical progress Council Regulation (EEC) No. 3922/91 — OJ L 291, 14.11.1996, p. 15.

empowered to recognise the approvals granted to foreign products, organizations and personnel. Such practice should be subject to Community surveillance.

2.3. In order to ensure surveillance, such bilateral agreements must be notified to the Commission and to the Member States in order to allow an *a priori* examination. The Commission must ensure that the approval granted does not affect the level of safety specified by the present regulation, that it does not give an unfair advantage to a third country, and that it is not contrary to Community policy vis-à-vis this third country.

2.4. When doing so, the Commission will be assisted by a committee of Member State representatives. In order to set up this consultative committee instead of the regulatory committee set up under Regulation (EEC) 3922/91, Articles 9, 11 and 12 will have to be redrafted.

3. **General comments**

3.1. As in its previous opinions, the Economic and Social Committee endorses the objectives of a high level of security in civil aviation and freedom of movement for the aviation products and services described above. Whilst recognizing that Regulation 3922/91 has provided progress in these areas, the Committee wishes to highlight once again the problems already experienced in the operation of the previous regulation, particularly in publishing and translating the JARs contained or to be contained in the regulation.

3.2. The Committee welcomes, subject to the following remarks, the proposal for a Council regulation which, in the absence of bilateral agreements between the Community and third countries, recognizes approval granted under bilateral agreements — subject to Community surveillance — between Member States and third countries. This would clear the way for the incorporation of the technical modifications provided for under JAR 145. The amended regulation would subsequently pave the way for the incorporation of other JARs already partly drafted by JAA Member State representatives.

3.3. Approval or acceptance of an organization on the basis of approval granted by the competent authorities of a third country, as provided for under the new Article 7 bis, must not alter the economic climate, cause social disruption or impact negatively on employment in the Community. The Committee therefore calls for research to be undertaken into the possible impact in the social sphere.

3.4. Regarding the status of the committee, the ESC would reiterate the recommendation made in its earlier opinion [1] that the 'committee should be of a regulatory nature', in view of the highly specialized, technical nature of Regulation 3922/91. The inclusion of the new Article 7 bis means that the Commission is pressing more for a consultative committee. Echoing the ESC opinion, the regulation adopted on 16 December 1991 provides for a regulatory committee. In the light of the new information, the ESC sees no reason to water down the regulatory nature of the existing committee by transforming it into a consultative committee.

[1] Council Regulation (EEC) No. 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation — OJ L 373, 31.12.91, p. 4 — ESC Opinion — OJ C 159, 17.6.1991.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on measures to promote and provide information on agricultural products in third countries'

(1999/C 169/04)

On 1 April 1999 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 April 1999. The rapporteur was Mr Espuny Moyano.

At its 363rd plenary session of 28 and 29 April 1999 (meeting of 29 April 1999) the Economic and Social Committee adopted the following opinion by 78 votes to three, with nine abstentions.

1. **Introduction**

1.1. The proposal for a regulation creates a Community instrument for the promotion of agricultural products in third countries, through the total or partial Community funding of measures that promote or provide general information about such products. The measures, which are based on principles of subsidiarity and complementarity, will help to consolidate the image of Community products by giving added value to those measures already taken by the national authorities and the economic operators concerned.

1.2. The proposal for a regulation is limited to the drawing up of general criteria for the selection of:

1.2.1. products likely to benefit from this promotional instrument of the Community, i.e. products intended for direct consumption or processing where there are potential markets and, in particular, where no export refunds are required; and typical or quality products manifesting high added value.

1.2.2. markets of third countries where measures promoting and providing information about Community agricultural products are planned, i.e. markets where there is significant actual or potential demand.

1.3. Implementation of the promotional and information campaigns will be carried out over three basic phases:

1.3.1. Every two years the Commission will select eligible products and markets based on procedures involving the Management Committees responsible for the sectors concerned. Consultation of the Standing Group on the Promotion of Agricultural Products of the Advisory Committee on Agricultural Product Health and Safety will be optional.

1.3.2. The Commission will also have the task of approving the concrete promotional and information programmes proposed by the trade or inter-trade bodies representing the sector or sectors concerned and with the prior approval of the Member States concerned. The Commission will only be able to approve the programmes after it has informed the Management Committees of the sectors in question and, where appropriate, after consulting the Advisory Committee on Agricultural Product Health and Safety.

1.3.3. The tasks of managing and implementing the selected measures will, on the basis of an open or restricted invitation to tender, be assigned by the Commission to a body or bodies with specialist knowledge of the products and markets concerned, and with sufficient resources to implement the measures. As far as the olive oil sector is concerned, a provision explicitly enables the International Olive Oil Council to carry out this task.

1.4. With the exception of certain specific measures to be financed 100 % by the Community, the other measures would be part-financed as follows:

1.4.1. The Community's contribution would not exceed 50% of the real cost of the measures, with a degressive rate falling from 60 % to 40 % in the case of multiannual programmes.

1.4.2. The contribution of the Member States concerned would not exceed 20 %.

1.4.3. The remaining balance of the real cost of the measures would be borne by the private organization or organizations promoting the campaign. In certain duly justified cases, where the programme concerned is clearly of Community interest, the private organizations promoting the campaign might bear that part of the funding covered by the Member States.

1.5. The proposal for a regulation stipulates that every two years the Commission shall present to the Council and to Parliament a report on the application of the proposed measures.

1.6. Finally, the amount charged to the EC budget for the Community's financial contribution will be 15 million EUR annually for the period between the years 2000 and 2003.

2. **General comments**

2.1. The ESC welcomes this initiative at a time when the Common Agricultural Policy is going through a critical phase, with radical changes needing to be completed within the next few years.

2.2. These changes, which are designed to put the finishing touches to the European Union's new agricultural and agri-food model, will need to focus on bolstering the central pillars of that model, including the Union's role as an exporter of agri-food products.

2.3. To achieve this, it is necessary to improve the competitiveness of Europe's agricultural and agri-food sector both within the single market and in non-EU countries and to maintain the reputation Europe has acquired over recent times for being a world agricultural leader.

2.4. The Committee supports the idea that one of the best ways of maintaining and improving Europe's position is to support its export drive. Support is needed for the following reasons:

2.4.1. European agricultural, agri-food and forestry products undoubtedly offer wide variety and high quality, which is an excellent reason why they should be promoted and why their consumption should be encouraged in third countries.

2.4.2. All countries in the world, and especially our leading commercial partners and competitors (USA, Japan, Canada...), have a long-standing policy of actively promoting their products.

2.4.3. Product-promotion policies are neutral in the eyes of the World Trade Organization (WTO) and would undoubtedly help the European Union to foster the image and quality of our products on international markets.

2.4.4. There is also a general tendency to reduce export subsidies under the Marrakesh Agreement.

2.4.5. Finally, the promotion of EU agricultural, agri-food and forestry products in third countries would be a way of backing Member States' own export campaigns and this would be consistent with the principles of subsidiarity and complementarity.

2.5. If the European Union wishes to effectively step up its exports of Community agricultural, agri-food and forestry products, it is essential that its promotional activities are complementary to, and co-ordinated with, action already taken by Member States, agricultural organizations and their own enterprises in third countries. Only in this way will it be possible to develop a common approach that takes advantage of synergies and provides added value. With this in mind,

2.5.1. subsidiarity and complementarity must be the leading principles guiding the Community's promotion of agricultural products in third countries.

2.5.2. the initiative should be pursued on the basis of the co-financing principle since this makes it possible not only to pool financial resources but ensures, in the interests of effective action, that all the parties concerned are involved and shoulder their responsibilities.

2.6. Finally, we would emphasize that although public Community and national levels all have a role to play, it is ultimately the private component of product promotion that holds the key. The general campaign to promote agricultural products, which is supported both by the Union and by the Member States, in fact needs to be complemented by private investment, which means taking the promotion of individual product brands to be the keystone of the whole edifice.

2.7. Finally, the Committee considers that it is essential for the Community to set aside the necessary funds if its promotional policy is, with a minimum degree of effectiveness, to achieve the objective of improving the competitiveness of Community agricultural products. The Committee notes with disappointment, however, that the Commission's proposed budget is clearly inadequate.

3. **Specific comments**

3.1. Measures to promote or provide information on agricultural products 'shall not be directed towards particular brand names' (Article 1(2)); however, in the interests of complementarity and the effectiveness of the multiplier effect derived from combining Community action with national and private initiatives, such a provision must not automatically result in the exclusion of general measures forming part of more extensive promotional programmes that include brand components and are, in the last analysis, the ultimate objective of promotional activities.

3.2. The measures set out in Article 2 of the proposal coincide to a large extent with traditional, generally accepted policy instruments for product promotion. The ESC nevertheless considers that the following points should be included to clarify and complete the list:

3.2.1. The ESC approves the intention to focus Community action on the provision of general and common information on the quality, hygiene and food safety aspects of European products, but we should not forget at the same time to also disseminate the cultural values inherent in such products.

3.2.2. The market studies referred to in Article 2(e) should not only aim to provide a more accurate picture of third-country demand, they should also analyse distribution channels and the conditions governing access to markets and related problems (tariff and non-tariff barriers, tax systems, investment arrangements, etc.).

3.2.3. The promotion of workshops, meetings and seminars intended for selected target groups (importers, retailers, doctors, restaurant owners, the specialised press....) as well as other opinion-formers, in order to inform them of the virtues of EU agri-food products.

3.2.4. Sending sales representatives abroad and inviting buyers to the Community.

3.2.5. Although 'studies to evaluate the result of the promotional and information measures' (Article 2(g)) are an adequate instrument for testing the effectiveness of measures, they are not promotional measures in the strict sense of the term. The ESC proposed instead that sufficient funds be set

aside to pay for an independent enquiry into the effectiveness of the results of the programmes. Because of this — and in any case — the budget allocated to this regulation needs to be higher than the funding level proposed by the Commission.

3.3. With regard to the criteria for choosing suitable third countries (Article 4), particular consideration should be given to markets where there is actual or potential demand and where promotional activities are already being carried out by the Member States and their economic operators in order to facilitate and consolidate market penetration there. In the case of developing countries, promotional activities should always be sensitive to the need for endogenous development and preference should be given to EU products that are complementary to, rather than identical with, home-grown products.

3.4. Given the co-financing arrangements proposed by the Commission, it is vitally important for the Member States, and the private organizations located in the Member States, to be actively involved in the decisions regarding the selection of products and markets (Article 5), programmes (Article 7), and the bodies responsible for managing and implementing the measures and evaluating the results (Article 8). To this end the ESC proposes:

3.4.1. that an ad hoc, horizontal Management Committee for Product Promotion be set up, which would a) guarantee the involvement of national experts competent in the promotion of agricultural products in third countries, and b) aim to ensure that Community action is coherent and co-ordinated;

3.4.2. that consultation of the Standing Group on the Promotion of Agricultural Products of the Advisory Committee on Agricultural Product Health and Safety be mandatory and not just optional, as the Commission proposes.

3.5. The ESC endorses the provision whereby the Community may carry out promotional work in the olive oil and table olive sector through the International Olive Oil Council, given the excellent results achieved by this body to date. The ESC calls upon the Commission to consider the case for also using the International Olive Oil Council for promotional work within the EU.

3.6. The ESC supports the co-financing proposal of the Commission, especially since a financial commitment on the part of economic operators is a means of ensuring their active participation, the proper use of financial resources, and the effective achievement of promotional objectives. However, the financial participation of Member States may, if appropriate, be optional.

3.7. Finally, convinced as it is that the instrument in question has an important role to play in improving the competitiveness of European agricultural products, the ESC considers that the budget is too small to achieve the proposed objectives, especially if one takes into account the budget savings stemming from the reduction of export subsidies. In view of these circumstances,

3.7.1. the ESC calls upon the Commission, Parliament and Council to make an effort to increase the level of funding provided that this is not detrimental to the current funding of promotional activities within the European Union.

3.7.2. the ESC is convinced that the periodic assessment of the results of applying this regulation will lead to a sustained increase in funding.

4. **Final considerations**

4.1. The promotion of EU agri-food products in third countries is going to have to play an important role in the revamped Common Agricultural Policy if we wish to see the Union continuing to play a leading role in world agricultural markets.

4.2. Given the current and future restrictions imposed by GATT, the sector will only increase its competitiveness if flexible, modern and adequately funded instruments — similar to those already employed by our principal competitors — are employed in opening up new outlets in third countries.

4.3. EU-Member State complementarity and subsidiarity are the golden rules for common action of any description. It therefore makes sense for the Community authorities, national authorities and trade organizations to run this initiative in common, working in a co-ordinated fashion to maximise its benefits.

4.4. The involvement of the private sector is essential at the stages of planning, devising and financing programmes and actions. This financial commitment is not only a guarantee of involvement, it is also a way of ensuring achievement of the ultimate objective — support for European products, specialities and typical, high-quality brands.

Brussels, 29 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the opinion of the Economic and Social Committee

The following amendment to the Section opinion was defeated.

Point 4.1

Add after 'the promotion of EU agri-food products in third countries' the words: ', in addition to export refunds'.

Reason

The European Parliament adopted an amendment in plenary session to the effect that the European Commission should study the possibility of dismantling export refunds and of employing some of the resources freed up by this for promotional purposes.

Although the European Commission has already responded negatively to this amendment, it is important for the ESC to take a stand on this, and to emphasise the importance of the two instruments, which are entirely separate but complementary, and of an active European export policy, consisting of export refunds and promotional measures.

Result of the vote:

For: 27, against: 31, abstentions: 32.

Opinion of the Economic and Social Committee on the 'Proposal for a Council recommendation providing for minimum criteria for environmental inspections in the Member States'

(1999/C 169/05)

On 9 February 1999 the Council decided to consult the Economic and Social Committee, under Article 130s of the Treaty establishing the European Economic Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 April 1999. The rapporteur was Mrs Sánchez Miguel and the co-rapporteurs Mr Pezzini and Mrs Santiago.

At its 363rd plenary session (meeting of 28 April 1999) the Economic and Social Committee adopted the following opinion by 84 votes to three with two abstentions.

1. **Introduction**

1.1. The implementation and enforcement of Community environmental standards are delegated to the Member States in line with the principle of subsidiarity. However, in view of the increasing damage to the environment, thought must be given to the need for the competent Community authorities to push ahead not only with the harmonization of divergent national legislative models, but also with the creation of Community information and monitoring systems to ensure that the Member States comply with Community environmental standards.

1.2. It should be noted that the Commission communication on implementing Community environmental law [1] announced measures to harmonize existing Member State inspection systems by laying down minimum criteria for environmental inspections, to be drawn up by IMPEL [2]. In its opinion [3] on this communication the Committee argued that the European Environment Agency should also undertake this task as it has detailed information on the situation in the Member States.

1.3. The need for harmonization is apparent from the measures envisaged in the Commission proposal. Its aim is to establish some minimum criteria for environmental inspections carried out in the Member States in the various sectors into which responsibility is divided. These criteria — which have been proposed by IMPEL — concern the frequency of inspections, the information required, publication of findings, etc. The proposal is also intended to establish some minimum rules for publicising the results, aimed at the general public and more specifically at environmental organisations.

1.4. It should be pointed out, however, that in this first stage the scope of the proposal is confined to air, water and soil pollution from point sources covered by Community legislation ('controlled installations'); diffuse sources are not included.

1.5. The inspection of these installations will entail checking compliance with Community environmental legislation and the provisions enacted by national authorities in implementation thereof. 'Environmental inspection' will also include monitoring the impact of controlled installations on the environment with a view to making recommendations as to measures which may be taken in the event of non-compliance.

1.6. There are two types of inspection: routine, i.e. part of a planned programme, and non-routine, i.e. carried out in response to a complaint or accident.

1.7. The legal basis for the proposal is Articles 130r and 130s of the Treaty which refer to the implementation of Community environmental policy, although Articles 155, 169 and 171, which empower the Commission to supervise the transposition of Community into national law, would also apply.

1.8. It must be stressed that inspection is the sole responsibility of the Member States. For this reason the Commission has opted for a recommendation which lays down minimum standards for existing (or new) inspections in the Member States so as not to impinge on their sovereignty in this matter.

2. **Comments on the proposed measures**

2.1. With regard to informing the public (Art. IV.1 and especially VI.2), which is covered by Directive 90/313/EEC on the freedom of access to information on the environment, the Committee considers that more stress should be placed on

[1] COM(96) 500 final, 22.10.96.
[2] Implementation and Enforcement of Environmental Law.
[3] OJ C 206, 7.7.1997.

publicising the inspection activities and that above all the legitimate right to request such information should be clearly defined, seeing that in practice it is often refused.

2.2. With regard to the inspection criteria proposed by the Commission (Art. 5), the Committee proposes adding that the authorities responsible for the inspections should apply to those enterprises which voluntarily join the eco-management and audit scheme [1] (EMAS) the same inspection methods as are already used in the EMAS. This would encourage a greater number of enterprises to join the scheme which has scarcely been used so far in some Member States.

2.3. The Committee approves recommendation VIII on the reporting of environmental inspection activities in general. This is a positive step in that it enables a check to be made on the level of compliance with the regulations. It also approves the actions proposed in the event of non-compliance.

2.4. Non-routine site visits (Art. V.3) may be regarded as playing a fundamental preventive role, since the cooperation of environmental organizations and the public will make for better monitoring of compliance with the regulations. Account should also be taken of the role that workers' organizations could play here, in that it is the workers who suffer directly from the effects of non-compliance with environmental standards and who are more knowledgeable than other members of public. Recommendation V.3 should therefore contain a new paragraph recognizing the right of workers' organizations in inspected enterprises and installations to file a complaint.

2.5. Inspection reports could be better publicised (Art. VI.2) if they were included in a European register as urged by the ESC in its opinion on the implementation of environmental legislation [2]. The European Environment Agency could undertake this task.

2.6. The Committee welcomes the inclusion of a recommendation on co-operation between the Member States (Art. III.2), since the exchange of information, including carrying out joint inspections, will have a greater impact on the environment, bearing in mind that many natural resources, water, air, etc. know no frontiers. In this connection the ESC would stress the importance of extending this co-operation to the applicant countries so as to help them make the changes necessary to bring all their environmental legislation into line with the Community acquis.

