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II

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

419th PLENARY SESSION, HELD ON 13 AND 14 JULY 2005

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/91/EEC, as regards the formation of public limited liability companies and the maintenance and alteration of their capital

(COM(2004) 730 final — 2004/0256 (COD))

(2005/C 294/01)

On 13 January 2005 the Council decided to consult the European Economic and Social Committee, under Article 44(1) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2005. The rapporteur was **Mr Burani**.

At its 419th plenary session, held on 13 and 14 July 2005 (meeting of 13 July), the European Economic and Social Committee unanimously adopted the following opinion.

Preamble

- Issuance of shares for non-cash-consideration is subject to the requirement of a valuation by one or more independent experts.

1. Background

1.1 In September 1999, in the context of the Simplification of the Legislation on the Internal Market process (SLIM), a Commission Company Law Working Group issued a report on the simplification of the First and Second Company Law Directives. In its report on a *Modern Regulatory Framework for Company Law in Europe* (issued in November 2002), the High-Level Group of Company Law Experts stated that most of the SLIM Group proposals were worth implementing in the form of a directive.

1.2 The draft directive in question undertakes to simplify certain aspects of the Second Directive, which currently sets out the following requirements:

- Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par. This prohibition applies to all share issues without exception, not just to the initial share issue in the context of the company's incorporation. This does not imply that subsequent share issues cannot be made at a nominal or accountable par value lower than that of a previous issue, as long as the price at which the new shares are issued complies with the above mentioned obligation.

- Streamlining of ownership in the company's share capital is, if possible at all, subject in principle to ex-ante authorisation by the statutes, by the instruments of incorporation and/or by the general meeting.

- Acquisition by the company of its own shares is subject in principle to approval by the general meeting only for a certain period of time and only for a certain fraction of the company's capital.

- Financial assistance by the company for the acquisition of its shares by a third party is possible only in very limited cases and only up to a certain limit.

- Exclusion of pre-emptive rights in capital increases for cash consideration is subject to approval by the general meeting and to the requirement of a written report by the company's administrative or management body.

- For cases of capital reduction, it is up to the Member States to lay down the conditions for the exercise of a creditor's right to obtain adequate security.

2. Content of the draft directive

2.1 The draft directive is based on the premise that a simplification of the Second Directive would do much to promote business efficiency and competitiveness without reducing the protection offered to shareholders and creditors.

2.2 In this light, the draft directive's various articles are aimed directly or indirectly at:

- providing companies with the possibility to attract considerations other than in cash to their capital without having to resort to a special expert valuation, providing there is no opposition;
- enabling companies to acquire their own shares up to the limit of the company's distributable reserves;
- enabling companies to grant financial assistance with a view to the acquisition of their shares by a third party up to the limit of their distributable reserves;
- enabling companies to increase, under certain conditions, their capital without having to meet reporting requirements linked to the restriction or withdrawal of the pre-emption rights of shareholders;
- offering creditors the opportunity to resort to judicial or administrative proceedings where their claims are at stake;
- giving shareholders holding a large majority (90 %) of a public limited liability company's capital the right to acquire the remaining shares.

2.3 In order to prevent market abuse, Member States should take into account, for the purpose of implementation of this Directive, the provisions of Directives 2003/6/EC and 2004/72/EC as regards accepted market practices and a series of measures aimed at securing transparency in management and the accountability of management bodies.

3. General comments

3.1 The Committee approves the objectives set by the draft directive and, in general, the means by which the Commission intends to meet them. A distinction must be made, however, between *genuine simplification*, which does not alter the meaning or scope of existing provisions, and *modifying simplification*, which, by doing away with certain procedures that were originally designed to protect third parties, the market or companies themselves, can bring about a change, be it substantial or secondary, to the protective nature of previous directives.

3.2 Modifying simplification is not necessarily a bad thing, and can indeed prove useful if it adjusts provisions to the reality of the market and company life. However, when undertaking it, the Commission cannot go beyond its remit of simplifying — not modernising — the legislation in force. In other words, a modification is acceptable if it demonstrably helps to

simplify corporate governance, improving companies' competitiveness and cutting their costs; it is not acceptable if it reduces the rights of third parties, especially minority shareholders or creditors. The Committee draws the attention of the Parliament and the Council to this point, which is very important in order to avoid giving the public the impression that a simplification exercise is being used to make substantive changes that are unrelated to simplification. That is the spirit in which the EESC intends to make its contribution, commenting solely on those aspects requiring attention, it being understood that those not mentioned have received its approval.

4. Specific comments

4.1 **Article 10a(1)** states that Member States may decide not to apply the protective provisions of Article 10(1), (2) and (3) of Directive 77/91/EEC, in the event of a new non-cash capital contribution: in practice, if the contribution consists of quoted securities. In this case, certification by an expert may be replaced by a valuation on the basis of their weighted average price over the previous three months.

4.1.1 The Committee approves this, but would point out that a calculation on the basis of the weighted average price over the previous three months is based on past values that do not take future prospects into account; prices may rise but also fall. The rule should be expanded to allow for the weighted average price to be considered a *maximum*, giving the decision-making bodies the option to choose a different value, giving reasons.

4.1.2 The derogations envisaged in Article 10a(1) should be applied throughout the EU. If they were left to the Member States' discretion, there is a risk that the desired deregulatory effect would not be felt in certain countries.

4.2 **Under Article 10a(2)**, Member States may also decide not to apply the abovementioned protective provisions in the event of a new capital contribution that does not take the form of quoted securities (unquoted securities, immovable property, etc.). In such cases however, the valuation has to have been undertaken by an independent expert who is 'sufficiently trained and experienced' in this area.

4.2.1 The Committee thinks that Article 10a(2)(a) concerning the expert should be deleted, as the requirement that he be 'sufficiently trained and experienced' is too vague. For the purposes of the Directive it is sufficient to stipulate referral to an independent expert recognised by the competent authorities.

4.2.1.1 In Article 10a(2)(b) concerning the valuation of the contribution, the period of three months should be extended to at least six months.

4.2.2 Article 10a(2)(c) states that the expert must make the evaluation 'in accordance with generally accepted valuation standards and principles in the Member State'. The EESC proposes that the accounting rules recognised by law or by official regulations be cited explicitly.

4.2.3 Under Article 10a(3), Member States may decide not to apply the valuation provisions when assets are contributed as consideration other than in cash whose value is derived from the accounts of the previous year. It should be made clear whether 'value ... derived by ... asset' refers to book value.

4.3 **Article 10b(2)** states that 'each Member State shall designate an **independent administrative or judicial authority** to be responsible for examining the legality of the considerations other than in cash'. On a point of form alone, the EESC would note that a judicial authority is *always* independent, and suggests a slight change in the wording of the text. More importantly, such authorities are referred to a number of times in the text of the directive, each time with reference to different functions, but never with a definition of their precise role or a list of tasks.

4.3.1 Every Member State has administrative or judicial authorities with notarial, authorising or regulatory functions, and the time seems to have come for the situation to be clarified, at least within the Member States, and for a single authority (a 'one-stop shop' along the lines of the 'services' directive) to be designated as responsible for company regulation and control. This would mark a real step forward, not only towards simplification, but also and above all in the completion of the single market.

4.4 **Article 19(1)** states that in countries that allow companies to acquire their own shares, authorisation must be given by the general meeting *for a maximum period of five years*. The EESC thinks that this period is much too long. The state of the market and of a company can change radically, obliging decision-making bodies to reverse their decisions. Share purchase orders are not generally valid for five years. In the interests of prudence and in order to give the general shareholders' meeting a degree of discretion, it would be preferable to reduce the period to two years, allowing for either annual or biannual renewals.

4.4.1 In the second subparagraph of Article 23(1), the stipulation that transactions should take place 'on the initiative' of the administrative or management body should be deleted. The concept is much too vague and can only have been intended as an illustration. The period of five years for the cash flow analysis in the second subparagraph also appears to be too long and should be cut to two years.

4.5 **Article 23a** establishes the right of shareholders to contest the general meeting's approval of a contribution transaction other than in cash by asking the appropriate judicial or administrative body to decide on the legality of the transaction. The EESC notes that the decisions of a general shareholders' meeting have legal force and that it would be difficult for an

authority with solely administrative powers to decide to annul or change them. This makes it all the more necessary to define the roles of the authorities responsible (see above in point 4.3) and to set up a one-stop shop to include judicial functions (administrative tribunal).

4.6 A paragraph is added to **Article 29** exempting administrative or management bodies from the obligation to present a written report on the restriction or withdrawal of the right of pre-emption in the case of an increase in capital. The EESC cannot see the logic behind this provision, which seems to run counter to the principle of transparency without simplifying procedures in any significant way. It should also be noted that shareholders may 'request the administrative or management body to indicate the reasons for the restriction or withdrawal of the right of pre-emption'. However, there is no provision for a refusal to provide information or for shareholders to disagree about the information they are given. The point of reference should be the general principles of company law: the general meeting is sovereign when it comes to the powers delegated to company bodies, and always, in all cases, has the right to be informed on what has been done and to receive an account of every budget heading, concerning both income and expenditure. The EESC therefore proposes that the new paragraph be deleted.

4.7 **Article 39a** does not introduce a simplification as such, but attempts to codify (mirroring Article 15 of the takeover bids directive) a rule that exists only in certain countries: a 'majority shareholder' (i.e. one who holds at least 90 % of subscribed capital in a listed company) can oblige 'minority shareholders' to sell him or her those shares at 'a fair price'. Member States may raise the threshold to a maximum of 95 %. The preamble to the proposed directive extends the term 'majority shareholder' to cases where there are several main shareholders, while the wording of Article 39a suggests that a single shareholder is meant. This ambiguity needs to be resolved in the definitive text.

4.7.1 A rule of this kind has been codified in the takeover bids directive, as mentioned above, but this is different: the guarantees of transparency associated with a takeover bid are lacking, as are the conditions which prompted it. While it may well be in the interests of the majority shareholder to control 100 % of the company (particularly in the presence of an obstructionist or argumentative minority), the minority shareholders may view the matter very differently, depending on circumstances and individual situations. A shareholder who has no influence on the running of the company may be quite happy to sell his or her portfolio at a fair price, providing it is higher than the price he or she could obtain by selling the shares on the stock market. However, if the shares provide a good return or look likely to increase in value, an investor/shareholder may prefer to hold on to them. In such circumstances, it is not clear why he or she should be obliged to sell. In conclusion, while a minority 10 % shareholding is generally unlikely to hamper corporate governance, one must also

recognise the full freedom of choice that is the right of every shareholder. At the same time, however, there will be a few cases in which governance requires control of all shareholders: these are the only cases where such a rule would be justified, and then only with the authorisation of the supervisory authorities.

4.8 **Article 39b** (modelled on Article 16 of the takeover bids directive) is the mirror image of the previous point: minority shareholders may, individually or jointly, oblige the majority shareholder to buy their shares, again 'at a fair price'. The comments made in the previous paragraph apply *mutatis*

mutandis. Here too, the authorities should only approve a forced sale in cases of proven necessity, excluding that of selling off a shareholding simply because the company is forecast to perform badly.

4.8.1 In both of the above two cases, the Committee's conclusions are prompted by the same concern for fairness and respect for general legal principles: the shareholders' right to choose must be fully upheld and must not be restricted by considerations extraneous to their interests unless there is a proven necessity that dictates otherwise.

Brussels, 13 July 2005

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

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC concerning the annual accounts of certain types of companies and consolidated accounts

(COM(2004) 725 final — 2004/0250 (COD))

(2005/C 294/02)

On 3 February 2005, the Council decided to consult the European Economic and Social Committee, under Article 44(1) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2005. The rapporteur was **Mr Byrne**.

At its 419th plenary session, held on 13 and 14 July 2005 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion unanimously.

1. Summary

1.1 The proposal to amend the Accounting Directives is a follow up to the Action Plan adopted by the Commission on 21 May 2003, for Modernising Company Law and Corporate Governance at EU level.

1.2 The objective of the proposals is to further enhance confidence in the financial statements and annual reports published by European companies to provide shareholders and other stakeholders (e.g. employees and suppliers) with reliable, complete and easily accessible information.

1.3 The EESC has made its comments on certain points of detail in this document but in general supports the stated objective and believes that this action is necessary to protect all stakeholders.

2. Details of the Commission's proposal

2.1 The proposal requires that the Accounting Directives (78/660/EEC and 83/349/EEC) be amended to:

- (a) Establish collective responsibility of board members i.e. drawing up the financial statements is a collective responsibility of all board members (administrative, management and supervisory)
- (b) Enhance transparency about related parties' transactions i.e. involving all companies transactions with their managers, the latter's family or other related parties which are not carried out under normal commercial conditions
- (c) Enhance transparency about off-balance sheet arrangements by updating the requirements currently set out in the Accounting Directives to cover for example Special Purpose Entities (SPE)

(d) Introduce a Corporate Governance Statement so that each listed company should disclose in a specific section of its annual report information about its practices in a 'corporate government statement'.

2.2 The Commission emphasises that its approach is principle based; this is intended to ensure proportionality and provide flexibility.

2.3 The Commission acknowledges that the proposal does not fall under the exclusive competence of the Community but points out that making financial statements comparable across the EU is necessary to improve public confidence in them.

3. General comments

3.1 The EESC acknowledges the need to improve public confidence in financial statements of European Companies in the light of recent scandals within Europe and elsewhere. It therefore strongly supports this initiative.

3.2 The EESC supports the principle-based approach to the proposal as it agrees that specific rules have the possibility of being circumvented or becoming out of date.

3.3 Given the need to encourage enterprise and employment within the EU it is important that reporting requirements should not be excessive. Excessive reporting could have the added disadvantage of reducing the focus on the things that really matter. The EESC welcomes therefore the inclusion of a 'materiality' criterion within the proposals; indeed it wonders if this criterion should not be an overriding feature of the Directives.

3.4 The EESC is also concerned that the reporting requirements for unlisted SMEs should not be unduly burdensome as these entities are an engine for growth in the EU. The Committee is aware that Member States have discretion to permit small and medium-sized companies use less than the full reporting requirements. The EESC suggests that it would be appropriate to undertake a fundamental review of the thresholds for small and medium-sized companies with a particular focus on reducing the burden on the smallest entities ⁽¹⁾.

(1) Articles 11 and 27 of the Fourth Directive set the size criteria for respectively small and medium-size companies for application within the Directive. The criteria are:

	Art. 11 (Small companies)	Art. 27 (Medium-size companies)
Balance sheet total	EUR 3 650 000	EUR 14 600 000
Net turnover	EUR 7 300 000	EUR 29 200 000
Average number of employees in the financial year	50	250

3.5 The EESC is aware that the International Accounting Standards Board is currently undertaking a project to produce a set of standards specifically for SMEs. The EESC welcomes this development.

4. Specific comments

4.1 Responsibilities of board members

4.1.1 The EESC supports the proposals establishing **the collective responsibility** of board members for the annual report and accounts that is already generally accepted in the EU. However where a two tier structure exists it is important that responsibility be placed on each board (administrative, management or supervisory) in relation to their respective functions and should not exceed the competences assigned to them by national law.

4.1.2 The EESC suggests that board members should, in good faith, be required to disclose to their auditor all information that is deemed to be relevant to the company's financial report and accounts without being specifically asked.

4.2 Related party transactions

4.2.1 The EESC welcomes the Commission's objective of enhancing transparency about related parties' transactions for non-listed companies in order to restore public confidence in the companies' financial statements. Related party transactions are often of particular significance in privately owned companies including SMEs.

4.2.2 The text of Article 1 amending the Fourth Directive under Article 43 7 (b) requires the disclosure of the 'nature, business purpose and amount' of transactions with related parties that are not carried out 'under normal commercial conditions'. This disclosure goes beyond the requirements of IAS 24 in particular in requiring the disclosure of the 'business purpose' of such transactions.

4.2.3 The EESC questions the proposal to go beyond IAS 24 that is likely to impose significant additional costs for many non-listed companies which would outweigh the benefits to users of their financial statements.

4.3 Off balance sheet arrangements and SPEs

4.3.1 The Commission proposes to improve disclosure by imposing a specific requirement to include in the notes to the accounts disclosure of material off balance sheet 'arrangements' including SPEs. The EESC supports this requirement but is concerned that the term 'arrangement' is not defined and therefore remains a rather vague concept; the Committee therefore suggests that there is a need for clarification and guidance, possibly by using appropriate examples.

4.3.2 To limit the impact on SMEs the EESC recommends that Member States be permitted to limit the information to be disclosed to what is strictly necessary to assess the financial position of the company.

4.4 *Corporate governance statement*

4.4.1 The EESC welcomes the requirement for listed companies to disclose information about governance structures that are of great importance for investors. Inclusion of the statement in the annual report will require the auditors to express an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year which already applies to the annual report itself under Article 51.1 of the Fourth Directive.

4.4.2 A problem seems likely to arise however since some Member States have gone beyond the requirements of the Fourth and Seventh Directives and made the annual report — which would in future include the corporate governance statement — subject to a full audit. The EESC believes that not all elements in the corporate governance statement lend themselves to full audit. A solution to this could be found by requiring listed companies to provide a corporate governance statement 'together with the annual report and accounts' but the statement should still remain subject to a consistency check as outlined in paragraph 4.4.1.above.

4.4.3 The EESC believes that Article 46a.3 is too widely drawn. The following wording is suggested 'a description of the main features of the company's internal control and risk management system in relation to the financial reporting process'.

4.5 *Other points*

4.5.1 The terminology used in Article 2 i.e. 'of direct relevance and assistance' amending the Seventh Directive is different from that used in the Fourth Directive i.e. 'material and of assistance'. There does not seem to be any reason for this apparent inconsistency. The EESC would suggest that the latter wording that includes the important word 'material' be used in both cases.

4.5.2 The words 'not under normal commercial conditions' are used in Article 1 amending Article 43(1) under 7(b) of the Fourth Directive. Similar wording is used in relation to the Seventh Directive in Article 34 7(b). In the explanatory memorandum 'not under normal commercial conditions' is defined by adding 'i.e. not at arm's length'. Since the latter is the generally recognised accountancy term it is suggested that it is more appropriate for use in the amended Directives.

Brussels, 13 July 2005.

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

Opinion of the European Economic and Social Committee on 'The Perspectives of European Coal and Steel Research'

(2005/C 294/03)

On 1 July 2004 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on 'The Perspectives of European Coal and Steel Research'.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 June 2005. The rapporteur was Mr Lagerholm and the co-rapporteur was Mr Gibellieri.

At its 419th plenary session, held on 13 and 14 July 2005 (meeting of 13 July 2005), the European Economic and Social Committee adopted the following opinion by 57 votes to none with 3 abstentions.

1. Introduction

1.1 Prospects opened up by the Research Fund for Coal and Steel

1.1.1 ECSC collaborative research ended with the expiry of the ECSC Treaty on 23 July 2002. However, the surplus capital contributed by the steel and coal industries during the Treaty's period of operation now makes it possible to perpetuate this type of collective research. Indeed, the decision to transfer this capital to the Communities and devote it to research was taken in the Treaty of Nice. The capital amounts to EUR 1.6 billion (estimated value of the capital known at the time when the ECSC bonds were released). The Research Fund for Coal and Steel (RFCS) was created in February 2003. The legal basis was laid down in the annex to the Treaty of Nice relating to the expiry of the ECSC and by the Council decisions of 1 February 2003 (2003/76/EC, 2003/77/EC, 2003/78/EC) published in the Official Journal of 5 February 2003.

1.1.2 Technical and financial guidelines lay down the conditions for the operation of the programme.

1.1.3 After three years of operation of the new system, the aim of this document is to point out certain differences which have emerged in the operation of the Fund and, above all, to attempt to identify future prospects.

1.1.4 First and foremost, apart from a few points to which we will return later, the spirit of ECSC collaborative research has been maintained, not least because of the proven high level of efficiency of ECSC research funding and this is a matter for satisfaction.

1.2 Financial aspects: a temporary and noticeable reduction in grants

1.2.1 The RFCS is managed by the Coal and Steel Unit of DG Research. In budgetary terms, it is the interest on the aforementioned capital, resulting from a long-term placement, which is used to finance the research. The available annual budget therefore depends on the income from investment. An allocation key determines the steel and coal proportions, which are 72.8 % and 27.2 % respectively. In practice, over the last two operating years, this has meant a budget of about EUR 43 million (43.68 million in 2003; 43.68 million in 2004 and

41.20 million for 2005) for steel research. This financial aid applies to about 50 projects per year. As far as the coal aspect is concerned, the level of funding allocated by the RFCS budget over the three last years has been of the order of EUR 16.13 million in 2003, 15.27 million in 2004 and 16.13 million for 2005.

1.2.2 A significant reduction in the total amount of subsidies should be noted, since they represented about EUR 55 to 56 million for steel and EUR 28 to 31 million for coal at the end of the 1990s and into the beginning of the present decade. It should also be noted that the average subsidy available per participant will be further reduced significantly in the next few years, in view of enlargement and the resulting increase in the number of participants in the programme. Indeed, the new Member States will make their contribution as before, but gradually and only between 2006 and 2009. Their contributions to the capital will be made in successive instalments (making a total of EUR 169 million) but the full effects will not be felt until 2011.

1.2.3 The cost-effectiveness of ECSC steel research has already been established (return of 13 units for each unit invested). Considerable effectiveness has been displayed in carrying out industrial research centred on the essential needs of the steel industry, in partnership with those directly concerned, i.e. industrialists and, where necessary, other partners such as component manufacturers or the main customers. There is still an essential need for this type of research today, so as to maintain the competitiveness of the European steel industry at its present level, i.e. among the best in the world. The pilot and demonstration projects which constituted the originality of the ECSC programmes have diminished significantly over the last few years; they must remain the instrument of choice and the preferred vehicle for rapid transfer of technological developments to the operational units (factories).

1.2.4 ECSC-funded European coal research has been highly efficient. Evaluation ⁽¹⁾ shows average benefit factors ranging from 7 to 25. Moreover, RTD often results in substantial spin-off benefits for other industries for example, in surveying, tunnelling, and material testing methods.

⁽¹⁾ Performed in 1995 by Geoffrey Walton Practice and Smith Vincent and in 1996 by the Coal Research Committee of DG XVII

1.3 Monitoring and management of the programmes

1.3.1 Major changes have taken place as regards the process of selection of annual projects for approval. On the one hand, the Commission is assisted by a coal and steel committee (COSCO) in which representatives of the Member States take part as well as by Steel Advisory Groups (SAGs) and Coal Advisory Groups (CAGs) with representatives of industry and other relevant stakeholders. On the other hand, the assessments are made by independent experts. In material terms, the Commission has ensured that these assessments are carried out properly since the system was set up, under conditions which are improved each year.

1.3.2 The quality of the projects selected and hence of the RFCS programme, depends on the quality of the assessments. Since it is industrial research programmes which are being evaluated, it is essential that this be done by experts with specialised knowledge of industrial needs and priorities, of past research and its results and of the skills of the partners involved. The experts of the technical groups, for example, meet these conditions but the Commission and the steel industry groups still need to optimise the practical conditions for these experts' participation.