2.7. By the same token, the Committee considers that minimum criteria should be laid down for harmonising the training of inspectors.

3. **Conclusions**

3.1. The ESC considers that this recommendation will help to ensure that environmental legislation is implemented properly; the Commission must, however, push ahead with the planned subsequent stages, especially the inspection of diffuse sources of pollution.

3.2. In order to reduce the current differences in inspection duties between the Member States, it is also important to lay down some common criteria for environmental inspectors, in particular their qualifications and training, as is being done through IMPEL.

3.3. With regard to point VII on investigations of serious accidents and incidents, the Commission should be able, with due respect for the principle of subsidiarity, to take action to remedy any shortcomings in the inspections in some Member States, using the Treaty articles which allow it to monitor the transposition and implementation of Community legislation.

3.4. The Committee would stress the need for harmonization between the criteria for the EMAS procedure and those for this type of inspection; this would avoid a duplication of bureaucratic procedures and, above all, would encourage SMEs to apply the criteria voluntarily because they would be able to adjust more easily to voluntary criteria. It would also help to align the information obtained from each type of inspection.

3.5. In line with its earlier stance in the opinion on the implementation of Community environmental legislation, the Committee calls for centralization of the information obtained from environmental inspections in a European register which could be held by the European Environment Agency. This register would be kept separately from the national data bases provided for in point VI.2 of the proposed recommendation, thus improving the information available to all organizations concerned about the environment.

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[1] Council Regulation EEC No. 1836/93, OJ L 168, 10.7.1993.
[2] OJ C 206, 7.7.1997.

3.6. The Committee supports the Commission's proposal to review the implementation of the recommendation after two years. If need be, the case for a framework directive could be examined then.

Brussels, 28 April 1999.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Decision establishing a Community action programme in the field of civil protection' ([1])

(1999/C 169/06)

On 9 February 1999 the Council decided to consult the Economic and Social Committee, under Article 235 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 April 1999. The rapporteur was Mrs zu Eulenburg, with Mr Liverani and Mr Wilkinson acting as co-rapporteurs.

At its 363rd plenary session (meeting of 28 April 1999), the Economic and Social Committee adopted the following opinion with 87 votes in favour and three abstentions.

1. **The Commission proposal**

1.1. Civil protection measures, which are provided for in the Treaty Article 3f, are necessary to deal with major natural disasters such as floods, earthquakes, landslides and forest fires which devastate areas of the European Union time and again. Since 1985 the Community has therefore been working to establish effective mechanisms, based on the principle of subsidiarity, for reinforcing co-operation between civil protection players in the EU.

1.2. In 1998, following the adoption by the Council of a two-year civil protection action programme (1998-99), the Commission launched several major projects in close cooperation with the civil protection authorities in the Member States. The purpose of all these projects is to establish common rules and guidelines and provide for networking between experts in the relevant fields.

1.3. The civil protection action programme now proposed by the Commission will cover the period 2000-2004 and will help to ensure that the results of the aforementioned major projects have a greater and more lasting effect. It will also help launch new major projects in the fields of prevention, preparedness, response and restoration and will contribute to the continuation of existing good practices (establishment of common rules and guidelines, training, pilot projects, support actions, etc.). The Commission proposes the allocation of an annual budget of 2 million euros for this programme.

2. **General comments**

2.1. *Introduction*

2.1.1. No matter what the causes of a disaster may be, it is a fact that the effects — and thus the threat which the disaster poses to man and his natural environment — are for ever increasing and, because of their complexity, are becoming more and more difficult to assess and contain.

2.1.2. It is not possible to react effectively and efficiently to a disaster unless the response has been planned well in advance on the basis of a comprehensive risk assessment and unless the measures to be taken by the organizations, institutions and government bodies involved have been coordinated and carefully rehearsed.

2.1.3. Disasters obviously know no national frontiers. If EU citizens, who are exposed to a wide range of risks, are to be effectively protected and far-reaching threats to the environment are to be averted or at least minimised, assistance must not be jeopardised by Member States failing to cooperate or adopting different plans of action.

([1]) OJ C 28, 3.2.1999, p. 29.

2.2. *Objectives of the action programme*

2.2.1. Full support is given to the objectives of the programme as listed in point 7 of the Commission's explanatory memorandum. These objectives tally with the criteria indicated in Article 3(2).

2.2.2. At a time when resources are becoming increasingly scarce, it would seem vital to exploit synergies and involve other bodies and institutions in providing efficient assistance. Efforts made by the EU to this effect should be supported.

2.3. *Content of the action programme*

2.3.1. The Committee thinks that research and technological development should be taken into consideration.

2.3.2. Since the response to a disaster has to be based on a comprehensive and sound risk analysis if it is to be effective and efficient, Member States should be encouraged to support research projects which investigate the cross-border effects of natural and technological disasters.

2.3.3. If civil protection in the EU is to be developed properly, it would seem expedient to carry out a comprehensive risk analysis as the basis for adequate precautionary measures.

2.3.4. This should be overseen by an external group of experts from the relevant areas of science, government bodies and NGOs. An addition to this effect should be included in the action programme.

2.3.5. Since disasters are much easier to deal with if Member States' citizens are able to help themselves, public information, training and awareness campaigns in this area are to be endorsed.

2.3.6. Consideration should also be given to involving the general public more in permanent organizational structures, since this would allow potential to be exploited which would otherwise be left untapped.

2.4. *Legal bases*

2.4.1. The legal bases for civil protection should be reviewed, especially in the light of Community enlargement, since Article 235 of the EC Treaty might not be sufficient in future.

2.4.2. Creating a legal basis which can also be used in future, too, for Community civil protection activities should not, however, lead to a move away from the subsidiarity principle, even if technical guidelines and guidelines for responding to disasters would basically make sense — at least in the event of cross-frontier disasters or protective measures.

2.4.3. In addition, national plans and measures should continue to be supported and promoted by Community-wide cooperation.

2.4.4. It is necessary, with a view to the future, to review the present legal bases for an action programme jointly and possibly discuss the need for additional provisions.

2.5. *Future outlook*

2.5.1. The Committee thinks it appropriate to give some thought to the future outlook for civil protection work after a period of assessment.

2.5.2. Steps must be taken to ensure that knowledge and experience acquired in the course of the action programme is put into practice after the programme has ended.

3. **Summary of the opinion**

3.1. As the experiences of recent years clearly show, disasters and their effects on society have become increasingly complex in Europe, too.

3.2. Comprehensive risk analyses are available only rarely and cannot therefore provide a sound basis for civil protection planning.

3.3. For this reason it makes sense to not simply focus research into disasters on risk prevention. Interdisciplinary risk analyses must also be given priority.

3.4. In addition, synergies must be exploited in every respect, i.e. other Community policies and measures must be applied to civil protection.

3.5. In the event of a disaster the initial assistance comes from the local population. This means that EU citizens must be taught how to help themselves more and must be made more aware of the fact that civil protection concerns each and every one of us.

3.6. Cooperation between Member States in the field of civil protection should also be promoted beyond the period covered by the planned action programme.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council decision setting up a Community framework for cooperation in the field of accidental marine pollution' [1]

(1999/C 169/07)

On 9 February 1999 the Council decided to consult the Economic and Social Committee, under Article 130s(1) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 April 1999. The rapporteur was Mr Wilkinson, the co-rapporteurs Mrs zu Eulenburg and Mr Liverani.

At its 363rd plenary session (meeting of 28 April 1999) the Economic and Social Committee adopted the following opinion by 89 votes in favour, 0 against and 2 abstentions.

1. Background

1.1. Community action in the field of accidental marine pollution has existed since a 1978 Council Resolution to set up an action programme. The aim of this programme was to support the efforts of Member States to improve their capabilities to respond to major pollution incidents at sea.

1.2. In 1981 a Community Information System was established. Its purpose was to give Member States the data necessary for dealing with pollution incidents. Its scope was extended in 1986 by including an inventory of resources available.

1.3. In 1987 a Community Task Force, managed by the Commission, was set up to help any Member State facing a marine pollution incident by the rapid secondment of experts from other Member States.

2. The Commission Proposal

2.1. The system has shown its value in both minor and major pollution incidents, but there is now a need to consolidate a simpler and more coherent and transparent framework for cooperation, by bringing the relevant Community Information Systems and Action Programme together into one act. The framework will provide a sound legal basis, while setting out criteria and financing arrangements for actions taken.

2.2. The proposal covers information exchange, training, a Community Task Force, international cooperation and pilot technical development projects. The annual budget proposed is 1 million euro, half of which will fund training and exchanges of experts.

3. General Comments

3.1. The Committee supports the proposed Council decision as a logical and helpful development of a system that is already in place as a means of better protecting the environment. It is important that work in this area should continue in the longer term.

3.2. The Committee notes that the proposals are designed to help in cases of marine pollution from all sources, and whether accidental or deliberate.

3.3. The Committee also notes that the proposals would be helpful to Member States who are party to other international agreements on marine pollution [2], in force or under negotiation.

3.4. It further notes that agreement on defining who is responsible for causing some types of pollution, to establish liability for paying under the 'polluter pays' principle, is still under discussion internationally.

4. Specific Comments

4.1. The proposed budget for the scheme is very modest, bearing in mind what costs may be saved in a single major incident by effective and speedy action.

4.2. Since marine pollution incidents may well involve third countries, it would seem wise to encourage countries which border a Member State to adopt the EU framework, at least as far as the information system is concerned.

4.3. For EU candidate countries, especially those which have coastlines, consideration should also be given to funding

[1] OJ C 25, 30.1.1999, p. 20.

[2] Such as the Bonn Agreement (North Sea), Barcelona Convention (Mediterranean) and Helsinki Convention (Baltic).

their participation, at a limited level, in the training activities which are planned. This funding could come from the budget proposed in COM(1998) 769 final or from other EU sources.

4.4. Further, it would be valuable to keep international organizations, such as IMO, informed of progress in the hope that they may use the EU framework as a model internationally.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Directive 92/117/EEC concerning measures for protection against specified zoonoses and specific zoonotic agents in animals and products of animal origin in order to prevent outbreaks of food-borne infections and intoxications'

(1999/C 169/08)

On 22 April 1999 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 April 1999. The rapporteur was Mr Leif Nielsen.

At its 363rd plenary session (meeting of 28 April 1999), the Economic and Social Committee adopted the following opinion with 93 votes in favour and three abstentions.

1. **Introduction**

1.1. Council Directive 92/117/EEC obliges the Member States to take certain measures for protection against zoonoses and zoonotic agents in animals and products of animal origin to prevent outbreaks of food-borne infections and intoxications. The directive provides for a reporting system on the incidence of zoonoses, as well as the monitoring, control and eradication of certain types of salmonella found in poultry breeding flocks. It also introduces control programmes for other zoonotic agents than salmonella. These require the Commission to follow developments and, inter alia, to draw up guidelines for measures to control zoonoses.

1.2. Although the directive was adopted unanimously by the Council of Ministers, it soon became clear that not all Member States were able to implement the rules it laid down. It was particularly difficult to carry out the requirement to slaughter or destroy poultry flocks infected with salmonella (S. Enteritidis and S. Typhimurium). To date, the directive has only been fully implemented in four Member States. Sweden and Finland obtained indefinite trade guarantees upon accession in 1995. Even though the deadlines were postponed in 1997 by Directive 97/22/EC, a number of Member States have still not submitted their national plans for achieving the objectives of the directive or for implementing its provisions.

1.3. The Commission is now considering a fundamental change to the policy pursued to date and reflecting on the objectives of future strategy. This involves, inter alia, flexibility on how the objectives are achieved, measures to counter the spread of zoonotic agents through trade, prevention of trade disputes with third countries and development of the 'stable to table' principle, including the introduction of codes of good farming practice.

1.4. The Commission was originally supposed to submit a report containing a proposal for a revision of the directive in the light of the experience gained by 1 January 1996. This deadline was extended in 1997, but has now been exceeded by 1½ years. The Commission is now complaining that,

because of the complex nature of the matter, it is still unable to present new proposals, claiming that further reflection is necessary. It therefore proposes a further postponement, allowing it to submit a report including proposals by 31 March 2000. These proposals would then be adopted by the Council no later than 31 December 2000. The Member States are to implement the directive no later than 31 May 2001. The deadline for implementation by third countries importing to the EU is one year after the entry into force of these provisions.

1.5. The Commission has provided funding for the eradication and control of zoonotic diseases in animals and for other programmes aimed at preventing zoonoses. This funding amounts to 36 million EUR in 1999. EC reference laboratories for salmonella and zoonosis epidemiology have also been set up to provide guidance for national laboratories on methods of analysis and comparative studies, as well as training courses and workshops.

2. **General comments**

2.1. In February 1996, the last time the deadlines were extended, the ESC recognised that Directive 92/117/EEC has certain shortcomings and that the failure to implement it fully in some Member States leads to a distortion of competition between producers in the various Member States [1]. The ESC also drew attention to the increasing concern about salmonella among consumers, pointing out that major action was needed to fulfil the Treaty obligation to contribute to a high level of health protection. The ESC emphasized the need to promote and speed up the implementation of control measures on salmonella in all EU Member States. In view of the lack of progress made, these comments are as relevant now as they were three years ago.

2.2. In addition to the provisions of Article 129a of the Treaty, it has been pointed out countless times in recent years, especially in the wake of the BSE crisis, that the EU is expected to ensure a high level of consumer protection and food safety. Zoonoses are one of the chief problem areas in this respect. There are no reliable and comparative figures on the number of cases of illness or death in the EU as a result of zoonoses. Only a small proportion of the cases of illness are reported. Zoonoses are responsible for major healthcare expenditure and loss of working hours, as well as the personal suffering of those concerned and premature death. A rough, unofficial estimate of the number of cases of salmonella-related illness reported in the EU is 200 000 per year. The actual number of cases is thought to be between 10 and 50 times greater and the direct cost is estimated to amount to between 2 and 10 billion EUR per year.

2.3. Eggs and poultry meat are the major cause of salmonella-related illness in most Member States. In 1998 serious salmonella enteridis was therefore a problem in the majority of EU countries. This can probably be attributed to the production of table eggs and could have been prevented if the original guidelines had been followed.

2.4. Despite the fact that a number of private programmes have been implemented, the ESC finds it unacceptable that a number of Member States have been unable to go further towards implementing the 1992 directive and that the Commission did not taken legal action far sooner to enforce implementation and did not submit proposals for changes. This is an illustration of the unacceptable practice current in the EU whereby deadlines are set which neither the institutions not the Member States take seriously. In future, the maximum effort should be made to set realistic deadlines which are then respected.

2.5. The ESC calls upon the Commission to make up for lost time by drawing up the relevant proposals as soon as possible, and feels that the deadlines should be considerably shorter than proposed. Postponing the deadlines further brings with it the risk that Member States will do nothing until the year 2001, allowing the situation to get worse as a result.

2.6. Many zoonoses, such as salmonella, should be eliminated in individual poultry flocks and pig or cattle herds with measures relating to the acquisition of animals, the purchase of feedingstuffs, disinfecting of sheds etc. as well as improved management. Next, measures must be taken during slaughter to prevent, for instance, salmonella in contaminated animals spreading from the throat and intestine to the meat. Finally, action is needed at the subsequent stages of the marketing chain; food preparation hygiene is also very important.

2.7. As things stand at present, specific action could be taken at the slaughter stage which would bring an appreciable improvement in hygiene. The ESC therefore proposes that the Commission initiate such action as soon as possible so that those Member States which have not yet implemented the zoonosis Directive are obliged to submit, without delay, a plan outlining how they first of all intend to implement targeted action at the slaughter stage. The more complex measures required in primary production can then be considered more closely and implemented at a later date. However, the ESC fears that developing a new strategy in this respect, including codes of good farming practice, will be extremely time-consuming.

2.8. The ESC feels it is crucial that the Commission should lose no time in publishing available statistics in this field so that the general public is able to follow developments and see

[1] OJ C 97, 1.4.96, p. 29.

the current state of affairs in the Member States. This overview will also stimulate market forces, as well as business and consumer interests, which have an effect on the production and distribution elements in the whole 'stable to table' chain.

2.9. The objective in the EU is to ensure veterinary harmonisation at a high level. EU action in the field of zoonoses is not in reasonable proportion to efforts being made to combat other infectious diseases in livestock, particularly to take account of the operation of the internal market.

2.10. Rapid action is necessary to solve the question of how to maintain free trade within the internal market while safeguarding those areas of the EU with the best zoonosis profile so that this is not undermined by importing goods infected with zoonotic agents. Countries which, for example, have reduced salmonella to a minimum in domestic animal production, obviously want to demand guarantees with regard to imports both from other Member States and from third countries. Such demands may be difficult to ignore. If this conflict is not resolved, trade guarantees and a consequent regionalization of the internal market could become necessary.

2.11. According to Article 14 of the zoonoses Directive, third countries are to submit a plan giving details of guarantees as regards the incidence of zoonoses and zoonotic agents. This is a condition for being included or remaining on the Community's list of third countries from which imports to the EU are permitted. However, no third country has yet submitted a plan, which means that imports from the third countries in question should be formally stopped. For EU countries which have or are in the process of improving the situation, these imports pose a risk of spreading zoonotic agents, as well as causing uncertainty among consumers and an unfair distortion of competition. In addition, third countries will be able to require guarantees from the EU for EU exports.

2.12. The proposed extension of the deadline until 2002 at the earliest is also quite damaging to the EU's credibility with respect to third countries. Nor can the applicant countries, which are expected to adopt the acquis communautaire, fail to lose respect for EU rules in this vital area, which inevitably creates a precedent, thereby damaging subsequent development.

2.13. Zoonoses in domestic animals lead to increased use of antibiotics. Various international forums have concluded that the use of antibiotics must be restricted as far as possible in order to prevent the development of resistance [1]. Stepping up the fight against zoonoses in domestic animal production will therefore also help to counteract the risk of bacteria developing which are resistant to different known antibiotics, with implications both for animal production and the treatment of human illnesses.