1.3.3 For steel, nine technical groups henceforth replace the previous 17 executive committees as regards the monitoring of projects and the transfer of technological information, with a substantial reduction in the number of the participating experts. This development will be partly compensated by the increased involvement of experts from the 10 new Member States. The tutelage system set up (allocation of the monitoring of one project or a limited number of projects to one expert) seems effective in ensuring more direct monitoring of projects; it makes it easier to discuss the monitoring and makes it more rigorous. A mid-term assessment of the new RFCS projects will be carried out in spring 2005 and will provide more information in this respect.

1.3.4 Regarding coal, three technical groups (TGs) have begun to replace the five Executive Committees operating under the ECSC Coal Research programme. Their fields of interest are mining technologies (TG1), conversion technologies (TG2) and clean coal technologies (TG3), respectively.

1.3.5 The level of involvement of companies and institutions based in the 10 Accession States in the year 2000 ECSC proposals was almost nil, as opposed to 4.2 % and 14.16 % for steel and coal proposals respectively at the time of the 2004 RFCS call. The total number of representatives from the 10 new Member States on the various committees and advisory and technical groups is 25 (11 COSCO, 5 SAG, 4 CAG, 3 steel TGs and 2 coal TGs).

2. Steel

2.1 General situation in the steel sector

In 2004 the buoyant global economy provided a significant boost to the European economy but domestic demand failed to pick up substantially. The prospects for 2005 largely depend on the performance of the world economy, since the euro-zone is very much dependent on final demand generated elsewhere.

The key as to whether the global economy and with it the steel market will continue to expand this coming year is, China and other Asian countries. China appears to have entered a phase of controlled slowdown and its growth is becoming more sustainable.

2.1.1 With the moderation in world economic growth expected this year and the slow development of the recovery in continental Europe, it is expected that real consumption growth will expand at a slower rate than in 2004. However, since stocks levels of some products are too high in some countries, a moderation in apparent consumption growth can also be expected.

2.2 Future prospects for steel research

2.2.1 Results of the first calls for tender following the expiry of the ECSC: a considerable fall in the number of successful proposals in the RFCS programme

With the help of a new standard contract, 49 contracts were signed in 2003 and 51 in 2004; nearly 50 should be signed in 2005. The rate of success has fallen considerably, since the number of proposals submitted has not diminished in relation to the amount of aid available — quite the reverse. For example, 116 proposals were submitted in 2002, 143 in 2003 and 173 in 2004. The rate of success of the projects is about 30 % at present, whereas it was 50-55 % at the beginning of this decade. This recent tendency has been observed at a time when the new Member States are still participating relatively little in the RFCS programme.

2.2.2 The Steel Technology Platform: the right framework for a long-term vision of steel research

The steel industry has to confront many challenges in different areas such as the need for competitiveness arising from globalisation; the rapid growth of new, large producers (at present China); environmental rules which concern both processes and products; the requirements of customers and shareholders; health and safety at work and training.

The ambition of the steel industry is to maintain and even reinforce a global leadership, which is both sustainable and competitive.

To meet this ambition, a group of personalities decided to launch a determined, long-term and structured R&D action, in the framework of a Steel Technology Platform. This platform was launched on 12 March 2004.

The CCMI is one of the platform's partners and is represented on its Steering Committee.

2.2.2.1 Six working groups, involving more than 100 people and corresponding to the **4 pillars of sustainable development**, have been set up: profit, partners (involving both automotive and construction sectors), planet and people, as well as energy. These working groups have devised **three large and complementary R&D industrial programmes with wide-ranging social impacts**, each encompassing several R&D Themes and Research Areas.

2.2.2.2 Three industrial programmes with large wide-ranging social impacts are proposed:

- Safe, clean, cost-effective and low capital-intensive technologies
- Rational use of energy resources and residue management
- Appealing steel solutions for end users

2.2.2.3 Concerning the first large programme, great flexibility is needed in the whole steel industry production chain in order to cope with the expanding range of products that will have to be supplied at low cost. Much more compact lines with very short response times and extended ranges of capability would be of benefit to the steel sector. On the other hand, where conventional technologies are mature and robust enough to guarantee stable performance, intelligent manufacturing technology should contribute to the development of more flexible processes. New production concepts, such as intelligent manufacturing processes and efficient production organisation, need to be designed and developed, based on breakthrough organisational technologies to ensure the evolution of new processes, products and services.

2.2.2.4 Three major themes have been identified in the first large programme:

- Novel integrated routes for 'oxide free' and energy efficient processing
- Flexible and multifunctional production chain
- Intelligent manufacturing.

2.2.2.5 The second large programme is also focussed on three major R&D themes:

- The greenhouse-gas challenge

- Energy efficiency and resource savings

- Development of green products that take into account the social impact of materials.

2.2.2.6 The third large programme addresses the challenge of meeting customer's demands for a broad variety of ever more sophisticated high-performance materials for, essentially, two markets: the automotive and the construction sectors. A third (energy) is being considered this year.

2.2.2.7 All together, these three programmes aim to play a major role in **boosting competitiveness, economic growth and the related impact on employment in Europe**. The corresponding R&D themes and areas that have been identified in those programmes are bringing a strong **contribution to the sustainable development approach. Protecting the environment** (greenhouse gases emissions, particularly CO₂ emissions) and increasing **energy efficiency** constitute both major transversal issues in the universe of the proposed RTD programmes. **Security and safety** represent the third very important objective to be addressed, not only in the relevant industries but also in customers' everyday life as users of steel solutions (cars, buildings, energy production and transport, etc.) by developing new **clever and safer steel solutions**.

2.2.2.8 Another major transversal theme, that involving **human resources'** aspects, has also been taken into consideration (attracting and securing qualified **people** to help meet the steel sector ambition). In this respect:

- A large European network (Top Industrial Managers for Europe (TIME), 47 universities from all 25 Member States), involved in education, training, communication and dissemination activities has been identified among the stakeholders of the EU Steel Technology Platform. This network should play a leading role in both analysing how the education system could meet future requirements for qualified people in the European steel industry and devising effective approaches to addressing its anticipated shortcomings.
- Human resources as the holders of a company's core competencies, represent a key asset that should be dynamically optimised. A survey of the steps taken by European steel producers in terms of change management and progression towards a 'knowledge organisation', leading to exchanges of best practices, should significantly contribute to such an optimisation process.

2.2.2.9 The vision of the future described in the Strategic Research Agenda adopted by the Steering Committee of the Platform on 15 December 2004 sketches out the prospects of steel research for the coming years and decades.

2.2.2.10 A second version of the Strategic Research Agenda will set priorities and make proposals with regard to the placing of themes and research fields in the various European programmes: RFCS, RDFP (Framework programme, FP), Eureka, national and regional programmes, etc. Thus, it will include the main consensus-based topics for research to be pursued by the RFCS.

2.2.2.11 The nature of the research themes described in the Strategic Research Agenda, combined with the skills of the necessary partners, should guide the choice of appropriate European programme. For example, though not exclusively, RFCS for research specific to steel and RDFP for research involving partners from more than one industrial sector (e.g. suppliers and component manufacturers where the development of new technologies is concerned; customers and users — such as automobile and construction industries — where it is a question of developing innovative steel solutions etc.). Similar guidance should exist in the context of joint technological action for large, long-term programmes requiring sizeable investments and centred on European themes selected by consensus.

2.2.2.12 To achieve its full effectiveness, the approach suggested above requires, of course, **that the different programmes be coordinated**. Thus the Platform's Strategic Research Agenda must be a document of choice for the forthcoming revision of the steel guidelines. Moreover, coordination of programmes should make it possible to give all projects the same opportunity, regardless of which European programme they come under.

2.2.2.13 The next FP7 and other European programmes (Eureka, etc.), national and even regional programmes, should offer the possibility to implement the Strategic Research Agenda. However, the Joint Technology Initiatives, together with loans of the European Investment Bank, will enable the development of emergent breakthrough technologies and their implementation on wide industrial scales, over the coming decades.

2.2.2.14 In addition, the consensus-based selection of priority specific themes for the steel programme in the platform's Strategic Research Agenda should build a reserve of priority topics (requiring both considerable funding and considerable technical resources) to be submitted in response to the annual calls for tender for RFCS steel research. Doing so would also offer an opportunity to avoid the fragmentation of subsidies, to reduce administrative costs by reducing the number of proposals and, above all, to achieve greater efficiency by concentrating resources on topics that are vital for the steel industry's competitiveness.

2.2.2.15 One of the projects (ULCOS, Ultra Low CO₂ Steel Making) of the 2nd programme of the steel platform is aiming at reducing drastically the CO₂ emissions in steelmaking. It has the following characteristics:

- an issue that concerns the whole of Europe and is incorporated in the 7th Framework Programme;

- clearly identified industrial objectives which are important for the long-term competitiveness of the steel sector;
- a consortium that has already been formed with the leading players in the European steel industry.

Their commitments are contained in a consortium agreement. Given the characteristics of this project industry advised, in February 2005, the Commission of the platform's interest in setting up a Joint Technology Initiative (JTI). However, ESTEP was not selected for a JTI in the Commission's proposal of 6 April 2005 to the European Parliament and Council.

2.2.2.16 Finally, **regular updating of the programmes should make it possible to keep them perfectly matched to industrial needs**.

3. Coal

3.1 General situation in the coal sector

3.1.1 Europe is the world's third largest coal consumer. In terms of provision of energy to the European Union, coal is one of the central pillars supporting the balanced energy mix and its role has clearly increased with EU enlargement. It is an essential feedstock fuel for iron and steel making, while in the electricity sector with a share of 32 %, it remains a fuel of choice by virtue of its security of supply and competitiveness.

3.1.2 European coal mining is a highly developed sector of industry. Compared to deposits overseas, the geological conditions for hard coal in Europe are demanding. The challenge of exploiting these deeper deposits has resulted, however, in a leading position for European mining technology. Today, European mining technology holds more than half of the expanding world market — not least as a result of ECSC RTD funding^(?).

3.1.3 A commitment to maintaining Europe's leading position assumes appropriate research funding, which will favour not only employment in this sector but also the Community's balance of payment and has associated multiplier effects. This applies to both mining as well as clean coal utilisation since technological advances have to focus on all critical aspects of the coal chain.

^(?) The World Energy Council has predicted a rapidly growing total investment volume of EUR 3,000 billion over the next 25 years for the construction and equipping of mines.

3.2 Research perspectives in the coal sector

3.2.1 The sector has an excellent research infrastructure, which cooperates well at European level. For years it has involved partners from the former Accession (now New Member States) in joint research projects. The FP5-funded Network on European Sustainable Mineral Industries (NESMI), comprising about 100 stakeholders in European mining industry and science, exists since 2002. An important outcome of NESMI is the European Technology Platform for Sustainable Mineral Resources (ETPSMR), announced at the NESMI conference on 15 March 2005, which is to be launched in September 2005.

3.2.2 The strategic objectives for coal RTD are:

- Securing Europe's future energy supply
- Developing innovative and sustainable production technologies
- Improving the efficiency of coal utilisation so as to reduce emissions
- Sustainable usage of energy resources
- Creating European added value through R&D-based technology leadership.

3.3 RTD in mining technology

3.3.1 RTD has to give priority to productivity and cost cutting throughout the whole production process:

Exploitation at low cost whilst avoiding operational downtimes requires an optimum knowledge of the deposit obtained by prior exploration. New underground **exploration methods** should therefore be developed in a multidisciplinary approach. In order to achieve further cost savings in planning, development and operational control, it is necessary to continue the development of modern surveying systems, including satellite technology.

3.3.2 The safe and cost-effective development of deposits requires **intelligent and flexible manufacturing systems**, such as novel road driving and winning methods with the application of robots, advanced automation and artificial intelligence. Key terms here are further automation, improved process control and embedded systems for operation and maintenance.

3.3.3 The development objectives in **automation** concern intelligent, autonomous sensors and actuators, wireless sensor networks, new physical measuring procedures, localisation and navigation systems and intelligent image processing systems.

3.3.4 Improved and highly rationalised **strata control techniques** are a matter of high priority for ensuring the more economic and safer support of mine exploitation, especially at

greater depth. A particular aid to planning, which is of very great interest here, is the further development of rock mechanical modelling.

3.3.5 A key issue, necessary in all phases of the production process is improved **information technology**, including sensing, monitoring, and analytical techniques. In detail, this involves communication, particularly mobile underground communication, including related IT terminals. Virtual reality, successfully developed in a RFCS joint project, could further improve mine-control station technology. Increased computer-assisted process management will improve both efficiency and safety in the workplace.

3.3.6 **Assembly and dismantling** is an obstacle to any further progress in productivity owing to the confined spatial conditions and steadily growing dimensions and unit weights. One major objective therefore, is to reduce the assembly and dismantling times using new assembly/dismantling techniques and to restrict the components to a small number of standardised, compact components. Once again, modern IT technology can be used as a supporting measure. Something similar applies with respect to the transport of material underground. The prime objectives here are the automation of transport using modern sensor systems and optimised material handling.

3.3.7 The costs of environmentally relevant actions and the question of public acceptance of mining in densely populated regions make environmental protection, with a view to elimination or reduction of various harmful influences of mines or coking plants on the environment an important subject for research. Any methodological progress achieved in these areas will have both considerable export potential and an enormous impact on other industries and is badly needed by society as a whole. This concerns active mines as well as closure measures and follow-up use.

3.3.8 Examples of the need for R&D include more precise procedures for forecasting both the recurrent rises in mine-water levels and gas emissions after closure. In addition, general technical progress in other sectors of industry should also be used as far as possible and their modification for underground hard coal mining supported. Key words in this connection are nanotechnology, bionics, sensors from aerospace technology and robotics.

3.4 RTD in Clean Coal Utilisation

3.4.1 The major objectives here also represent two stages for clean coal utilisation:

- Improved efficiency in order to reduce emissions and for a sustainable use of resources, and
- CO₂ sequestration and storage.

3.4.2 For clean coal utilisation, the current preferred option is to increase efficiency because it reduces emissions and helps to achieve the aim of conservation of resources. This strategy is favoured due to the fact that there will be an anticipated need for replacement and new construction in excess of 200 GW power plant capacities (EU15) in Europe for the period 2010 to 2020. For fossil-fuel-fired power plants, a percentage of approximately 60 % is forecast, with coal alone contributing 23 %. This presents a major opportunity to use maximum — efficiency technologies.

3.4.3 With the steam-power plant technology achievable today maximum efficiencies of 45 %-47 % are possible with the use of hard coal. An increase to more than 50 % can be expected, primarily due to a further rise in the process parameters of pressure and temperature (to more than 700 °C). A key role is played here by the development and testing of new, high-temperature materials. Compared with the technology currently installed in Germany, this would mean savings of about 30 % in CO₂ emissions.

3.4.4 It is therefore possible to achieve a significant contribution to the reduction of CO₂ emissions while at the same time conserving resources in the short term mainly by developing these conventional steam-power plant processes. This should therefore be a major focus for future research funding.

3.4.5 In addition to more highly developed conventional power-plant processes, combined processes may also provide an alternative in the medium to long term. The main possible variants here are the integrated coal gasification process (IGCC) and pressurised pulverised coal firing. With these it would be possible to achieve efficiencies of substantially higher than 50 %. Ongoing research into this must be intensified.

3.4.6 Furthermore, research is needed into the development of zero-emission power plants, providing there is the political will to achieve this. The installation of the equipment needed to separate carbon dioxide however, produces a loss of 6 to 14 percentage points in plant efficiency. This not only increases the cost of the end product but also contradicts the objective of the conservation of resources. Optimised power-plant designs with maximum possible efficiencies form the basic technologies with a view, in particular, to the long-term objective of a CO₂-free power plant.

3.4.7 The zero-CO₂ power station is a long-term vision. Preventive climate protection demands the timely development of processes for the technically and economically rational separation of environmentally relevant trace gases from power-station emissions with a view to preventing the release of CO₂ into the atmosphere.

3.4.8 At present, the development of CO₂ separation technologies (the first part of the process) appears to be simpler to

achieve than the reliable and long-term storage of the carbon dioxide after separation (the 2nd part of the process) because very little is known about the long-term behaviour of large quantities of CO₂ in enclosed storage chambers. At the present time the debate is focused mainly on sequestration in depleted oil and gas deposits or in deep salt aquifers. Such an undertaking will require substantial logistical investment.

3.4.9 According to current expertise there is no insurmountable technical obstacle to such a development, though the concept is fraught with considerable economic and ecological risk. Minimising this risk is one of the major tasks facing both industry and governments in the years ahead.

4. Conclusions and Recommendations

After a period of transition of three years, the RFCS research programme has proved to be efficient and effective, having substantially integrated the network of experts of the former ECSC Research programmes. The EESC recommends maintaining, for the foreseeable future, both the same consultative bodies (COSCO, SAG and CAG, Technical Groups) for the management of the programme and the same evaluation procedure. The EESC asks the Commission to consider how to increase the participation of experts in technical groups.

4.1 Although for administrative reasons the RFCS Research programme includes both coal and steel, each sector has its specific characteristics and needs that should be managed in order to enhance the realisation of technical and scientific objectives of improving their competitiveness. The EESC supports the establishment of European Technology Platforms in which both the steel and the coal sectors can find the appropriate environment for developing and coordinating their RTD policies and activities utilising all available European resources.

4.2 The EESC is strongly in favour of a rapid and substantial integration of enterprises, research centres and universities of the new Member States in the RFCS research programme and in the activities related to the relevant European Technology Platforms for the steel and coal sectors.

4.3 Steel

In the coming decades, the EESC foresees an essential need in the steel industry for collaborative research in order to maintain and even reinforce that industry's current global leadership position; a position that is both sustainable and competitive. The utilisation of steel is essential for meeting the future requirements of society — and for the creation of new market opportunities. In the future the steel industry will have to address, in particular, the need for more environment-friendly products and new steel solutions.

4.3.1 The EESC identifies the following main issues:

- Protecting the environment (reduction of CO₂ emissions in particular) and increasing energy efficiency constitute both major transversal issues in the RTD programmes. New processes have to be developed that would be more integrated and flexible than existing ones.
- Security and safety also represent a very important objective to be addressed, not only in the relevant industries but also in customers' every-day life as users of steel solutions (cars, buildings, energy production and transport, etc.) by developing new, more intelligent and safer steel solutions. Weight reduction in developing new steel products represents a shared objective as well. However, the social impact of materials would bring a valuable contribution to the long term objectives of the steel sector (strengthening the competitive position of steel products and the sustainability of steel production processes).
- Attracting and securing qualified people constitutes another very important objective in helping to meet the ambitions of the steel sector.
- The consensus-based identification of priority specific themes for the Steel Technology Platform constitutes a reserve of priority topics to be implemented with the

different European RTD instruments (RFCS, FP7, national and even regional programmes). However the different programmes need to be coordinated.

- The support of the European authorities in order that the steel sector platform be adopted as a priority platform that will benefit from a Joint Technology Initiative.

4.4 Coal

The EESC welcomes the new European Energy Priorities stressing the significance of clean coal technologies for climate and environmental protection and the security of energy supply in the Union and announcing its commitment to clean coal technologies as a key priority for research in the 7th RTD Framework Programme.

The programme should aim, therefore, at the improvement of efficiency in order to reduce emissions and for a sustainable use of resources as well as CO₂ sequestration and storage measures. As the broader orientated European Mining Technology Platform will provide strategies and instruments for cross sectoral mining research, the complementary character of the RFCS programme should be retained and the programme should aim at specific coal mining RTD.

Brussels, 13 July 2005.

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

Opinion of the European Economic and Social Committee on the Communication from the Commission on the Social Agenda

(COM(2005) 33 final)

(2005/C 294/04)

On 9 February 2005, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'Communication from the Commission on the Social Agenda'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 June 2005. The rapporteur was **Mrs Engelen-Kefer**.

At its 419th plenary session, held on 13 and 14 July 2005 (meeting of 13 July 2005), the European Economic and Social Committee adopted the following opinion by 60 votes to one, with three abstentions.

1. Introduction

1.1 Special expectations are bound up with the new Social Agenda for the period 2006-2010. At a time when the Lisbon Strategy is the subject of a mid-term review, there is a need to give greater prominence to the importance of social policy as a means of achieving the objectives set out in Lisbon. There is a need to honour the claim set out in the Lisbon Strategy that the improvement of competitiveness and increased economic growth can go hand-in-hand with the establishment of more and better jobs and greater social cohesion. To this end, there is a need to introduce a European policy which places these objectives on an equal footing, thereby ensuring that the Lisbon strategy is a balanced strategy. There needs to be a balanced relationship between economic policy, employment policy, social policy and environmental policy in order to safeguard the European social model on an ongoing basis.

1.2 At its summit meeting held on 22/23 March 2005 to give fresh impetus to the Lisbon Strategy, the European Council noted that priority should be given to promoting growth and employment and drew attention to the decisive importance of macro policy in that context⁽¹⁾. This priority-setting appears to be urgently necessary, given the ongoing weak economic situation and the persistently high level of unemployment. The Council takes as its starting point an approach based on a mutually reinforcing blend of economic policy, employment policy and social policy when it points out that: 'To achieve these objectives, the Union must mobilise all appropriate national and Community resources ... in the strategy's three dimensions (economic, social and environmental) so as to better tap into their synergies in a general context of sustainable development'⁽²⁾. The EESC does, however, take the view that giving priority to focusing on growth and employment does not automatically bring about an improvement in the social situation, even though more growth is a key prerequisite for tackling unemployment and improving the social situation. Social policy should rather be regarded as a productive factor which has a beneficial impact on growth and employment. The Social Agenda 'will help to achieve the Lisbon Strategy objectives by reinforcing the European social

model based on the quest for full employment and greater social cohesion'⁽³⁾.

1.3 'The European social model is based on good economic performance, a high level of social protection and education and social dialogue'⁽⁴⁾. It is also based on the fundamental values of democracy, freedom and social justice, which are common to all of the EU Member States. This declaration of belief in a social market economy and its underlying values is set out, for the first time in respect of the whole of the EU, in the future EU Constitution, in particular in the EU's Charter of Fundamental Rights. Despite differences of form with regard to individual provisions, all EU Member States display common features of social justice which, taken together, form the components of the European social model. These common features include:

- sustainable social security systems, based on the principle of solidarity, designed to afford protection against the major risks encountered in the life of the individual;
- working conditions, set out in law or collective agreements, for protecting workers and promoting employment;
- the granting of involvement and participation rights to workers and organisations representing their interests;
- industrial relations systems and arrangements for autonomous social dialogue between the social partners;
- general public interest services.

The task of European social policy is to safeguard and develop this European social model though the use of effective instruments at EU level. The special contribution made by social policy comprises: the European Employment Strategy (EES); coordination measures taken with a view to promoting social integration and reforming social security schemes; and the upward alignment of living and working conditions through the establishment of social standards of an adequate minimum level.

⁽¹⁾ 'Sound macroeconomic conditions are essential to underpin the efforts in favour of growth and employment'. (Presidency conclusions – Brussels 22/23 March 2005, point 7 page 4).