3. **Specific comments**

3.1. The ESC feels that a scientific evaluation should be carried out as soon as possible of Member States' measures to prevent or treat zoonoses in connection with Decision No. 2119/98/EC of the European Parliament and of the Council setting up a network for the epidemiological surveillance and control of communicable diseases in the Community [2].

3.2. In its opinion of February 1996, the ESC called on the Commission and other interested parties to hold a conference on the zoonosis issue. The Committee now repeats that call for a conference, with a view to increasing public awareness of relevant initiatives in the EU. The conference could be organised in conjunction with the ongoing workshops held at the Federal Institute for Health Protection of Consumers and Veterinary Medicine in Berlin (BGVV).

3.3. Made up as it is of different interest groups, the ESC has a major commitment to combating and preventing zoonoses. It would therefore ask to be brought into future discussions in good time with a view to proposing improvements in the fight against zoonoses and to achieving a high level of health protection without distorting internal trade or competition between producers.

3.4. The ESC also calls on the Commission to ensure that food safety is one of the priorities at the coming WTO negotiations. A clear strategy to control zoonoses within the EU is a necessary requirement to back up the EU's international negotiating position.

4. **Conclusion**

4.1. In view of the significance of zoonoses, both in terms of health and economic implications, the ESC regrets that the Commission and the Member States did not make efforts

[1] cf. the ESC opinion of September 1998 on 'Resistance to antibiotics as a threat to public health' (OJ C 407, 28.12.98, p. 7) and the conclusions of the EU conference on 'The Microbial Threat' held in Copenhagen in September 1998.

[2] OJ L 268, 3.10.98.

sooner to achieve the objective set in the 1992 directive. Similarly, it is concerned about a further postponement. With initiatives underway in the Member States to prevent the further spread of zoonoses, the Commission must lose no time in surveying the current state of play and submitting appropriate proposals with a view to bringing the situation under control as soon as possible. Otherwise there is a risk of major problems in the functioning of the internal market. Available statistics should also be published and a scientific conference organised as soon as possible. Early clarification of the EU's policy in this area is also crucially important for its relations with the wider world.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Commission proposal on the prices for agricultural products (1999/2000)' [1]

(1999/C 169/09)

On 23 March 1999 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 April 1999. The rapporteur was Mr Strasser.

At its 363rd plenary session (meeting of 28 April) the Economic and Social Committee adopted the following opinion by 90 votes to two, with four abstentions.

1. **Gist of the Commission proposal**

1.1. *The agricultural economy in 1998*

1.1.1. 1998 was marked by a sharp deterioration in some agricultural markets. In addition, the economic and financial crisis in various non-member countries affected first and foremost the pigmeat and beef sectors.

1.1.2. Following two record crops in succession, world cereal market prices fell to their lowest level for five years and growth in demand on world markets slowed down. Cereal intervention stocks, particularly of barley and rye, climbed to 16 million tonnes towards the end of 1998 and likewise dragged down market prices in the sector.

1.1.3. Whilst the prices of most products fell in 1998, the only sectors where producer prices were up on the previous year were fruit (with the exception of citrus fruit), wine, potatoes and beef/veal.

1.2. *Trends in agricultural production*

1.2.1. With a harvest of around 208 million tonnes (2.1 % up on 1997), 1998 set a new record for cereal production as a result of higher yields (up 4.2 %). Oilseed production also went up, rising by 6.5 % to reach 15.5 million tonnes, of which 14.2 million tonnes were used as food.

1.2.2. 1998, however, saw steep falls in the production of sugarbeet (7.5 % reduction in areas sown and 5 % reduction in yields) and olive oil (down 500 000 tonnes).

1.2.3. It is estimated that milk production will turn out to have dropped slightly (to 120 million tonnes) in 1998, whilst beef/veal production is likely to have fallen by 4.2% to 7.5 million tonnes.

1.2.4. Pigmeat production on the other hand is estimated to have risen by 6.5 %, poultrymeat by 2.1 %, and sheepmeat/-goatmeat by 2.9 %.

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[1] OJ C 59, 1.3.1999, p.1-27.

1.3. *Farm incomes*

1.3.1. According to initial Eurostat estimates, in 1998 agricultural incomes in the EU, measured as average income per person engaged in agriculture, fell in real terms by 3.9 %. The Commission attributes this to the following factors:

— a substantial fall in meat prices (particularly pigmeat which is down by 26.1 %)

— a decline in the level of agricultural subsidies (down by 6.2 %)

— a marked slowdown in the contraction of the agricultural labour force.

1.3.2. Subsidies account on average for 29 % of agricultural income in the European Union. This reflects a partial shift from market price support to direct income payments.

1.4. *Budget situation*

1.4.1. The Commission estimates that the requirements of the EAGGF Guarantee Section for 1999 amount to 40,953 million EUR, which is well within the agricultural guideline of 45,188 million EUR.

1.5. *The Commission's price proposals*

1.5.1. The Commission points out that now reforms have been carried through, only a few market management parameters still need to be fixed annually. It also refers to discussions on the proposed reforms contained in Agenda 2000. The Commission therefore proposes, with one or two exceptions, that where a decision is still necessary, amounts should remain the same whether in respect of institutional prices, subsidies or monthly increments for cereals and rice.

1.5.2. In the cereals sector, the Commission proposes only one amendment to existing regulations, namely a change in the 'irrigated area' provision, whereby compensatory payments should, in line with Agenda 2000, be reduced proportionately (on a one to one basis) in the event of an overshooting of 'irrigated area ceilings' in 1999/2000, and not be reduced by one and a half times the rate of the overrun, as provided for in Regulation (EEC) No. 1765/92.

1.5.3. In the sugar sector the Commission proposes that the monthly reimbursement of storage costs be reduced from 0.38 EUR to 0.33 EUR per 100 kg to reflect lower interest rates. The Commission also recommends that no (higher) derived intervention price for white sugar be proposed in the case of Italy, which is not a deficit area.

1.5.4. Although the Commission takes the view that a similar proposal might have been made to reduce monthly increments in the intervention price for rice (given the fall in the intervention price in this sector), no such proposal has been put forward because of the difficult situation on the rice market.

1.5.5. In the wine sector a package of transitional measures has been proposed, pending the entry into force on 1 August 2000 of the reformed common wine regime.

1.5.6. In view of the fact that the Commission tabled a proposal on 6 November 1998 fixing the guarantee thresholds (quotas) and the premiums for the years 1999, 2000 and 2001 in the tobacco sector, it was deemed unnecessary to include a proposal in the 1999/2000 price package.

1.5.7. In the seeds sector, a few changes to the parent regulation were proposed. In the case of rice and hemp, the aim is to bring seed legislation into line with the legislation on individual products.

2. **General comments**

2.1. The Economic and Social Committee has already expressed detailed views on the Commission's proposals for reforms under Agenda 2000. It therefore does not wish to use the Opinion on the 1999/2000 price package as an excuse to dwell once more on individual aspects of the CAP reform. The Committee nevertheless regrets that, with a few exceptions, the Commission has not shown much willingness to take on board the arguments and proposals put forward by the Committee and other bodies on alternative ways of reforming the CAP. A positive development however is the recognition by farm ministers and the heads of sate or government that amendments will have to be made to the Commission proposals and the realisation that such amendments partly coincide with the changes deemed by the Committee to be necessary when drawing up opinions on legislative proposals for CAP reform.

2.2. The Committee views with great concern trends in farm incomes in the majority of EU Member States, with incomes falling particularly steeply in some individual countries. The sharp decline in these incomes is all the more disturbing as CAP reforms and the price trends of major agricultural products in 1999 suggest that such incomes will be subject to further downward pressure.

In this connection it has become clear that institutional prices, expressed in national currencies, have fallen as a result of the introduction of the EUR in most EU Member States. Only in a few Member States have the losses resulting from currency revaluations been marked up.

2.3. The Commission cites 'a marked slowdown in the reduction in the agricultural labour force' as one of the main reasons for the fall in farm incomes.

Rising unemployment in the EU continues to be one of our major unresolved problems. Many rural areas are particularly beset by unemployment so that in many areas it has been, and is, becoming more and more difficult for farmers to find opportunities for earning income outside agriculture. This has inevitably had an impact on structural change in agriculture. The Committee therefore believes that a solution to the problem of deteriorating incomes should not be sought by encouraging the agricultural labour force to desert farming in large numbers. In any case, the main cause of the decline in income levels over the past few years has been the drop in the price of key farm products.

The Committee would point out in this context that the ESC Opinion on the 1997/98 farm price proposals contained the suggestion that income trends in agriculture be looked at in conjunction with their impact on employment.

2.4. The Committee does not agree with the Commission that the partial shift from market price support to direct income support 'has generally contributed to the consolidation of agricultural income and the reduction in its variability'. The massive fall in incomes in some Member States does not support this thesis. Even higher direct payments are unable to make up for the loss of income resulting from market fluctuations, which is why it is essential to make systematic use of available market management instruments.

2.5. The Committee is well aware that unforeseeable events such as the financial crises in south-east Asia and the crisis in Russia have had a powerful effect on the market outlets for and hence prices of major agricultural products. These developments run counter to the assumptions made in the Commission's 'long-term prospects'-assumptions which formed, inter alia, some of the thinking behind CAP reforms. Events over the previous year also show that by and large Europe cannot simply abolish the instruments it uses to organise common agricultural markets. Such instruments after all are needed:

— to regulate production appropriately,

— to ensure that EU farmers are not fully exposed to the vagaries of world markets.

The Committee notes with interest that the USA has changed the new direction of its agricultural policy — which came into existence with the Fair Trading Act — in order to react to the crisis on major agricultural markets. Unlike the EU, the US administration has acted rapidly, thereby giving American agriculture a competitive advantage.

2.6. The Committee criticises the Commission for, in any case, reacting too slowly to the crises in pigmeat markets. The criticism applies both in respect of (a) the granting of subsidies for private storage and (b) the increase in export refunds.

2.6.1. The Committee expects the Commission to make timely use of the existing market organization machinery to prevent sharp price falls which would result in loss of income for a majority of farmers.

2.7. The Committee has repeatedly asked the Commission to undertake an in-depth study of the impact of the CAP and CAP reforms (particularly when agricultural producer prices are being reduced) on consumer prices, food quality, health, the environment, employment and rural areas. The Committee continues to believe that a comprehensive analysis of this kind is necessary and so regrets that the Commission has not yet come up with anything.

2.8. The Committee would point out that in 1998, as in the past, no additional measures were introduced to hasten the development of renewable energy sources, and renewable raw materials for industrial purposes. It is regrettable that no such measures are provided for in the present price package. Conditions for the development of renewable raw materials continue, on the contrary, to change every year so that there is no such thing as stable conditions for the development of this increasingly important branch of production. There has, moreover, been a sharp decline in the non-food use of oilseeds.

2.9. The Committee hopes that, despite the collective resignation of the European Commission, the work that lies ahead will be properly carried out and there will be no legal uncertainty in areas of importance to agriculture and the foodstuffs sector.

3. **Specific comments**

3.1. *Cereals*

3.1.1. The Committee notes that in the cereals sector the Commission does not propose any changes in institutional prices or premiums.

3.1.2. The Committee is pleased that the Commission has not reduced the monthly increments. Maintaining such increments at least at their present level would likewise be of great importance for the future.

3.1.3. The Committee agrees with the Commission proposal that penalties for the overrun of irrigated areas should be on a one-to-one basis and not disproportionate, which simplifies the system.

3.1.4. Since the downward pressure on cereal prices has continued to gain momentum and intervention stocks in the current marketing year have seen a further rise, the Committee is in favour both of keeping the set-aside rate at 10 % for the 2000 harvest and of acting to stabilise markets. The Committee would also like to see the maximum moisture content for cereal intervention set — as before — at 15 %.

3.2. *Rice*

3.2.1. The Committee welcomes the Commission proposal not to reduce the monthly increments in order to cope with the difficult situation on the rice market.

3.2.2. In view of this difficult situation, the Committee hopes that all instruments will be fully utilised to stabilise the market pending reform of the common organisation of the rice market.

3.3. *Sugar*

3.3.1. The Committee believes that the Commission should re-examine whether the proposed reduction of the monthly storage refund is really justifiable. The stable interest rate situation referred to by the Commission is, inter alia, at odds with the fact that the introduction of the Euro on 1 January 1999 resulted in an average 1.54 % fall in beet and sugar prices in terms of national currencies. A close look also needs to be taken at whether conditions in Italy really warrant an abandonment of the derived intervention price for white sugar.

3.4. *Fibre plants*

3.4.1. The Committee welcomes the fact that the Commission has not this time proposed a reduction of premiums, as it did in previous years.

3.4.2. The Committee proposes that administrative procedures be simplified, for example by ensuring that applications for premiums do not involve filling in more than one form. The Committee further notes that current rules on coefficients for flax entail costly red tape, which puts some EU regions at a competitive disadvantage. Here too the Commission should look at the possibility of simplifying administration by doing away with the system of coefficients.

3.5. *Wine*

3.5.1. The Committee agrees with the Commission that existing regulations should remain in place until the reform comes into force. For this same reason the related measures and national derogations set out in the price package should likewise be maintained.

Brussels, 28 April 1999.

3.6. *Fruit and vegetables*

3.6.1. The Committee notes that the Commission proposes no changes to the common organisation of the fruit and vegetables regime following the 1997 reform.

3.6.2. Reducing budget expenditure on this important sector can be criticised for several reasons, one of which is the strong pressure in prices resulting from changes in the system of premiums for citrus fruits.

3.7. *Seeds*

3.7.1. The Committee notes the Commission's proposals for amendments to the basic Regulation on seeds. It also points out that the proposal concerning Lolium perenne L. entails a reduction in aid for a certain category of seed, thereby penalizing a large number of seed growers.

3.8. *Animal products*

3.8.1. The Committee notes that the Commission proposes no changes in institutional prices or premiums in the case of milk, beef/veal, and sheepmeat/goatmeat. Given the importance of the prices of animal products for farm incomes, the Committee calls upon the Commission to make full use of every available instrument to ease market situations, particularly through improvements in pigmeat markets.

3.8.2. The Committee advocates a continuation of the special measures applicable in the new German Länder with regard to the 90-animal farm threshold.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on

— the 'Proposal for a European Parliament and Council Regulation amending Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community',

— the 'Proposal for a European Parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families', and

— the 'Proposal for a European Parliament and Council Decision establishing an Advisory Committee on freedom of movement and social security for Community workers and amending Council Regulations (EEC) No. 1612/68 and (EEC) No. 1408/71'

(1999/C 169/10)

On 12 November 1998 the Council decided to consult the Economic and Social Committee, under Article 49 of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 April 1999. The rapporteur was Mr Vinay.

At its 363rd plenary session (meeting of 28 April 1999), the Economic and Social Committee adopted the following opinion by 89 votes in favour with four abstentions.

1. **Introduction**

1.1. The Commission proposal behind this opinion is prompted by a basic observation: that one of the purposes of the right to free movement for workers within the Union, as enshrined in Article 48 of the Treaty and implemented since 1968, is to give every European citizen the right to move to any Member State to work or look for work, while guaranteeing full equality of treatment and the complete integration of workers and their families into the host state.

1.2. Full enjoyment of such rights within the EU is currently hindered by rules that are now out-dated: a fact brought to light by a number of Court of Justice rulings. Gaps in the system have also been identified by the Commission's High Level Panel (HLP), set up in 1996 under Simone Veil to pinpoint areas where free movement legislation was lagging behind or lacking.

1.3. The panel's report stressed the need to ensure that the necessary legislative changes reflected not only case-law developments but also political and sociological trends in the EU since 1968.

1.4. Having repeatedly called for an improvement in legislation on the free movement of workers, the European Parliament approved the Commission's proposals on Regulation (EEC) No. 1612/68 and Directive 68/369/EEC [1] back in 1989 and has since continued to push for the legal framework to be strengthened and properly implemented by the Member States.

1.5. Full enjoyment of the right to free movement is all the more important in the light of the guidelines on employment adopted following the Luxembourg European Council in November 1997. In the face of critical levels of unemployment throughout the Union, these emphasized the importance of enhancing the capacity of workers, and the unemployed in particular, to integrate into the labour market. Any obstacles to opportunities for training and experience, not least relating to mobility, must therefore be removed as part of a European strategy for employment.

1.6. In 1997, following the Parliament's lead and with reference to the recommendations of the HLP, the Commission adopted an action plan announcing that it would be proposing legislation to improve conditions for the exercise of the right of free movement. In May 1998, the Committee approved [2] the broad lines of the action plan, while making a few specific recommendations.

[1] Parliament opinion of 14 February 1989 (A3-0013/90).
[2] OJ C 235, 27.7.1998.

1.7. The Commission proposals addressed by the present opinion mirror large chunks of the strategy outlined in the action plan. They amend and update Regulation No. 1612/68 and Directive No. 68/360 while streamlining the institutional side by merging the advisory committees on free movement and social security.

1.8. In more precise terms, the proposals seek to clarify and simplify the rules on right of residence while rationalizing procedures for granting residence permits for EU workers, including those who go to another Member State to seek employment or take vocational training courses.

1.9. They also square existing rules on guaranteed equal treatment for Union citizens with the case-law built up by a large number of Court of Justice rulings.

1.10. The proposals introduce rules designed to safeguard and encourage occupational mobility, enabling workers in any Member State to benefit from employment-related facts or circumstances arising in any other Member State.

1.11. Specific measures have been designed to ensure that workers are not disadvantaged through living in one country and working in another.

1.12. The proposed legislation also extends the rights of workers' family members, with new safeguards for the right to integration and to equal treatment as regards all financial, fiscal, social or cultural benefits, and, in particular, the right to engage in a self employed activity. Spouses of Community citizens also retain their rights in the event of divorce.

1.13. The proposals do away with barriers relating to age and economic status when determining which family members have the right to live with an employed worker.

1.14. A new clause outlaws all forms of discrimination based on race, religion, gender, age, disability or sexual orientation where the right to free movement is exercised.

1.15. Following specific recommendations from the social partners, the existing tripartite advisory committees on free movement and social security will be merged, in order to rationalize and improve their operations.

2. **General comments**

2.1. The Economic and Social Committee welcomes and endorses the overall package of Commission proposals to amend Council Regulation (EEC) No 1612/68, Directive 68/360/EEC and Council Regulation (EEC) No 1408/71.

2.2. The Committee has already examined and assessed the extensive case-law of the Court of Justice and the High Level Panel (Veil) report. It is also fully aware of the political worth of the Amsterdam Treaty's provision to bolster the right to freedom of movement. As mentioned above, the Committee, has already endorsed the action plan for the free movement of workers, while recommending that greater attention be paid to the various points made in the Veil report.

2.3. The proposals in question are specifically aimed at removing the remaining obstacles to the free movement of employees and their families, particularly regarding their material status in law in any EU state other than their state of origin.

2.3.1. The Committee agrees with the Commission that the proposed revision of measures pertaining to 'workers' and their families is consistent with the goal of full exercise of the right of Union citizens to move and reside freely throughout the EU. Having already emphasized this need in the past, the Committee once more urges the Commission to follow up its current proposals with accompanying measures based on Article 8(a) of the Treaty (re-numbered Article 18 by the Amsterdam Treaty) to establish a single legal status for European citizenship and full freedom of movement.

2.4. To be more specific, the Committee backs the proposed revision in its aim to facilitate free movement for job seekers, trainees and people on a series of short-term contracts, to extend and improve the right of residence of family members, dependent or otherwise, and other people who may be dependent or live under the same roof in the Member State of origin, to reinforce equal treatment and equivalence of situations for employment purposes, in both the public and private sectors, to give adequate consideration to the issue of frontier workers, and to simplify administrative procedures that inhibit free movement.

2.5. The Committee reiterates the view expressed in its last opinion, that no single market worthy of the name should pose restrictions on the free movement of workers. This is all

the more essential in the light of the need to enhance employability, as mentioned in the Luxembourg European Council's employment guidelines. The greater availability of opportunities for training, free of national red tape, represents a fundamental tool for matching labour supply and demand more closely, and for enabling the European workforce to retrain on an ongoing and comprehensive basis, essential in a period of constant technological change.

2.6. Although the proposals considered in this opinion are definitely a major step forward, they do not totally remove all the practical barriers to transnational mobility. For instance, certain fiscal aspects and a number of points relating to social protection and supplementary pensions in particular must be tackled once and for all. The Committee is convinced of the need to draw up a legal framework to coordinate these matters at EU level and, therefore, reiterates its call for a single European commissioner to be appointed to coordinate all free movement issues.

2.7. The Committee echoes its previous opinion in reminding the Commission that the issue of the rights and protection of third country workers, legally resident in any Member State, should also be taken into account within this context.

2.8. The Committee recommends that the Commission work together with the other European institutions to encourage and supervise the rapid and full implementation of the new measures in all the Member States. The effective implementation of the new laws should be backed up using existing information tools and by means of a specific campaign. Another important dimension is the need to encourage authorities to pool information and to address specific urgent issues jointly, by setting up contact points for instance.

2.9. The Committee has frequently pointed out that assisting and defending the rights of employees in the various Member States above and beyond the planned advisory committees is a matter of significant concern to the social partners, particularly when work and employment issues are at stake. Against that backdrop, they should be encouraged to participate on a regular basis in Community programmes and initiatives directly connected with the future application of the new laws in question.

2.10. The Committee agrees with the decision to use the Article 189b procedure for the adoption of these measures, as already recommended for other related areas.

3. **Specific comments**

3.1. *Proposal for a European Parliament and Council Regulation amending Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community — 98/0229 (COD)*

3.1.1. The stronger, clearer and more direct rewording of Article 1(a), defined as the non-discrimination clause, is in line with the Treaty of Amsterdam and buttresses free movement with fundamental principles for the safeguard of human rights, which the Commission had already incorporated in its action plan to combat racism. The Committee is fully behind the Commission's move.

3.1.2. The Committee takes this opportunity to call for the term 'migrant worker' to be replaced in future by that of 'Community worker'.

3.1.3. As in previous opinions, the Committee approves of the changes to Article 1 regarding the affirmation of the right to free movement of job seekers and trainees. It also welcomes the new second paragraph to Article 5, providing for access to training opportunities for people seeking employment in other Member States. The Committee hopes that the recent Council agreement to promote 'European pathways' [1] will give greater freedom of movement to trainees and apprentices.

3.1.3.1. The Committee would again underline the need to extend and reinforce the Eures network, in both public and private sectors, and to generate synergies between Eures, Interreg and other Community programmes in order to provide an efficient interface between cross-border training projects and the European labour market.

3.1.4. The changes to Article 7 on the assimilation of the material rights of workers exercising their right to free movement with those of national workers, with particular emphasis on conditions of employment and work, promotion, health and safety, training and education and financial, fiscal, social, cultural and other advantages, and to Article 8, on public office, also constitute a major step forward.

3.1.5. If implemented assiduously, the amendments to Article 7 regarding the equivalence of situations for professional purposes will significantly reduce forms of discrimination that persist, particularly in the public sector. However, as the Commission itself points out, the directives on this subject have, up to now, principally made an impact on the regulated professions and the recognition of certain qualifications and diplomas.

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[1] Council Decision of 21 December 1998, OJ L 17, 22.1.1999. See also ESC opinion, OJ C 214, 10.7.1998.

3.1.5.1. The question of employees and non-regulated professionals gaining recognition for professional qualifications acquired in the private sector is still unresolved. The Commission must develop further initiatives on this matter, but room can already be made for a relevant and proactive contribution from the social partners and collective bargaining.

3.1.6. The proposals to establish individual direct rights of family members, set out in amended Articles 10, 11 and 12 on legal certainty, the right to engage in self-employed and other economic activity, access to training and education, and the retention of independent rights of residence, match the hopes and demands expressed in both the Veil report and the Committee's last opinion.

3.1.6.1. There is some confusion, however, on the criteria for continued independent right of residence, and the right to take up an economic activity, in the event of divorce. Article 10 (4) states that family members, who are not nationals of a Member State, retain the right of residence even if the marriage is dissolved, on condition that they have lived in the host country for three consecutive years. The reason for this time-based condition is unclear. More unclear still is the requirement, in amended Article 11, that, in the event of divorce, any family member may take up any activity as an employed or self-employed person as long as they have lived in the territory for a minimum of five consecutive years. Divorced family members should be given the opportunity to support themselves and any other family members for whom they are responsible by engaging in employed or self-employed work.

3.1.7. The Committee has frequently drawn attention to the problem of frontier workers. The amendments to Article 7(a) reinforce the legal security of such workers. Nevertheless, the Committee would point out that a number of issues still require definitive or satisfactory answers, and it calls on the Commission to take action to identify and clarify all outstanding questions, whether or not they are covered by the present regulation, starting with tax and social security, on the basis of the Veil and European Parliament [1] reports.

3.1.7.1. The recent agreement with Switzerland is welcome but the critical positions in the Principality of Monaco, San Marino and Andorra are still unresolved.

3.1.7.2. In view of the major implications for central and eastern European countries, especially those covered by association agreements, rules on movements of workers will clearly have to be drafted for inclusion in the relevant agreements and treaties.

3.1.7.3. Lastly, the Committee emphasizes the importance of creating the right climate in border regions for social dialogue to have a positive input regarding job growth policies, spatial planning and the implementation of standards, beyond the usual bounds of collective bargaining policy.

3.2. *Proposal for a European Parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families — 98/0230 (COD)*

3.2.1. The amendments to Regulation (EEC) No. 1612/68 examined thus far would not be fully effective or operable unless accompanied by the approval of the proposed amendments to Directive 68/360/EEC.

3.2.2. On movement and right of residence, above and beyond the provisions on the main points, the importance of making a strong stand against the red tape that complicates and thus hinders exercise of the right to free movement has been pointed out time and again, not least in previous Committee opinions.

3.2.3. The Committee therefore welcomes the accompanying measures to facilitate family reunification and the independent right of residence for family members, with the exception of certain points raised in the specific comments on the amendments to Regulation 1612/68.

3.2.4. The perennial problem persists, however, of the visa requirement throughout the Union, even for short journeys, for third country nationals, including the family members of Union citizens, legally resident in a Member State. This issue has already been raised in the Veil Report and previous Committee opinions [2].

3.2.5. The proposal to recognize the right to cumulate periods of work for the purposes of claiming right of residence (Art.6(3)(2)), originates from a major point in the Veil Report, which emphasized the importance of not eroding the rights of workers who have built up the requisite period of work within a reasonable amount of time, though with interruptions. The proposal takes the suggestion on board but its wording is vague. It would be clearer to state simply that once they had worked the necessary time, as indicated in the document, the above workers would acquire the right to be issued with a residence permit; providing, depending on their circumstances, they did not already belong to one of the various categories applying to employed or unemployed workers who are legitimately present on the territory.

[1] Resolution on the situation of frontier workers in the European Union — Rapporteur: Anne Van Lancker — PE 225.852/fin., 6 May 1998.

[2] ESC opinions: OJ C 153, 28.5.1996; OJ C 157, 25.5.1998; OJ C 235, 27.7.1998.

3.2.6. The proposed right of residence for job seekers from other Member States, for automatically renewable periods of at least six months, and residence permits for trainees, are an essential extension of the right to free movement.

3.2.7. The proposed bolstering of the right of residence and streamlining of administrative procedures are considered useful and timely. In the Committee's view, the extension and coming of age of the legal concept of European citizenship, exemplified by the present proposal, must be accompanied by a widespread growth in awareness and practical ease of its day-to-day application. Even the most flawless laws fail if they do not translate easily and naturally into the practical experience of the men and women they are written for.

3.3. *Proposal for a European Parliament and Council Decision establishing an Advisory Committee on freedom of movement and social security for Community workers and amending Council Regulations (EEC) No. 1612/68 and (EEC) No. 1408/71*

3.3.1. In keeping with its earlier opinion and the request made at the time by the social partners, the Committee endorses the Commission's proposal to establish an advisory committee on free movement and social security, to collate and rationalize existing structures. It stresses the need for the new committee to be given full and immediate operational capacity and to act as a permanent and effective interface between the social partners and the Commission.

3.3.2. The Committee shares the Commission's belief that this joint structure marks a major step towards a global approach encompassing all areas connected with the right to freedom of movement.

3.3.3. The new Advisory Committee must be sufficiently representative of the complex labour market it will be called upon to examine and assess; it must plan its activities so as to boost its capacity to address the various issues from a distinctly European standpoint. It must also be free to act with the necessary flexibility. To that end, further streamlining of the committee may be beneficial, though clearly it must not be made any less representative.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Regulation (EEC) No. 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin'

(1999/C 169/11)

On 1 April 1999 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Economic and Social Committee decided to appoint Mr Braghin to act as rapporteur-general for this work.

At its 363rd plenary session of 28 and 29 April 1999 (meeting of 28 April) the Economic and Social Committee adopted the following opinion with 57 votes in favour and four abstentions.

1. Introduction

1.1. The proposed Council Regulation (EC) is intended to adjust the procedures laid down in Regulation (EEC) No. 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin. It aims to make them consistent with the new set of rules resulting from the entry into force of Council Regulation (EEC) No. 2309/93 of 22 July 1993, which established a European Agency for the Evaluation of Medicinal Products and gave it the task of handling matters concerning the determination of the maximum residue limits acceptable.

1.2. This adjustment, somewhat late in the day, concerns a situation which has already been in existence for four years. The proposal does not relate to changes in the technical/scientific aspects and criteria on which the maximum residue limits of veterinary medicinal products considered acceptable in foodstuffs of animal origin are based; it solely concerns procedural changes to preserve the Regulation's legal consistency while at the same time facilitating compliance with the commitments made in connection with the Uruguay Round multilateral negotiations (transparency of health measures via the introduction of reasonable periods of assigning areas of competence).

1.3. The Economic and Social Committee welcomes this move to achieve clearer and consistent rules, a matter of particular importance for both human and animal health.

2. Specific comments

2.1. The ESC observes that Article 1 duly sets out the roles of the European Agency for the Evaluation of Medicinal Products, the applicant and the Commission; in particular, the ESC endorses the proposed fixed period (120 days) for the completion of the procedure for establishing the maximum acceptable residue limits.

2.2. The ESC would stress the importance of respecting the timelimits set in the revised Article 7 of Regulation (EEC) 2377/90 to ensure transparency and legal certainty in a sector which has vital health implications and hopes that all bodies involved make it a priority in their work to meet the specified deadlines.

2.3. The ESC feels that set deadlines will enhance the system's credibility and provide the applicant with greater safeguards, bearing in mind the more onerous responsibilities that the EAEMP will be required to shoulder in examining applications for determining, amending or extending maximum residue limits.

2.4. The new version of the first sentence of Article 9(2) could be improved if the vague phrase 'shall as soon as possible examine...' were replaced by specific, binding deadlines, possibly spelling out the technical/scientific details in the sections concerning assessment of the justification of such grounds and consultation of the Committee for Veterinary Medicinal Products. The ESC suggests that the procedure should not exceed a set length of 120 days in all, as is provided for in the Agency's opinion.

2.5. The ESC particularly welcomes the proposed publication of a summary of the assessment of the safety of the

substances concerned, while respecting the confidential nature of any proprietary data, and suggests that such summaries should be included in the annual report of the European Agency for the Evaluation of Medicinal Products.

Brussels, 28 April 1999.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on 'Public sector information: a key resource for Europe — Green Paper on public sector information in the information society'

(1999/C 169/12)

On 22 January 1999 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on 'Public sector information: a key resource for Europe — Green Paper on public sector information in the information society'.

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 13 April 1999. The rapporteur was Mr Hernández Bataller.

At its 363rd plenary session (meeting of 28 April 1999), the Economic and Social Committee adopted the following opinion, with 71 votes in favour and one abstention.

1. **Introduction**

1.1. Transparency in public business is nowadays clearly an inescapable feature of democracy, regardless of the political complexion of the government and the territorial structure of public authorities. Administrative transparency helps to give those authorities greater rigour and effectiveness in their day-to-day work.

1.2. Encouraging a policy of transparency is regarded throughout the European Union as essential in order to gain public confidence and support in the process of European integration.

1.3. Declaration No. 17 appended to the Final Act of the Treaty on European Union refers to the right of access to information, with a recommendation to the Commission that it submit to the Council a report on means of improving public access to the information held by the institutions.

1.4. The European Council meetings in Birmingham and Edinburgh in the course of 1992, again urged the Commission to continue its work on improving access to the information available to the Community institutions. The Commission, for its part, adopted Communication 93/C 156/05 [1] on public access to the institutions' documents, which contained the results of a study on citizens' access to documents in the individual Member States and concluded that better access to documents should be developed at Community level; this was followed up by Communication 93/C 166/04 [2] on openness in the Community, setting out the basic principles governing access to documents.

1.5. On 6 December 1993 the Council and the Commission approved a code of conduct on public access to the documents of both institutions: this was a 'code of conduct' in that it laid down the principles which should govern such access. As a result, the Council's new rules of procedure included certain rules on public access to documents, which were developed by Council Decision d93/731/EC [3] on public access to Council documents.

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[1] COM(93) 191 final: Public Access to the Institutions' Documents — Communication to the Council, the Parliament and the Economic and Social Committee

[2] OJ C 166, 17.06.1993, p. 4: Communication to the Council, the Parliament and the Economic and Social Committee: Openness in the Community.

[3] OJ L 340, 31.12.1993, p. 43-44: Council Decision of 20 December 1993 on public access to Council documents.

1.6. Article 191a of the Treaty of Amsterdam lays down that every citizen of the Union has the right of access to the documents of the European Parliament, the Council and the Commission, subject to certain principles and conditions [1].

2. **Contents of the green paper**

2.1. The green paper on public sector information in the information society is a result on the one hand of the process of making the Community institutions more transparent, and on the other of the need to provide the European information industry with adequate instruments to assist its development.

2.2. The green paper expresses the view that the Treaty establishing the European Community confers a number of rights on citizens of the Union. However, there are considerable practical difficulties hindering the exercise of those rights. These difficulties arise mainly from a lack of transparency vis-à-vis the public, firms and all levels of administration.

2.3. In the light of the differences between Member States in terms of information policy, and the fact that they could hinder the development of the European information industry, the green paper aims to spark a debate among economic and social operators on access to information and how to make the most of that information in an increasingly complex environment.

2.4. Access to public sector information is very important for enterprises in Europe, since the complete opening of the European market in telecommunications services and data, with greater freedom of access to administrative information and other data held by public authorities, will improve the competitiveness of enterprises. For example, the European Patents Office reckons that more than 18bn EUR are wasted each year on searches that have already been carried out.

2.5. The green paper maintains that links must be forged between the three main players in the information chain: the public sector, the private sector and the general public. Access to public sector information must therefore be rapid and straightforward throughout Europe, to promote the competitiveness of European businesses that use public sector information in their countries.

2.6. The process of European integration itself calls for an exchange of information between national public sector bodies and for access for citizens and firms to such data and documents.

2.7. The divergences which the green paper detects between Member States affect the conditions for access to information, and practice and policy as regards dissemination and use, and could hamper the further growth of the European information industry.

2.7.1. The divergences noted by the green paper are in the following areas:

— the definition of the public sector and its scope,

— right of access,

— time, quantity and format,

— the pricing of public sector information,

— competition,

— protection of privacy,

— inventories and directories of public sector information,

— liability,

— appropriate Community action.

3. **General comments**

3.1. *Preliminary considerations*

3.1.1. The Economic and Social Committee shares the Commission's anxieties as expressed in the green paper, and supports

— the right to information, of which the right to access to documents is a part, constitutes a basic human right and forms part of the rights of European citizenship. The Committee takes the view that it should always be interpreted in the manner most favourable to the citizen, in accordance with democratic principles and rules,

— not only greater public sector (including Community) transparency vis-à-vis citizens but also the possibility of encouraging an environment more favourable to business initiative and growth — especially in small and medium-sized enterprises — in the Community as a whole, and an active employment policy.