⁽²⁾ Ibid, point 6, page 4

⁽³⁾ Presidency conclusions, point 29, page 9

⁽⁴⁾ Presidency conclusions – Barcelona European Council, 15 and 16 March 2002

1.4 With a view to achieving the Lisbon objectives, the role of social policy, as a special field of action at EU level, needs to be strengthened by pursuing a proactive policy designed to:

- avoid unemployment and promote the reinsertion into the labour market of particularly disadvantaged groups;
- combat poverty and social exclusion, paying particular attention to new risks of poverty, involving, for example, the 'working poor';
- combat all forms of discrimination and to bring about equal opportunities for women;
- step up the exchange of experience on social security reform strategies with the aim of squaring the maintenance of the social function of these measures with the provision of lasting safeguards in respect of basic funding;
- enforce social standards of an adequate minimum level for protecting workers and safeguarding their rights in respect of involvement and participation and rights in respect of worker representation in enterprises.

The EESC strongly supports the new procedure adopted by the Commission whereby all proposed legislation is to be scrutinised to assess its impact on growth and employment and to determine whether it is compatible with the EU's Charter of Fundamental Rights.

1.5 The High Level Group on the Future of Social Policy in the Enlarged EU has made an important contribution to the preparation of the new Social Agenda. The High Level Group submitted its report in May 2004. The new Social Agenda should, in the EESC's view, take greater account of the findings and proposals of the High Level Group ⁽⁵⁾.

2. Summary of the Commission's proposal

2.1 In its communication, the Commission first of all draws attention to the fact that it is committed to the modernisation and development of the European social model as well as to the promotion of social cohesion, as part of the Lisbon strategy. The Social Agenda sets out the priorities which should guide the European Union's action. Implementation of the Social Agenda should be based on the following principles:

- positive interplay between economic, social and employment policies;
- promoting equality as regards employment, social policy and industrial relations in order to improve human and social capital;

⁽⁵⁾ Report of the High Level Group on the Future of Social Policy in the Enlarged EU, May 2004

- modernising systems of social protection by bringing them into line with current requirements of our societies on the basis of solidarity and by strengthening their role as a productive factor;

- taking account of the cost of the lack of social policy ⁽⁶⁾.

2.2 On the basis of the abovementioned principles, the Commission proposes that a strategic approach be pursued, geared to two elements:

- strengthening citizens' confidence in social change by adopting an intergenerational approach and partnerships for change and by exploiting the opportunities provided by globalisation;
- setting priorities, on the basis of the Commission's strategic objectives for the period 2005-2009, in the following policy fields: promoting employment, tackling structural change, creating a more cohesive society and promoting equal opportunities.

3. Building confidence — conditions for success

3.1 Three specific measures are announced with a view to bolstering confidence in social change. These measures are as follows:

- a Green Paper on demographic change and a contribution to the European Initiative for Youth;
- the partnership for change; the Commission proposes the organisation of an annual meeting of all players concerned in a forum to evaluate the implementation of the Social Agenda;
- the incorporation of the European social model into the international labour context and support for the concept of promoting decent work.

3.2 The EESC, too, considers that there is a need to bring about a higher level of public confidence in European unification and social development overall. The only way that this can be achieved, however, is if EU policy brings about a real improvement in the social situation of individual people. The EESC, also, recognises the need for a well-founded analysis of the social consequences of demographic change and welcomes the presentation of the Green Paper announced by the Commission ⁽⁷⁾; this document will facilitate the organisation of a wide-ranging debate in the EU. With a view to promoting an intergenerational approach, special attention should be paid to the impact of demographic change on the young generation. It is, however, not clear what is meant by the Commission when it refers to 'a contribution to the European Initiative for Youth', nor is it clear what role the Commission plans to play in this context. The governments of Germany, Spain, France and Sweden have recently presented to the European Council a joint document on the subject of a 'European Pact for Youth'.

⁽⁶⁾ COM(2005) 33 final of 9.2.2005, page 2

⁽⁷⁾ COM(2005) 94 final of 16.3.2005

This pact, which was adopted at the Spring Summit ⁽⁸⁾, includes proposals for measures in the following fields: employment, social integration, general education and vocational training, mobility and youth exchanges.

The joint document also makes explicit reference to the planned Green Paper on demographic change. The EESC deplores the fact that, in its communication, the Commission fails to address in greater detail the proposals put forward by the abovementioned governments ⁽⁹⁾.

3.3 The EESC regards the proposed establishment of an annual forum to evaluate the implementation of the Social Agenda as a fundamentally good idea. Such a forum should, in the EESC's view, address the outlook for the European social model and involve all the social groups concerned in its work. The proceedings of the forum should be planned in such a way as to enable discussions to be held between participants.

3.4 The EESC strongly supports the Commission's intention actively to draw attention to the benefits of the European social model in the international labour context and to support the establishment of decent working conditions throughout the world, in accordance with ILO standards. The credibility of the EU in this context will only be assured if it maintains and develops the European social model, even when underlying economic conditions have changed, and also on condition that it defends, in a convincing way, the linkage between economic and social progress. With these aims in view, the EU should also make explicit reference to the revised European Social Charter and the European Charter of Fundamental Rights.

4. Employment, the quality of work and tackling structural change

4.1 European Employment Strategy (EES)

4.1.1 In the context of the European Employment Strategy (EES), the Commission announces a reorientation for 2005, **geared to the priorities set out in the 2003 Report of the Kok Task Force on Employment**. These priorities are as follows: to promote adaptability; to attract more people into the labour market; to increase investment in human resources; and to implement reforms more effectively. These measures are to be carried out in conjunction with the broad economic policy guidelines. The EESC points out that the High-Level Group on the Future of Social Policy has put forward concrete proposals in respect of the setting of priorities in the new employment guidelines. Under these proposals, the employment guidelines should be concentrated on integrating young people at an earlier stage and more effectively into the labour market, the establishment of 'bridges' between education and employment and the integration of women and older workers into the labour market. According to the proposal put forward

by the High-Level Group, a further priority should be the promotion of high-quality jobs by taking action with regard to the organisation of employment and in the field of health and safety; such measures would also facilitate the employment of older workers. In the field of lifelong learning, the High-Level Group also proposes that various measures be incorporated into the employment guidelines. Greater priority should also be given, in the EU's employment guidelines, to measures to tackle the social consequences of structural change and to provide assistance in this regard, particularly in the new EU Member States. These proposals have been taken up only to a partial extent in the Integrated Guidelines for Growth and Jobs ⁽¹⁰⁾, which have in the meantime been presented.

With regard to the reorientation of the employment guidelines, the EESC underlines the need to give greater priority to the quality of employment and the need, in this context, to avoid giving rise to 'working poor'.

4.1.2 The only role for the European Social Fund (ESF) in support of the EES mentioned by the Commission in its communication is in connection with the improved implementation of reforms, on the one hand, and a planned communication strategy, on the other hand. The EESC expresses criticism over the fact that the Commission does not even refer to the role of the ESF as an important instrument for promoting human resources and a key tool for labour-market training and further training measures. In the EESC's view, this important role played by the ESF in support of lifelong learning has not been demonstrated clearly enough. In this context it should be pointed out that competence and skills are surely factors which give the EU a key competitive edge ⁽¹¹⁾.

4.1.3 The EESC does, in principle, endorse the observations set out in the Social Agenda as regards back-up measures in the context of structural change in the economy; these observations are clearly based on the views set out by the High Level Group on the Future of Social Policy. One striking omission, however, is the fact that the Commission does not address the social consequences of the restructuring of enterprises. Plans for tackling social consequences are, however, the very issue at stake and one which should be addressed in such a way as to make it possible to achieve a fair balance between economic interests and the interests of employees. The Commission puts forward basic proposals with regard to procedures and instruments, such as the establishment of 'a high-level forum of all players and stakeholders' to accompany the restructuring of enterprises. The Commission does, however, fail to provide more precise information as to the membership of such a forum or even its objectives and the issues involved. Nor does the Commission highlight the importance of the rights of employees, on the one hand, and EU social legislation, on the other hand, in the context of measures to tackle the social consequences of structural change. The EESC does, however, take the view that the Directive on protecting workers in the event of collective redundancies and transfers of undertakings, the Directive on worker information and consultation and the Directive on European Works Councils are key instruments for tackling the social consequences of structural change, with the participation of workers and the organisations representing their interests.

⁽⁸⁾ Presidency conclusions – Brussels European Summit, 22 and 23 March 2005

⁽⁹⁾ Opinion of the EESC on the *Proposal for a Decision of the European Parliament and of the Council creating the Youth in Action programme for the period 2007-2013* (CESE 253/2005 of 10.3.2005 – Rapporteur: Mr Rodriguez Garcia Caro)

⁽¹⁰⁾ COM(2005) 141 final of 12.4.2005

⁽¹¹⁾ EESC opinion on the *Proposal for a European Parliament and Council Regulation on the European Social Fund* (CESE 250/2005 of 9.3.2005 – Rapporteur: Mrs Engelen-Kefer)

4.1.4 The EESC welcomes the initiation of the second phase of the consultation of the social partners on the issue of restructuring and on the revision of the Directive on European Works Councils. The EESC does, however, believe that these two issues should be tackled separately. European Works Councils do, indeed, play an important role in the issue of restructuring. Quite apart from this fact, however, the improvement of the European Works Council Directive is long overdue. The EESC has already addressed this issue and pointed out that: '[This] instrument has made a very important contribution to developing the European dimension of industrial relations' ⁽¹²⁾.

4.1.5 The EESC also expresses its support for the plan to achieve greater synergy between policies and their financial levers, in particular the ESF. What the Commission exactly means by this proposal is not, however, clear. It is also unclear what the Commission means by 'a stronger link between the EES and the development of the legal frameworks and social partners' agreements' (page 7 of the communication).

4.2 A new dynamic for industrial relations

4.2.1 The Commission is seeking to instil a new dynamism into industrial relations by developing social legislation, strengthening the social dialogue and promoting corporate social responsibility (CSR). In this context, the Commission plans to submit a Green Paper on the development of labour law in which it will analyse current trends as regards work patterns and the role of labour law in (a) providing a more secure environment and (b) ensuring transition in the light of recent developments. In the Commission's view, the subsequent debate on this Green Paper could lead to the modernisation and simplification of the current legal provisions. The EESC regards the presentation of such a Green Paper as a useful step. It does, however, take the view that it is too early to anticipate, however sketchily, the possible upshot of such a debate. The EESC believes, as a matter of principle, that, in the case of the review of labour law, in which the social partners are to be involved, the requirements of the Treaty have to be the decisive element in determining what action has to be taken. Under the Treaty, the setting of minimum provisions is to lead to the harmonisation of living and working conditions, while the improvement is being maintained (c.f. Article 136 of the Treaty establishing the European Community).

4.2.2 The Commission also announces the following planned measures: to propose, in 2005, an initiative to protect the personal data of workers; to review the Directives on the transfer of undertakings and collective redundancies; and to consolidate the various provisions on worker information and consultation. The EESC would point out that it is time that these initiatives were implemented. In line with the provisions of the Treaty, the aim of the review of the Directives should be to 'promote improved working conditions and an improved

standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained' (Article 136 of the TEC).

Turning to the consolidation of the provisions on worker information and consultation, the EESC takes the view that the level of participation rights set out in the Directive on the European company should serve as a benchmark.

4.2.3 The EESC is in agreement with the proposals put forward by the Commission in the field of health and safety at work, in particular the emphasis placed on prevention in the planned initiatives. The planned new strategy on health and safety at work covering the period 2007 to 2012 should, above all: analyse new health risks too; include measures to protect groups of workers hitherto not taken into account; and tackle the question of how implementation of the existing provisions on health and safety at work could be improved and supported, particularly in the new Member States.

4.2.4 The EESC also welcomes the intention expressed by the Commission to promote and support the social dialogue at both inter-sectoral and sectoral levels and to provide more logistical and technical support for the social partners in the EU. The EESC believes that these measures are particularly necessary, especially in the new EU Member States as, in these states, social dialogue structures are, in many cases, still poorly developed or in the process of being established. The bilateral social dialogue between the social partners in the EU is a key component of the European social model. This social dialogue has a special role to play in view of its legitimising function, the representativeness of the process and the fact that, as part of the social dialogue, binding agreements may be concluded at EU level, as was pointed out by the social partners in the joint declaration which they issued on the occasion of the Laeken Summit ⁽¹³⁾. Just as important as this social dialogue is the dialogue with civil society, which takes the form, above all, of consultation with the EESC, in its role as the forum for organised civil society ⁽¹⁴⁾. In the new EU Member States, in particular, both the civil dialogue and the development of stable industrial relations between the social partners need to be supported by the European Commission.

4.2.5 The Commission intends to launch further initiatives in the field of CSR, with the aim of promoting the development of CSR principles. In the EESC's view, the many good examples of assuming social responsibility by means of codes of conduct and other voluntary measures on the part of enterprises, as highlighted in the European Multi-Stakeholder Forum on CSR (EMS Forum), will provide a sound basis for the proposed measures. These measures should include initiatives on lifelong learning. The EESC therefore supports the efforts of the European Commission to put forward initiatives to promote the development and transparency of CSR principles at EU level.

⁽¹²⁾ EESC opinion of the *Practical application of the Works Council Directive (94/45/EC) and on any aspects of the Directive that might need to be revised* (OJ C 10 of 14.1.2004 – Rapporteur: Mr Piette)

⁽¹³⁾ ETUC/UNICE/CEEP Joint declaration of 7.12.2001

⁽¹⁴⁾ EESC opinion on *European Governance – a White Paper* (OJ C 125 of 27.5.2003 page 61 – Rapporteur: Ms Engelen-Kefer, Co-rapporteur: Ms Pari)

4.3 European labour market

4.3.1 The Commission intends to take various measures with a view to removing existing barriers to cross-border mobility and promoting the development of a genuine European labour market. One of the initiatives which has been announced is the proposal for a Directive on the transferability of rights acquired under occupational pension schemes. The EESC believes that it is essential for this proposal to be presented without delay, bearing in mind that negotiations between the social partners on this subject have not yet been taken up because of differing views on the scope of such a proposal.

4.3.2 A further proposal announced by the Commission concerns the provision of an optional framework for transnational collective bargaining at either enterprise level or sectoral level. The Commission takes the view that such a framework could be used to address, on a cross-border basis, issues relating to work organisation, employment, working conditions and further training, along the lines of the 'partnership for change'. The proposed framework would be 'optional' in that it would be up to the social partners to decide whether they wanted to make use of such a legal framework or not.

It has been demonstrated in practice that European works councils have, in many cases, not only made use of their right to be informed and consulted but have also entered into agreements on a voluntary basis in respect of a number of the issues being tackled. Similar examples of agreements can also be found in the social dialogue at sectoral level. The EESC supports the objective set out by the Commission of promoting the social dialogue at enterprise and sectoral level, whilst taking greater account than has hitherto been the case of the fact that enterprises operate on a cross-frontier basis, with the result that voluntary agreements accordingly assume a cross-border importance.

The EESC urges the Commission to discuss its proposed framework provisions, at the earliest possible stage, with the European social partners, to ascertain their views on the matter and to take account of these views.

4.3.3 As the Commission points out, freedom of movement for persons is one of the basic freedoms in the EU. The EESC therefore believes that the existing instruments, such as the network of European employment services and the coordination of social security schemes for migrant workers, require ongoing improvement. The EESC therefore approves the proposal to set up a high-level group, in 2005, to address the impact of EU enlargement on mobility and the operation of the transitional periods and to report on these issues in 2006. The EESC would point out that the social partners and NGOs have extensive experience in this field. The EESC therefore calls upon the Commission to bear in mind representatives of the social partners and NGOs when appointing members of the high-level group.

5. A more cohesive society: equal opportunities for all

5.1 In this second of its priority areas, the Commission addresses the issues of: stepping-up the exchange of experience on the reform of social security schemes; policies for combating poverty and social exclusion and promoting non-discrimination; and the role of social services.

5.2 The Commission reiterates its proposal that coordination be rationalised and simplified in the fields of social inclusion, pensions and health. The EESC has already tackled this issue in an earlier opinion⁽¹⁵⁾. The EESC draws attention to the fact that, in its view, the use of the Open Method of Coordination (OMC) needs to take account of the specific characteristics of the respective fields. In particular, the EESC takes the view that the application of the OMC in the field of social inclusion, which has already reached a very advanced stage, should be pursued in the form of national action plans and biennial reports. This is, in the EESC's opinion, also particularly necessary in view of the fact that, despite the joint efforts which have been made, it has not been possible to bring about any significant reduction in the degree of poverty. Approximately 15 % of the overall population of the EU can be classified as 'poor'; in several Member States this proportion is over 20 %. One of the decisive causes of poverty is the high level of unemployment, which affects large families and single parents, in particular⁽¹⁶⁾. The fact that people are in employment also does not afford protection against poverty, as demonstrated by the increasing number of 'working poor'⁽¹⁷⁾. It is therefore essential to step up efforts to combat poverty and social exclusion.

5.3 In this context, the Commission intends to pursue the debate on national minimum income schemes and introduce consultations on this matter in 2005. The EESC wonders where this debate has taken place and who was involved in it. The EESC takes the view that it is the responsibility of the Member States to provide all citizens who are in need with social assistance in the form of a minimum income which enables them to have a decent standard of living. It is not clear from the details provided by the Commission what is to be the aim of the debate to be pursued at EU level on national minimum income schemes. In view of the urgent nature of the problems involved, the EESC would also pose the question as to whether it would not be better to bring forward the proposed European Year of Combating Poverty and Social Exclusion, scheduled for 2010.

5.4 The EESC supports the Commission's policies for tackling the issue of equal treatment for men and women and non-discrimination in general. The Commission announces that it will put forward a new communication in 2005 in which it will set out its policy approach and examine initiatives for supplementing the existing legal framework.

⁽¹⁵⁾ EESC opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection (OJ C 32 of 5.2.2004 – Rapporteur: Mr Beirnaert)

⁽¹⁶⁾ Joint report on social inclusion, May 2004

⁽¹⁷⁾ Report of the High Level Group on the future of social policy in an enlarged European Union, May 2004

The EESC points out that in many EU Member States the Directives on non-discrimination have only recently been transposed into national law or they are currently in the process of being transposed. The EESC therefore takes the view that it would be helpful to submit a report on progress made with the transposition of these Directives into national law and to propose further policy measures on the basis of this report.

The EESC expresses its support for the planned measures in respect of equal treatment for men and women and, in particular, the establishment of a European Gender Institute and the new edition of the Commission's Action Plan on equal opportunity for people with disabilities.

5.5 Also in 2005, the Commission intends to put forward a communication defining social services of general interest. The EESC welcomes the proposed communication, particularly in view of the fact that it expects that this communication will have an active impact on the controversial debate on the Directive on services in the internal market and will help to clarify the situation. In its White Paper on services of general interest, the Commission already drew attention to the special features of social services of general interest including, in particular, public service obligations and the fact these services are geared to the needs of the individual. Social services, be they provided by private or public bodies, differ in a fundamental way from other services in the internal market by virtue of the fact that they are founded on the principle of subsidiarity, tailored to the needs of the individual and help to promote social cohesion by fulfilling the fundamental right to benefit from social protection. The EESC therefore believes that social services and, in particular, health services, have to be treated in a fundamentally different way than services which are purely market services.

5.6 The EESC deplores the fact that the European Commission fails to address the importance for employment and social cohesion of non-profit social services. In its earlier opinion on the mid-term review of the social policy agenda, the EESC already tackled this issue and pointed out that: 'The contribution of non-profit-making social services to employment and their social impact is increasingly recognised and exploited, with significant implications in terms of promoting and protecting the rights of disadvantaged people, responding to needs in education, social assistance and health assistance, and support for policies to promote inclusion and reduce social inequality. Non-profit-making organisations help to identify and articulate emerging social needs, especially those of less-advantaged sectors of the population; they invest in repairing a damaged social fabric where healthy structures must be restored; they mobilise social fellow-feeling and participation, as the necessary condition for flourishing democratic structures, even in the most disadvantaged areas' ⁽¹⁸⁾.

6. Conclusions

6.1 The EESC welcomes the European Commission's Communication on the Social Agenda; this Communication

does, in the EESC's point of view, help to underline the importance of social policy to the achievement of the Lisbon objectives. The EESC does, however, believe that, despite the strategic approach which it pursues, the communication does not meet, in all respects, the special expectations bound up with the mid-term review of the Lisbon Strategy. Whilst, in the previous Social Agenda, the European Commission was still guided by a belief in the role of social policy as a productive factor, this is no longer explicitly the case in the new proposal. The EESC, for its part, believes that social policy must not be subordinated to economic policy; these two policies are, in its view, of equal importance. The promotion of social cohesion and the establishment of a dynamic welfare state are just as much part of the objectives of the Lisbon Strategy, as adopted at the European summit in March 2000, as are the goals of increasing the EU's competitiveness and achieving sustained economic growth. The establishment of a high level of protection is one of the key components of the European social model and a factor which makes a decisive contribution towards the achievement of social cohesion.

6.2 Contrary to the frequently held view that a high level of social expenditure is at variance with economic policy objectives, empirical data from a number of European states proves the opposite point of view. The High Level Group on the Future of Social Policy drew attention to this point in its report. According to the findings of a study carried out by the European Policy Centre in 2004, Sweden, Denmark, Austria, Luxembourg and the Netherlands have achieved both a relatively high level of economic performance and a high level of social protection. In its report the High Level Group on the Future of Social Policy points out that: 'The European countries which score top positions in the competitiveness ranking drawn up by the World Economic Forum all have a high level of investment in social policy and social protection and show high employment rates and low poverty rates after social transfers ⁽¹⁹⁾'.

6.3 The EESC expresses criticism over the fact that the new Social Agenda sets out fewer concrete measures than did its predecessor. This makes it more difficult to carry out an appraisal of the Agenda as the political direction in which the proposals set out in the Agenda are heading is not always recognisable. This applies in particular in the case of social legislation; in this field the European Commission confines itself to calling for the revision of existing Directives and scarcely presents any new proposals. The EESC therefore expects the strategic framework to be complemented by concrete measures. In the EESC's view, the new Social Agenda should go hand-in-hand with an action programme covering the next five years. The fundamental social rights set out in the future EU Constitution should provide guidelines in this respect. The social policy action programme should, accordingly, (a) set out proposals for the revision of existing Directives and put forward proposals for new Directives and (b) embrace the planned debates and coordination measures designed to promote the further development of European social policy. The EESC takes the view that the mid-term review of the Lisbon Strategy, in particular, should highlight European social policy and the productive role which it plays in promoting growth and employment.

⁽¹⁸⁾ EESC opinion on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the Mid-term review of the social policy agenda* (O) C 80 of 30.3.2004 (Points 3.3.6 and 3.3.7) – rapporteur: Mr Jahier).

⁽¹⁹⁾ Report of the High Level Group on the Future of Social Policy in an enlarged European Union, May 2004

6.4 In this context, the EESC would also like to address the issue of the financing of social policy. Although the Commission already pointed out, in presenting the Financial Perspectives, that the structure and resources of the future EU budget would have to reflect and promote the Lisbon strategy, there are grounds for fearing that the budget proposal is likely to fail to match up to this demand.