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[1] Article 191a of the Treaty, adopted at Amsterdam:
1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.
2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 189b within two years of the entry into force of the Treaty of Amsterdam.
3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

3.1.2. The Committee considers that access to public sector information involves:

— accessibility of administrative archives and registers, meaning not just passively making them available but a duty of active promotion designed to facilitate the citizen's access to high-quality information in a practical form,

— equal participation by all operators in relation to sources of administrative information,

— the public obligation to protect freedom of access.

3.1.3. The development of the information society, and particularly of Internet, offers new opportunities that public sectors, including the Community, must exploit in their policies and procedures relating to information. With the help of Internet the right to information can be not merely formal, but also more easily reachable for a large majority of the citizens.

3.2. *Definition of the public sector*

3.2.1. It is difficult to exclude altogether any of the three criteria listed in the green paper (functional, legalist/institutional or financial approach). At all events, the sector should include any body, regardless of its legal form, which has been commissioned, by decision of a public authority and under its control, to carry out a service of public benefit, and which has for that purpose greater powers than would apply to transactions between individuals [1].

3.2.2. The public sector should include not only publicly-owned enterprises whose legal form is private but also private enterprises acting by virtue of administrative delegation or authorization, in managing that aspect of public services which excludes any commercial function, and the legislative and judicial authorities. These last should be included because of the regulatory effect of their earlier decisions, and legal acts with commercial implications for third parties (e.g. auctions by order of a court).

3.2.3. The Committee takes the view that, although it is difficult to exclude any of the three criteria listed in the green paper, the subjects concerned should in future be specified by means of a mixed institutional/functional list, which the Member States should draw up and present to the Commission in accordance with the principle of subsidiarity.

3.2.4. At all events, the Committee takes the view that transparency of access to public documentation should apply to all bodies with public sector legal status, at their various levels of administration (European, national, regional and local).

3.3. *The existence of barriers at European level*

3.3.1. The Committee considers that the current differing conditions for access to public sector information in the Member States create barriers at European level. Consequently, any physical or legal person who so requests should have the right — without having to prove a specific interest — of access to public sector information, since this is a right inherent in European citizenship which can help to raise the quality of life and ensure harmonious, balanced development of economic activities, together with possibilities for individual and collective participation in public life.

3.3.2. The Committee is aware that, despite the existence of the current barriers, a category of firms is developing which specialize in research for information by request and which operate on the market in an innovative way, making the most of existing technological development.

3.3.3. The Committee considers it important for there to be meticulous regulation of the right of access and exception to it, which should be subject to the following principles:

— the principle of limited exceptions: exceptions will have to be limited in number and defined in detail, thus avoiding ambiguities,

— the principle of restrictive interpretation: exceptions should be made only when they are strictly necessary, and they should never be interpreted in an extensive sense,

— the principle of proportionality: exceptions should only apply to that information or part of information that really is prejudicial,

— the principle of proof: it will not be enough for the public sector to give a reason for withholding information; it will also have to prove that such information is prejudicial,

— the principle of control: there must be stricter legal controls on the public sector denying the right of access to information; in particular, the use of conciliation bodies, such as the ombudsman, should be encouraged.

4. **Large data bases (information on information)**

The setting up of large data bases (providing information on what information is available) at European level could help European citizens and enterprises to find their way around the available public sector information. The Committee thinks it desirable to set up a 'gateway' in the form of a Europe-wide 'information tree' and the use of appropriate processes and technologies to preserve language diversity in Europe, which will be particularly useful to ordinary people and SMEs.

[1] ECJ: Case C-188/89 Section 20 ('Foster Judgment').

5. **Pricing policies**

5.1. The Committee is aware that the existence of different pricing policies for access to and use of public sector information in the Member States of the Community can create distortions of competition between the various economic operators and creates disparities in the opportunities available to citizens.

5.2. At all events, a distinction must be drawn between information essential to citizens, especially that which relates to the exercise of democratic rights — which could be provided free of charge or, where appropriate, at a greatly reduced price — and information for commercial purposes, the price of which, as it must be readily available, should be based on the costs of printing, updating, retrieval and transmission of data, for which invoices could be issued; or it should be a reasonable market price.

6. **Activities of public sector bodies in the information market**

6.1. Public sector bodies do not create unfair competition at European level when they perform an active dissemination function by publishing and circulating specific information with a view to making facts known, or by implementing public administration measures which can be regarded as activities connected with the civil service or public-interest services.

6.2. All information activities which do not derive from civil service tasks or the provision of public-interest services must be made subject to the provisions of the Treaty, and especially the provisions on competition, to the extent that the application of those provisions does not constitute a *de facto* or *de jure* obstacle to performance of the specific task entrusted to the public sector bodies concerned [1].

6.3. Any special or exclusive rights should be granted using public procedures based on objective, transparent and non-discriminatory criteria, and in all cases the activities of firms with special or exclusive rights must comply with the rules on state aids and, in general, with those on free competition.

6.4. In the case of information for which there is only one source, the Committee takes the view that it should be made available in a reasonable way to all economic operators and citizens by the public sector body holding it.

[1] Art. 90(2) of the EC Treaty.

7. **Data bases**

The different copyright regimes relating to public sector information in Europe can cause barriers to the use of information, since:

— The public sector body may wish to maintain the integrity of the content and thus avoid the accusation of manipulating the information provided, since copyright relates to the data base and not on the selection or arrangement of its contents. This protection through copyright can apply equally to the material needed for the operation or consultation of certain data bases of the *'thesaurus'* type and indexing systems. Moreover, protection under the *'sui generis'* right relates to fields other than those covered by copyright, since the ownership belongs to the maker of the data base.

— Copyright can become a source of income for public sector bodies.

8. **Respect for privacy**

8.1. The current provisions on respect for privacy as regards data bases and telecommunications must be regarded as the minimum protection to be guaranteed by Community law and must be fully applicable to public sector bodies.

8.2. The Committee is in favour of a high level of protection for citizens' privacy, given that this is one of the foundations of a democratic society.

8.3. The Committee takes the view that access for commercial interests to personal data held by the public sector cannot be justified in any case which is not covered by the rules adopted, in particular, in the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46/EC) [2] and the Directive concerning the processing of personal data and the protection of privacy in the telecommunications sector (Directive 97/66/EC) [3].

9. **Liability regimes**

The existence of different liability regimes in the Member States can constitute an obstacle to access to, or exploitation

[2] OJ L 281, 23.11.1995, p. 31-50; Directive 95/46/EC of the European Parliament and of the Council of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

[3] OJ L 024, 30.1.1998, p. 1-8; Directive 97/66/EC of the European Parliament and of the Council of 15.12.1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.

of, public sector information, if activities are carried out in the establishment or head office of the public sector body and when an attempt is made to apply liability rules it turns out that different rules apply to the information intermediary because of his head office's location. This can have the effect that economic operators try to establish themselves where the level of protection is lowest.

10. **Policies pursued by the EU institutions in the field of access**

The Committee regards as inadequate the policies so far pursued by the institutions on the scope of access to and exploitation of information, and thinks it necessary to go further in the direction taken by the Decisions already adopted by the Council and the Commission and initiated by this green paper, in order to guarantee maximum transparency for citizens and the competitiveness of European firms. In the Committee's view the very minimum to be considered should contain the principles set out in point 3.3.3.

11. **Priority actions at European level**

11.1. Given the need for an effective measure to be adopted and the added value which it could provide at European level, the Committee feels that priority should be given to adopting a legal instrument with obligatory force to regulate access to public sector information and its free circulation in the Community, in accordance with the principles of proportionality and subsidiarity.

11.2. The Committee also takes the view that other, complementary, measures could be adopted, such as an exchange of information among public sector bodies with a view to sharing experience, running campaigns to train citizens and make them more aware of existing information sources, and carrying out pilot projects to reveal and co-ordinate the different sources.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Amended proposal for a European Parliament and Council Decision adopting a programme of Community action (the DAPHNE Programme) (2000-2004) on measures aimed to prevent violence against children, young persons and women' [1]

(1999/C 169/13)

On 23 April 1999, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 April 1999. The rapporteur was Ms Wahrolin.

At its 363rd plenary session (meeting of 28 April 1999) the Economic and Social Committee adopted the following opinion by 50 votes to three, with eight abstentions.

1. Introduction

1.1. The Commission has concluded that the appropriate legal base for the DAPHNE Programme — 'a Community action programme (2000-2004) to prevent violence against children, young persons and women' — is Article 129 of the EC Treaty (Public Health), which will shortly be replaced by Article 152 of the Amsterdam Treaty.

1.2. The proposal has therefore been referred back to the Economic and Social Committee. In addition to the amendment to the legal base, the text of the amended proposal contains a number of changes of wording. At its 357th plenary session on 9 September 1998, the Committee unanimously adopted its opinion [2] on the previous Commission proposal (COM(1998) 335 final).

2. General comments

2.1. First of all, the Committee would like to point out that whilst some parts of the amended proposal are now clearer and more structured, others are weaker.

2.2. In changing the legal base to Article 129, the Committee feels there is a risk of downgrading the issue to a public health problem. Violence against children, young persons and women, and sexual exploitation are major problems for society and do not just concern individuals and families (even though the family situation is, of course, in many ways, crucial). Neither is it merely a question of personal injury. As the Committee stressed in its previous opinion on the Daphne Programme, it should be remembered that certain groups are particularly vulnerable to violence and abuse, e.g. people with disabilities and older people.

2.3. The Committee feels that 'public health' must be interpreted in the broad sense, in accordance with the WHO definition (i.e. including physical, mental and social well-being).

2.4. As the Committee pointed out in its earlier opinion, violence against children, young persons and women is a very complex issue, and both causes and symptoms need to be addressed. There are no easy solutions, either for investigating the causes or for dealing with the resulting damage.

3. Specific comments

3.1. Article 1 of the programme includes a reference to the fact that it 'further aims to increase knowledge and expertise at Community level in methods and techniques designed to prevent and mitigate the effects of violence against children, young persons and women.' The Committee welcomes what it feels is a more forceful wording than that of the previous version.

3.2. The Committee believes that greater emphasis should be placed on the perpetrators of violence, and on any initiatives which might be triggered. In this respect, aspects relating to the balance of power between men and women must also be addressed, as advocated by the Committee in point 2.2 of its September 1998 opinion.

3.3. The Committee endorses the proposal under Article 1 to set up multidisciplinary networks, and expresses its support for their declared objectives.

3.4. In its earlier opinion, the Committee highlighted the importance of stepping up cooperation between non-governmental organizations (NGOs) and the authorities. The Committee is pleased to note that this has been provided for in Article 2 of the amended proposal.

3.5. The Committee feels that the objective has been narrowed in the Annex on actions aimed at raising public awareness and the exchange of best practice. The previous version also included the need to address sexual exploitation and other forms of sexual abuse. The Committee calls for a return to the previous wording of the objective in this Annex.

3.6. The wording of the objective now includes a reference to research programmes, which the Committee endorses. The Committee calls for project resources to be made available for research into positive ways of dealing with abusers.

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[1] OJ C 89, 30.3.1999, p. 42.
[2] OJ C 407, 28.12.1998.

3.7. The Committee feels that the scope for international cooperation provided for under Article 7.2 of the Commission's proposal is far too restricted in terms of which countries may participate.

4. **Conclusion**

4.1. In conclusion, the Committee would stress that, subject to the above reservations, it welcomes the programme as a whole. However, it would also point out that the scope of the amended version is more restrictive. Clearly, there is an urgent need to put into place measures to combat all mistreatment such as violence, abuse and sexual exploitation; however, we must not ignore the need to tackle the causes of violence. A shortcoming of the programme is also its failure to regard violence, abuse and sexual exploitation as infringements of human rights.

Brussels, 28 April 1999.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market' [1]

(1999/C 169/14)

On 23 April 1999 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 April 1999. The rapporteur was Mr Glatz.

At its 363rd plenary session (meeting of 29 April 1999), the Economic and Social Committee adopted the following opinion by 115 votes to two, with six abstentions.

1. **Introduction**

1.1. For the people of Europe and for European business, electronic commerce can create opportunities in terms of stronger economic growth, job creation, development prospects for new products and markets, more competitive European companies and a wide supply of goods and services for European consumers.

1.1.1. However, whether electronic commerce actually has the impact outlined above, for example on the jobs front, is contingent on various different factors. The Committee urges the Commission to carry out more intensive studies into this issue, particularly with regard to employment.

1.1.2. Benefits will be felt in particular if Europe manages to secure a strong global position in this field, especially in relation to the USA. As things stand, however, around 80% of electronic commerce is, according to OECD figures, US-generated. It is therefore vital that Europe take steps to ensure that, in future, it can utilize the opportunities presented by electronic commerce, rather than trailing behind the dynamic performance of the United States.

1.2. To bring the possible benefits fully to bear, it is necessary both to eliminate legal constraints on electronic commerce and to create conditions whereby potential users of electronic commercial services (both consumers and businesses) can have confidence in e-commerce. An optimum balance must be found between these two requirements. Given the wide scope of the directive under review and its complex interrelationship with other areas of regulation, a very careful and responsible approach will be needed.

[1] OJ C 30, 5.2.1999, p. 4.

1.3. The aim of the directive is to promote the spread of electronic commerce by helping break down legal barriers to trade. If, however, new distance selling methods are to gain broad acceptance among customers (both consumers and businesses), consideration will clearly also have to focus on ensuring that the consumer and data protection standards which apply to traditional trade are also maintained in the technical environment of electronic commerce and are enforceable in practice.

1.4. The vast majority of people in society are currently without fullaccess to information services. Some sections of the public, particularly older people, cannot be reached by electronic means, or opt exclusively for personal contact with the parties with whom they do business. The Committee feels that non-electronic access to important everyday services (such as running a bank account) must be retained, so that certain groups within society are not precluded from using them. Also, the use of new technologies must not create barriers for certain sections of society, hindering or preventing them from using electronic commerce. European policy must therefore seek to ensure that no sections of society are denied access to information society services because they lack the technology or know-how or because of their economic position.

1.4.1. For consumers, education and training are also essential elements in facilitating wider risk-free access to information society services.

1.5. Global solutions are undoubtedly needed for forms of distribution which, thanks to technology, can so easily transcend national borders; hence the intensive discussion which has emerged recently at various international levels. A whole range of international conferences and forums have been held between governments and interested parties to tackle this issue. These include the OECD conferences held in Turku in November 1997 and Ottowa in October the following year, the G7 ministerial conference in Brussels in February 1995 and the June 1997 ministerial conference in Bonn. Much work in this field has also been initiated under WTO auspices. Of course progress has been made at these levels, but the outcome of the talks and negotiations has currently often been confined to general principles.

1.6. This is why European-level initiatives are also essential if we are to exploit the economic and social opportunities open to Europe. Since electronic commerce profoundly alters business relations and the way in which people live together, Europe has launched a number of schemes designed largely to establish a clear framework for the continued development of this type of commerce. The aim is to promote investments in electronic commercial services which will have a positive impact on EU growth, competitiveness and employment.

1.6.1. These schemes include:

- the Communication on a European initiative in electronic commerce, [1]
- the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — ensuring security and trust in electronic communication — towards a European framework for digital signatures and encryption, [2]
- the Proposal for a European Parliament and Council Directive on a common framework for electronic signatures, [3]
- the Communication — globalization and the information society — the need for strengthened international coordination, [4]
- the proposed action plan on promoting safe use of the internet [5] which aims, through a range of measures, to boost trust in the networks and is thus an element in the drive to promote electronic commerce,
- a recent European Parliament resolution of 14 May 1998 also calls on the Commission to submit, as quickly as possible, a proposal for a directive to address these issues in a coherent way.

2. **The Commission proposal**

2.1. The proposed directive seeks to eliminate legal uncertainties and obstacles caused by national legal differences by finding solutions in five key areas. The aim is to establish a coherent framework for electronic commerce.

2.2. The five areas tackled in the proposal are as follows:

2.2.1. Establishment of providers of information society services: The place of establishment is defined. Special authorization regulations for information society services are to be prohibited. Providers must fulfil certain information requirements in order to ensure the transparency of their activities.

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(1) COM(97) 157 final, 16.4.1997; ESC Opinion, OJ C 019, 21.1.1998, p. 72.
(2) COM(97) 503 final, 8.10.1997; ESC Opinion, OJ C 157, 25.5.1998, p. 1.
(3) COM(98) 297 final, 13.5.1998, OJ C 325, 23.10.1998, p. 5; ESC Opinion, OJ C 40, 15.2.1999.
(4) COM(98) 50 final, 4.2.1998; ESC Opinion OJ C 284, 14.9.1998, p. 6.
(5) COM(97) 582 final, OJ C 48, 13.2.1998; ESC Opinion OJ C 214, 10.7.1998, p. 29.

2.2.2. Commercial communications (advertising, direct marketing, etc.): The proposal defines what constitutes a commercial communication and makes it subject to certain transparency requirements. Commercial communications must, for example, be clearly recognizable as such, and the parties on whose behalf they are made must be clearly identifiable. Unsolicited commercial communications must also be clearly identifiable as such by the user.

2.2.3. Contracts: Member State are to adjust their national legislation to ensure in particular that formal requirements do not hamper the use of electronic contracts in practice. The proposal also seeks to remove legal uncertainties by clarifying in certain cases the moment at which the contract is deemed to be concluded.

2.2.4. Liability of intermediaries: The aim is to clarify the responsibility of on-line service providers for transmitting and storing third party information. The proposal establishes a 'mere conduit' exemption and limits service providers' liability for other intermediary activities.

2.2.5. Implementation: The proposal encourages the development of Community-level codes of conduct and administrative cooperation between Member States. It facilitates the establishment of effective cross-border alternative dispute resolution systems and opens up the possibility of dispute settlement out of court.

3. **General comments on the draft directive**

3.1. Electronic commerce is undoubtedly hampered by differences and lack of clarity in the legal framework, which prevent its benefits from being fully felt. Moves to offer more legal certainty to providers and users are therefore to be welcomed.

3.1.1. The Commission has shown good timing in its submission of the proposed directive since, in most Member States, legal transactions and commerce by electronic means are a live issue. There is a clear material link, particularly with the electronic signatures directive [1].

3.2. The main aim of the Commission proposal for a directive on certain legal aspects of electronic commerce in the internal market is to remove legal barriers which could impede the spread of electronic services across Europe.

3.3. The Committee expressly welcomes the accompanying consumer protection measures set out in the proposal (e.g. information to be furnished by the provider, development of out-of-court dispute settlement). The Committee feels it is crucial that electronic commerce should not be promoted at the expense of consumer protection standards.

3.4. Basically, unless warranted on practical grounds, there should be no difference in the legal environment of electronic commerce and established trade. In terms of technology, there should be a level playing field. Discrimination and distortions of competition may arise because established trade, by its very nature, may need to be subject to other specific regulations such as building standards. The Committee feels that this factor must be borne in mind when considering how to improve the environment for electronic commerce.

3.5. This directive is distinctive in that, although wide in scope, covering areas such as commercial communications and electronic contracts, only partial harmonization is provided for in individual fields. More far-reaching rules may be adopted at national level only on completion of a committee procedure (Article 22).

3.6. The country-of-origin principle applies to those areas which, although not harmonized by the directive, still fall within its scope. This means that the legal arrangements of the country in which the service provider is established apply. The point of departure is the view that it is difficult for providers to be guided by the law of the countries in which they do business.

3.6.1. The present directive does not change existing Community law. However, that in no sense rules out possible conflict with Community law as implemented in the Member States. Some consumer protection directives lay down only minimum provisions. For instance, Article 14 of the Directive on the protection of consumers in respect of distance contracts [2] allows Member States to introduce or maintain a higher level of consumer protection, including bans, in the general interest, on the distance marketing of certain goods and services (such as medicinal products).

3.6.2. The Committee broadly endorses the idea behind the country-of-origin principle. It cuts the legal costs of information society service providers and thus works to their advantage, essentially as desired. It also makes for better implementation of protective measures by the appropriate authorities in the country of origin.

3.6.3. On the demand side, however, and for consumers in particular, the application of this principle means grappling with various legal systems which determine the content, quality and legal certainty of information society services. National systems differ and conditions often vary quite considerably as a result. In practice, therefore, this principle may pose risks to users in cases where their own countries' arrangements no longer afford the requisite protection.

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[1] COM(97) 503 final, 8.10.1997; ESC Opinion, OJ C 157, 25.5.1998, p. 1; COM(98) 297 final, OJ C 325, 23.10.1998, p. 5, ESC opinion 1444/98, OJ C 40, 15.2.1999, p. 5.

[2] Directive 97/7/EC, 20.5.1997, OJ L 144, 4.6.1997, p. 19; ESC Opinion, OJ C 19, 25.1.1993, p 11.

3.6.4. Since the consumers of one Member State may be unfamiliar with their rights under the law of another State where the service provider is based, the Member States and the European Commission should ensure the rapid establishment of a cross-border network of consumer protection agencies or ombudsmen to act as conduits and possibly arbitrators in the event of disputes between consumers in one country and service suppliers based in another. Such a network would preserve the concept of the single market while providing simpler, cheaper and more effective means of redress for consumers than litigation, although their rights to initiate litigation if they remained dissatisfied would remain.

3.6.5. Thus, while fully understanding simplification as far as the provider is concerned, the Committee feels that, as long as high-level harmonization is lacking, an extremely responsible approach is called for here and further consideration is required. The draft directive backs such an approach, setting out areas in which the general principle is not fully brought to bear.

3.6.6. The Committee would suggest that further exemptions may be justified where Member States' legal systems vary widely or in areas considered highly sensitive by public opinion in the Member States (e.g. advertising directed at children, games designed for advertising purposes, medicinal products sold by mail order, regulated professions). The blanket application of the country-of-origin principle, for example in advertising, could expose consumers to advertising practices which they have never before encountered. In sensitive areas especially, 'forum shopping' i.e. where the choice of location is based on where the rules are most favourable for the provider, would raise difficulties, particularly since SMEs have only limited scope in this regard. Principles should therefore be established as a guide for determining areas in which the country-of-origin principle applies and areas where, as yet, this is not possible. No-one disputes that such considerations should not be allowed to generate obstacles to the single market. Beyond that, the aim over time should be to achieve high harmonized standards.

3.7. The Committee notes that the wording of many of the provisions set out in the proposal are unclear and must be reworked in more precise terms.

4. **Specific comments**

4.1. *Article 2: Definitions*

4.1.1. The Committee would point out that, with the increasing convergence of technologies, definitions may rapidly be superseded. As the Green Paper on the convergence of the telecommunications, media and information technology sectors [1] makes clear, converging markets are set to spawn hybrid services which combine features of different classic categories of service. In the case of multi-media applications, such as television sets with integrated internet browsers, computers able to receive television and radio transmissions (radiotelephony and internet voice telephony), it will gradually become impossible to draw clear boundaries between individual and mass communication.

The Committee feels, therefore, that this factor should be borne in mind in the ongoing consideration of the draft directive and that the final definitions should accommodate possible new developments, thus ensuring that they are not very quickly superseded.

4.1.2. The definition of 'information society services' in particular raises a whole range of borderline issues, which are not fully resolved even taking account of Directive 98/48 [2] and especially Annex V thereof. For clearer understanding and to avoid any ambiguity, the Commission should, as in Annex V of the said directive, draw up negative and/or positive lists for existing services.

4.1.3. Similar ambiguities apply to the definitions of 'coordinated field', 'commercial communication' and 'established service provider'.

4.1.4. The term 'consumer' should be defined as follows: A consumer is any physical person resident in the Community dealing under contracts covered by this directive for purposes which cannot be regarded as forming part of that person's commercial or professional activity.

4.1.5. As the scope of this directive will raise many questions and is highly relevant, precision in this regard will be particularly necessary.

4.2. *Article 3: Internal market*

4.2.1. Article 3 stipulates that each Member State is to ensure that the information society services provided by a service provider established on its territory comply with legal provisions (country-of-origin principle). The impact of the country-of-origin principle has already been discussed in point 3.6 above.

4.3. *Article 4: Principle excluding prior authorization*

4.3.1. This article stipulates that access to information society services is not subject to any special requirements. However, as set out in the proposal, this should not affect other general authorization arrangements.

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(1) COM(97) 623 final, ESC Opinion, OJ C 214, 10.7.98, p. 79.

(2) Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations OJ L 217, 5.8.1998, p. 18.

4.4. *Article 5: General information to be provided*

4.4.1. The Committee is glad that the information requirements are to include details of the service provider. The Committee would also recommend that explicit reference be made to the minimum information requirements laid down in Directive 97/7/EC on distance contracts [1]. Article 4 of this directive sets out all the information which must be provided to the consumer before a contract is concluded. In particular, this also includes the requirement to give consumers, prior to the arrangement of any contract, clear, accurate and comprehensive information on the law to be applied to that contract and on the provisions of Article 6 giving customers the right of withdrawal.

4.4.2. However, the Committee feels that other, additional information would be useful, without, however, overburdening consumers and providers with a surfeit of data (e.g. regions in which the services are available, period of validity, probable delivery time, insurance, general conditions of sale).

4.4.3. In addition, specific warnings should be given about product safety. Alerting customers to possible risks (e.g. by notices on goods or instructions for use) is an important factor in any decision to buy.

4.4.4. Customers should also be informed about restrictions on distribution, download times (where possible) and licensing conditions for software products.

4.5. *Article 6: Commercial communications*

4.5.1. In the traditional media, there is a fairly clear distinction between advertising and editorial content. However, this dividing line risks becoming blurred, making it all the more essential to counter such trends in electronic commerce.

4.5.2. Purchasers (whether trade or final consumers) can adequately assess advertising and marketing only if they can clearly recognize it as such. The Committee therefore expressly endorses the obligations to provide information set out in Article 6.

4.6. *Article 7: Unsolicited commercial communication*

4.6.1. For recipients of commercial communications, the point is often not only the unsolicited nature of electronic advertising, but also, thanks to technology, its sheer volume, and the resulting costs in terms of telephone charges and storage capacity. Volume also presents difficulties for providers.

4.6.2. The draft directive stipulates that unsolicited electronic communication by e-mail must be identified as such. This is designed to give both recipient and provider the opportunity to use software to filter out unwanted e-mail advertising ('opt-out'). That said, it is the recipient who has to take the initiative here.

4.6.3. These arrangements are not perfect, however. Providers cannot filter mail unless requested to do so by the user — except in the case of obvious spammers — since otherwise those users desiring the information would not receive it. Secondly, users finding their mailbox full after being absent for any length of time are denied access to their desired (e.g. private) mail.

4.6.4. For this reason, the Committee would propose considering another possibility, namely user opt-in, where users exercise self-determination by expressing an explicit interest in receiving information. This opt-in option is available to Member States (see Annex II), but should be provided for across the board.

4.7. *Article 8: Regulated professions*

4.7.1. Here, the directive touches on a development which is widely observed in the regulated sectors, i.e. the emergence of an open, positive attitude towards information society services. In this regard, the directive recognizes the continued need for regulation in order to ensure that general interests are afforded the requisite protection (protection of consumers and other parties involved, reliable service provision, prevention of abuses etc.) This is broadly to be welcomed. However, in specific cases, care will be needed to determine the extent to which Member States' express regulatory remit and the subsidiarity principle make it possible to act at European level. The Committee would point out the flaw in providing for codes of conduct to be drawn up by professional associations and organizations without laying down appropriate criteria on which to base them.

4.8. *Article 9: Electronic contracts*

4.8.1. Certain types of contract are subject to formal requirements, not only under national rules but under EU legislation as well (e.g. the consumer credit directive [2]). In certain cases, therefore, there is a recognized need for rules stipulating that the contract should be in writing to facilitate proof and to make the parties aware of the significance of the contract they are entering into. Article 9 of the directive instructs the Member States to remove any legal requirements which 'prevent the effective use of electronic contracts' or which result in such contracts 'being deprived of legal effect and validity.'

4.8.2. It is beyond dispute that, as a matter of principle, electronic agreements should be effective. In sensitive areas of

(1) Directive 97/7/EC, 20.5.1997, OJ L 144, 4.6.1997, p. 19.

(2) Directive 98/7/EC, 16.4.1998, OJ L 101, 1.4.1998, p. 17; ESC Opinion, OJ C 30, 30.1.1997, p. 94.

business, however, there must be scope to attach certain conditions to legal validity. Parties to an electronic commerce contract are no less in need of protection than those entering into traditional contracts. In the case of sensitive contracts or declarations drawn up or delivered electronically, therefore, the Committee would stress the need for arrangements equivalent to existing formal requirements.

4.8.3. This is why, logically, the draft electronic signatures directive [1] does not touch on the legal validity of contracts. The Member States are thus free to make certain encryption features mandatory for some types of contract. Member States are also at liberty to exclude certain types of contract completely from the scope of the electronic signatures directive, or to lay down additional requirements — such as an electronic signature with special safety features — for the validity of formal contracts concluded by electronic means. Together with the framework established by this directive, the use of electronic signatures is a key element needed to boost electronic commerce.

4.9. *Article 10: Information to be provided*

4.9.1. A clear introduction to how services are used makes for transparency and prevents misunderstandings and the undesirable legal consequences they involve. It is therefore wholeheartedly welcomed.

4.10. *Article 11: Moment at which the contract is concluded*

4.10.1. To conclude a contract with legal effect, the service provider must issue an acknowledgement of receipt, which must be reconfirmed by the buyer. The Committee welcomes the clear arrangements for determining the moment at which a contract is concluded, and the proposal to establish a mechanism enabling the user of the service to identify and correct handling errors. The Committee would point out that the term 'offer' must be clearly defined to prevent loopholes. For example, in some Member States, an 'offer' on a website may be understood by the customer as an 'invitation to prepare an offer'. Clarification is needed here.

4.10.2. It is not clear who would be held responsible for the loss of a message as the result of a technical defect. Moreover, it is in any case doubtful whether final consumers are yet sufficiently aware that all electronic terminals have to be checked regularly for messages which may have a legal bearing.

4.11. *Articles 12-15: Liability of intermediaries*

4.11.1. With regard to liability, the introduction of a graduated system of exemptions and restrictions establishes a common framework, allowing the diverse activities of internet providers to be assessed separately; assessment is based on providers' degree of involvement with the content transmitted and their scope for monitoring content. The Committee welcomes efforts to establish clear rules on the responsibility of service or information society providers and shares the view that the 'manufacturer' of information should bear primary responsibility for its content.

4.11.2. Articles 12 to 15 partially exempt intermediaries from liability for the information transmitted. For the sake of clarity, it should be expressly stated that, although, in the circumstances described, the provider is not liable for lack of content control, liability for conduct relevant to data protection under data protection and telecommunications law remains unaffected.

4.12. *Article 17: Out-of-court dispute settlement*

4.12.1. Access to legal redress in the event of dispute is crucial to people's acceptance of electronic commerce. For minor legal proceedings especially, alternative dispute settlement arrangements can be an ideal complement to legal protection via the courts. In taking account of out-of-court dispute settlement procedures, the draft directive addresses an issue which, given the courts' excessive workload, is becoming increasingly important everywhere. Speeding up dispute settlement at moderate cost contributes significantly to ensuring that ordinary people have equal access to the law, but can only succeed if (i) a certain minimum level of quality is guaranteed and (ii) the complete range of available options is used to the full.

4.12.2. In this context, the Committee would also encourage a role for existing European consumer information offices.

4.13. *Article 18: Court actions*

4.13.1. Interim injunctions have without doubt proved a valuable tool. The Committee is pleased that they are also to be used in conflicts relating to electronic distance contracts. Extending the scope of the injunctions directive [2] to cover infringements of the present directive is also appropriate.

4.14. *Article 19: Cooperation*

4.14.1. Member States may comply with the obligation to provide assistance and meet requests for information only within the framework of existing laws on confidentiality and data protection.

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[1] COM(1998) 297 final, ESC Opinion CES 1444/98, 2.12.1998, OJ C 40, 15.2.99.

[2] Directive 98/27/EC, 19.5.1998, OJ L 166, 11.6.1998, p. 51, ESC Opinion, OJ C 30, 30.1.1997, p. 112.

4.15. *Article 22: Derogations*

4.15.1. The draft provides for various types of derogation. National 'measures' must pass through the Commission's committee procedure. The proposed committee procedure means that the Commission can subsequently amend the scope of the directive without further ensuring the appropriate involvement of the Member States and the European Parliament under the co-decision procedure pursuant to Article 189b of the Treaty establishing the European Community. Furthermore, the power to be vested in the Commission under Article 22(3)(d) to decide on the compatibility of measures with Community law may affect the remit of the European Court of Justice.

4.15.2. Moreover, only court decisions are clearly excluded from these arrangements. Clarification should be given as to whether the word 'measures' in the third paragraph refers to administrative measures or also includes legislation.

4.16. *Annexes*

4.16.1. Annex I should be reviewed to check whether games of chance and pyramid games are also excluded from the scope of the directive, particularly Article 3.

4.16.2. The legal areas listed in Annex II are excluded from the scope of the country-of-origin principle. These include 'contractual obligations concerning consumer contracts'. It should however be ensured that this derogation applies not only to contractual, but also of course to legal obligations in relation to consumer contracts. These include, for example, the obligation to warn of risks and to act with due care and attention. However, some way will have to be found to distinguish commercial communications, where requirements are not subject to precontractual obligations in the narrow sense.

Brussels, 29 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC'

(1999/C 169/15)

On 18 December 1998 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 April 1999. The rapporteur was Mr Ataíde Ferreira.

At its 363rd plenary session (meeting of 29 April 1999), the Economic and Social Committee adopted the following opinion with 78 votes in favour, 47 against and nine abstentions.

1. **Introduction**

1.1. The Commission has long felt the need to regulate the distance marketing of financial services at Community level. The subject has been mentioned in various initiatives, not only by the Commission, but also by the European Parliament and the Economic and Social Committee itself, but circumstances were such that financial services were not included in Directive 97/7/EC of 20 May 1997 on distance selling in general [1].

1.2. The Economic and Social Committee was actually one of the bodies most in favour of drawing up Community rules in this field, given that it had in a way pioneered such an initiative.

1.2.1. Indeed, in its opinion on consumer protection and completion of the internal market of 26 September 1991 [2], the ESC drew attention to the difficulties encountered by consumers wishing to make cross-border banking transactions [3].

1.2.2. In its additional opinion on the same subject [4], the Committee recognized that it was essential to have common rules to protect consumers in this area and thus welcomed the proposed directive on contracts negotiated at a distance, which included financial services.

1.2.3. Later, in its opinion on the Commission Green Paper on financial services [5], the ESC was critical of the fact that the Green Paper confined itself to distance selling, but, on that point, took care to emphasize that 'rules would be applied that are equivalent to those laid down in the horizontal directive on contracts negotiated at a distance', albeit adapted to the specific characteristics of financial services and with due regard for the new aspects of selling financial services via information technology or television advertising, especially by unauthorized intermediaries.

1.3. There are factors obtaining at the present time which make the adoption of Community measures in this field a matter of particular urgency. The euro is currently being introduced as a single currency in the EU; we are also seeing a burgeoning of the technological mechanisms and instruments which characterize the Information Society; we already live in an increasingly global economy where national borders, both within and even outside the EU, have less and less significance.

1.4. All these factors are behind an increased desire and need to resort to distance marketing, where the parties involved in cross-border transactions do not deal with each other face to face, even in the business of consumption. And the world of financial services, which forms the basis and essential vehicle for such transactions, is already, and, given the factors described above, will certainly continue to be an area in which the demand, supply, negotiation and conclusion of deals will increasingly happen without the parties involved being physically present, and even without any actual physical transaction taking place.

1.5. The proposal is clearly intended to bring about complete harmonization of the sector in question, that is distance marketing of financial services to consumers.

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(1) The decision to exclude financial services from the Directive on distance marketing was taken by the Consumer Affairs Council on 17 May 1995.

(2) OJ C 339/06, 31.12.1991.