6.5 The relevant sub-heading of the Financial Perspectives, entitled 'Competitiveness for Growth and Employment' ⁽²⁰⁾, does indeed show an increase in funding but this increase applies, above all, to measures to promote competitiveness and entrepreneurial initiatives. A comparison with the existing expenditure on social and employment measures demonstrates

that no provision is made for a real increase in funding in respect of future social policy. The Commission is essentially proposing an unchanged budget in this context.

6.6 The EESC has already clearly expressed the view, in, amongst other documents, its opinion on the Community Programme for Employment and Social Solidarity (PROGRESS) ⁽²¹⁾, that, particularly in the light of the sobering mid-term review of the Lisbon strategy, it is unable to comprehend the objective of seeking 'budget neutrality' with regard to employment and social policy. The EESC therefore calls for a corresponding increase in the budgetary estimates for social policy, along the lines of those in respect of the remaining measures set out under the heading 'Growth and Employment'.

Brussels, 13 July 2005.

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

⁽²⁰⁾ COM(2004) 101 final/2 of 26.2.2004

⁽²¹⁾ EESC opinion on the Proposal for a Decision of the European Parliament and of the Council establishing a Community Programme for Employment and Social Solidarity – PROGRESS COM(2004) 488 final of 6.4.2005, CESE 386/2005

Opinion of the European Economic and Social Committee on the Communication from the Commission — A stronger partnership for the outermost regions

(COM(2004) 343 final)

(2005/C 294/05)

On 27 May 2004 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the Communication from the Commission — A stronger partnership for the outermost regions

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2005. The rapporteur was Ms López Almendáriz.

At its 419th plenary session, held on 13-14 July 2005 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 62 votes to 1 with 8 abstentions.

1. Introduction

1.1 In June 2002, the Seville European Council asked the European Commission to submit a report presenting a global, coherent approach to the special characteristics of the situation of the outermost regions and to ways of addressing them; in response, the Commission adopted a Communication entitled *A stronger partnership for the outermost regions* ⁽¹⁾ on 26 May 2004.

1.2 This request from the European Council, which came on the eve of EU enlargement and in the context of globalisation, represented a decisive initiative for drawing up a global strategy for development in the outermost regions, based on pressing ahead with the implementation of Article 299(2) of the Treaty.

1.3 On 29 May 2002, just before the Seville European Council, the European Economic and Social Committee adopted an Own-initiative opinion on the Future strategy for the outermost regions of the European Union ⁽²⁾, which proposed the development of a global strategy for these regions, specifying principles, objectives, available resources and a timetable for the adoption of measures.

1.4 With the objective of launching a comprehensive, coherent policy for the outermost regions, in June 2003 the regional governments and the countries concerned submitted memorandums, all stressing the importance of recognising the specific characteristics distinguishing these regions from other European regions.

1.5 Articles III-424 and IV-440(2) of the Constitutional Treaty confirm specific legal recognition of the outermost regions, and a new objective of territorial cohesion is added to the objectives of economic and social cohesion.

⁽¹⁾ COM(2004) 343 final.

⁽²⁾ OJ C 221 of 17.9.2002, p. 10, rapporteur: Ms López Almendáriz.

2. Gist of the Commission document

2.1 The Commission is proposing a stronger partnership with the outermost regions of the Union. The new strategy forms part of the reform of EU cohesion policy for 2007-13. The Communication identifies three priorities:

- **Competitiveness:** improve the competitiveness of the outermost regions by creating and developing a business environment which will attract new companies.
- **Accessibility:** step up cohesion efforts in the outermost regions in order to reduce the difficulties connected with their remoteness, such as fragmentation among a group of islands or enclosure in areas with poor access. The reduction of these handicaps and of the additional costs of production in the outermost regions is one of the main priorities of the Union's activities to help these regions.
- **Regional integration:** the outermost regions and neighbouring non-member countries exist in a common regional environment which should facilitate trade among them in goods and services. This is why it is important to encourage their integration into their surrounding geographical area.

2.2 The Commission proposes two specific solutions aimed at helping the outermost regions to develop their full potential:

- **A specific programme to compensate for handicaps:** this programme would be financed by the ERDF over the period 2007-13. It would be dedicated to reducing the specific handicaps faced by the economies of the outermost regions which are listed in Article 299(2) of the EC Treaty: remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products.

— An action plan for a wider neighbourhood: the aim would be to enlarge the natural sphere of influence of the outermost regions in socio-economic terms (including as regards migration-related issues) as well as in terms of culture. This means reducing barriers which limit the scope for trade within the geographical area of these regions, which are far from the European mainland but very close to the regional markets of the Caribbean, America and Africa. The action plan for a wider neighbourhood will consist of measures concerning both trade and customs matters and also transnational and cross-border cooperation.

3. General comments

3.1 The Committee welcomes the fact that Articles III-424 and IV-440(2) of the draft Constitutional Treaty confirm specific legal recognition of the outermost regions at the highest level of legislation, recognising their exceptional nature and providing for the adoption of cross-sectoral laws and regulations to ensure flexible application of common policies in these regions.

3.2 The Committee is pleased to note the EU's ability to respond to regions' specific needs and, in particular, its recognition of the specific characteristics of the outermost regions and of the way they differ from other regions with geographical or demographic constraints.

3.3 The Committee welcomes the fact that the Commission has accepted the recommendation it made in its Opinion on the Future strategy for the outermost regions of the European Union to reinforce the Commission's interdepartmental group for the outermost regions, creating a specific unit in DG Regio to give it more human resources, and hopes that its role of interdepartmental coordination will not be obstructed.

3.4 The Committee welcomes the recognition in the Commission Communication that the special status of the outermost regions is based on the principles of equality and proportionality. The special status allows differing treatment to take account of the distinct situation of those regions, so that their inhabitants can enjoy the same opportunities as people living in other regions of Europe.

3.5 The Committee welcomes the Commission's recognition that the combination of permanent constraints on the outermost regions gives rise to additional costs, in terms of energy supply in general, and primarily, where farm products for local consumption are concerned, owing, *inter alia*, to the following difficulties:

- small markets;
- isolation from main markets;

- lack of economies of scale in the production sector and the need for firms to stock large quantities of goods;
- faster depreciation of goods, and the consequent need for equipment to comply with higher safety standards or be replaced more often (problems caused by the difficult climate and terrain);
- problems caused by the use of production infrastructure geared to larger-scale production and distribution systems;
- shortage of skilled labour because of the small labour market and the difficulty of gaining access to the rest of the European labour market;
- the additional costs of energy supply, affecting farming products for the local market;
- lack of access to high-speed connections and telecommunications networks, the additional costs of electronic communications services;
- the difficulty of promoting local products outside a region;
- obstacles created by the need to comply with environmental regulations;
- twofold insularity, i.e. the fact that some outermost regions are themselves broken down into a number of islands.

3.6 The Committee shares the Commission's concern to integrate the outermost regions into the Lisbon and Gothenburg strategy with a view to creating jobs and boosting economic reform and social cohesion, and therefore proposes that their potential be harnessed in the area of the knowledge-based society.

3.7 The Committee feels that the vigorous growth of the tourism sector represents considerable added value, helping to increase the competitiveness of the outermost regions' economies. However, the sector must not grow too fast because of the imbalance that would be created and the detrimental impact on the environmental sustainability of those regions.

4. Specific comments on the Commission Communication

4.1 The Committee welcomes the fact that the Commission Communication takes into consideration a number of the recommendations made in its own-initiative opinion⁽³⁾ but regrets that others have not been taken into due account.

⁽³⁾ OJ C 221 of 17.9.2002

4.2 The Committee wishes to point out that the common position of the outermost regions and the Member States concerned on future cohesion policy rules applying to these regions proposed automatic eligibility for the former objective 1 — now the 'convergence' objective — as the best way of addressing their specific situation, thereby guaranteeing that they receive uniform treatment and the necessary funding to tackle their permanent constraints.

4.3 The Committee notes that the Commission has opted for an alternative proposal, combining the application of general cohesion policy rules to the outermost regions with the creation of specific instruments: a programme to compensate for the specific constraints on the outermost regions and an action plan for the 'wider neighbourhood'.

4.4 The Committee notes that there is no explicit reference to the legal scope of the new Article III-424 of the draft Constitutional Treaty ⁽⁴⁾.

4.5 The Committee regrets that the Commission's strategy for the outermost regions is chiefly and almost exclusively concerned with cohesion policy, hardly making any provision at all for action in other spheres.

4.6 The Committee hopes that the progress made in identifying the specific characteristics of the outermost regions and noting the inadequacy of certain sectoral policies will result in a cross-sectoral strategy for these regions which takes account of their specific, anomalous situation within the Community.

4.7 The Committee therefore thinks that the lack of consideration given to the role of other Community policies means that, strictly speaking, this cannot be called a genuinely comprehensive, coherent strategy for the outermost regions as required by the Seville European Council.

⁽⁴⁾ 'Article III-424: Taking account of the structural economic and social situation of Guadeloupe, French Guiana, Martinique, Réunion, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission, shall adopt European laws, framework laws, regulations and decisions aimed, in particular, at laying down the conditions of application of the Constitution to those regions, including common policies. It shall act after consulting the European Parliament.

The measures referred to in the first paragraph concern in particular areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Council shall adopt the measures referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.'

4.8 The Committee regrets this oversight, particularly where agriculture is concerned, in that no response is given to many of the questions raised by the outermost regions which urgently require solutions to be found.

4.9 Similarly, the Committee regrets the lack of provisions on immigration policy seeking to provide solutions to urgent problems constantly besetting some of the outermost regions and calls for the specific characteristics of these regions to be taken into account in future immigration policy.

4.10 The Committee expresses reservations regarding whether it is appropriate and sufficient to apply the general cohesion policy eligibility criteria to the outermost regions, considering that they have insufficient basic infrastructure and lack the conditions for competitiveness which are necessary if the goals of the Lisbon and Gothenburg strategies are to be achieved.

4.11 The Committee notes that the Commission's strategy for the outermost regions is based almost exclusively on two specific instruments: the programme to compensate for the specific constraints they face, and the 'wider neighbourhood' action plan ⁽⁵⁾.

4.12 The Committee welcomes the fact that, under the new ERDF objective 3, 'European territorial cooperation', the outermost regions are to be eligible for funding for both cross-border cooperation and transnational cooperation, as this is essential if they are to be able to interact with their respective neighbours.

5. Recommendations

5.1 The Committee believes that the Commission should draw up a comprehensive strategy for the outermost regions, providing the resources necessary to implement it in accordance with the commitments made in its March 2000 report and called for in the June 2002 Seville European Council Conclusions. To this end, it must be made clear that the current Article 299(2) of the Treaty (the future Article III-424 of the Constitution) is the sole, common legal basis for all measures applying to the outermost regions, whether they involve derogation from the actual Treaty or amendment or adaptation of secondary legislation.

5.2 For these reasons, the Committee considers it right and necessary to make a number of recommendations urging the Commission to:

⁽⁵⁾ See footnote 1.

5.2.1 consider not applying the general cohesion policy eligibility criteria to the outermost regions, as the best way of enabling them to tackle their permanent constraints, while, in addition, ensuring that they continue to receive uniform treatment;

5.2.2 allocate the two proposed specific instruments sufficient funding to enable them to meet the needs and resolve the problems of all the outermost regions;

5.2.3 spare no effort or resources to give practical effect to the 'wider neighbourhood' action plan through effective, coherent coordination with EU development policy and, in particular, with the provisions of the Cotonou Agreement, the MEDA (southern Mediterranean and the Middle East) and ALA (Latin America and Asia) programmes and other future Community programmes and initiatives launched with specific regions of the world;

5.2.4 safeguard the interests of the Community banana sector as a whole in the impending changes to the rules governing the COM in bananas, improving the current market equilibrium so that growers from the less developed countries can have access to the Community and global markets while, at the same time, Community growers' incomes and jobs can be safeguarded, by setting an appropriate tariff which is sufficiently high to secure the future of the Community banana sector;

5.2.5 respond to the final outcome of the WTO negotiations with regard to the setting of the flat tariff rate by proposing, where necessary, appropriate measures to ensure continued employment and income guarantees for Community growers in the banana sector. These could include measures to improve the mechanisms of the internal support system;

5.2.6 when amending the Posei agricultural programmes, ensure that their potential is fully exploited. This has not been the case so far, mainly because some of the measures are very recent. The ceilings established for the programmes should be respected, allocating sufficient funding to enable the goals set to be achieved;

5.2.7 address the specific needs of the outermost regions as regards rural development policy, not least by abolishing provisions which restrict or prevent access to structural aid; compensating farmers for increased costs; setting aid levels which are commensurate with the needs of these regions; and increasing Community coverage by introducing support measures in the following and other fields: specific production systems, use of appropriate machinery, agricultural insurance schemes, promotion of the setting-up of associations, and programmes for combating harmful organisms;

5.2.8 adopt new measures to boost the competitiveness of farm products such as tomatoes, fruit, plants and flowers, which have to compete in the same markets as similar products from other countries with which the EU has association agreements, such as Morocco, or which have preferential systems, such as the ACP countries;

5.2.9 take the necessary measures to ensure that all the outermost regions continue to benefit from the current levels of funding and aid, where both the future Rural Development Fund and the future European Fisheries Fund are concerned;

5.2.10 strengthen the European Social Fund's role in the outermost regions, with a view to bringing down the unemployment rate, which is particularly high in most of these regions, and ensuring that the people of these regions have the same opportunities as other EU citizens;

5.2.11 support the creation or, where appropriate, consolidation of economic and social councils, which will convey the views of economic and social stakeholders and civil society organisations in general more effectively;

5.2.12 revise its proposals on state aid, taking into account the provisions of the draft Constitutional Treaty, and continue and step up the special treatment of the outermost regions as regards state aid in the agricultural and fisheries sectors and in the freight sector;

5.2.13 introduce appropriate measures to ensure that proper provision is made for the outermost regions in all common transport policy instruments which affect their development, and that the specific characteristics of these regions are taken into account in Community legislation on public service obligations so that quality and prices can be assured which are geared to the needs of their inhabitants;

5.2.14 build on and improve the competition system in the sea and air transport sectors in the outermost regions, particularly in regions suffering from 'twofold insularity';

5.2.15 give practical effect to the specific references to the outermost regions made in the Commission proposal on the Seventh RTD Framework Programme, in order to facilitate their participation in Community R&D initiatives in the fields of climatology, volcanology, oceanography, biodiversity and natural risks, among others;

5.2.16 take into account the specific situation of the outermost regions when liberalising the internal gas and electricity markets, in order to avoid penalising consumers in these regions in terms of regularity of supply, quality of services and prices; that means taking a more flexible approach to establishing public service obligations and state aid;

5.2.17 urgently adopt measures ensuring sustainable development in the outermost regions, particularly in the fields of protection of biodiversity, the Natura 2000 network and waste management;

5.2.18 be imaginative when establishing specific mechanisms and procedures for the outermost regions, to ensure that the benefits of the single market do not pass them by, e.g. encouraging the use of renewable energies and access to broadband networks;

5.2.19 ensure that the outermost regions continue to enjoy special tax arrangements, as these are essential for their economic development;

5.2.20 envisage the active participation of the outermost regions in the negotiation of the EU-ACP economic partnership agreements (EPAs), facilitating the creation of a permanent channel for ongoing dialogue between regional — and/or national — authorities and regional bodies with which the EU is negotiating the EPAs, in order to make the agreements more effective, compatible and consistent.

Brussels, 13 July 2005.

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

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on market access to port services

(COM(2004) 654 final — 2004/0240 (COD))

(2005/C 294/06)

On 2 December 2004 the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 May 2005. The rapporteur was Mr Retureau.

At its 419th plenary session of 13 and 14 July 2005 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 91 votes to 49 with 17 abstentions.

1. Introduction

1.1 Following the Green Paper on seaports and maritime infrastructure of 1997, and whilst the White Paper on a common transport policy was still in its drafting phase, the Commission, in its first proposal for a Directive on market access to port services in 2001, reiterated that the key elements of the Ports' package were as follows:

— integration of maritime transport in the TEN-T category;

— regulation of access to port services;

— public financing for seaports and port infrastructure.

1.2 The objectives of the Ports' package were extensively developed in the first proposal for a Directive on the second key issue of market access ⁽¹⁾, which was finally rejected after a third reading in Parliament.

1.3 The Commission, exercising its prerogative as the only institution with the right of initiative, has now returned to the issue with a new proposal for a Directive on market access to port services ⁽²⁾. In so doing, the Commission asserted its conviction that, under the Treaty, it has the right and duty to legislate in this matter.

1.4 It affirms at the outset that the philosophy, general principles and objectives outlined in its 2001 Communication remain unchanged. However, specific proposed amendments were taken into account because they enhanced the original proposal.

⁽¹⁾ COM(2001) 35 final.

⁽²⁾ COM(2004) 654 final, published on 13 October 2004

1.5 It is appropriate to recall some of the main causes of contention that had obstructed the first proposal before examining the nature and scope of the amendments introduced by the new proposal for a Directive.

- The very need for such a Directive was challenged.
- As far back as 1997, the Green Paper had been criticised by the Committee ⁽³⁾ because the proposal failed to take real account of the social dimension of the port sector. The 2001 Proposal for a Directive was also criticised on the same grounds.
- Security and environmental protection requirements, as well as the concept of public service (Article 86 TEC) had not been adequately addressed.
- Pilotage should be excluded from its scope (the Parliament rapporteur had also recommended excluding handling. However, this point did not obtain a majority in the EP committee).
- Self-handling, in its principle and scope, and handling, because for technical reasons it requires a minimum of two providers per port, gave rise to considerable criticism, and even caused a European dockers' strike.
- The durations of authorisations gave rise to lengthy debate, as did compensation for earlier providers by new ones. The aim was to avoid a downturn in investment even towards the end of authorisation, and to safeguard the financial interests of service providers.
- Opening the sector to the greatest possible number of service providers gave rise to criticism on the grounds of financial efficiency and return of investment, in keeping with the real size of the market and other considerations, including compliance with port development strategies and specialisations.

2. The Commission's new proposal for a Directive

2.1 The proposal under consideration includes a well-argued explanatory memorandum and a long list of recitals. The Commission confirms that it has retained the initial 2001 proposal, whilst taking into consideration its own 2002 amended proposal, the common position of the Council and the texts resulting from conciliation proceedings after the European Parliament's second Reading.

⁽³⁾ EESC opinion on the Green Paper from the Commission on Seaports and Maritime Infrastructure, OJ C 407 of 28.12.1998 p. 92.

2.2 The reasons for a European initiative are essentially the following:

- the Treaty's four fundamental freedoms;
- the Council's demands;
- growing needs in the transport sector (2001 White Paper) and the need to shift a substantial proportion of this growth to the maritime sector;
- the need to complete the internal market and create conditions for transparent competition within and between ports, based on harmonised rules;
- generating employment and respecting workers' social rights.

2.3 Nevertheless, the original philosophy and principles as well as a considerable number of points have not changed since the original 2001 proposal.

2.4 More specifically, the changes do not affect:

- the scope of application;
- criteria for granting authorisations;
- pilotage, which is considered as a commercial service;
- transparent accounting for the managing body of the port (this issue, unlike the others, was not challenged and is already covered by a directive on financial transparency and State aid guidelines).

2.5 The main new elements included in the new Commission proposal are:

- self-handling for cargo and passenger operations may be provided using the land-based personnel of the self-handler, and, under certain conditions, the seafaring crew;
- authorisations for service providers and self-handling become mandatory. Current providers must obtain new authorisation within a 'reasonable timeframe' to achieve compliance with the rules of the Directive, while taking account of the legitimate expectations of the current services providers up to a maximum of 12 months after the latest possible date for transposition of the Directive;
- the general principle is to create access to the broadly defined port services, for the greatest possible number of service providers, with limitation of numbers being the exception (Article 9);
- the duration of authorisations is finally adjusted according to the level of investments to be made by the service provider and the rules governing the depreciation of immovable or movable property;
- the matter of competition between ports is covered by the Commission's Directive on financial transparency (Article 16) and the Directive on State aid guidelines (Article 17).

3. Preliminary comments

3.1 A number of seaports are owned and/or managed by the public authorities (municipalities and other local or regional authorities, public bodies etc.). Their managing bodies are therefore partly or entirely subject to public accountancy rules, and carry out cost accounting. Seaports' practices and accounts should be submitted to their national competition authorities and, if need be, to their regional or national audit offices. The reports of these supervisory bodies should be sent to the Commission's DG Competition.

3.2 In recent years, most new Member States, as well as the old Member States, have adopted seaport privatisation policies. Many ports are now public limited liability companies.

3.3 Europe's most important ports open onto the North Sea and the English Channel. The cargo tonnage and number of containers handled varies widely according to the geographical location of ports in various European seas. The scope of the draft directive includes ports handling cargo tonnages ranging from 1.5 million to tens or hundreds of millions, and in some ports (Rotterdam or Antwerp, for instance) the number of containers handled runs into several million. The EESC believes that applying uniform rules to ports that vary considerably in terms of size, type of activity, ownership and management, may fail to match the realities and effective needs of the affected ports. Competition amongst ports is long-standing. Account should be taken of subsidiarity and proportionality considerations.

3.4 Many ports provide their own infrastructure and basic services for maritime traffic. They do not feel that their responsibilities should be restricted to the administration and maintenance of maritime, land and port space, and the quays. The provision of certain services may reflect general interest exigencies, or the port authority's efforts to achieve overall financial balance, or even a profit to be distributed amongst the shareholders of privately owned ports. Preventing 'cross subsidies' would weaken the capacity for port investment.

3.5 The EESC regrets that important developments since the Green Paper and the first Ports' package have not been taken into consideration and would urge the Commission to review its proposal in the light of an objective impact assessment that takes account of prevailing realities in European ports and their incontrovertible competitive edge on the international market. The EESC notes that, at the EESC hearing held on 31 January 2005, the Commission stated that such a study would be published towards the end of June 2005. The EESC believes that, in the absence of a relevant Social Dialogue Committee, the social partners should also be consulted. The proposal should undergo considerable revision in order to ensure compliance with standard procedures for best practice in legis-

lation (participation, consultation, impact assessments). The second proposal follows swiftly on the first, without sufficient preparatory work.

3.6 A port is a complex logistical platform that is connected to a hinterland that may vary considerably in geographical and economic terms on a regional, national or international scale, and inland waterway, rail, road, pipeline and coastal shipping networks. It must develop strategies that are consistent with the development of the geographical area whose economy it fuels, its employment pool, and emerging or evolving economic needs. The EESC believes in favouring intermodality that enhances maritime transport, cabotage in particular. As currently worded, the arrangements outlined in the proposal for a Directive do not explicitly address this imperative.

3.7 The role of commercial ports, be they specialised or multipurpose, public or private, is not restricted to providing the essential services (means of access, docks, quays and land space) of a multimodal platform. The role they play in spatial organisation and division and providing for infrastructure development must also be rewarded economically. Finally, they must compensate for the possible shortcomings of private operators in certain areas to ensure that the platform remains functional.

3.8 Their development projects and specialisations must be respected. Quite apart from restricted space and material constraints on access, it should be made possible to limit the number of service providers to ensure financial efficiency and feasibility for service providers, operational safety, port management, environmental and social guarantees, and job security. This essentially depends upon subsidiarity. Furthermore, exacerbated competition could lead to a dispersal of resources and skills that would be detrimental to the users' interests.

3.9 The Committee acknowledges that the Commission's new proposal grants port authorities greater flexibility in establishing maximum numbers for operators per category of service provided, depending on the port's character and local conditions.

3.10 Concessions and licenses granted by the competent authority to service providers or commercial agreements between the competent authority and service providers must be concluded for a period which is in relation to the type and scale of the investments made by service providers, allowing a normal period for amortisation and return on capital investment (for instance, 10 years, in case of no significant investments; 15 years, in case of significant investments in movable assets and training; and 45 years in case of significant investments in immovable assets and comparable movable assets).

3.11 The rights and operating conditions of port management bodies which have concluded lease agreements on the port area and have received authorisation to provide port services cannot be changed after the Directive enters into force, as this would amount to the port authorities cancelling the contract, which could entail the State's liability.

3.12 The Committee notes that changes relative to handling and pilotage do not fulfil the expectations already expressed by the Committee, several States, and Parliament (*).

3.13 As the Commission points out, the number of jobs is not linked to the number of service providers but to the port's real traffic and/or diversification of services. Increasing the number of service providers will not create more employment. Only an increase in traffic and the introduction of non-traditional services will generate employment.

3.14 The provisions concerning handling and self-handling, relevant to motorways of the sea and cabotage in the internal market, could pose a fundamental threat to collective agreements in most countries, since they might sometimes be considered as contrary to Community competition law within the framework of the proposal for a Directive, whilst perfectly tenable under national and international social and labour legislation. The Court of Justice recognises that respecting collective agreements could restrict the application of competition law. At international level, many EU Member States have ratified the ILO's maritime conventions on port handling services, working conditions and crew safety. The EESC notes that the Commission's provisions do not take into consideration these provisions negotiated in a tripartite framework.

3.15 The Committee values the strong competition in the services market and the quality, safety and continuity of port handling services. If, however, port handling services were allowed to engage in self-handling, this would create unequal conditions of competition between the existing port handling operators and self-handling operators. The port handling operators have established themselves in ports through privatisation or competition and have invested in superstructure and infrastructure. Self-handling operators, on the other hand, can enter the port services market without any competition or investment commitments and, in contrast to the handlers, can use infrastructure created by others free of charge and have no time constraints on their operations. There is a heightened risk of accidents in ports and so higher safety-at-work levels need to be respected and monitored. Allowing self-handling is likely

to lead to more accidents. Although the proposal for a Directive is claimed to have a social dimension, its provisions would in fact appear to constitute a rejection of the expectations of dockers, who are worried about exchanging recognised and qualified jobs with negotiated salaries for job insecurity and individual employment contracts, entailing loss of social or pay guarantees in a context of forced competition amongst handlers. Self-handling would result in additional tasks for seafaring crews and greater exposure to accident risk, while crews are often reduced to a minimum. Furthermore, it would result in additional responsibilities and obligations for captains.

3.16 The Committee considers that pilotage cannot simply be classified as a commercial service. It requires complex technical skills, and local knowledge that, in many cases, is continually changing, which are implemented in order to ensure the safety of transport, the surrounding population, and the environment, depending on the goods transported. It is therefore a service of general interest that is not essentially of a commercial nature, even though it is sometimes entrusted to private companies under the supervision of port authorities. As such, it should be excluded from the Directive's scope. This does not prevent ports from continuing to grant pilotage authorisation to captains who have enough experience and local knowledge to pilot their vessels to the quay without assistance. However, it should be borne in mind that many vessels carry substances that are dangerous to other vessels, equipment, port workers and the local population.

3.17 The Committee notes that ports fall within the relevant State's sphere of sovereign powers, which the Directive must not encroach upon. Certain functions (supporting the fight against terrorism, organised crime and irregular migration, which often entails costs and investments that are borne by the port) may be delegated to the port authority.

3.18 The new provisions concerning authorisation are self-evident, sensible measures even though local conditions and specificities must be taken into account when establishing the specifications. The need to apply principles of transparency and separate accounts to seaports cannot be called into question. The Committee acknowledges the need to respect them in compliance with the Transparency Directive.

3.19 The requirements to be met by port-service providers to get their licences extended after eight, 12 or 30 years should be spelt out in the Directive.

(*) EESC opinion on the Proposal for a Directive of the European Parliament and of the Council on market access to port services, OJ C 48 of 21.2.2002 p. 122.

3.20 Finally, it would appear that the key objective of this proposal is to lower the cost of port services. However, the Committee believes that compliance with safety and environmental standards, as well as social rights, are equally important criteria for ensuring efficient port systems, in the interest of the economics of transport, and safe and reliable services.

3.21 The great diversity of national or local contexts, rules and practices, and of the obligations of managing bodies and public authorities, means that any rules to be implemented must take full account of each port's specific characteristics. Every port has adapted itself over many years and operates in conditions favourable to it in its national context. Any attempt to unify operating conditions could have adverse effects on port activities and their efficiency.

3.22 The Committee believes that applying subsidiarity to the proposed legislation and ensuring coherence of port development policies at a local level is preferable to the uniform provisions outlined in this proposal for a Directive. There are extensive differences in size and type of ports. Excessive competition amongst service providers at a specific port could result in over-investment and waste, not to mention a deterioration of social conditions.

3.23 In line with the principles of subsidiarity and proportionality, national antitrust regulatory bodies and auditing institutions could have the authority to intervene if the port authorities concentrated port services under their own control in cases where no economic benefit or public service requirement can justify such a practice; or they failed to comply with the principles of transparency or with accountancy rules. Thus Community intervention on competition or State aid could be more effectively concentrated on exceptional cases: for instance, if the national competition authorities and the relevant regional or national audit offices did not effectively fulfil their role in enforcing existing Community legislation.

3.24 The matter of shifting part of the cost of certain access and operational improvements (dredging, or construction of channels and docks) to local or national taxpayers is raised by the existing Commission case-law on State aid.

3.25 Local communities should only be taxed in the general interest and not to lower the costs of (national or international) seaport users alone, and primarily for major ones. Services of general interest should be governed by democracy and not by the market.

4. Conclusions

4.1 A far less detailed framework directive providing sufficient scope for subsidiarity would appear preferable to the present draft directive. It should be sufficient to refer to the applicability of legislation relevant to transparency or public procurement without entering into the details of their application to port services. A Community framework should not encroach upon the port management's prerogative to safeguard the general interest entrusted to its authority.

4.1.1 Such a framework directive should not in any way affect the rights and obligations of Member States vis-à-vis their legislation on social and labour issues, public health, the environment, security, public order, or services of general interest. It should not affect collective agreements that comply with applicable national law. It should also take account of the Member States' international obligations, for instance, the ILO Maritime Conventions.

4.1.2 The EESC cannot but regret the fact that the draft directive lacks an impact assessment, which runs counter to the commitment to legislate better undertaken by the Commission since its White Paper on governance. All draft legislation subject to the co-decision procedure should include an impact assessment and information on consultations held with social partners.

Brussels, 13 July 2005

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

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received more than a quarter of the votes cast, were rejected in the debate:

Point 1.5

Amend as follows:

'It is appropriate to recall some of the main causes of contention for the European Economic and Social Committee ~~that had obstructed~~ in the first proposal before examining the nature and scope of the amendments introduced by the new proposal for a Directive.'

Reason

In the interests of clarity it should be made quite clear who felt there were causes of contention in the first proposal. This is not clear from the subsequent paragraphs, which mention the Council and the European Parliament.

Outcome of the vote

For 42

Against 63

Abstentions 3

Point 3.1

Amend as follows:

'Without prejudice to the European Commission's own powers, seaports' practices and accounts should be submitted ...'

Reason

The proposed procedure may not place any restriction on the existing powers of the Commission.

Outcome of the vote

For 54

Against 71

Abstentions 5

Point 3.1

Move the whole paragraph and place it between the present points 3.17 and 3.18, and re-number the other points in section 3 accordingly.

Reason

The point is too technical for an opening comment. It would be better to place it with the paragraphs mentioned, which cover financial matters.

Outcome of the vote

For 50

Against 74

Abstentions 10

Point 3.4

Delete the final sentence, as follows:

'Many ports provide their own infrastructure and basic services for maritime traffic. They do not feel that their responsibilities should be restricted to the administration and maintenance of maritime, land and port space, and the quays. The provision of certain services may reflect general interest exigencies, or the port authority's efforts to achieve overall financial balance, or even a profit to be distributed amongst the shareholders of privately owned ports. Preventing "cross subsidies" would weaken the capacity for port investment.'

Reason

Cross subsidies are not compatible with fair competition between ports. These subsidies obscure cost prices, which have to be charged at the very least; there is consequently no transparency.

Outcome of the vote

For 61

Against 80

Abstentions 6

Point 3.6

Delete the last two sentences, as follows:

'A port is a complex logistical platform that is connected to a hinterland that may vary considerably in geographical and economic terms on a regional, national or international scale, and to land transport networks. It must develop strategies that are consistent with the development of the geographical area whose economy it fuels, its employment pool, and emerging or evolving economic needs. The EESC believes in favouring intermodality that enhances maritime transport, cabotage in particular. As currently worded, the arrangements outlined in the proposal for a Directive do not explicitly address this imperative.'

Reason

Most hinterland is not accessible by sea. It is therefore not advisable to give priority to this sector, not to mention according it absolute priority. A similar plea could be made — with greater justification — on behalf of inland waterway transport. Furthermore, coastal navigation is promoted in, inter alia, the motorways of the sea programme.

Outcome of the vote

For 59

Against 83

Abstentions 9

Point 3.17

Delete this point.

~~'The Committee notes that ports fall within the relevant State's sphere of sovereign powers, which the Directive must not encroach upon. Certain functions (supporting the fight against terrorism, organised crime and irregular migration, which often entails costs and investments that are borne by the port) may be delegated to the port authority.'~~

Reason

In its proposal, the Commission already states this in so many words. In point 3.17 it is, however, also suggested that, in the event of the delegation of certain functions, without the payment of compensation by the State, the port is not obliged to pass on the costs involved to customers, which may give rise to unfair competition with other ports.

Outcome of the vote

For 55

Against 84

Abstentions 13

Delete points 3.23 and 3.24

- 3.23 ~~The matter of shifting part of the cost of certain access and operational improvements (dredging, or construction of channels and docks) to local or national taxpayers is raised by the existing Commission case law on State aid.~~
- 3.24 ~~Local communities should only be taxed in the general interest and not to lower the costs of (national or international) seaport users alone, and primarily for major ones. Services of general interest should be governed by democracy and not by the market.~~

Reason

Costs incurred by port authorities for the benefit of ports must be charged to users or to the port's own stakeholders. The current text suggests that the general interest can be used as a reason not to do so.

Outcome of the vote

For 55

Against 82

Abstentions 17

Add new point (3.25)

'To be able to establish whether future port investment is compatible with European law at the beginning of the planning stage, the Committee calls on the European Commission to supplement its proposal as soon as possible with proposals for Community guidelines on public funding for ports and the type of funding that is compatible with the internal market, as discussed at the hearing of 31 January 2005.'

Reason

Self-explanatory.

Outcome of the vote

For 59

Against 85

Abstentions 14

Amend point 4.1 to read as follows:

'Although the Committee supports the liberalisation of transport-related port services, like other transport services, it believes that a far less detailed framework directive providing sufficient scope for subsidiarity would ~~appear~~ be preferable to the present draft directive. It should be sufficient to refer to the applicability of legislation relevant to transparency or public procurement without entering into the details of their application to port services. A Community framework should not encroach upon the port management's prerogative to safeguard the general interest entrusted to its authority, but this must not affect fair competition and transparency.'

Reason

There was no disagreement in the study group on this point, and the amendment makes clear the context in which our comments and conclusions should be read. The general interest must not be an excuse for failing to apply these two basic principles of the EU.

Outcome of the vote

For 61

Against 86

Abstentions 12

Opinion of the European Economic and Social Committee on the contribution of civil society to EU-Russia relations

(2005/C 294/07)

On 1 July 2004 the European Economic and Social Committee, acting under Rule 29 of its Rules of Procedure, decided to draw up an opinion on 'The contribution of civil society to EU-Russia relations'.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 May 2005. The rapporteur was **Filip Hamro-Drotz**.

At its 419th plenary session (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 109 votes to two, with six abstentions.

1. Reasons for issuing the opinion

1.1 The Russian Federation which plays an important international role is a strategic partner for the EU. EU enlargement further highlights the importance of the cooperation between the EU and Russia as neighbours and the establishment of the best possible relations between the EU and Russia, in the context of the development of the common European values of democracy and respect for both human rights and civil rights, is of vital importance to both parties.

1.2 Social development and improvement of living conditions, establishing the rule of law and ensuring greater predictability in the conditions and environment for business, as well as building a market economy, call for determined action. Although Russia's leadership formally subscribes to such objectives, progress in achieving them and the realities of everyday life fall far short of the expectations both of Russian and international society. The attitude displayed by the country's current leadership towards, for example, economic players and the media does not, in the EESC's view, serve to confirm the statement of intent of the authorities regarding promotion of democracy and strengthening civil society. The current trend of developments in Russia is worrying, and not just for its citizens. Russia is clearly moving away from democracy, the State is in control of the media, the Russian Army, despite international commitments, is present in Moldavia and Georgia, and the judiciary serves political ends. Building organised civil society under such conditions is an extremely difficult task.

1.3 Deepening EU integration — the internal market, the single currency and increasing cooperation in a growing number of policy areas — is a fundamental objective of historic significance, to which all Member States are committed, regardless of the recent setbacks in this process. However, the EU's internal integration must not lead to a situation where the EU draws away from Russia and the rest of Europe, which is not developing in the same way, since this could result in the division of Europe.

1.4 The declaration of 9 May 1950 by the French foreign minister Robert Schuman on the building of a united Europe draws its inspiration from the idea that European integration must be based on the desire to work together on equal terms

to achieve stated goals, on shared values and reconciliation and on people's vision of a common future. Robert Schuman also stated that Europe cannot be built all at once, but rather through practical achievements and, above all, by creating genuine solidarity. The message of the Schuman Declaration is also relevant to EU-Russia relations and the efforts to strengthen their cooperation.

2. Contribution of civil society to EU-Russia relations

2.1 Strengthening EU-Russian relations also requires solid support from organised civil society in the EU. The efforts of civil society in the EU are aimed at achieving improved cooperation between the EU and Russia and at supporting the process of building civil society structures and democracy in Russia.

2.2 The experience of the new EU Member States, which in ten years have successfully completed the process of post-Communist transition, is important and they can provide added value in cooperation between the EU and Russia. In particular civil society actors (NGOs) in these countries can play an important role in relation to democratisation and protection of human and citizens' rights in Russia.

2.3 The union of EU countries' business confederations (UNICE) has for many years presented proposals and opinions on the development of economic relations and EU and Russian business leaders regularly discuss this issue in the framework of the so-called EU-Russia Industrialists' Round Table and present their views to EU-Russia summits. The European Trade Union Confederation (ETUC) also presents its position to summit meetings, and in 2004 it forwarded a joint letter with the Russian trade union confederation (FNPR) to the European Commission president and the Russian president in which they proposed that the EU and Russian trade union confederations should be given a similar role to that of the EU-Russia Industrialists' Round Table. Other civil society actors have on their own initiative developed ways to express their views about the development of EU-Russia relations in their specific sectors. Russian society is still poorly organised, the emergence of NGOs is slow, and they do not yet play a significant role.

2.4 For its part, the EESC has in recent years presented several opinions on EU-Russia relations, in which it addressed also the functioning of Russian civil society. The main opinions are listed in footnote 1. The recommendations and findings presented in these opinions have been taken into account in the present opinion, without, however, making specific reference to them⁽¹⁾. This work led the EESC to establish direct contacts with many of the main Russian civil society actors.

3. Recommendations

3.1 *The EU must adopt a more integrated policy towards Russia and implement it in a pragmatic fashion*

3.1.1 The consistent development of cooperation between the EU and Russia has been hampered by the fact that individual Member States promote their own interests by working bilaterally with Russia, even in matters whose management has been entrusted to the EU. Of course, nothing should be done to restrict the development of constructive and open bilateral relations between individual Member States and Russia in areas which do not fall within EU competence. On the contrary, this kind of bilateral, regional and sectoral activity is highly important, and each EU Member State must bear the responsibility for it.

3.1.2 In order to achieve positive results in EU-Russia cooperation, EU countries should agree on an EU policy towards Russia which is clearer and more focused than at present and on the mechanisms for its implementation civil society in the EU should take a more proactive stance in sharing practices of self-organisation, and in supporting the revival of solidarity networks in Russian civil society. The European Union can place what constitutes its true wealth — namely its diversity, the plurality of its forms of social organisation, and the democratic, social and cultural cross-fertilisation underpinning this diversity and plurality — at the disposal of Russian civil society and thus of Russia itself. All the Member States must work to promote common goals, a task which has become even more important following enlargement. It is equally evident that an open and straightforward approach is the best way to achieve results in developing cooperation between the EU and Russia. The EU should also develop technical assistance to help Russia become a stable, democratic and prosperous country. The structure of existing technical assistance programmes should be re-evaluated. Progress can best be made in small but determined steps.

⁽¹⁾ *Relations between the EU and Russia, Ukraine and Belarus (1995); TACIS – Technical Assistance to the Commonwealth of Independent States and Mongolia (1998); Relations between the European Union and the countries bordering the Baltic sea (1998); The northern dimension and relations with Russia (1999); The Northern Dimension: Action Plan for the Northern Dimension in the external and cross-border policies of the European Union 2000-2003 (2001); EU/Russia strategic partnership: What are the next steps? (2002); Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours (2003).*

3.2 *The Road Maps should stimulate the preparation of a dynamic agreement between the EU and Russia*

3.2.1 The EU and Russia are expanding and deepening their relations on the basis of the Road Maps to achieve the four Common Spaces. The four Common Spaces are: 1) the Common Economic Space, 2) the Common Space of Freedom, Security and Justice, 3) the Common Space of Co-operation in the Field of External Security, and 4) the Common Space on Research, Education and Culture. The Road Maps set out some 400 measures to be taken over the few years. The EESC considers this to be an excellent approach and would stress that the EU must increase its efforts in order to create open and wide-ranging political, economic and social relations between the EU and Russia.

3.2.2 There are several aspects of the Road Maps that are relevant for civil society: for instance the prioritised sectors for regulatory and economic dialogue; facilitating competition, investment and trade; interregional and cross-border cooperation; environment; promotion of people-to-people links; movement of persons; youth; cooperation in the field of civil protection; research and education; and gradual integration of transport networks.

3.2.3 The EESC urges the EU and Russia to implement the Road Maps without delay. Their content should be constantly updated with a view to making them as practicable as possible, and their implementation should be subject to annual review by the two sides. Both the EU and Russia should also designate bodies to be responsible for their implementation. The EESC for its part is prepared to actively contribute — as a follow-up to this opinion — to this process in spheres relevant to civil society. It intends in this respect to present proposals on the content and implementation of the Road Maps, and to step up its direct contacts with the main Russian civil society actors (see points 3.4.3. and 3.5.5.).

3.2.4 The initial ten-year period of the EU-Russia Partnership and Cooperation Agreement, which was drawn up in the first half of the 1990s, will expire in 2007 if either side so wishes. The Road Maps for the four Common Spaces should serve as the basis for a new, modern EU-Russia agreement founded on strategic partnership. Russia should be encouraged to remove persisting obstacles to trade in goods and services, and to guarantee a well-functioning regulatory framework for investment so that the EU and Russia can start to draw up a free trade agreement based on Russia's market economy status and membership of the WTO.

3.2.5 The EU and Russia should also work together to revamp regional cooperation — the Northern Dimension (including Baltic Sea cooperation and the Arctic cooperation) and Black Sea cooperation — along similar lines. The EESC is pleased to note that this aspect has also been duly taken into account in the Road Maps and encourages further measures to develop regional cooperation as part of EU-Russia relations.

3.3 *The role of civil society must be enhanced in the context of the Road Maps for the EU-Russia cooperation*

3.3.1 Strengthening EU-Russia relations in a sustainable way will be limited unless the activities of the parties are guided by common values. These include individual responsibility, respect for the rule of law, respect for the individual and property, human rights (i.e. media freedom, organisation of free elections, political pluralism, equal opportunities and minority rights), transparency, integrity, human dignity, equality and freedom of speech, the right to organise and basic workers' rights, sound industrial relations and adequate social protection. There will be no common ground for cooperation and mutual understanding unless these values can be permanently built into the foundations of Russian socio-economic and political life.

3.3.2 The EESC considers the overall objectives of the Road Maps to be relevant. It is pleased to note that the importance of common values has been underscored as a fundamental basis in three of the Road Maps (the Common Space of External Security, the Common Space of Freedom, Security and Justice and the Common Space of Research and Education, including Cultural Aspects).

3.3.3 Strengthening of cooperation between the EU and Russia will be affected by what happens in these areas in Russia. The EESC recommends that this issue should be underlined in the implementation of the Road Maps. It strongly believes that more concrete actions to achieve the common values, which are fundamental to developing a functioning civil society, should be added to the Road Maps.

3.3.4 It is important to develop an environment in Russia where the social partners and other organised civil society actors can operate independently and participate with confidence in the preparation of social and economic decisions having a bearing on them. This calls for open dialogue and networking, which require independent media. This also requires that key international agreements such as the ILO core labour standards should be implemented in practice.

3.3.5 Prerequisites for a functioning civil society are that Russian economic and social actors should have a high degree of representativeness, be independent and have the capacity to engage in constructive and transparent expert dialogue with authorities and other actors in society.

3.3.6 The EESC welcomes the launch in spring 2005 of consultations between the EU and Russia in the framework of the second Common Space, on human rights and related basic rights, e.g. of minorities. Resolving national and local self-determination issues and avoiding the use of conflictual methods (Chechnya), which put people in Russia in danger and also pose a threat for the citizens of the EU, should be addressed in these consultations.

3.3.7 Over the years the EU has demonstrated its ability to bring about essential changes in third countries on the basis of

dialogue, and this should also be the aim in dialogue with Russia. The Council of Europe and the OSCE obviously play a key role in these matters. The EESC notes with satisfaction that the EU and Russia have agreed in the Road-Maps to strengthen their cooperation within the framework of these forums.

3.3.8 Sufficient EU financial assistance is needed to develop EU-Russia relations. More use should be made of TACIS, etc. resources to develop civil society, education and independent media, and this should also be taken into account in the European Neighbourhood and Partnership Instrument (ENPI). The EESC recommends that the European Commission present a proposal on how Russian civil society could derive greater benefit from the EU's relevant instruments.

3.4 *Civil society actors should be given an adequate role in implementing the Road Maps for EU-Russia cooperation*

3.4.1 The EU has emphasised that, in building relations between the EU and Russia, the aim is to find solutions and ways forward that are qualitatively sustainable. This requires that the views of different stakeholders in civil society be taken on board, which is why it is so important to develop civil society in Russia.