(3) The major study by E. Balate, P. Dejemeppe and M. Goyens, which is annexed to the opinion, drew attention to the lack of binding rules for financial services, especially cross-border transactions, welcoming as an important instrument of progress the then recently submitted draft directive on contracts negotiated at a distance which, at the time, included financial services.

(4) OJ C 19, 25.1.1993.

(5) OJ C 56, 24.2.1997.

1.6. The specific characteristics of financial services and their immaterial nature, combined with their acknowledged complexity and importance to consumers, provide justification not only for proposing special provisions which do more than simply echo the general provisions applicable to distance selling, but also for adopting a high level of consumer protection in the areas to be harmonized.

1.7. Bearing in mind the specific characteristics of financial services and the distinctive features of the procedures used in distance marketing, the proposed directive defines a series of objectives which it seeks to achieve. These may be summarized as follows:

1.7.1. To ensure that consumers are given the opportunity to

a) examine the contract before giving their consent,

b) compare the offers before making their choice,

c) withdraw when they have concluded a contract without having been acquainted with the contractual terms and conditions or when the supplier has unfairly induced them to conclude a contract during the reflection period.

1.7.2. To guarantee that suppliers are in a position to

a) sell without hindrance financial services using a distance selling method,

b) make the most of the opening up of borders and new technologies,

c) conclude distance contracts with consumers.

1.8. To achieve these ends, the proposed directive lays down the following guiding principles:

a) the consumer must be familiar with the terms and conditions of the contract before signing it,

b) there must be a guaranteed reflection period during which the consumer can analyse the contract and compare the offer made with others on the market,

c) there must be an established right of withdrawal within a reasonable period, in cases where the two preceding provisions are not respected,

d) the consumer has a right to be clearly informed of the rights mentioned in the foregoing paragraphs,

e) a complete ban on unsolicited communications and pressure selling of financial services, without the prior and express consent of the consumer,

f) the binding character of all these rights and the rigorous penalization of commercial practices in contravention thereof,

g) the obligation to establish appropriate and effective complaints and redress procedures for the settlement of disputes arising in this field, particularly within the scope of Directive 98/27/EC of 19.5.98 (injunctions),

h) a clear inversion of the burden of proof in favour of the consumer with regard to compliance, by the supplier, with obligations to provide information and the consumer's consent to conclude the contract and its performance.

2. **General Comments**

2.1. The Committee feels that measures to harmonize the distance marketing of contracts are necessary and welcomes the Commission's initiative in coming forward with the present draft directive (COM(1998) 468 final, of 14 October 1998), which was long overdue.

2.2. While recognizing that transposing the directive is likely to pose problems and require some adjustments to the structure and operation of the financial institutions concerned, the Committee nevertheless feels that the entry into force of the single currency on 1 January 1999 will help to smooth the necessary adjustments. It therefore suggests that the three-year deadline for completion of transposition (until 30 June 2002, Article 17(1)) be shortened by a year and set at 30 June 2001.

2.3. The Committee accepts that the scope of the present draft directive is restricted to the form in which the financial services mentioned are marketed, deliberately excluding all other aspects to do with the content of such services, which will continue to be governed by existing Community rules, and that it applies solely to transactions between professionals or suppliers and 'any natural person (...) who (...) is acting for purposes which are outside his trade, business or profession' (Article 2(d)).

2.3.1. However, the Committee feels that the Commission's aims in proposing the present directive will only be achieved if its scope is limited to situations in which the marketing of financial services makes exclusive use of distance communication techniques. The definition of 'distance contract' (Article 2(a)) should reflect this recommendation.

2.3.2. Any overlap with other consumer protection directives should be avoided. These directives should be made compatible with each other.

2.4. Apart from Articles 57(2) and 66, the draft directive refers only to Article 100a on the establishment of the internal market as its legal basis.

Although mention of these legal bases is preceded by the words 'in particular' and there is a reference in passing to Article 129a in the first recital, the ESC feels that express mention should be made of Article 129(3)(b) of the Treaty (Article 153 of the Amsterdam Treaty, which comes into force on 1 May 1999) in the list of legal bases given in the first paragraph of the proposal.

2.5. From this, the Commission should draw an important conclusion with regard to the type of harmonization proposed for the directive by introducing a 'minimal clause', similar to the one in Directive 97/7/EC, to reflect what is enshrined in Treaty Article 129a(5). This would give the Member States the scope to define more stringent protective measures, in line with the tradition of Community rules in this area, without detracting from the high level of consumer protection established by the directive.

2.6. The Committee accepts that the scope of the directive is limited to financial services concluded 'under an organized distance sales or service-provision scheme run by the supplier' and therefore excludes occasional or chance transactions by operators without an organized scheme (Article 2(a)).

However, for reasons of fundamental legal certainty, the Committee feels that the directive must give a precise definition of both (a) what is meant by 'an organized scheme' for the purposes of this directive, and (b) at what point transactions cease to be regarded as occasional or chance, thereby obliging the supplier to actually set up 'an organized distance sales or service-provision scheme'.

2.7. Still on the subject of definitions, the Committee feels that the draft directive does not define what is meant by 'unfair inducement' (Article 4(2)) in terms of what is permissible.

It is in the very nature of a system of law that illegal practices are defined within that system. In a directive designed to bring about total harmonization on such an important point as this one, with serious implications for the right of withdrawal and the obtaining of compensation, it does not seem acceptable that an underlying concept, i.e. the illegal practice of 'unfair inducement', is not precisely described in Community law.

2.7.1. The Committee therefore strongly recommends, not just for legal reasons but also in the interests of equality and certainty, that it should not be left to the discretion of the Member States to determine what is meant by 'unfair inducement', but rather that a precise description by given in the directive of what constitutes such practice.

2.7.2. The Committee feels that consideration should be given to including, under the concept of 'unfair inducement', the common practice of advertising or promotional material being intermingled with the contractual conditions. The two things should be clearly separate.

2.8. The Committee feels that the term 'durable medium' needs to be defined more precisely, and recommends including a more technical and exhaustive definition based on the elements mentioned in previous ESC opinions, namely the opinion on electronic signatures [1], the opinion on Safe use of the Internet [2] or the (draft) opinion on certain aspects of electronic commerce in the internal market [3].

2.9. As regards the right of withdrawal, the draft directive provides no clear definition of whether it is receipt of the consumer's communication by the supplier which counts, and if so, whether receipt by the supplier must be within the period allowed for exercising the right, or whether it is enough for the right to be exercised within the period even if a communication to that effect is received later (Article 4(1), (2) and (3)).

Bearing in mind that there is no uniform interpretation for such cases in the Member States, with case law showing a variety of decisions, the Committee recommends that the question of communicating the right of withdrawal be clearly explained so as to avoid doubts about interpretation.

2.10. As regards the nature and definition of the periods of time laid down in various provisions of the proposal, the Committee feels that the periods laid down for exercising the right of withdrawal (14 days or 30 days — Article 4(1) and (2)), should not be fixed, but should be taken as a minimum which can be extended by the Member States if they consider this necessary to afford greater consumer protection.

2.11. The Committee also feels that the nature of the period should be clearly stated in the proposal, i.e. whether the days are to be counted consecutively, or whether it is only working days, not counting Sundays and public holidays, and what is to be done if the last day of the period falls on a Sunday or a public holiday.

2.12. The Committee also feels that in each case where the phrase 'without any undue delay' is used, which appears in various binding provisions (Articles 5(1) and (3), 8(1) and 11(2), second paragraph), a maximum period should be stipulated, e.g. 'within 48 hours' or 'within a maximum of five days', to avoid uncertainty.

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(1) OJ C 40, 15.2.1999.
(2) OJ C 214, 10.7.1998.
(3) CES 457, 29.4.1999.

2.13. It is essential that consumers should have confidence, access to information and simple, non-judicial, inexpensive means of redress in the event of disagreement with foreign service suppliers.

2.13.1. The ESC therefore stresses the need for the Commission and the Member States to ensure the rapid development of cross-border consumer redress mechanisms such as those which could be provided by a network of national consumer protection agencies or ombudsmen who would act as conduits and arbitrators in the event of dispute.

3. **Specific comments**

3.1. Article 1(1) — Given that the concepts of 'approximating' laws and 'harmonizing' laws are different, the Committee feels that if the Commission were to opt for total harmonization, the Article should read 'to harmonize the laws, regulations and administrative provisions...'. [1]

3.2. Article 1(2) — Bearing in mind the difficulty of making a strict distinction between single contracts and successive contracts, the Committee feels that the directive should refer to 'each new individual and separate contract'.

3.3. Article 2(a) — The definition of 'distance contract' should contain the word 'exclusive' before the words 'use of means of distance communication...'.

3.4. Article 3 — the wording should be tightened up as follows:

3.4.1. In point 1, a new paragraph should be added as follows:

> 'Until the consumer accepts the contract, no payment, in any form whatsoever, may be demanded by the supplier.'

3.4.2. Delete the redundant phrase 'with the consumer's express consent'.

3.5. Article 4 — should be amended as follows:

3.5.1. (Does not apply to English version).

3.5.2. In the second paragraph of point 1, rewrite the first words as 'The consumer then has a right of withdrawal...'

In indent (b) of Article 4(1), consideration should be given to the case of non-life insurance policies 'taking effect immediately', as allowing withdrawal in such cases may constitute abuse of rights.

3.5.3. Although not including them in the list of exclusions to the right of withdrawal, the Committee feels that an explicit reference is required in the preamble of the directive to portfolio management services and investment advice with regard to the financial products referred to in points 5 and 7 of the Annex, specifying that although contracts constituting a mandate for individualized management of financial products may always be revoked in general terms, this does not imply withdrawal from contracts concluded, under mandate, in connection with the financial products referred to in points 5 and 7 of the Annex.

3.6. Articles 3(3) and 4(1) fourth para. — The Committee feels that the reference to points 5 and 7 of the Annex may be too limiting, and should instead be phrased in more general terms, referring to 'all financial services in which, by their nature, it is not materially possible to exercise the rights of reflection or withdrawal, such as those mentioned in points 5 and 7 of the Annex.'

3.7. Article 7 — The Committee feels, in line with an earlier opinion [2] that where the 'durable medium'does not offer sufficient guarantee of reliability or security, Member States should be given the option to require communication in writing in the cases referred to in the directive [3].

3.7.1. Alternatively, and if it proves impossible to produce an unambiguous and exhaustive definition of 'durable medium', the Committee recommends making it obligatory, within a reasonable period of time (8 days), to confirm in writing the communication sent via a 'durable medium' as long as receipt of this has not been acknowledged, even though the import of the communication would take effect as soon as it was received via a 'durable medium', unless the consumer could prove that he had never received it. In the latter case, the import of the communication would only take effect once written confirmation was received.

3.8. (Does not apply to English version)

3.8.1. (Does not apply to English version)

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[1] Although the Explanatory Memorandum speaks of 'harmonization', Article 1 uses the term 'approximate'. The two concepts do in fact differ, as can be seen in Filiali Osman, '*Codification, Unification, Harmonisation du Droit en Europe*' and Antoine Jeammaud, '*Unification, Uniformisation, Harmonisation: de quoi s'agit-il?*' in 'Vers un Code Européen de la Consommation', p. 11 and 35 (Bruylant, 1998).

[2] Cf. Opinion OJ C 40, 15.2.1999 on electronic signatures.

[3] Note that the various language versions differ here.

3.9. Article 10 — The Committee feels there is no justification for allowing each Member State to decide between the options given in Article 10(2).

It feels that there should be a clear and unequivocal imposition of the system referred to in indent (a), i.e. unsolicited communications shall not be authorized if the consent of the consumers in question has not been given.

3.10. Article 11(2) — The section about penalties in the event of failure to comply with Articles 6 and 10 should form a separate Article.

3.11. Article 11(3) — The term 'close link' should be clearly defined in Article 2 with the same sense as the term 'closer connection' used in the Rome Convention. As a separate issue, consideration should be given to the desirability of using the same terminology, especially as a different term is used in other texts, notably Article 6 of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

3.12. Article 12 — The Committee feels that the Commission — without prejudice to the provisions of the Brussels and Lugano Conventions — should consider the possibility of including a provision on the competence of the courts which, in the case of a cross-border dispute, would allow the consumer to choose between taking legal action in the national courts of the country in which he resides or in the national courts of the country in which the supplier is domiciled or has its headquarters, while any legal action against the consumer should always be undertaken through the courts of the country where the consumer is resident.

3.13. Lastly, the Committee feels that the directive should provide for periodic assessment of implementation, as is the case with a number of Community directives [1].

[1] An example is Directive 89/552/EEC, 3.10.89, Article 26: *'Not later than the end of the fifth year after the date of adoption of this Directive and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting.'*

Brussels, 29 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI

APPENDIX

to the ESC Opinion

The following points from the section opinion were amended by the Plenary Assembly, but received at least a quarter of the votes cast.

Point 2.2

'The Committee calls on suppliers of financial services to implement the provisions of the directive voluntarily as soon as possible, in advance of the deadline of 30 June 2002.'

Result of vote

For: 74, against: 43, abstentions: 8.

Point 2.8

'Bearing in mind the need to provide detailed advance information and a reflection period, as well as the expensive refinancing conditions for suppliers, the Committee is of the opinion that the suggested periods laid down for exercising the right of withdrawal appear to be sufficient and should be implemented in all Member States.'

Result of vote

For: 75, against: 48, abstentions: 5.

Point 2.11

'The Single Market requires that service suppliers should be able to operate throughout the EU on the basis of their home country of origin rules rather than face 15 different sets of national rules which would fragment the market, raise costs and prices and inhibit consumer choice.'

Result of the vote

For: 71, against: 59, abstentions: 2.

Opinion of the economic and social committee on 'Relations between the European Union, Latin America and the Caribbean: socio-economic interregional dialogue'

(1999/C 169/16)

On 3 December 1998, the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided tot draw up an Opinion on Relations between the European Union, Latin America and the Caribbean: socio-economic interregional dialogue.

At its plenary session on 24 and 25 February 1999, the Committee decided, in accordance with Rule 23(3) of the Rules of Procedure, to draw up an own-initiative opinion. The Section for External Relations, responsible for carrying out work on the subject, drew up its opinion on 14 April 1999. The rapporteur was Mr Zufiaur.

At its 363rd plenary session on 28 and 29 April 1999 (meeting of 28 April) the Committee adopted the following opinion unanimously.

1. **Introduction**

1.1. Over the last decade, the Economic and Social Committee (ESC) has been actively involved in developing relations between the European Union and the countries and sub-regions of Latin America and the Caribbean. By preparing a number of information reports and opinions, the Committee has expressed its views on the most significant initiatives introduced by the regions. By the same token, through regular contact with its Latin American counterparts, primarily the Economic and Social Consultative Forum (FCES) of the Southern Common Market (MERCOSUR), the ESC has contributed to the marked rapprochement between the two regions during this period. This opinion follows this whole range of initiatives.

1.2. The forthcoming first Summit of Heads of State and Government between the countries of the EU, Latin America and the Caribbean, to be held in Rio de Janeiro on 28 and 29 June 1999, will constitute a watershed in a process which has seen the two regions draw ever closer together throughout the nineties. The main features of this process have been the expansion of institutionalised dialogue and cooperation mechanisms and, more recently, the opening of negotiations with Mexico on the reciprocal liberalisation of trade and the European Commission's recommendation for similar negotiations to be opened with MERCOSUR and Chile. The timing of the Summit also coincides with an event of particular importance for future relations between the EU and the Caribbean, namely the negotiations for the next Lomé Convention which were launched on 30 September 1998.

1.3. The Summit — and the process of preparing its agenda — will not simply take stock of the progress made in the past in terms of relations between the regions, since the political declarations and guidelines on cooperation which should emerge from it will also largely define the areas that will dominate dialogue and cooperation between the EU, Latin America and the Caribbean in the early years of the new millennium.

1.4. Against the backdrop of this gradual rapprochement between the two regions, based on joint adherence to the values of democracy and international cooperation and on centuries of shared history and deep cultural, political, economic and human ties, this opinion assesses the current state-of-play and the outlook for intra-regional relations, with the emphasis on the outlook for dialogue and cooperation between the representatives of civil society, on socio-economic issues in particular. The issues addressed in this opinion are examined in greater detail in the information report on Relations between the European Union, Latin America and the Caribbean: socio-economic interregional dialogue, adopted on 14 April 1999.

2. **State-of-play and outlook for relations between the EU, Latin America and the Caribbean**

2.1. The EU, with the adoption of the basic document on EU relations with Latin America and the Caribbean by the Council of Ministers on 31 October 1994, and the declarations issued at the Madrid European Council held on 15/16 December 1995, expressed the EU's wish for closer political ties with Latin America and deeper institutionalised dialogue with its partners in the region. The aim was to bolster democracy, to advance towards trade liberalisation, support regional integration processes and target its cooperation more effectively. Since then, ties between the regions have become much stronger, and this has been reflected in the setting up of various bodies for institutionalised political dialogue and cooperation mechanisms at different levels. The new 'fourth generation' framework agreements signed with MERCOSUR, Chile and Mexico have broadened and diversified the areas of cooperation and have incorporated the objective of reciprocal and gradual trade liberalisation. By the same token, the new EU Member States have swelled the ranks of European countries jointly and unanimously agreeing on the importance of consolidating links between Europe and Latin America.

2.2. In the political sphere, regular ministerial meetings, also attended by Bolivia and Chile, have been launched with

Mercosur. The EU has initiated institutionalised political dialogue on bi-regional and interregional issues of common interest with the Andean Community (AC), and regular dialogue with Chile and Mexico on such issues in meetings at various levels, going right up to the top level. These new dialogue forums reinforce the institutionalised meetings between EU Foreign Ministers and the Rio Group held every year on the basis of the 1990 Rome Declaration and the San José dialogue between the EU and Central American countries launched in 1984.