3.4.2 The EESC recommends that the role of credible civil society actors be strengthened in EU-Russia cooperation mechanisms by setting up a consultative committee under Article 93 of the PCA. This would enable maximum benefit to be derived from their expertise in cooperation between the EU and Russia. There has been positive experience with similar arrangements in EU relations with the Mediterranean countries, India, Latin America and the ACP countries. The EESC's understanding is that Russia also has large numbers of actors who have the necessary capacity to contribute to this end.

3.4.3 The EESC aims to play a significant role in the process of finding the right way for civil society to be involved in EU-Russia cooperation.. The EESC's intention to strengthen its contacts with the main Russian civil society actors, mentioned in points 3.2.3 and 3.5.5, should ideally be expanded in the foreseeable future into an advisory forum in the context of formal EU-Russia cooperation.

3.5 *Cooperation between civil society in the EU and Russia should be further strengthened*

3.5.1 Over the years, some interest groups, including the trade union movement, consumers, employers, farmers and other civil society groups have established contacts with their counterparts in Russia. This is the case both at EU and bilateral level. Russian organisations are also often involved in international cooperation in their respective fields. The aim is to promote direct links, networking, interaction, and exchange of experience and knowledge between ordinary citizens. The main objectives of civil society cooperation should include expanding relations of trust between the EU and Russia.

3.5.2 However, these relations must be further diversified and developed, since many Russian organisations do not have adequate contacts with each other and with similar organisations in other countries. The EESC encourages all actors in organised civil society to further strengthen and enlarge their cooperation with Russian counterparts in their own field of interest. The EU should for its part initiate actions to facilitate this cooperation.

3.5.3 The EU Member States should step up efforts to involve civil society organisations in the setting up of joint projects, in promoting educational and exchange programmes in this framework, and in initiating joint economic projects. The governments of the EU Member States should also provide more public information about the existence of such projects and train the civil society sector to prepare projects.

3.5.4 It is important to find ways of establishing contacts with all parts of Russia, including Kaliningrad. The Committee of the Regions' proposals⁽¹⁾ for developing regional cooperation between the EU and Russia are pertinent in this regard. The EESC supports these proposals and recommends that the Permanent Partnership Council upgrades this topic on its agenda.

3.5.5 The EESC will use its position to promote the development of links between EU and Russian organised civil society. A first step in this direction would be to organise regular contacts, joint workshops, etc. on specific topics with Russian partners (e.g. economic reforms and employment, reform of social security systems, development of social dialogue in Russia, involvement of civil society actors in EU-Russia cooperation). The aim would be for this to lead to regular and more intensive cooperation between both sides. This should in due time develop into an advisory forum underpinning the EU-Russia cooperation mechanism (see also points 3.2.3 and 3.4.2-3.4.3).

3.6 *Cooperation between Russia and its neighbours, and between civil society actors in these countries, should be supported.*

3.6.1 It is important for relations between Russia and its neighbouring eastern European countries — e.g. Russia and

Ukraine — as well as Moldova and Belarus — to be consolidated at the same time as the EU steps up its relations with its eastern European neighbours. Closer relations and more intensive interaction are needed on political, economic and social issues, with the aim of improving European cooperation. The EESC proposes that the EU should support such development as part of its neighbourhood and partnership policy.

3.6.2 The EESC recommends that cross-border contacts between civil society actors in these countries should also be supported in this context. The EESC, for its part, has already taken measures to develop dialogue and intends to report regularly thereon to the Commission.

3.7 *Cross-border mobility between the EU and Russia should be promoted*

3.7.1 Good transport links and easy travel are essential for promoting cross-border mobility. The EESC supports efforts to develop and integrate transport links, which require investments in improving infrastructure and logistics in both the EU and Russia. Major international financing bodies, above all the EIB and EBRD, should be more involved in this activity.

3.7.2 The EESC is pleased to note that the objective of facilitating people-to-people contacts and travel between the EU and Russia — e.g. through integration of transport networks, legal border-crossing and visa facilitation and principles for readmission — have been pinpointed in the Road Maps. Border agreements are building blocks for smooth cross-border mobility.

3.7.3 The current visa procedure is slow and expensive and represents a threshold — even an obstacle — to tourism and closer cross-border interaction between civil society actors, including young people and students. Visa and work permit application procedures must be simplified; this would help to promote cross-border mobility and relations. Therefore it is important that the current negotiations between the EU and Russia on visa facilitation lead as soon as possible to an outcome that satisfies both parties.

Brussels, 13 July 2005.

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

⁽¹⁾ CdR 105/2004

APPENDIX

to the opinion of the European Economic and Social Committee

A. The following amendment was rejected by the plenary session but received at least one-quarter of the votes cast:

Point 1.3.

Delete.

Reason

Point 1.1 of the opinion already states that the Russian Federation is a strategic partner of the European Union, which adequately conveys the content of point 1.3.

Voting:

For: 33

Against: 64

Abstentions: 8

Opinion of the European Economic and Social Committee on Chemicals legislation — REACH

(2005/C 294/08)

On 14 December 2004 the Bureau of the European Economic and Social Committee, acting under the implementing provision for Rule 29 of the Rules of Procedure, decided to draw up an opinion on 'Chemicals legislation — REACH'.

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 16 June 2005. The rapporteur was Mr Braghin.

At its 419th plenary session, held on 13 and 14 July 2005 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 52 votes to two with two abstentions.

1. Background

1.1 Since the publication of the proposal for a regulation establishing a European Chemicals Agency and a procedure for the registration, evaluation, authorisation and restriction of chemicals (REACH) ⁽¹⁾, there has been a wide-ranging debate involving the EU institutions, national authorities, the chemical industry, other industrial sectors, trade union organisations, and numerous NGOs.

1.2 A number of suggestions which the Committee made in its earlier opinion ⁽²⁾ have received interesting follow-up in the ongoing debate, particularly as regards:

- the need for a series of further studies to assess the following: the proposal's impact on certain sectors; the scale and consequences of any withdrawal of critical substances from the market; the establishment of strategic partnerships for pilot implementation projects; and the impact on the new Member States;
- the need to simplify the obligations placed on companies, and to reduce costs in order to avoid loss of competitiveness or company relocations, whilst safeguarding the priority objective of safeguarding health and the environment;
- the case for fine-tuning and strengthening the role of the Agency, and ensuring adequate representation of all the interested players.

1.3 Two studies undertaken in the context of the Memorandum of Understanding between the Commission and UNICE-CEFIC have given a clearer picture of the problems faced by particular industrial sectors. These further impact studies showed that although some of the fears voiced initially were excessive, concerns still remain and further efforts are needed to make the system more effective and coherent.

1.3.1 The main findings of the Business Impact Case Study undertaken by KPMG Business Advisory Services ⁽³⁾ are as follows:

- There is limited evidence that higher volume substances are vulnerable to withdrawal following the REACH registration requirements. Lower volume substances (under 100 tonnes) are most vulnerable to being made less or non-profitable by the REACH requirements. Out of the 152 substances assessed in detail, only 10 substances were found to be vulnerable to commercial withdrawal as they became less or non-profitable.
- There is limited evidence that downstream users will be faced with a withdrawal of substances of greatest technical importance to them. These substances will be registered, sometimes in spite of commercial vulnerability.
- The one-off costs of registration for chemicals suppliers can in some cases be significant and may result in the rationalisation of portfolios by chemicals suppliers. This effect would mainly relate to substances which are not considered by chemical suppliers to be technically critical to their customers.
- If a substantial withdrawal of substances occurred, the extent and costs of reformulation and re-engineering could be significant (not least because of the need for studies, tests and user validation).
- The costs will mainly be absorbed or passed on, but may be more difficult for SMEs.
- The impact of REACH on innovation is uncertain. There is no evidence, for the cases investigated in the study, that research and development (R&D) resources will automatically be diverted due to REACH, nor are increases in R&D expected.

⁽¹⁾ COM(2003) 644 final of 29.10.2003.

⁽²⁾ OJ C 112 of 30.4.2004.

⁽³⁾ KPMG, *Business Impact Case Study REACH*, presented on 28 April 2005.

- Companies have recognised some business benefits from REACH which include: better information about substance properties and dangerous components in preparations, easier risk management and rationalisation of substance portfolio.
- Concerns were expressed about specific workability and confidentiality problems. Some concerns were expressed by formulators and downstream users that chemical producers might not want to include certain uses in their registration dossier.
- Users of inorganic substances (and of raw materials in particular) need further clarifications about the REACH registration provisions.

1.3.2 The study on new Member States ⁽⁴⁾ shows that awareness of REACH remains limited and identifies the following key points:

- Substantial increases in costs are only anticipated in a few cases.
- The direct costs to be borne in specific cases could be high in relation to turnover or in terms of erosion of profit margins.
- A few substances are felt to be vulnerable as they already have limited profit margins.
- Companies depending on non-EU eastern markets will be the hardest hit.

1.4 The findings of these studies and the ongoing debate have highlighted various aspects which the economic operators involved feel are of critical importance. The Committee wishes to make a further contribution to this debate, in close coordination with the work being done at the Council and the European Parliament.

2. Registration criteria and timeframes

2.1 The proposed regulation removes the current artificial distinction between 'existing substances' (those already declared to be on the market in September 1981) and 'new substances' (those put on the market after that date). Article 5 establishes an obligation to register substances on their own or in preparations which are manufactured or imported in quantities of one tonne or more per year (second paragraph of Article 5(1)). The regulation also establishes the principle that substances may not be manufactured in the Community or imported unless they have been registered (Article 19(1)).

2.2 Transitional provisions are laid down for the 30 000 or so substances currently manufactured or put on the internal market, which are to be phased in to the registration system according to the quantities produced or imported by the individual company (Article 21). The transitional provisions establish a three-year phase-in period for the registration of substances manufactured or imported in larger volumes (1 000 tonnes or

more per year) and for substances currently classified as CMR ⁽⁵⁾ category 1 or 2; a six-year phase-in period for substances manufactured or imported in quantities of 100 tonnes or more; and an 11-year phase-in period for those manufactured or imported in quantities of one tonne or more.

2.3 This volume-based approach has been questioned on a number of grounds, first and foremost that registrations cannot be distributed over time according to the actual risks of the individual substance concerned. A risk-based priority would be more justified in scientific and economic terms, but defining the priority substances would require an iterative procedure to identify the intrinsic hazard and the risks related to exposure in order to arrive at an assessment and thus to manage the risk.

2.4 The Committee therefore considers that although a prioritisation system based on volume is rather rough (as noted in its earlier opinion ⁽⁶⁾), it provides the most practical way of attaining the desired objectives and replacing the present system, which is universally agreed to be inefficient. The proposed system also covers substances of very high concern such as CMR category 1 and 2. The approach adopted by the Commission, which is based on volume (a rough indicator of potential exposure) but which also considers intrinsic hazard, should thus prove easier to apply, more transparent and better able to guarantee operators sufficient legal certainty.

3. Regulatory simplification

3.1 The Committee thinks that the concerns (if not fears) of many operators stem at least partly from the highly complex and rather opaque structure of the proposed regulation. This comment applies particularly to operators in sectors which do not produce chemicals in the strict sense of the term, and to importers, SMEs and downstream users who sometimes lack the technical facilities and expertise to describe, when required to do so, their particular uses and the management of the related risks. The length of the technical annexes is a further barrier to a full understanding and application of the REACH system.

3.2 The Committee therefore hopes that, in the light of the opinions and amendments taken on board during the first reading, the Commission will also strive to make the regulation more reader-friendly and consider reordering its chapters and articles. Firstly, more precise definitions are needed in order to clarify the scope of the regulation and the category exemptions, as well as the registration deadlines and the different requirements for different tonnages.

3.3 Once the obligations incumbent on manufacturers and importers according to production volume and processes have been clarified, other more complex aspects will also become clearer (e.g. mechanisms for data sharing, information responsibilities and arrangements along the supply chain, and the commitments and responsibilities of downstream users).

⁽⁴⁾ JRC-IPTS, Contribution to the analysis of the impact of REACH in the new European Member States, presented on 28 April 2005.

⁽⁵⁾ Carcinogenic, mutagenic or toxic for reproduction.

⁽⁶⁾ OJ C 112 of 30.4.2004, point 3.3.2

3.4 The Committee also suggests that a distinction should be made regarding those annexes which by their very nature do not form part of the legislative provisions (e.g. Annex X). These annexes should still receive explicit mention and thus provide a practical point of reference, but should be drawn up jointly by authorities and experts from the sectors concerned, using the model of the BAT and BREF⁽⁷⁾ systems under the IPPC directive. Making this daunting body of technical information simpler and clearer will help to secure an accurate evaluation of the efforts and costs facing companies. Such a distinction would also speed up adaptations to technical and scientific progress and simplify procedures.

3.5 The Committee appreciates the Commission's effort to draw up practical guidelines in its REACH Implementation Projects (RIPs). It believes that such instruments are crucial for the practical feasibility of the proposal, as they will enable operators and authorities to become fully conversant with the mechanisms of the system.

3.6 The Committee asks for a further effort to involve industrial associations, trade unions and other sectoral organisations with a view to securing effective cooperation on the ground between authorities, businesses, professional organisations and trade unions. This should help to ensure effective implementation of the system. In this context, the Committee advocates the development of support structures such as the national help desks which the Commission is considering at present.

4. Pre-registration

4.1 Article 26 establishes a duty to pre-register: each potential registrant of a substance coming under the REACH system must submit the specified information to the Agency at least 18 months before (a) the three-year deadline set for quantities of 1 000 tonnes or more, or (b) the six-year deadline for quantities of one tonne or more. Downstream users and manufacturers/importers of quantities of less than one tonne may contribute to the sharing of data if they so wish.

4.2 The information required under Article 26(1) provides a sufficient basis for encouraging the sharing of data about individual substances, and thus possible agreements for the joint submission of data and of the tests to be carried out (thereby reducing costs). However, the Committee considers that this information is not sufficient for assessing the potential risk of a substance and hence for devising new prioritisation criteria for registration purposes. This would require a more complicated set of data involving more time, more costs and more red tape, which could prove too much for small producers and importers, and for the Agency that would have to deal with them.

⁽⁷⁾ BAT (Best Available Techniques) and BREF (BAT reference documents): these are documents drawn up by the EU office in Seville which is responsible for implementing Directive 96/61/EEC on integrated pollution prevention and control (IPPC). The documents are drawn up jointly by Community experts and stakeholders.

4.3 When considering the various proposals under discussion, the Committee thinks that preference should be given to those which safeguard the basic objectives and the currently proposed deadlines (thereby avoiding uncertainty and confusion among the operators involved) and those which the case studies suggest will be less burdensome for the most vulnerable operators.

5. Recommendations for an effective, manageable REACH system

In order to work effectively, the registration mechanism must specify clearly:

1. the substances covered by the proposed system;
2. its scope, in particular by specifying the criteria and the categories to be exempted (at present these are mentioned in several different articles of the regulation);
3. the obligations regarding the flow of information between manufacturers, importers and downstream users (both industrial and professional) of the same substance;
4. the mechanisms and incentives for forming consortia.

5.1 *Definition of the term 'substance'*. The case studies have confirmed that there is considerable uncertainty about the substances (especially inorganics) covered by REACH.

The Committee is pleased that a specific REACH Implementation Project (RIP) is being conducted to clarify for authorities and businesses the substances which will in fact come under the REACH system.

5.2 *Scope*. It would be useful to draw up a summary in table form to provide operators with precise details of the exempted categories, particularly of those which are already regulated by existing Community legislation; this would help to guarantee attainment of REACH's health and environmental protection objectives. The Committee agrees that overlaps and duplication of obligations must be avoided, and trusts that precise indications will remove any lingering doubts on this matter.

5.3 *Flow of information*. The REACH system can only work effectively if there is an adequate flow of information between upstream and downstream operators. Without this two-way flow, which should also take place between different manufacturing sectors, it would be impossible to take the right measures to manage risk and protect workers, consumers and the environment. The Committee agrees that the manufacturer/importer should assess the exposure scenarios and risks for 'identified uses', when required, acting in good faith and with 'due diligence'; these are clear concepts that are firmly established in legislation and case law.

5.3.1 The Committee stresses that the Agency's data on the substances registered, and later on those that have been assessed, should be made available to economic operators in general (currently they are only to be provided for manufacturers, importers and users of a specific substance, for that substance alone), and to workers' representatives and other categories who might find them useful (medical, security, emergency services, etc.). Any confidential or commercially sensitive information should be removed before these data are passed on.

5.4 *Data sharing.* The proposal states that a substance information exchange forum (SIEF) may be set up for manufacturers and importers of the same phase-in substance, to enable them to pool their information. The Committee supports this, and the underlying objective of minimising duplication of tests, including non-animal testing.

5.5 The Committee stresses the need to avoid duplication of tests, not only in the case of experiments on animals. A concerted effort should be made to develop QSAR-type (Quantitative Structure-Activity Relationship) screening and assessment models, and alternative methods and tests that do not involve animals, devising procedures for speeding up their validation and, if possible, enabling them to be used before the competent bodies give definitive formal approval.

5.6 *Cost effectiveness.* The application of the system must expressly strive to reduce the costs borne by companies, so as to be consistent with the objectives of the Lisbon strategy and sustainable development, which the Committee has always supported. The fundamental challenge of REACH is to marry the goal of competitiveness with that of health and environmental protection. In particular, care must be taken to ensure that registration costs do not weigh excessively on particular segments of the supply chain or on sectors that face particularly stiff competition or are structurally weak.

5.7 It has been calculated that 60 % of the direct costs of registration relate to the tests. The Committee therefore stresses the great importance of mechanisms to encourage companies, on a voluntary basis, to conduct tests jointly and share their results. A fair, harmonised system to ensure that those who use previously or jointly collected data bear their share of the costs is also very important.

5.8 The Committee therefore suggests that some of the guidelines on costs should be amended, as they do not appear sufficient or fair, particularly as regards:

- the reduction of the registration fee; this fee is modest in the case of small volumes but becomes considerable for larger ones. Article 10(2) currently proposes that the fee be reduced to one-third when the same set of data is submitted

by several firms belonging to a consortium. A more significant reduction would be desirable;

- the sharing of the costs of animal testing between forum members (second paragraph of Article 28(1), and Article 50(1)). It does not seem fair to share the costs equally, without considering their respective production volume. The Committee thinks that it would be fairer to use criteria related to turnover of the substance concerned or the volumes sold over the preceding three years;
- the 50 % share of the animal-testing costs sustained by previous registrants (Article 25(5) and (6)) seems even more unjust. For a late registrant, such a threshold could prove an insurmountable barrier to market entry.

6. Comments on the proposals being discussed at the Council

6.1 Among the proposals under discussion, the OSOR system ('one substance, one registration') proposed by the UK and Hungary has received some backing and has been widely debated within the Council. The principle can be supported, as such a system would radically reduce the number of tests needed and avoid a lot of duplicate studies, but doubts remain about the scope for its practical application.

6.1.1 The Committee notes some weaknesses and unsolved problems in this system as regards:

- safeguarding of confidentiality (which is difficult to guarantee without assigning the task to third parties working on behalf of a pool of companies), given the proposed obligation to share data (it is the sharing that is obligatory, not the establishment of consortia);
- the intrinsic complexity of a system that seeks to cover all operators who handle a given substance, if only because it would include operators in all Member States and would thus inevitably pose language problems;
- the number of companies taking part in several SIEF, even if this difficulty is allayed by the scheduling of three pre-registration phases based on tonnage;
- the long time that it will presumably take for the designated experts to reach an agreement on what data are to be passed on from the various sets of shared 'core data', not least because the inclusion of one test rather than another could have significant economic consequences for the company by virtue of the cost-sharing mechanism;
- the joint submission of the dossier (or the reference to a joint dossier), which could lead to a shedding of responsibility on the part of the individual operators involved.

6.1.2 Moreover, the OSOR system makes no provision for (and offers no guarantee of the possibility of) the sharing of work to ascertain exposure and risk characterisation and management, when required, as this would be difficult if not impossible for different types of operator to agree on. This would suggest a need for partly separate registrations, which runs counter to the principle underpinning OSOR.

6.2 The recent proposal by Malta and Slovenia regarding substances in the 1 to 10 tonne category is designed to simplify the system and reduce costs for firms (often SMEs) concerned with this tonnage band. It does not alter basic features of the regulation such as the tonnage brackets and deadlines, and proposes operating arrangements that appear simple and flexible.

6.2.1 The main proposals are:

- simplification of the registration requirement, based on the information available on the substance and its use, with a simple basic set of essential information (including physico-chemical and (eco)toxicological data);
- simple mechanisms for describing exposure:
 - main categories of use (industrial/professional/consumers),
 - main conditions of exposure;
 - nature of exposure (accidental/infrequent; occasional; continuous/frequent);
- prioritisation criteria (defined by the Agency) to apply automatically if two or more of the conditions listed in the relevant annex occur together;
- regular (five-yearly) flexible review, to take account of experience acquired with previous applications.

6.2.2 The Committee is pleased that this proposal retains the same volume-based deadlines as the Commission proposal, and that supplementation of the information provided and/or of that on the tests scheduled under Annex V is only required when the Agency suggests that this is advisable. The presence of the prioritisation criteria triggers a check which may lead the Agency to ask for further information and tests about specific aspects or, if there are serious concerns about the risks posed by the substance, to begin the evaluation procedure.

6.3 The Swedish proposal on substances contained in articles deserves particular attention, if only because of the widespread concern about the practical application of Article 6. It highlights a number of important points:

- the definition of the term 'article' is too vague to allow a distinction between different types of article;

- the quantities of dangerous substances released, even unintentionally, may be very high, and their release may vary significantly depending on how the articles are processed or used, or when they are discarded;
- identifying which substances released may 'adversely affect human health or the environment' (Article 6(2)) would be difficult in the absence of a specific risk assessment;
- the presence of CMR, PBT or vPvB substances (listed in Annex XIII) is not necessarily reported to the authority or subject to registration;
- EU manufacturers of articles who are subject to the REACH system throughout the supply chain will be at a disadvantage vis-à-vis their direct competitors outside the EU, who will only be subject to it as regards dangerous substances released in articles;
- information on the content of dangerous substances in articles is important in the purchase and marketing of the articles themselves, not least for consumers, but the proposed regulation makes no provision for this.

6.3.1 With a view to securing the health and environmental objectives of the system without unduly increasing red tape and costs, the Committee endorses the following proposed measures:

- obligation to provide information downstream in the supply chain, to professional users and users/consumers of articles;
- registration of substances of particular concern, independently of the quantities included in articles, and registration of dangerous substances if they are present in quantities of more than one tonne, if they are added intentionally and are identifiable as such in the article;
- obligation for the Agency to provide structured information on the use of substances in articles, and its right to ask for further information to manufacturers/importers of articles regarding unregistered substances or those covered by Article 54(f);
- a right to know the dangerous chemicals contained in an article, also for professional users;
- a 'guiding list' for dangerous substances which can be released unintentionally, identifying the types of article under observation.

6.3.2 The Committee also supports the proposal to bring forward the application of Article 6 if a series of phases and voluntary agreements are respected which demonstrate its practical applicability, as suggested by the sector's stakeholders.

6.4 Lastly, the Committee reiterates the need to strengthen the role of the Agency, as noted in its earlier opinion⁽⁸⁾. It therefore endorses the French proposal (*Shape the Agency for Evaluation — SAFE*), and particularly the idea of making the Agency responsible for the three types of evaluation (of the testing proposals, of the dossiers submitted, and of the substances themselves) envisaged in the draft regulation, and giving it direct responsibility for the 'rolling plan' covering substances that need priority evaluation.

7. Impact on the supply chain

7.1 The Committee thinks that further study is needed of the supply chain and of the differing consequences for its various parts. The substances covered by the regulation are used cross-sectorally, and the same firm may be both a manufacturer and downstream user. In other words, a firm may have more than one REACH role, as manufacturers/importers and downstream users.

7.1.1 Chemical substances and preparations are used in all production processes. However, the registration burden rests with the direct supplier, or is transferred up the supply chain, unless the downstream user puts the substance to an unenvisioned use and has not given the supplier prior notification of this.

7.2 In order to try to pinpoint the different kinds of difficulty facing operators, it is helpful to single out six main types of operator, with different roles in the supply chain:

- manufacturers/importers of basic chemicals;
- large non-chemical manufacturers;
- SMEs that manufacture chemicals requiring registration;
- formulators;
- non-chemical manufacturing SMEs;
- importers of chemicals or articles.

7.3 Manufacturers/importers of basic chemicals (e.g. ethylene and butadiene) are relatively few in number and handle large volumes. They are thus likely to come under the first registration deadline, but the costs will have a relatively minor impact on their turnover.

7.4 Large non-chemical firms (particularly the iron and steel, paper and cement industries) are both downstream users — using a host of substances and preparations in the manufacturing process — and manufacturers/importers, according to the current definition of substances. In the absence of a more precise definition of exempted substances (which would be desirable), they will mainly be involved in registrations for the first deadline.

7.5 During the drafting of the present opinion, the Committee has obtained new data regarding SMEs which manufacture chemicals and compounds requiring registration. Despite this, available data do not give a full or detailed picture of the situation. It is clear that several thousand SMEs will face

a registration obligation, but it is not known which substances will be involved and in what volumes, or, therefore, the related registration commitments and deadlines. The most recent impact studies show that the registration costs could significantly affect these firms' competitiveness and the continued market presence of some substances. The Committee hopes that this aspect will be carefully monitored, not least bearing in mind the likely adverse impact downstream.

7.6 Formulators (i.e. the firms that blend the individual substances) use a number of substances to make a single preparation, and are involved in the registration of substances that have not been purchased on the internal market. The studies conducted have confirmed that formulators are particularly concerned about the disclosure of data and information that could reveal manufacturing secrets; more particularly, indication of the code for each substance used in a preparation would reveal its formulation, jeopardising competitiveness. The Committee suggests that this requirement should only apply to substances that are classified as dangerous.

7.6.1 Formulators are therefore likely to be the main downstream users concerned by Article 34(4), which requires downstream users to prepare a chemical safety report (Annex XI) for any use not envisaged in the exposure scenario communicated to them in the safety data sheet provided by the supplier of the raw materials used in their preparations. Formulators will also have to meet the obligation (contained in the existing legislation) to prepare a safety data sheet for the preparations they market, when these are classified as dangerous under Directive 99/45/EC.

7.7 Non-chemical manufacturing SMEs are mainly downstream users, likely to make only minor use of substances (the registration burden for which in any case lies with the manufacturer/importer) but more frequently of preparations. They will be able to refer to the safety data sheet or chemical safety report if required, which will enable them to make more controlled use of the substances and manage the risk more effectively. The economic burdens for this category of business will mainly be indirect, involving substantially new administrative and bureaucratic obligations.

7.8 As stated in point 3.6, the Committee hopes that industrial associations, trade unions and other sectoral organisations will be able to play an active part in monitoring and simplifying the implementation processes. They can carry out an information role that will help to ensure full compliance with the regulation and encourage operators to join specific consortia.

8. Health and safety

8.1 The impact assessments conducted so far have concentrated mainly on the costs and feasibility of the REACH system. There have been fewer, if any, quantitative assessments of the benefits for health and safety in the workplace, and for health

⁽⁸⁾ OJ C 112 of 30.4.2004, point 3.2.

and the environment in general. Many operators have complained that REACH will be excessively onerous, and have called for substantial changes. However, some sectors and large commercial chains have welcomed the proposal, despite the costs and the administrative work it will demand.

8.2 The Committee's earlier opinion mentioned the added value of the system in terms of the quality and safety of production processes and products. It recommends that these aspects be pursued further, not least in relation to the *Environment and health* action plan⁽⁹⁾. The Committee is pleased that some specific studies have been scheduled on this, such as the Trade Union Technical Bureau for Health and Safety's study on the impact of REACH on occupational health (skin diseases, respiratory diseases).

8.3 The directive on the safety of workers already contains provisions for establishing exposure scenarios and the safe handling of substances. However, its practical application is sometimes less than satisfactory. In extending the information available, REACH marks a step forward for protecting the health and safety of workers in all production sectors. The availability of more detailed and better documented safety data sheets and chemical safety reports for dangerous substances will certainly help to improve the situation, bearing in mind that they will cover a larger number of substances and will be more widely disseminated among economic operators.

8.4 Another neglected aspect which deserves serious attention concerns the training and skills needs of the various members of the supply chain (operators and workers), and the implications in terms of transparency and information for consumers. The Committee calls for an active policy on this, with training schemes for workers and mechanisms for making non-confidential information available, as suggested above. Implementation of REACH will undoubtedly lead to developments on these fronts, but specific measures should be planned with a view to ensuring maximum effectiveness.

9. Innovation

9.1 One of the aims of the REACH system is to stimulate innovation. The Committee welcomes the equal treatment given to new substances, and especially the five-year (renewable) exemption from registration for substances in the research stage and the increase in the volumes for notification

purposes. However, it would like to see the development of further instruments and measures. In particular, it suggests that chemical research be explicitly included in the 7th framework programme, on which discussions are now starting, and that specific incentives for innovation and technology transfer be considered, with a view to encouraging the development of substances that pose fewer potential risks.

9.2 The two recent case studies do not anticipate a dramatic diversion or reduction of R&D resources. However, some impact will certainly be felt, in the absence of an increase in research investment. This, in tandem with the increase in costs, could lead to a drop in innovation capacity and hence in competitiveness. As this could be particularly severe for SMEs, the Member States too should support research in these companies, taking advantage of the new rules on state aid for SMEs. The fact that the companies questioned did not appreciate the anticipated opportunities suggests that an information campaign is needed on REACH's potential benefits, which could at least partially offset the inevitable burdens.

9.3 REACH's impact on the production system is likely to bring new opportunities for those companies that are most attentive to market developments, giving the more flexible and efficient businesses the possibility to win new shares of the market and offer new solutions for the most critical substances whose replacement would be desirable. The experience acquired will also create a competitive advantage when other areas of the world have to adjust to production standards that are more respectful of human health and the environment. Nor should one overlook REACH's impact on research associated with the need for new knowledge (analytical chemistry, computer modelling, toxicology, new testing methods, sampling and measuring techniques, new application software).

9.4 Lawmakers and political decision-makers must be mindful of these processes so as to ensure that all Community policies are consistent with, and facilitate achievement of, both the competitiveness/ innovation and environmental protection objectives required under the Lisbon strategy. The Committee hopes that a thorough, ongoing debate between the competent authorities and stakeholders will help to frame effective policies and instruments that will work alongside market mechanisms to promote an innovative chemicals industry that is also attentive to protection of health and the environment.

Brussels, 13 July 2005.

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

⁽⁹⁾ OJ C 157 of 28.6.2005.

Opinion of the European Economic and Social Committee on the scope and effects of company relocations

(2005/C 294/09)

On 29 January 2004 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on 'The scope and effects of company relocations'.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 June 2005. The rapporteur was Mr Rodríguez García Caro and the co-rapporteur was Mr Nusser.

At its 419th plenary session of 13 and 14 July 2005 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 128 votes to 15, with six abstentions.

1. Introduction

1.1 We live in a world of growing globalisation (a process accelerating the breakdown of frontiers), internationalisation of trade and extremely rapid technological development⁽¹⁾. The increase in institutional investment⁽²⁾ and trans-frontier cross-investment, the relocation of tasks, rapid changes in ownership and greater use of information and communication technologies mean that geographical identities are becoming blurred and competitiveness is taking on a global dimension. Thus competitiveness is the overall objective of the economic dimension which, in interaction with the social, environmental, political and institutional dimensions, shapes the process of sustainable development.

1.2 The European Union today appears as a major nucleus of integration against a backdrop of globalisation, with a single market, economic and monetary union and real progress in the field of the common foreign and security policy and in the area of justice and home affairs.

1.3 A society needs to be competitive as a whole. Competitiveness should be understood as the capacity of a society continually to anticipate, adapt to and influence its economic environment⁽³⁾. In its Communication of 11 December 2002,

⁽¹⁾ The French magazine 'Problèmes économiques' published a special issue in September 2004 (no. 2859) devoted entirely to the issue of relocations. It includes an article that states that the term 'globalisation' is an Anglicism used to evoke the phenomenon known as 'mondialisation' in French. It is described as the transition from an international economy, in which politically autonomous nations organise their national economic space and maintain economic exchanges of higher or lower importance, towards a global economy which goes beyond national regulations.

⁽²⁾ The term 'institutional investment' refers to investments made by entities with a high volume of funds or reserves. For example, this type of investment can be made by investment funds, banks, insurance companies or pension funds.

⁽³⁾ See EESC Opinion of 19.3.1997 on Employment, Competitiveness and Economic Globalisation (OJ C 158 of 26.5.1997); rapporteur: Ms Konitzer (Group II – Germany).

Industrial Policy in an Enlarged Europe⁽⁴⁾, the European Commission defines competitiveness as '*the ability of the economy to provide its population with high and rising standards of living and high rates of employment on a sustainable basis*'. Moreover the importance of overall competitiveness is underlined by the European competitiveness reports regularly published by the European Commission since 1994⁽⁵⁾.

1.4 For companies competitiveness means being able to meet customers' needs in a sustainable way, more efficiently than its competitors, providing goods and services which are more attractive in terms of price and other factors⁽⁶⁾. 'Organisational competitiveness' can be defined as the extent to which an organisation is capable of producing high-quality goods and services which achieve success and acceptance on the world market⁽⁷⁾. Organisations must comply with the 'three E's': efficiency, efficacy and effectiveness. Efficiency in the management of resources, efficacy in achieving objectives and effectiveness in influencing the environment.

1.5 Human resources are fundamental to companies' ability to compete. In this respect, their motivation, training and promotion opportunities, and contributions within a context of social dialogue are important.

1.6 Today companies face a constantly changing environment. Increasingly open markets, highly developed infrastructures and means of communication and transport, technologies and technological applications undergoing constant innovation and ever intensifying competition provide the framework within which companies have to develop their day-to-day activities.

1.7 In the specific case of the European Union, 1 May 2004 was a landmark in its history, with the accession of ten new Member States. As stated in the Committee's Opinion on

⁽⁴⁾ COM(2002) 714 final. See EESC Opinion of 17.7.2003 on the subject (Mr Simpson, OJ C 234 of 30.9.2003).

⁽⁵⁾ See, in particular, the seventh edition, published in 2003 (SEC(2003) 1299), and the eighth edition published in 2004.

⁽⁶⁾ See EESC Opinion cited in footnote on page 2.

⁽⁷⁾ John M. Ivancevich, *Management: Quality and Competitiveness* (1996).

enlargement, ⁽⁸⁾[t]he enlarged single market will bring many economic advantages and will strengthen the competitiveness of the EU in the global market, provided that the Union manages to exploit its existing potential rather than allowing it to go unused.' However, it has to be borne in mind that the economic structures of these countries have not yet reached the standards in the EU 15. According to the European competitiveness report 2003, the CEEC-10 ⁽⁹⁾ have an advantage in labour-, resource- and energy-intensive industries compared to the EU-15 whereas they have comparative disadvantages, primarily in capital- and technology-intensive industries. This pattern leads to competitive advantages of the CEEC-10 regarding (upstream) primary and (downstream) consumption goods whereas they have disadvantages regarding intermediate and capital goods.

1.8 An internal market of almost 455 million people, where companies can operate within one common framework, capable of ensuring stable macroeconomic conditions in an area of peace, stability and security, is the main advantage of the enlargement that took place on 1 May 2004. Although, after enlargement, the population of the EU increased by 20 % and GDP by 5 %, hourly labour costs and labour productivity on average become lower in the EU-25 as a whole.

1.9 However, enlargement of the Union should not be seen as a threat, per se, for the 'old' Member States of the EU. Previous enlargements of the Union show how GDP and living standards improve in countries joining the EU. An example of this is the increased GDPs in Ireland ⁽¹⁰⁾, Spain ⁽¹¹⁾ and Portugal ⁽¹²⁾ since their accession. Furthermore, it must not be overlooked that since 1 May 2004, the future of the EU has become part and parcel of the future of its 25 Member States.

1.10 In addition, enlargement provides an opportunity for European business to benefit from the advantages offered by new EU partners — not only in terms of cost or training, but also in terms of a geographical proximity and cultural and linguistic similarity far greater than that offered by other possible locations.

1.11 The phenomenon of relocation represents a dual challenge for European society: firstly, relocation to other Member States, in search of better conditions; secondly, the relocation

to non-EU states, such as Southeast Asian countries ⁽¹³⁾ or countries with emerging economies ⁽¹⁴⁾, particularly China. This second case is partly driven by favourable production conditions but mainly by the chances offered by entering very large new markets with enormous growth potentials.

1.12 The relocation phenomenon, apart from being the direct cause of job losses, could also bring other, associated problems, such as an increase in social security costs for governments, increased social exclusion, and less economic growth overall, partly as a result of a general demand shortfall. Moreover it should be mentioned that relocation of industrial production can, at best, help to promote social rights in countries receiving investment and necessarily involves the regular transfer of know-how; consequently relocation can make a considerable contribution to levelling out the comparative advantages described in 1.7 above and to further increasing the competitiveness of the relocated businesses.

1.13 Despite the effects mentioned above, the European Commission acknowledged, in its Communication on *Restructuring and Employment* of 31 March 2005 ⁽¹⁵⁾, that restructuring must not be synonymous with social decline and a loss of economic substance. Furthermore, this Communication also states that restructuring operations are often essential to the survival and development of enterprises, although it is necessary to accompany these changes in such a way as to ensure that their effects on employment and working conditions are as short-lived and limited as possible.

1.14 Today, investing in other countries is no longer an issue that affects large companies only: SMEs, particularly those with high technological added value, are already setting up business in other countries or outsourcing part of their business.

1.15 On the one hand, the creation of the most advanced technological processes in high-cost countries is one of the factors limiting company relocations, generating new areas of activity and adding to the skills and know-how of companies' workers. On the other hand, the countries with emerging economies and Southeast Asian countries have markets with major potential, where tax regimes and the energy prices offered are often more favourable than in the EU; in addition, labour costs are much lower, in part due to lower development of social rights, which are in some cases non-existent in comparison to the fundamental standards of the International Labour Organisation (ILO), and a lower cost of living. This enables companies located there to compete globally on the basis of lower costs. At the same time, these countries favour

⁽⁸⁾ See EESC Opinion of 12 December 2002 on Enlargement (OJ C 85 of 8.4.2003); rapporteur: Ms Belabed (Group II – Austria).

⁽⁹⁾ This abbreviation refers to the following Central and Eastern European Countries: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, plus Bulgaria and Romania.

⁽¹⁰⁾ GDP increased from 63.3 % of the EU-15 average in 1970 to 123.4 % of the average in 2004. Source: Statistical Annex of the European Economy – Spring 2005 (ECFIN/REP/50886/2005).

⁽¹¹⁾ GDP increased from 71.9 % of the EU-15 average in 1986 to 89.7 % in 2004. Source: Statistical Annex of the European Economy – Spring 2005 (ECFIN/REP/50886/2005).

⁽¹²⁾ GDP increased from 55.8 % of the EU-15 average in 1986 to 67.4 % in 2004. Source: Statistical Annex of the European Economy – Spring 2005 (ECFIN/REP/50886/2005).

⁽¹³⁾ Brunei Darussalam, Burma/Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam, East Timor (source: European Commission).

⁽¹⁴⁾ This term refers to any economy with low-to-middle per capita income and characteristically undergoing the transition from a closed economy to a market economy, which involves the implementation of a series of structural, economic reforms, and receiving a high volume of foreign investment [Antoine W. van Agtmael; World Bank, 1981]. Emerging economies include China, India, Brazil and Mexico.

⁽¹⁵⁾ COM(2005) 120 final.

foreign investment, sometimes with the help of economic free zones where labour laws and social conditions are weaker than in other parts of the country, because they realise that it will provide major income for their economies. For this reason, more and more companies are coming to see the benefits of relocating the lower added-value part of their businesses to these areas, usually creating poor quality, low-wage jobs in the process.

1.16 In the light of the economic takeoff of emerging economies and Southeast Asian countries, it is revealing to note that foreign direct investment (FDI) is indeed increasing in these regions, as are the EU's trade flows with them. Consequently, even though the figures show that Europe has managed to maintain an important share of inward FDI, the global flow has been reoriented and is increasingly directed towards Asia.

1.17 Thus, recent data confirms the new course being taken by the European Union's external trade, although the USA continues, by a wide margin, to be its main trading partner. However, this country's importance is tending to diminish in favour of countries like China ⁽¹⁶⁾.

1.18 At this point it would be worthwhile to try and define the concepts of delocalisation and deindustrialisation:

— **Delocalisation** occurs when a business activity is totally or partially ceased, to be reopened abroad by means of direct investment. In the European Union we can distinguish between two types of relocation:

- a) *internal*: Total or partial transfer of business activity to another Member State;
- b) *external*: Total or partial transfer of business activity to non-EU countries.

— **Deindustrialisation**: Within this concept a distinction should be made between:

- a) *absolute de-industrialisation*: This implies a decline in employment, production, profitability and capital stock in industry, as well as a decline in exports of industrial goods and the emergence of persistent trade deficits in this sector;

⁽¹⁶⁾ With regard to the EU's external trade flows, data published by Eurostat on 22 February 2005 for January-November 2004 show a clear increase in imports from China (21 %), Russia, Turkey and South Korea (18 % each), while the only decrease was seen in imports from the USA (-1 %). In the section on EU exports, the most significant increases were for exports to Turkey (30 %), Russia (22 %), China (17 %) and Taiwan (16 %). During the period in question, EU-25 trade showed an increase in the trade deficit with China, Russia and Norway, while there was an increase in the trade surplus with the USA, Switzerland and Turkey.

- b) *relative deindustrialisation*: This is the decline in the share of industry in the economy, reflecting a process of structural change in the relationship between the industrial performance and the service sector. ⁽¹⁷⁾

In addition to internal and external relocations, it is also worth mentioning another phenomenon which has been highlighted by recent events at some production sites: reverse relocation. This occurs when an employer urges employees to accept a lower standard of working conditions or face the risk of being relocated. This phenomenon is particularly harmful as it can encourage competition between workers, and can have a snow-ball effect

2. Causes and implications

2.1 In order to tackle the negative effects of relocation, it is clear that economic and social measures are required to promote the creation of wealth, well-being and employment. In this context, particular attention should be paid to small and medium-sized enterprises, given the importance of their contribution to employment in the EU, and to companies in the social economy — small, medium-sized and large — owing to their continuing tendency to create jobs, and jobs moreover that their statutes make, in principle, less easy to relocate. Therefore, the Committee supports the European Commission's proposal to establish a Competitiveness and Innovation Framework Programme (CIP) ⁽¹⁸⁾, in which it proposes the creation of three sub-programmes aimed at providing a common framework to boost productivity, innovation capacity and sustainable growth. The first of these sub-programmes, entitled the Entrepreneurship and Innovation Programme, is intended to support, improve, encourage and promote, inter alia, access to finance for the start-up and growth of SMEs, and sector-specific innovation, *clusters* and action in relation to entrepreneurship and the fostering of a favourable environment for cooperation between SMEs. It is vital to the creation of regional *clusters* that multinationals decide not to relocate and encourage the activity of SMEs in their local area.

⁽¹⁷⁾ Cf. in this respect, the study 'The Significance of Competitive Manufacturing Industries for the Development of the Service Sector', Bremen, December 2003.

The key messages of this study are the following:

- a reduced share of the manufacturing in GDP does not equal reduced importance;
 - the linkages between the manufacturing and the service sectors are increasing;
 - dynamically growing, enterprise-related services depend particularly strongly on industry's demand;
- industry is an important technology provider for product and process innovations in the service sector.

⁽¹⁸⁾ COM(2005) 121 final 6 April 2005: Proposal for a Decision of the European Parliament and of the Council establishing a Competitiveness and Innovation Framework Programme (2007-2013).

2.2 Furthermore, the indirect effects that the risk of relocation can have on salaries and working conditions must be considered. The social partners, through collective bargaining and optimised creation and use of European works councils wherever the law provides for them, should minimise these risks and safeguard the future of the enterprise and working conditions of a high standard.

2.3 Historically, the EU-15 has been characterised by regional disparities in levels of income, employment and productivity, which reflect the differences in the level of indebtedness, in the tax benefits and in the attitude towards innovation. After the enlargement of 1 May 2004 this regional diversity has increased considerably⁽¹⁹⁾.

2.4 At regional level, the consequences of company relocation can be dramatic especially if the region specialises in a particular sector of activity. This is why a massive relocation of companies in a particular sector can have a strong impact in terms of falling employment rates, a noticeable fall in demand, reduced economic growth and a major social exclusion among others, with all the negative consequences that this implies. In order to avoid this, the European Commission, in its Third Cohesion Report⁽²⁰⁾, highlights the importance of focusing its efforts on cohesion to improve economic efficiency and the competitiveness of the European economy, which implies mobilising all its resources and regions⁽²¹⁾.

2.5 It is essential that efforts be made to retrain the workforce, boost investment in innovation and research, and develop incentives to promote the entrepreneurial spirit in the European Union.

2.6 According to data from the European Monitoring Centre on Change (Dublin), some sectors will be affected more than

⁽¹⁹⁾ According to Eurostat data of 7 April 2005, the per capita GDP of the European Union (EU-25) in 2002 was between the 32 % of the EU-25 average found in the region of Lubelskie, in Poland and the 315 % in the Central London region in the United Kingdom. Among the 37 regions with a per capita GDP greater than the European average of 125 %, 7 were situated in the United Kingdom and Italy, 6 in Germany, 4 in the Netherlands, 3 in Austria, 2 in Belgium and Finland and finally 1 in the Czech Republic, Spain, France, Ireland, Sweden and Luxembourg. Among the new Member States, the only region to exceed 125 % was Prague in the Czech Republic (153 %). Conversely, among the 64 regions with a per capita GDP lower than the Community average of 75 %, 16 were in Poland, 7 in the Czech Republic, 6 in both Hungary and Germany, 5 in Greece, 4 in France, Italy and Portugal, 3 in Slovakia and Spain and finally 1 in Belgium, the United Kingdom, Estonia, Latvia, Lithuania and Malta.

⁽²⁰⁾ COM(2004) 107, 18.2.2004. See related EESC Opinion (ECO 129).

⁽²¹⁾ The Committee has issued an own-initiative Opinion on Industrial change and economic, social and territorial cohesion (OJ C 302 of 7.12.2004). rapporteur: Mr Leirião (Group III – Portugal), co-rapporteur: Mr Cué (CCMI Category 2 – Belgium).

others by relocation⁽²²⁾. A company's position on relocation also depends on its degree of independence in terms of corporate and technological structure. The weakest group will be branches of foreign-based multinationals and companies which do not own the technology for their products or processes.

2.7 Europe's insufficient output in terms of research and innovation is worrying since relocations do not seem any longer to be restricted to labour-intensive sectors. Relocations are now increasingly observable in intermediate sectors and even in certain high technology sectors where there are tendencies to relocate activities such as research and services, China and India being the biggest beneficiaries of these developments/transfers.

2.8 We also know that some companies are bringing production back home because the EU offers a good climate for the production of advanced goods and services. Although relocation of production to low-cost countries will continue, the focus should be on helping to maintain or create a good climate for the production of advanced goods and services in order to attract production with high value added.

2.9 The United States is the world's most powerful economy and the EU's main trading partner. In the 1990s a number of changes took place in various countries, especially the United States, which gave rise to the 'new economy'. The rapid development of information and communication technologies (ICT) and their application in business led to an acceleration of the rate of GDP growth and a sharp fall in unemployment. The effects of the telecommunications revolution were thus felt throughout society and the economy.

2.10 Even though fostering research is extremely important in order to slow down the process of relocation, which for some European regions is already a preoccupying issue, it is the application of the results of research that is decisive. It is the implementation of the results of scientific and technological research which produces real economic development and growth. This means that the key factor is not the technology itself but the use made out of it, i.e. the **innovation**.

2.11 However, it must be realised that innovation alone will not prevent the relocation of traditional industrial activities which will be transferred elsewhere because they lack competitiveness. But innovation will be a driving force for the replacement of relocated activities with alternative products, processes and services in these areas.

⁽²²⁾ The European Monitoring Centre on Change (www.emcc.europa.eu) notes that the sectors most affected by relocations since 2000 are the metal, telecommunications, motor, electrical, textile, food and chemical sectors.

2.12 An economy based on the integration of technological progress into the production processes provides a wide range of new products and processes of high added value, both in production and consumption. In this context, the countries that joined the EU on 1 May 2004 should be considered as a source of opportunities since, with the help of an adequate industrial policy, European companies will be able to design a new strategy on a continental scale, making the most of the opportunities brought by enlargement.

2.13 Relocation means a company moving all or part of its activity from one place to another. Companies, like people, leave their place of origin with one aim in mind: improvement. In highly developed economic areas with partially saturated markets, the potential for growth of the national economy within its own market gradually comes up against its natural limits. Entire industrial sectors are therefore obliged to search for future opportunities in other economic areas. Moreover, in the age of globalisation, companies face strong global competition in both their home and export markets. In this context, the competitiveness of companies depends not only on the quality of their products or services and those of their suppliers, but also on their prices, exchange rate variations and the presence of open, competitive global markets whose standards are observed by all.

2.14 The choice of location is a strategic issue for companies and consequently forces them to consider numerous aspects of a very different nature. Companies take their decisions on the basis of (among other things) high levels and the right kind of training, good public services, moderate costs, political stability, institutions inspiring a minimum of confidence, the proximity of new markets, the availability of productive resources and reasonable levels of taxation. Moreover, a company's position on relocation also depends on infrastructure and transaction costs. It also depends on its degree of independence as determined by its corporate and technological structure and the efficiency of the public administration. Hence labour costs are not the only factor in deciding for or against relocation and should be weighed against productivity since the productivity/cost ratio is essential to competitiveness.

2.15 Relative business costs are largely determined by national or regional conditions. Countries receiving company investment must provide minimum levels of infrastructure, education and security. When contemplating taking on entrepreneurial risk, companies seek stability and confidence (in that order) before investing. Events generating instability, or particularly uncertainty about the future, undoubtedly influence investment decision-makers. Political decision-makers have to be extremely aware of the importance of attracting investment which creates high-quality jobs, facilitates technological development and boosts economic growth. Furthermore, when designing development aid, greater store should be set by improving political, civil and social rights in recipient countries. Companies must help to achieve this objective by applying the principles of social responsibility⁽²³⁾.

⁽²³⁾ The EESC, in its Opinion on *Corporate Social Responsibility (Green Paper)* acknowledges that '[v]oluntary (...) action is one of the fundamental principles of CSR' (OJ C 125 of 27.5.2002); rapporteur: Ms Hornung-Draus (Group I – Germany), co-rapporteurs: Ms Engelen-Kefer (Group II – Germany) and Mr Hoffelt (Group III – Belgium).

2.16 The social partners have a particular duty to create stable rules of engagement for the labour market. Collective agreements, as part of an autonomous social dialogue, ensure a level playing field for companies, a balance between the market and workers' rights that leads to growth, security and development potential for employees and companies.

2.17 Further aspects also play a key role. On the one hand, the nature and scope of products and services do, in many cases, require the goods to be produced and the services to be provided in or at least near the target markets. On the other hand, there is often a need, particularly in the case of supply industry enterprises, to follow their business customers to the locations which the latter has chosen. Finally, in many cases, it is not possible to tap new markets unless the enterprises concerned ensure that their goods and services include at least some degree of locally-provided added value.

2.18 Finally, it should not be overlooked that, since consumers lend great importance to price and consumer demand also influences supply, there is considerable pressure on retailers to lower their prices. Large retailers, having decided to offer the consumer low prices, then put pressure on suppliers to reduce their prices. In this situation, suppliers, especially the smallest ones, do not usually have the economic resources to satisfy the large retailers' demands⁽²⁴⁾.

2.19 Due to the disparity between the economies of the EU Member States, and between that of the EU as a whole and those of Asian countries, there are certain factors that encourage company relocations:

- cheaper supply;
- tax advantages;
- potential access to new markets;
- technology;
- lower labour costs.

2.20 Movement of companies, especially away from the EU, could give rise to some difficulties such as:

- **loss of competitiveness:** companies remaining in the EU would be obliged to bear higher costs than their competitors; this is likely to result in a loss of worldwide market share, with negative consequences for the achievement of the Lisbon Strategy objectives (sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment);

⁽²⁴⁾ See the EESC Opinion *The Large retail sector – trends and impacts on farmers and consumers*. Rapporteur: Mr Allen (Group III – Ireland)

- **less generation of know-how:** European companies, forced to compete with companies with lower costs, could possibly be obliged to invest less and less in research; this would result in a loss of innovative capacity, which is essential for survival in today's market;
- **loss of jobs and deterioration of job opportunities** for an ever growing number of employees in the affected regions and sectors; this will result in increased social exclusion and in states having to devote a greater part of their budgets to social spending; the workers who suffer most will be those of branches of multinationals with their headquarters in another country and those of companies which do not own the technology for their products or processes;
- **slower economic growth:** caused in part by reduced internal demand, due to the effect that pay cuts, job losses and fewer opportunities in the job market will have on the population.

3. Conclusions

3.1 In response to the concerns expressed by the European Council ⁽²⁵⁾, and aware of the anxieties aroused by the danger of deindustrialisation and of the ways in which we can prepare ourselves and face the structural transformation which is taking place in European industry, on 20 April 2004 the European Commission adopted the Communication entitled *Fostering structural change: an industrial policy for an enlarged Europe* ⁽²⁶⁾, in which it sketches the outlines of an industrial policy for an enlarged European Union. The Committee deals specifically with this Communication in a separate Opinion, ⁽²⁷⁾ in which it welcomes the Commission's initiative.

3.2 In this document the European Commission states that, although the majority of sectors are increasing their production and although no general process of deindustrialisation is to be observed, Europe is nonetheless undergoing a process of restructuring, involving the transfer of resources and jobs to activities with a high knowledge content. In this context, the Communication points out that in all the Member States the number of jobs in the industrial sector fell during the period 1955-1998.

3.3 The Commission also points out that enlargement offers numerous opportunities for industry and that, in some cases, it can help retain production in the EU which might otherwise have been transferred to Asia. The Commission calls for action to anticipate change and continue the policies necessary to support this process, in the context of the new financial perspectives for the period to 2013 and in three areas:

- i) **A regulatory framework favourable to industry** at national and EU level, not necessarily meaning fewer regulations, but rather clear regulations applied in a uniform manner across the EU.
- ii) **Optimising synergy between different policies**, to encourage competitiveness, with a special focus on areas like research, training, competition rules and regional aid.
- iii) Adopting measures in specific sectors to **respond politically to specific needs**, move up the value chain and anticipate and flank structural change.

3.4 There is no doubt that industry is the engine of the economy, and that a healthy and dynamic industry can give an impetus to the economy as a whole, whereas weak industrial competitiveness and flagging industrial production can lead to general stagnation of economic activity. Against this background, it is essential to pursue an industrial policy ⁽²⁸⁾ which promotes the establishment and growth of firms in the Union which invest heavily in innovation and development, rather than competing on costs. Only by exploiting the advantages which Europe offers (such as high-quality information society infrastructure, a high level of investment in research and new technologies and their exploitation in industry, the promotion of continuing education and training for workers, social dialogue and all the advantages of the single market) will it be possible to maintain and improve the competitiveness of European industry. In this way it would be possible to promote economic growth and progress towards full employment and sustainable development.

3.5 With a view to improving and preserving the competitiveness of businesses in the EU, the Committee calls for improved protection for intellectual property rights and the enforcement of those rights in third countries.

3.6 It is necessary to promote a production model which emphasises factors other than the price of the products manufactured. It should be stressed that competitiveness is not based on costs or tax incentives alone, but that people are a fundamental part of firms' competitive edge. Research and the development of new technologies which make it possible to reduce production costs and improve productive capacity are essential, but sight should not be lost of the fact that the real value of these advances lies in their application. It is therefore a matter of priority to have the necessary knowledge for the appropriate exploitation of these processes, making it possible to exploit the considerable potential for improvement, as well as to make companies aware of the risks and the need to search for new applications for existing technologies, i.e. to promote an **innovative attitude**. In this entrepreneurs and workers undoubtedly have a crucial role to play. Ultimately the aim is to encourage

⁽²⁵⁾ At its meeting held in October 2003, under the Italian Presidency.

⁽²⁶⁾ COM(2004) 274 final, 20.4.2004.

⁽²⁷⁾ OJ C 157 of 28.6.2005, rapporteur: Mr Van Iersel (Group I – Netherlands), co-rapporteur: Mr Legelius (CCMI Category 1 – Sweden).

⁽²⁸⁾ The need for an active industrial policy was acknowledged by the European Council at the Spring Summit 2005, held in Brussels on 22 and 23 March 2005.

European firms to base a large part of their added value and competitive advantage on **human capital**. That is why measures targeted at continuing training and boosting investment in research and innovation are of decisive importance. Here too European social partners play an important role, through their joint work programme ⁽²⁹⁾.

3.7 However, some measures only apply to intra-EU relocation.

3.7.1 The enlargement of the EU and the consequent extension of the internal market rule out placing any kind of restrictions on the relocation of companies from Western Europe to Central and Eastern Europe. Consideration must be given to introducing EU funding criteria, which ensure that only company set-ups which initiate a new business activity or line are supported, and not those which simply transfer existing manufacture or services from elsewhere within the EU. Efforts should thus be encouraged with a view to levelling out, as soon as possible, the enormous discrepancy between eastern and western Europe as regards production conditions in general and production costs in particular.

3.7.2 The most important conclusion is that there should be an ongoing process to improve competitiveness in the EU. This process should run in harmony with the Lisbon Strategy and be led by companies (development of better products, creation of innovative business models, more efficient production processes, etc.) and facilitated by improved European and national legislation.

3.7.3 It would therefore be advantageous to increase support for investment in human capital and other types of infrastructure. The European Union needs a strong, innovative and technologically advanced industrial base. To achieve this, a thorough understanding of the current situation in both regional and national economic sectors is vital, so that the specific advantages that exist locally can be put to best use.

3.7.3.1 In order to help to keep companies in their places of origin, regional incentives should be increased as regards training; it would be worthwhile promoting other initiatives such as exchanges with universities for research, and partnerships with local authorities for developing regional 'clusters' of support for businesses ⁽³⁰⁾.

3.7.3.2 The Committee supports the Commission's proposal to increase from 5 to 7 years the period for which businesses receiving financial aid must maintain the investment for which this aid was requested ⁽³¹⁾, thus encouraging them to lay down

⁽²⁹⁾ See the *Joint declaration on the mid-term review of the Lisbon strategy*, presented at the Tripartite Social Summit held on 22 March 2005.

⁽³⁰⁾ The Competitiveness and Innovation Framework Programme (COM(2005) 121 final, 6 April 2005), mentioned above (see point 2.1), included such activities.

⁽³¹⁾ See the European Commission's proposals for the Structural Funds.

roots. Should these businesses not comply, they will have to give back the financial aid received.

3.7.4 Given the relevance and interest of this issue, the Committee will follow the development of relocation in Europe ⁽³²⁾.

4. Recommendations

4.1 As the European Commission noted in its Communication on integrated guidelines for growth and jobs (2005-2008) ⁽³³⁾, firstly, the EU must seize the opportunities provided by the opening up of rapidly growing markets, such as China and India, and, secondly, the EU has a high potential for developing further its competitive advantages, and it is crucial that actions are pursued with determination to exploit that potential.

4.2 The Committee believes that creating a knowledge society, based upon human capital, education, research and innovation policies, is the key to boosting growth potential and being in a position to face up to future challenges. Furthermore, the Committee believes that sustainable growth also requires greater demographic dynamism, improved social integration and fuller utilisation of the potential embodied by European youth as recognised by the European Council of 22 and 23 March 2005 in adopting the European Youth Pact.

4.3 The Committee considers it necessary to achieve greater convergence and synergy between the EU's different internal policies, actions and objectives. This not only requires firm internal coordination in the Commission, but also in dialogue with the European Parliament and the Council.

4.4 The Committee recommends that the Commission also pursue a sector-based in addition to a horizontal approach in EU industrial policy, since the recommendations of the High-Level Groups show that the pharmacy, textiles and clothing, ship-building and automobile sectors all face specific problems that call for tailor-made solutions and specific measures ⁽³⁴⁾. These problems cannot be solved through a horizontal approach.

⁽³²⁾ In this context, the quantitative and qualitative analyses being carried out by the European Monitoring Centre on Change (Dublin) should be taken into account.

⁽³³⁾ COM(2005) 141 final, 12 April 2005.

⁽³⁴⁾ The principal common objective of these four High Level Groups (HLGs) set up by the European Commission between 2001 and 2005 is to stimulate debate on initiatives that will facilitate the adjustment of the respective sectors to major challenges and improve conditions for the competitiveness of related European industry. Of these HLGs, three have published their reports (pharmaceuticals in May 2002; textiles and clothing in June 2004, although it has resumed its work at 'sherpas' level to continue the debate on unfinished issues and to monitor the situation of the sector in 2005; shipbuilding in October 2003). The CARS21 HLG final report is expected before the end of 2005.

4.5 In order to prevent, as far as possible, the negative effects of company relocations in Europe, the following aspects need to be given special attention:

4.5.1 Education, training and skills Human capital is very important for industrial competitiveness and will probably become even more so (a clear example of this is the fact that lack of skilled workers is the main constraint on the development of SMEs). In the coming years it will become increasingly clear that the availability of skilled workers is a critical factor in determining the long-term international competitiveness of European industry. For that reason great importance will be attached to training and immigration in the context of the legislation and common policy of the Union. European industrial policy must put education, training and skills at the centre of its strategy, with special attention being paid to the ongoing training of workers.

Human capital and know-how are competitive advantages

4.5.2 Research and innovation. These are key factors in the competitiveness of European industry. Europe must work to achieve the objective of devoting 3 % of its GDP to research and must redouble its efforts to develop public and private-sector research. In this context, the establishment of the European Research Area is of vital importance in providing the EU with the necessary basis for scientific and technological progress.

At the same time, it is important that research be translated into industrial innovation and that private investment be increased in those capital goods which actually bring about technological change.

Scientific and technological innovation is an important differentiating factor

4.5.3 Competition policy. Although increasing, the interaction between industrial and competition policy is still insufficient. It needs to be stepped up. The appropriate implementation of the competition rules, interlinked with the objectives of industrial policy, will contribute significantly to growth and employment in the long term.

Market monitoring must be stepped up, and new and amended directives must include conditions ensuring that they are uniformly applied in all Member States.

It is necessary to link competition policy with industrial policy

4.5.4 Awareness. Given the role of current price-driven consumer trends, it would be beneficial to raise consumer awareness of the consequences of this behaviour. Companies can become involved in this awareness campaign through labelling (social, quality, etc.).⁽³⁵⁾ They could also provide

⁽³⁵⁾ See EESC opinion on Information and measurement instruments for corporate social responsibility (rapporteur: Ms Pichenot) adopted on 8 June 2005.

consumers with more accurate information on the origin of their products.

Consumers must be made more aware of the consequences of their behaviour

4.5.5 Key sectors. A more active sector-based industrial policy, which fosters public-private cooperation, is needed. Therefore, the Committee considers that the quantitative and qualitative analyses being carried out by the European Monitoring Centre on Change (Dublin) should be taken into account, in order to have a more adequate basis for the public debate on relocation.

Greater public-private cooperation in key sectors seems crucial to accelerate development

4.5.6 Responses to unforeseen events. What all sectors require, as stated in the Communication from the Commission on restructuring and employment⁽³⁶⁾, is 'reform of financial instruments for better anticipation and management of restructuring' with suitably adjusted budgets, in view of the social impact. Furthermore, public authorities should also intervene in the event of 'unforeseen events with a severe regional or sectoral impact'. The EESC therefore supports the creation of 'contingency reserves' within the Structural Funds.

The EU needs flexible financial instruments that can cope with unforeseen events

4.5.7 Infrastructure. Transport, telecommunications and energy networks need to be improved nationally, within the Community and with neighbouring countries. Infrastructure is a key requirement for competitiveness and therefore must be made available to companies at a competitive cost. Effective public services are a necessary requirement for the development of enterprises, in particular SMEs, and also serve to stimulate this development.

Facilitating the work of companies through investment in infrastructure is an incentive for them to stay in Europe

4.5.8 Promoting the entrepreneurial spirit and encouraging business activities. In order to guarantee the future of European industry, it will be essential to establish a business climate favourable to the establishment and development of entrepreneurial activity, paying particular attention to small and medium-sized enterprises. It will be necessary to improve access to financing in the early and intermediate stages of companies' development and, as far as possible, to simplify the procedures for the establishment and management of companies. It will also be necessary to promote a change of mentality, encouraging the acceptance of risk inherent in business activity.

⁽³⁶⁾ COM(2005) 120 final.

It is also important to consider the involvement of workers in achieving their firms' objectives.

Promoting the establishment of companies in order to ensure growth is mandatory

4.5.9 **Social policies.** The best way of tackling the understandable concerns over the negative consequences of company relocations is to develop and properly implement social policies that promote a positive attitude to change, enable workers to adapt and upgrade their skills, and encourage job creation.

It is necessary to develop and implement social policies that minimise the possible negative consequences of company relocations

4.5.10 **Social dialogue.** European industrial policy needs to be defined in business, sectoral and intervocational terms, and put into practice with input from the social partners, whose expert knowledge, as the main stakeholders affected, will be vital. This requires that companies make their intentions clear at an early enough stage to make appropriate action by the other stakeholders feasible.

The European social partners should address this issue in the context of restructuring and the new agenda for European social dialogue, including at sectoral level. Within the frame-

work of the social dialogue, collective agreements are a major factor for the creation of fair conditions of competition for businesses.

Striking a constructive and creative balance between the interests of the various stakeholders is a continuous task

4.5.11 **Competition and international rules.** Although relocation represents a structural change, it is not acceptable for changes to be motivated, albeit partially, by an EU policy that is too flexible when it comes to negotiating and interpreting basic international regulations. Account must be taken of the social dimension of globalisation and an appropriate EU policy mix found to encourage cooperation between the WTO and the ILO. The EU must therefore act within these international bodies to ensure that these rules are respected and if not, to apply the existing mechanisms as effectively as possible.

There must be open, competitive global markets whose rules are obeyed by all

4.6 The aim should be to promote new investment in Europe, retain existing investment and continue European investment abroad.

Brussels, 14 July 2005.

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

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 77/388/EEC on the common system of value added tax, with regard to the length of time during which the minimum standard rate is to be applied

(COM(2005) 136 final — 2005/0051 (CNS))

(2005/C 294/10)

On 27 April 2005 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2005. The rapporteur was Mr Burani.

At its 419th plenary session, held on 13-14 July 2005 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 91 votes, *nem. con.* with 2 abstentions.

1. Background

1.1 Pursuant to the second subparagraph of Article 12(3)(a) of Directive 77/388/EEC, the Council, on a proposal from the Commission and having consulted the European Parliament and the European Economic and Social Committee, unanimously sets the level of the standard rate of VAT. In January 1993, the Commission presented some proposals for creating a regime of **definitive tax harmonisation**, but the Council was not able to adopt them as the required unanimity could not be achieved.

1.2 Instead, agreement was reached on approximation of rates, with Directive 92/77/EEC setting a **minimum rate of 15 %**; the expiry date of that decision, originally set for 31 December 1996, was extended three times; the next expiry date is 31 December 2005.

2. The Commission proposal

2.1 In view of the rapidly approaching expiry date, the Commission has presented a proposal to extend the existing directive until 31 December 2010. The current provisions remain unchanged: the standard rate cannot be lower than 15 % and the taxable amount is the same for the supply of goods as for the provision of services.

3. The Committee's views

3.1 Given the current situation of Member States' fiscal policies, particularly with regard to VAT, the Committee can only agree with the Commission's initiative, which is in practice a proper response to the circumstances.

3.2 The Committee would nonetheless like to take the opportunity to make some additional comments, in the hope that these will receive the attention of Member States.

3.3 The **lack of unity of purpose** of the Member States in the area of taxation, and of VAT in particular, is certainly nothing new: this has been the case since the European Union was founded, and the successive enlargements from the original six countries to the current 25 has served only to widen the divergence. Over the years, agreement has not even been reached on the Commission proposal for a range of minimum and maximum tax rates of 15 to 25 % (even if this is the range that exists in practice); an agreement on the uniform application of the principle of payment of VAT in the country of origin has proved even more elusive, and the argument for abolishing the numerous exemptions and derogations given to each Member State from time to time for various reasons and with expiry dates — where specified — that are hardly ever respected, has never been properly tackled.

3.4 Given this background, **talking about a 'transitional system'** for VAT when referring to a system that has been in place for decades whilst awaiting a 'definitive system' that appears as problematic as ever, **is a mystification** that the EESC is no longer prepared to accept. The Council should state, for the sake of that transparency vis-à-vis citizens that it keeps talking about, that it will continue to pursue **the strategic objective** of VAT harmonisation, whilst accepting that this is not realistically achievable in the short to medium term. This will avoid wasting energy and resources on a futile attempt to achieve unanimity in areas that are of fundamental importance to the fiscal and social policies of each Member State, and which each of them therefore intends to maintain without concessions.

Brussels, 14 July 2005.

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