2.3. Adherence to democratic principles and respect for human rights form the cornerstone of EU/Latin American political dialogue. The foundations of this vision, which has been substantiated in a wide agenda of cooperation and practical achievements, differ vastly from any other permanent dialogue which the two regions maintain with other regions or countries of the world. In step with Latin America's progress in consolidating democracy, the nature of this commitment has changed in some respects, with growing emphasis placed on establishing a climate guaranteeing good governance and the definitive consolidation of democracy in the long term. In addition to the importance of 'good public management' and strengthening institutions supporting the rule of law, the focus is on acknowledging the crucial role which civil societies play in consolidating democracy in the long term. However, issues such as safeguarding the rights of indigenous populations, continued violation of basic human rights and workers' rights in some countries, including the persecution of trade unions and their representatives, hinder the definitive consolidation of democracy and the rule-of-law.

2.4. With regard to relations with Caribbean countries covered by the Lomé Convention, the revised Lomé IV Convention, signed on 4 November 1995, reinforced political dialogue between the EU and African, Caribbean and Pacific countries (ACP) on issues such as democratisation and consolidation of the rule of law. This has also meant greater emphasis on developing the ACP's foreign trade and its international competitiveness, as well as greater flexibility in allocating cooperation resources. The considerations relating to the new Lomé Convention, which comes into force in the year 2000, reflect the aim of strengthening the political dimension of EU/ACP relations and of expanding and diversifying their political dialogue, with greater emphasis on fostering 'good governance', and on developing the institutions and political participation of civil society.

2.5. In pursuing and consolidating political dialogue, the EU, Latin America and the Caribbean are responding to several shared strategic concerns. Insofar as cooperation between the two regions and converging views on the main items on the international agenda will help to strengthen the overall position of the two regions and increase their profile and influence in international forums, these will be crucial to the goal of achieving peace and stability in a multipolar world. The many challenges posed by globalisation make it particularly important for the two regions to adopt policies and strategies based on mutual benefit and shared responsibility. Progress on integrating markets and reducing the regulatory capacity of national authorities heightens the need to strengthen international and multilateral cooperation so as to foster the democratic monitoring of globalisation at political level. Where imbalances triggered by globalisation reveal a lack of international cooperation, the two regions must help to strengthen governability at regional, interregional and international level.

2.6. The expansion and strengthening of trading relations and reciprocal investment is an objective shared by the EU, Latin America and the Caribbean. Generally speaking, the development of trade between the two regions during the nineties has been particularly dynamic. Trade between the two regions has grown by more than 75 % in absolute terms and EU exports to Latin America have risen by more than 150 %. Growth in imports from Latin America has been more modest at around 25 %. For Latin America as a whole, the EU is its second global trade partner after the United States, accounting for 15 % of the region's trade with the rest of the world in 1997. As for MERCOSUR and Chile, the EU has long been their main trading partner. With regard to investment, EU Foreign Direct Investment (FDI) to Latin America and the Caribbean has grown rapidly in recent years and accounts for some 30 % of the region's total FDI in the nineties.

2.7. Although the development of trade between the EU and Latin America has generally been satisfactory, there are some structural problems. Despite the growth in EU exports to Latin America, there has been a drop in the EU's relative share of Latin American foreign trade, due to the fact that the region's trade with its other main trading partners, the United States and Japan, has grown more rapidly, just as trade between the countries of the region doubled between 1990 and 1997. From the Latin America perspective, the persistence of a growing trade deficit with the EU since 1993 is a cause for concern, and this has prompted demands for better access to European markets, mainly for agricultural products.

2.8. Dynamic and balanced economic relations between the EU and Latin America provide the requisite framework for developing dialogue and cooperation in other areas. In addition to the fundamental importance of European trading and investment relations for the growth and diversification of Latin American and Caribbean economies, EU objectives in this area should be focused on the stabilisation of markets, international financial flows, and the promotion of direct investment as a stable source of financing for technological innovation and development of production. The introduction of the euro as the single currency for 11 of the 15 EU Member States has

opened up new possibilities in this area. The opening of negotiations on reciprocal trade liberalisation with Mexico, the scheduled launch of similar negotiations with MERCOSUR and Chile, and the launch of negotiations on agricultural trade within the World Trade Organisation (WTO) at the end of 1999, all provide opportunities for progress on the reciprocal opening-up of markets. Any further progress towards trade liberalisation between the EU and Latin America needs to take account of the sensitive nature of certain products, and, in general, the legitimate interests of the different sectors of production in the two regions.

2.9. While trade between the EU and the Caribbean is limited in terms of value, exports to European markets are crucial to several of the small Caribbean economies, particularly for products such as bananas and sugar. Looking towards the renewal of the Lomé Convention and possible changes in some of the preferential trade mechanisms in the coming years, EU/ACP negotiations need to make greater trade liberalisation consistent with consideration for the particular vulnerability of Caribbean economies and their dependence, in many cases, on exports of a single product.

2.10. For the last decade, the EU and its Member States have been Latin America's main source of external cooperation. Between 1990 and 1997, the 15 EU Member States and the European Commission together provided almost 55 % of Latin America's bilateral cooperation resources. Moreover, the growth in EU cooperation flows to Latin America up to 1996 is in stark contrast with the dramatic reduction in US aid to Latin America during the same period. Community funds for Latin America grew considerably between 1991 and 1996, and despite a slight drop in the Commission's commitments in Latin America as of 1996, Community cooperation has steadied at a significantly higher level than at the beginning of the decade.

2.11. Following a strategy of tailoring cooperation to match the various levels of relative development reached, Central America, the Caribbean and the Andean countries are the main recipients of development aid, whose main components are technical and financial assistance and humanitarian aid, while other partners, that is, Mexico, MERCOSUR and Chile, primarily benefit from economic and trade cooperation.

2.12. A most worrying trend is the cut-back in Official Development Assistance (ODA) provided by industrialised countries — in 1997 the OECD (Organisation for Economic Cooperation and Development) countries reduced their bilateral cooperation to developing countries by 5,8 %, while total ODA to Latin America dropped by 16 %. Even considering the constraints on Community and EU national budgets, real needs suggest that flows of financial resources to Latin America and the Caribbean should be maintained at the pre-1997 level or even increased. In any case, efforts to optimise the effectiveness of European cooperation are significant. In addition to improving coordination between the donors, focusing cooperation on mutually agreed priority areas, and boosting global and multiannual programmes in key areas, the decentralisation of cooperation is a prime mechanism for enhancing the effectiveness and management of cooperation. The participation of civil society in the design and implementation of cooperation should not simply be regarded as a means of bringing cooperation closer to grassroots level, but also as a means of boosting and maximising the benefits of cooperation and of consolidating the democratic process. In recent years, across-the-board EU cooperation programmes have played an increasingly important role in establishing direct cooperation ties between various players in the socio-economic sphere and in civil society as a whole.

3. **The social dimension in European and Latin American integration**

3.1. Both the integration model of the EU and that of MERCOSUR and other sub-regional groups, such as the Andean Community, the Central American Integration System (SICA) and the Caribbean Community (CARICOM), share the vision of integration as an integral process whose objectives extend beyond purely trade-related and economic aspects. This model differs from that of initiatives such as the Free Trade Area of the Americas (FTAA) — even though this is enshrined in the Action Plan launched at the First Inter-American Summit which covers objectives and initiatives for strengthening democracy and sustainable development — and the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico, which are basically restricted to the establishment of a free trade area, and are devoid of objectives or instruments in the political or cooperation spheres. Closely linked to this perception of integration is the notion that one of the basic pre-requisites for political democracy is the existence of a dynamic and diversified civil society. The establishment of mechanisms to represent the interests of the various socio-economic groups and for negotiation and mediation between these is, therefore, of primary importance for democratic consolidation. Similarly, against a backdrop of increasingly globalised production and keener world competition, the labour relations model, relations between the socio-economic groups and their level of participation in economic policy-making at national level, are all crucial to promoting economic growth and development. Consequently, incorporating a social dimension into the processes of integration and ensuring the active participation of the social partners in these are necessary for achieving the aims pursued by the integration processes in both regions.

3.2. The EU Member States enjoy a solid tradition of social dialogue, both directly between employers' organisations and trade unions and in the form of tri-partite agreements. While in some countries there is a long-standing tradition of institutionalised relations between the economic and social

players as well as mechanisms for social dialogue and resolution of labour disputes, other countries have since the 70s carried out valuable experiments in social dialogue. Similarly, the social dimension has been part of the European integration process since its inception. Within the sphere of Community social policy, of particular note are initiatives such as the establishment in 1960 of the European Social Fund (ESF); the launch in 1985 of European Social Dialogue; the adoption in 1989 of the Community Charter of Fundamental Social Rights for Workers, subsequently incorporated into the Amsterdam Treaty of 1997; and the Agreement on Social Policy, signed by the European social partners in October 1991, incorporated as an appendix to the Social Protocol of the Maastricht Treaty in 1992, and, lastly, incorporated into the Amsterdam Treaty.

3.3. With regard to the participation of organisations representing economic and social spheres, the Economic and Social Committee (ESC), established by the Treaty of Rome, plays a crucial role in European integration. The ESC, comprised of representatives of the different economic and social spheres, is a consultative body of the Council, Commission and, since the Amsterdam Treaty, of the European Parliament. The ESC may also issue own-initiative opinions. In addition, throughout the years other more specific consultation bodies have been established in various fields.

3.4. In Latin America, relations between players in the socio-occupational sphere have to a large extent been marred by conflict and the failure to establish proper institutionalised dialogue or coordination. Nevertheless, in recent decades, and linked to democratisation and the greater openness of economies towards world competition, efforts to promote dialogue between the economic and social players and between these and the State have been stepped up. In some cases, the purpose of dialogue has been to tackle a situation of economic recession, while in others the main objective has been to provide a framework of social and political stability for processes of democratic transition.

3.5. Similarly, in recent years significant progress has been made in incorporating the social dimension into the different regional integration structures in Latin America and the Caribbean. Notable examples of this progress are provided by the adoption of the 1997 MERCOSUR Multilateral Social Security Agreement, and, above all, the adoption of the 1998 MERCOSUR Socio-occupational Declaration, which establishes a range of individual and collective rights in the workplace. Initiatives taken by the other sub-regional groups include the Andean Community decision to adopt a common range of social policies promoting employment, a reduction in poverty, boosting education, health and human rights. The statement of intent drawn up by the representatives of the various social sectors meeting at the Second Andean Community Social Summit held from 24-26 February 1999, is another step forward towards the joint promotion of social policies. With regard to the SICA, the social dimension of integration has above all been substantiated by the Central American Social Integration Treaty of 1995. In the Caribbean, CARICOM has adopted an agreement on social security in force since 1997, and in February 1997, the Caribbean Heads of State and Government concluded the CARICOM Civil Society Charter pledging to uphold fundamental freedoms and rights in the workplace.

3.6. There has also been significant progress in involving the social partners and socio-occupational spheres more closely in the processes of regional integration. In MERCOSUR, the interests and views of the employers' associations and trade unions of the four member countries are represented in the Economic and Social Consultative Forum (FCES), which since 1994 has formed part of the group's institutional structure as a consultative body. In the same way, the Andean consultative employers' council and the Andean consultative workers' council respectively fulfil consultative and advisory roles in the Andean integration process. Following the decision to fully reactivate the work of both councils, the Andean Community has specified the objective of ensuring effective participation of employers and workers in the integration process, just as these have expressed their wish to establish a forum for permanent dialogue. In Central America, the SICA consultative committee, established in 1991, advises the SICA general secretariat.

3.7. The deepening regional integration in Latin America and the prospect of growing integration between existing groupings — in particular, between MERCOSUR and the Andean Community — calls for greater emphasis on the development of a social dimension as part of integration and for greater participation of social spheres in this process. In this respect, preserving a certain balance between areas and social groups in terms of integration may be considered a pre-requisite for achieving the harmonious expansion of the wider markets. Consequently, progress in the reciprocal opening-up of markets needs to be accompanied by mechanisms to preserve economic and social cohesion by supporting less developed areas and ironing out the differences within the regional blocs, and by consultation of the social partners.

3.8. The importance of strengthening the social dimension of Latin American integration is underscored by the Latin American economic and social situation, whose main feature is persistent widespread poverty. The political progress and economic recovery achieved by many countries during the 90s is at odds with the scant reduction in poverty levels. As fundamental pre-requisites for achieving stable economic growth, social cohesion, the definitive consolidation of democracy and political stability, reducing poverty and satisfying basic needs are probably the most significant challenges facing Latin American countries on the eve of the 21st century. The world financial crisis which has beset Latin America since the second half of 1998, and which has once again damaged the immediate prospects for economic growth, highlights the need to implement structural policies designed to reduce poverty.

In this respect, the persistence of poverty and other related problems, particularly the unequal distribution of income, is closely linked to the weakness of the social partners, the particular problems besetting the region's labour markets, inadequate job-creation, the expansion of the informal sector, and the lack of a skilled workforce. Strengthening the organisations representing the social partners, their effectiveness, and dialogue and coordination between such organisations, is crucial to solving these problems.

4. **The social dimension in future interregional relations**

4.1. The first EU/Latin American-Caribbean summit will herald the beginning of a new phase in the consolidation and expansion of links between the regions. In this new phase, maintaining dynamic interregional relations which help both regions to face the challenges of the new millennium means that dialogue and cooperation need to be based on the principles of a model for society advocating close interconnection between political democracy, an active and organised civil society, respect for human rights, free market economy with social justice, ecologically sustainable development and regional integration.

4.2. Given the fundamental role which the organisations of civil society play in strengthening democracy, upholding human rights, and in the economic and social spheres, their participation in dialogue between the two regions should be considered essential. The ESC, therefore, supports the active participation of civil societies in the various bodies for political dialogue and cooperation. The establishment of permanent contact and institutionalised relations between employers' associations, trade unions, consumer and trade associations, among others, will help to achieve the objectives defined by political bodies in both regions and to construct interregional relations on the basis of solid links between civil societies.

4.3. In this respect, the ESC considers it necessary to define appropriate machinery for ensuring that organised economic and social players participate in the various forums for interregional dialogue, with regard to both relations between the EU and the Rio Group and contacts between the EU and the various sub-regional integration structures and individual countries. It is important that negotiations on new interregional agreements, with Mexico, Chile and MERCOSUR, explore possible ways of ensuring the participation of representatives of trade unions, employers and other sectors in the various interregional bodies. The ESC considers that one way of boosting the participation of civil society representatives in bi-regional dialogue should be to establish consultative committees under the cooperation agreements with the sub-regions and countries of Latin America and the Caribbean, similar to those established under the agreements with the countries of the Maghreb and central and eastern Europe, and within the European Economic Area (EEA). Other ways could be to incorporate these sectors into various sectoral committees and commissions, give them an advisory and assessment role, and enable them to attend ministerial meetings as observers.

4.4. Strengthening socio-occupational associations in Latin America and the Caribbean should be a core objective of EU dialogue and cooperation with the region. The EU could thus help to boost the active participation of the socio-economic groups in the framing and implementation of economic and social policies, providing the key to an effective campaign against poverty and social exclusion, with the emphasis on promoting employment. All types of assistance, including technical and financial, for the most representative associations would help these to fulfil such tasks. Similarly, as part of EU support for sub-regional and regional integration, the exchange of information and experiences regarding the participation of organisations representing the different economic and social spheres should be an area of priority cooperation.

4.5. The ESC takes the view that strengthening ties between the players in civil society in the EU, Latin America and the Caribbean should ease the development of the social dimension of Latin American regional integration, an area in which Europe has a long-established tradition. In addition to a more general exchange of experiences, EU socio-occupational representatives could make a valuable contribution to Latin American and Caribbean discussions on the pros and cons of various aspects of integration. The European experience in designing mechanisms for reinforcing economic and social cohesion, both in general terms and in relation to restructuring specific sectors of production, may also be of significance to Latin America and the Caribbean, particularly as regional integration progresses and expands beyond the sphere of trade. Lastly, the establishment of contact and permanent cooperation bodies involving players in the social and economic spheres could help to solve specific problems in other areas of interregional relations, for example in the area of trade where 'social dumping' could arise as a result of failure to uphold fundamental human rights and basic international labour standards, as defined by the International Labour Organisation (ILO).

4.6. The higher profile for the socio-economic groups in interregional relations should mean that socio-economic organisations and others representing social interests, will play a significant role in implementing the various cooperation programmes and measures. To this end, the ESC recommends that ways be found to incorporate organisations representing civil society into development and economic cooperation programmes and to give them a more active role in channelling these programmes. It is worth noting that several EU cooperation agreements with countries in Latin America and the

Caribbean in recent years embrace measures in areas such as vocational training, job creation, and the administration of social services, where the activities of socio-economic players would be of particular relevance. Moreover, following the success of programmes such as ECIP, AL-INVEST, ALFA and URB-AL, it would be worth considering greater use of decentralised cooperation programmes as a means of furthering the objective of boosting the effectiveness of cooperation.

4.7. Besides support for the implementation of policies promoting productive economic growth, investment and job-creation, the European experience shows that the 'third sector', or the 'social economy', comprised of some types of cooperatives, mutual societies and non-profit associations and foundations, are potentially a considerable source of jobs. The participation of representatives of these sectors in bi-regional cooperation measures could, therefore, provide innovating impetus for job-creation policies in Latin America and the Caribbean. Similarly, as part of the fight against poverty and social exclusion, cooperation in the field of job-creation should give priority to measures specifically designed to support small and medium-sized enterprises (SMEs) and micro-businesses. Moreover, given the fundamental importance of education as a basis for development, the consolidation of cooperation in this area, including cooperation between universities in the two regions, should be high up the bi-regional agenda.

4.8. As part of its effort to support economic stability and sustainable development in the countries of Latin America and the Caribbean, the ESC considers measures that will help these countries meet their foreign debt obligations to be useful and necessary.

4.9. As part of cooperation, the ESC sees it as a priority to establish legal, programme-based and financial instruments directly linking together the representatives of civil society, and thereby facilitating mutual familiarity and direct contact. Across-the-board cooperation establishing measures to encourage initiatives carried out directly by economic and social players has proved a valuable complement to traditional inter-governmental cooperation. Encouraging this type of initiative is one way of fostering more direct cooperation, which is less hide-bound by administrative structures, between organisations representing the grassroots in EU, Latin America and Caribbean countries.

Brussels, 28 April 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI