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Notice No | Contents | Page

EN

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(Continued on inside back cover)

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(Resolutions, recommendations and opinions)

OPINIONS

449TH PLENARY SESSION HELD ON 3 AND 4 DECEMBER 2008

Opinion of the European Economic and Social Committee on 'Future investments in the nuclear industry and the role of such investments in EU energy policy'

(2009/C 175/01)

By letter of 27 May 2008, the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on

Future investments in the nuclear industry and the role of such investments in EU energy policy.

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 10 November 2008. The rapporteur was Mr IOZIA.

At its 449th plenary session, held on 4 December 2008, the European Economic and Social Committee adopted the following opinion by 122 votes to 15 with 16 abstentions.

1. Considerations and recommendations

1.1 Including administrative procedures and construction times, producing electricity from a nuclear power station takes around ten years and requires investment of between EUR 2 billion and EUR 4,5 billion for an installed capacity of 1 000 or 1 600 MWe. Guarantees of a stable legislative framework that takes into account the time lapse between investment and bringing the energy to market are essential. Both the choice of nuclear and the attendant legislation should enjoy the support of a large majority of the public and politicians.

1.2 Under present programmes, about half of power stations will have to be decommissioned by 2030. The EESC considers it vital to adopt stringent measures that guarantee adequate funding for decommissioning on the polluter-pays principle and a high level of protection for workers and the public. It wholeheartedly supports the Commission's proposals that Recommendation 2006/851/Euratom be made into a directive which creates independent authorities to manage funds for decommissioning and dismantling.

The EESC:

1.3 points out that the main obstacles are policy uncertainties, licensing procedures, lack of both transparency and comprehensive, clear and truthful information on actual risks, and failure to decide on final, safe locations for waste storage sites. The risk for private investors is too great and the financial crisis makes it even more difficult to secure the kind of medium- to long-term capital the nuclear industry needs. Leaving aside state aid to the sector, funding could be facilitated by a stable and secure regulatory framework for investors and by the possibility of concluding long-term supply contracts that guarantee a return on investment. The difficulties encountered in increasing even modestly the Euratom resources for funding (Euratom loans) suggest a rapid change in the Union's policy is unlikely;

1.4 is convinced that the public should be democratically involved and given the opportunity to get a full picture of the risks and the benefits of nuclear power so that they can play an informed part in the choices that directly affect them. The EESC wishes to take up this demand, and calls upon the Commission to encourage the Member States to launch a campaign for transparency and certainty regarding European energy demand, energy efficiency and the various options, including nuclear;

1.5 as matters stand, considers prolonging the use of power stations to be an economically viable option, provided that safety rules are strictly observed, even if this means foregoing a substantial increase in thermodynamic efficiency (15-20 %);

1.6 recommends facilitating investment in a) research into safety and into protection for workers and the public, and b) support for training, apprentice and professional development programmes to ensure that a high level of technical and technological capacity is constantly maintained in the sector's industry and in the national regulatory and monitoring authorities. This investment should be partly financed by national public programmes, as well as by Euratom FP7;

1.7 thinks that the various regimes for compensation and allocating responsibility in the case of accidents are insufficient and unwarranted. It would like to see, as an initial step, harmonisation of the provisions of the Paris and Vienna Conventions, which do not lay down the same type of applicable legal framework and the same compensation measures for nuclear-related damage. A directive should be adopted, as provided for in Article 98 of the Euratom Treaty on insurance of risks, which states clearly that responsibility in the case of accidents lies entirely with the nuclear operators. Given the nature of the risk, risk-sharing between the European operators in the sector, based on existing examples, should be encouraged;

1.8 believes that, in order to cope with a potential substantial increase in the demand for new power stations, European industry must plan major investment in knowledge and training and in research and development, which is essential for the future of the sector in Europe. Levels of less than 10-15 % of electricity from nuclear sources would make little sense, since the administrative costs and waste management require critical mass in order to build up economies of scale;

1.9 is aware that the solution of selecting locations for one or more joint European storage sites (similar to the United States' approach) is not feasible, and calls on Member States to speed up the process of deciding on final national sites. Harmonised safety requirements need to be established, for which the EESC — echoing the Western European Nuclear Regulators' Association (WENRA) and the European Parliament — calls for a directive;

1.10 urges the Commission to support research and development programmes, especially on fourth generation nuclear technology.

1.11 Neither are the available research resources sufficient in the area of waste treatment and protection from ionising radiation. The EESC urges the Commission, the Council and Parliament to provide the Euratom FP7 with further resources to support specific and dedicated joint technological initiatives, as is being done for example in the fields of fuel cells and medicines. The EESC also calls on the Member States to do considerably more to address this problem in areas for which they are responsible. In July 2008 the Nuclear Decommissioning Authority revised upwards the public funding needs for decommissioning by 30 % over 2003. The NDA estimate is GBP 73 billion (EUR 92 billion) and this is set to rise [1]. EDF, where the level of standardisation is high, says that these costs are equivalent to 15-20 % of initial construction costs.

1.12 In the Committee's view there are a number of steps that the Union and Member States might consider taking to reduce uncertainties.

— On the political side they could seek to build long lasting political consensus across the political spectrum about the part that nuclear may have to take in the fight against climate change.

— On the economic side they could clarify what requirements they will impose about decommissioning and nuclear waste disposal and the financial provision that operators should make for these long-term costs. They and the regulators could also clarify the terms on which nuclear power may be supplied to the grid and the nature of long term supply contracts that will be acceptable.

— On the research side the Union and member states may be able to support further R and D into third and fourth generation nuclear technology (including fusion) that will have better efficiency, environmental and safety standards than the present generation of nuclear plants.

— On the land-use planning side they could expedite the lengthy processes for identifying and permitting appropriate sites.

— On the financial side the European financial institutions may be able to mobilise sources of loan financing that will encourage other investors to come forward and play their part.

2. **Financing the nuclear sector**

2.1 *Energy demand in Europe and the increase in foreseeable costs*

2.1.1 In the next 20 years Europe will have to plough investment of around EUR 800-1 000 billion (whatever the fuel used) into replacing existing power stations. Out of a total of 146 nuclear reactors, an estimated 50 to 70 will have to be replaced (with potential costs of between EUR 100 and 200 billion).

2.1.2 The cost of extending the working life of currently operational nuclear power stations for longer is equivalent to some 25 % of the cost of a new power station, and these power stations can be used for a further period varying between 10 and 20 years. The costs quoted in a recent study [2] are not uniform, varying between 80 and 500 EUR/kWe according to the technology used, and relate to projects to extend working life by around 10 years.

[1] House of Commons Committee of Public Accounts: 38th Report of Session 2007/2008 — Nuclear Decommissioning Authority, UK.

[2] Osterreichisches Okologie Institut, Vienna, 2007.

2.1.3 Uncertainty as to future choices in the energy sector and the possibility of extracting further profit from investment are inducing operators to call for extending the life of existing power stations rather than investing huge amounts in new and more efficient ones. Extending the working life of power stations, ensuring at least the same level of safety, is certainly beneficial both financially and in terms of climate policy, but it merely puts off rather than solves the problem of meeting long-term energy demand.

2.1.4 If it is decided to phase out nuclear power generation, this will have to be replaced with other forms of power whose emissions level and base load is the same. If decommissioned power stations are to be replaced, the costs will be between EUR 100 and 200 billion. If it is decided to maintain nuclear power's current share of production, between EUR 200 and 400 billion will be needed, depending on electricity demand.

2.1.5 The cost of a new nuclear power station is estimated at between EUR 2 and 4,5 billion. The EIB considers the long-term development of nuclear energy production to be uncertain, forecasting a sharp decline in the EU of 40 % in 2030 compared to 2004. The president of the EIB confirmed this forecast at a very recent EESC hearing. The International Atomic Energy Agency (IAEA) expects nuclear electricity generation capacity to rise during the same period from 368 GWe to 416 GWe, representing a worldwide increase of 13 %, although a reduction of 15 GWe ([3]) is foreseen in Europe.

2.2 *Climate change, CO_2 emissions and the nuclear sector*

2.2.1 To achieve the Kyoto goals and those, even more stringent, to be set at Copenhagen, the EU would have to generate 60 % of electricity without CO_2 emissions. Currently, around 40 % of EU CO_2 emissions come from energy generation. The part played by the nuclear sector cannot be disregarded. According to the Commission, the target of 20 % of energy coming from renewables by 2020 should ideally be raised to 30 % of energy by 2030.

2.2.2 an increase can be expected in CO_2 emissions resulting from the production and processing of uranium, mainly due to the gradual exhaustion of mineral deposits with high uranium concentration, and from the increase in greenhouse gases owing to the use of fluorine and chlorine, necessary for the preparation of uranium hexafluoride and the purification of the zirconium needed for the tubes into which enriched uranium is inserted.

2.2.3 The carbon footprint of nuclear power generation will, however, remain very small, and this should be taken into due consideration.

2.2.4 Electricity demand from the public and private transport sectors will grow, as will demand for production of hydrogen, 95 % of which currently comes from hydrocarbons. Hydrogen will help solve the electricity storage problem, provided that it is obtained from fuels with extremely low emissions.

([3]) Report #:DOE/EIA-0484(2008) June 2008

2.3 *Difficulties encountered by the nuclear industry*

2.3.1 The greatest difficulty lies in the uncertain administrative and regulatory framework. Procedures vary between countries and in some cases they may entail a doubling or tripling of the construction time. In Finland the Commission estimates that at least 10 years are needed, but work has stopped owing to construction problems that have arisen and a delay of at least 18 months is anticipated. The administrative process started in 2000 and connection with the network is unlikely to happen before 2011.

2.3.2 Investment in the nuclear sector is distinguished by a particularly large injection of initial capital, around 60 % of total investment, with sale of electricity only starting after about 10 years. Around 20 years are needed to recoup the capital invested and the cost thereof. This shows the importance of lifetimes that are long enough for these technologies to be economically viable.

2.3.3 These are very long-term investments: it can take over 100 years to commission, operate, decontaminate and dismantle nuclear plant. It is essential that operators' financial stability is guaranteed for a long period of time and that Member States make a long-term commitment to the nuclear sector.

2.3.4 Funds for the nuclear sector depend more than others on the policy choices of national governments. In fact, this need for a definite and stable legal framework is the first source of uncertainty. There must be a policy to involve the public and make them more aware that they can contribute to the choice on the basis of information that is complete, transparent, understandable and truthful. Only a democratic procedure can ensure that an informed choice is made which will determine the future of the European nuclear industry.

2.3.5 The high incidence of the financial cost entails the need to 'sell' all the energy produced, given that nuclear installations must operate as a base load, distributing the electricity generated for a very high number of hours each year. A problem arises concerning certainty of profitability, which could be overcome by opting to establish long-term contracts, as in the case of Finland.

2.3.6 Another uncertainty factor is the system for providing compensation and assigning responsibility between the Member States in case of accidents. There should ideally be a standard European guarantee system in order to improve on current schemes and current insurance cover, which would be completely insufficient in the case of a serious accident. Producers must bear the entire burden and responsibility, as in any other business. In view of the nature of the risk (extremely high costs in the event of a serious accident and very low probability of this happening), forms of mutual co-insurance by the various nuclear energy producers should be encouraged.

2.3.7 Public opinion. The most recent survey of public opinion ([4]) shows a reversal of the trend where the nuclear sector is concerned: it has gained substantial support in countries which use this technology. However, opposition still prevails in the EU-27, although not by much (45 % to 44 %). The lack of transparency and the need for clear, comprehensive information have also been stressed by the European Nuclear Energy Forum.

2.4 *Community funding*

2.4.1 The Euratom Treaty provides for specific financing for research, development and demonstration in the Framework Programme of the European Atomic Community.

The first programme (indirect actions) concerns the following sectors:

— fusion energy research ([5]);

— nuclear fission and radiation protection.

The second programme (direct actions) provides for investment for:

— fusion (EUR 1 947 million, including at least EUR 900 million for activities connected with the ITER project);

— nuclear fission and radiation protection (EUR 287 million);

— nuclear activities of the Joint Research Centre (EUR 517 million).

2.4.2 The EIB represents another Community funding instrument that has guaranteed financing to a total of more than EUR 6 589 million in the sector, for both building power stations and disposing of waste, together with the EUR 2 773 million provided by Euratom for the same purposes.

2.4.3 Once the Commission has given the green light, the EIB, when analysing investments, takes into consideration not only the mobilisation of the huge financial resources needed for construction, but also the costs of waste management and decommissioning. However, the internalisation of costs announced by the EIB makes no provision for other indirect costs, such as those arising from external protection of installations by the security forces, or ancillary dismantling work such as for low-water dams built on rivers to ensure a constant flow of water for reactors even during periods of drought.

2.4.4 The different ways of calculating costs and the need for a guaranteed system of ad-hoc dedicated funds are clearly described in the Communication from the Commission *Second Report on the use of financial resources earmarked for the decommissioning of nuclear installations, spent fuel and radioactive waste* ([6]).

2.4.5 The report highlights the 'distorted' uses made in some Member States of funds earmarked for dismantling and waste management. In some countries, such funds are financed with public resources, which are often used for other purposes. This distorts competition significantly, as these costs should be internalised in accordance with the polluter-pays principle.

2.4.6 The Commission's proposal in 2002 to merge Decisions 270 of 1977 and 179 of 1994, and to increase the level of funding, was not unanimously supported by the Council. Available Euratom funding (EUR 600 million), which can be granted to finance up to a maximum of 20 % of total costs, is not sufficient to meet a number of requests that have not yet been formalised but are still at the stage of preliminary discussion with the Commission.

2.4.7 At the same time, Euratom funding and EIB loans should be used to promote research and applications supporting safe and sustainable development of the nuclear industry. Current measures appear inadequate with respect to the growing need for financing to guarantee high safety standards and reduce risk to a minimum. These funds should be specifically directed towards those countries which have public waste treatment policies.

2.5 *National funding*

2.5.1 The state aid regime does not allow for financing the construction of nuclear plant; whereas public funding is possible and desirable in order to increase security measures, develop transparent and uniform methods for granting licences and selecting sites, and support training and professional development programmes. Regardless of whether new nuclear plants are built or not, it will be essential to have highly specialised engineers and technicians who can guarantee safe long-term management of plants that are in operation and those that are in the decommissioning phase.

2.5.2 Four reactors are currently in construction in Europe (two in Bulgaria, one in Finland and one in France). It is difficult as things are to foresee a substantial increase in this production capacity, particularly where nuclear fission is concerned. A recent UK NIA study confirmed that it could support 70-80 % of a new nuclear programme, with the exception of reactor 'core' components such as the pressure vessel, turbine generators and other key components ([7]). The lack of technicians and engineers is the main obstacle to vigorous growth in the sector. This shortage is particularly evident in those Member States where there has been little or no development of nuclear energy. It could be overcome, however, since it takes around ten years from the decision to build a nuclear reactor to its coming on stream, whereas only five years are needed on average to train an engineer.

2.5.3 Substantial investments are needed in technical and scientific training. The younger generation has not been particularly interested in studies relating to the nuclear sector, with the notable exception of those countries which have developed a coherent nuclear programme and so created real career prospects. Scientists, technicians and engineers, and industrial construction

([4]) Special Eurobarometer 297 Attitudes towards radioactive waste (June 2008).

([5]) P. Vandenplas, G. H. Wolf: 50 years of controlled nuclear fusion in the European Union, Europhysics News, 39, 21 (2008).

([6]) COM(2007) 794 final of 12.12.2007.

([7]) NIA (Nuclear Industry Association). The UK capability to deliver a new nuclear build programme. 2008 update.

experts will be needed in the near future. It is essential that Member States which use nuclear technology, and especially those that choose to develop it, come up with specific and coherent projects for investing in training.

2.5.4 The Nuclear Energy Forum has stressed the importance of harmonising safety requirements. The CNS (Convention on Nuclear Safety) and IAEA Safety Standards are recognised as basic reference criteria. The Western European Nuclear Regulators' Association (WENRA) plans to implement a harmonised programme between the EU countries and Switzerland by 2010. On the basis of a SWOT analysis it has been proposed that a European directive should be issued on key safety principles for nuclear plants.

3. **Opportunities**

3.1 The issue of nuclear-power use and financing must be seen in the light of climate change resulting from CO_2 emissions. Roughly one third of electricity generation and 15 % of energy consumed in the EU is of nuclear origin, with low CO_2 emissions. Even allowing for the potential increase in use of energy from renewable sources (the other available carbon-free source, which should be resolutely prioritised, along with energy-saving), it would seem extremely difficult to achieve a decrease in CO_2 emissions over the coming decades without maintaining nuclear energy production at current levels.

3.2 Nuclear power is less vulnerable to price fluctuations given the small impact of uranium prices on total costs.

3.3 Diversifying the energy mix increases opportunities, especially for countries that are heavily import-dependent.

3.4 According to data provided by the Commission and some operators, kWh costs from nuclear energy are higher than those from conventional thermal power stations but lower than those from renewable sources. The figures take into account neither the predictable cost of CO_2 emissions certificates, nor partial internalisation of predictable expenses for decontamination and dismantling after decommissioning. For all types of energy source, the method should be adopted of internalising all external costs. According to some operators and older studies ([8]), the kWh cost from nuclear is lower.

3.5 Duration of fuel reserves. With the same number of power stations as at present and the same reactor technology, known reserves will be able to provide economically viable operation with low CO_2 emissions for an estimated period which varies between a few decades and several centuries ([9]) ([10]). This uncertainty is due to the fact that the 'purest' uranium deposits are gradually being exhausted, with the result that extraction and refining costs will rise as regards use of both energy and chemicals producing greenhouse gases. It should, however, be possible to reduce consumption in absolute terms with the future generation of nuclear power stations, notably breeder reactors. It would be useful to employ thorium as a fuel, since it is more abundant than uranium and offers better neutron yield and absorption, which means that less fuel-enriching is needed per unit of energy produced. In addition, it could supply thermal breeder reactors, considerably reducing the production of radiotoxic waste and plutonium that might be used for military purposes.

4. **Risks**

4.1 *Risk of serious accidents and nuclear fallout*: although developments in reactor technology have minimised the risk with the adoption of numerous control measures, in theory the risk of core fusion cannot be ruled out. Passive safety systems such as core catchers, already used in the EPR reactor being built in Finland, ensure that radioactive leakage is contained even in the highly unlikely event of core fusion. Future 'intrinsic-safety' reactors could eliminate this risk. For example, the European VHTR Raphael Project would guarantee that even in the event of a blockage in the cooling system, there would a gradual thermic progression towards a steady state in which heat dissipation would offset energy production, whereas with current reactors rapid intervention is needed to halt the increase in core temperature.

4.2 *Health risks associated with normal plant operation*: a study of the incidence of leukaemia among children in the vicinity of nuclear power stations between 1990 and 1998 revealed 670 cases, although it did not reveal excessive levels in children living within twenty kilometres of nuclear sites. However, a more recent epidemiological KiKK study carried out in Germany at the initiative of the Federal Office for Radiation Protection (BfS), using a large sample (1 592 cases and 4 735 controls), showed a correlation between the number of cases of cancer in children below the age of 5 and the distance of their homes from nuclear power stations. The authors concluded that the radiation level measured was so low that, according to radiobiological knowledge, the cancer could not be put down to exposure to ionising radiation. An external panel of experts ([11]) verified the results of the KiKK study. They are reliable and the low radiation level measured points to a need for more in-depth research into whether children might be hypersusceptible to radiation risks and for continuous monitoring of communities located near nuclear plant ([12]). In September 2008, the Swiss government's Federal Office of Public Health launched the Canupis study (Childhood Cancer and Nuclear Power Plants in Switzerland) which drew on the results of the

([8]) DGEMP- Couts de reference de la production electrique, Ministère de l'économie des finances et de l'indstrie (French Ministry of the Economy, Finance and Industry), December 2003.

([9]) Storm van Leeuwen, Nuclear power — the energy balance (2008), www.stormsmith.nl.

([10]) World Nuclear Association, www.world-nuclear.org/info/info.html.

([11]) Dr Brüske-Hohlfeld, GSF, Neuherberg; Prof. Greiser, BIPS, Bremen; Prof. Hoffmann, Greifswald University; Dr Körblein, Munich Environmental Institute; Prof. Jöckel, Duisburg-Essen University; PD Dr Küchenhoff, Munich LMU; Dr Pflugbeil, Berlin; Dr Scherb, GSF, Neuherberg; Dr Straif, IARC, Lyon; Prof. Walther, Munich University; Prof. Wirth, Wuppertal; Dr Wurzbacher, Munich Environmental Institute.

([12]) Mélanie White-Koning, Denis Hémon, Dominique Laurier, Margot Tirmarche, Eric Jougla, Aurélie Goubin, Jacqueline Clave.

German study and an analysis of literature on the subject commissioned by ASN, the French Nuclear safety Authority, following the recommendations of the Vroussos report.

4.3 *Waste*: very few countries have resolved the issue by identifying permanent storage sites. In the United States, the New Mexico site (*Waste Isolation Pilot Plant*), which had been operational since 1999, had to be downgraded as a result of water infiltration which, combined with the rock salt in the mine, had a highly corrosive effect on drums and led to sites in salt formations being considered geologically unstable. In Europe, only Finland and Sweden have announced the identification of final sites. Particular attention will have to be given to the reprocessing of waste. Studies must be continued into permanent waste storage once spent fuel has been reprocessed. The quality of this storage and the treatment of waste are integral components of the safety and security of the fuel cycle.

4.4 *Processing and transport*: further problems have arisen from the way radioactive fuel transport and processing plants have been run: their managers' practices have not in the past been irreproachable, quite unlike those of technicians in nuclear power stations. For example, unsuitable vessels have been used for transport (one sank, although fortunately not when carrying a radioactive cargo) and significant quantities of dangerous material have been discharged into the sea.

4.5 *Geological and hydro-geological risks*: another key issue is the fact that many power stations are situated in earthquake-prone regions. Japan opted to close the Kashiwazaki Kariwa site in the Nigata prefectorate, the world's largest power station, thereby giving up 8 000 MWe of capacity. The closure, following the earthquake of 16 July 2007, cut nuclear energy generation by 25 TWh. Work is currently being carried out to make two reactors operational again.

4.6 *Nuclear proliferation and terrorism*: concern has increased in recent years given the new threat presented by terrorist groups. Genuinely safe plant should be able to withstand the impact of an aircraft without radioactive material escaping.

4.7 *Water*: another vitally important aspect concerns climate change and increasing water shortages. As with all thermal power stations, including coal- and oil-fired and solar thermal plants, the water demand for cooling processes also very high in the case of nuclear power plants, unless the less efficient air cooling technology is used. (In France the water needed for electricity generation — including hydroelectric — accounts for 57 % of total annual water consumption: 19,3 billion cubic metres out of a total 33,7 billion cubic metres. Most of this water is returned (93 %) after cooling of the fission process and electricity generation ([13])). Heating of large amounts of water by nuclear power stations and worrying reductions in surface watercourses and aquifers pose further problems in selecting sites and cause the public to ask questions to which clear answers are needed from the authorities. In some cases, electricity generation has had to be reduced or stopped in times of drought.

([13]) Eau France and IFEN (Institut Français de l'Environnement — French Institute for the Environment) — data relating to consumption in 2004.

4.8 *Lack of raw materials in the EU*: in 2007 only 3 % of its requirements were available inside its borders. Russia is the main supplier, with around 25 % (5 144 tU), followed by Canada (18 %), Niger (17 %) and Australia (15 %). This shows that nuclear energy does not reduce dependence on third countries, although the other suppliers are largely politically stable countries.

4.9 *Access to long-term funding and capital*: the financial resources necessary are without a doubt considerable, but design and construction times, which can exceed 10 years for commissioning of power stations, make investment highly risky. Construction times initially estimated have never been observed: the average time actually taken before the electricity generated is sold is higher than forecasts, resulting, of course, in higher financing costs.

4.10 *Recent incidents*: while this opinion was being drawn up, numerous incidents occurred, one in Slovenia and four in France. The ban in France on using water and eating fish from rivers contaminated by radioactive water has had a negative effect on public opinion in Europe. These incidents, and their very negative media impact, indicate that particular attention must be paid to procedures for maintaining and selecting companies operating in nuclear sites.

5. **The EESC's comments**

5.1 Nuclear-generated electricity is now so important that no replacement can be envisaged in the short term for the essential contribution it makes to the EU's energy balance.

5.2 Funds for the nuclear sector depend more than others on the policy choices of national governments. In fact, this need for a definite and stable legal framework is the first source of uncertainty. There must be a policy to involve the public and make them more aware that they can contribute to the choice on the basis of information that is complete, transparent, understandable and truthful. Only a democratic procedure can ensure that an informed choice is made which will determine the future of the European nuclear industry.

5.3 As noted by the Commission itself, the lack of transparency and information that is scarce and contradictory on issues such as the allocation of dedicated funds for waste disposal and the dismantling of decommissioned power stations increase public uncertainty. The EESC calls upon the Commission to encourage the Member States to launch a campaign for transparency and certainty regarding European energy demand, energy efficiency and the various options, including the nuclear sector.

5.4 The Committee notes that many existing power plants in Europe (both fossil fuel and nuclear powered) will be coming to the end of their lives during the next twenty years, and that this could lead to shortfalls of electricity supply unless substantial new investment is undertaken.

5.5 The Committee has considered in various opinions that the highest priorities in the energy field are to promote energy

efficiency more vigorously and to expand the share of renewable energy in electricity production.

5.6 The Committee is aware however that even with maximum effort the expansion of renewables and of energy efficiency are unlikely to be able to fill the whole of the potential gap in electricity supply. In Europe as a whole some new investment will be required both in coal powered generation and in nuclear power plants.

5.7 In both cases the Committee consider it to be fundamentally important that all environmental and safety externalities should be built into the assessment of investment projects and into their operating costs.

5.8 In view of the growing threat of climate change, facilities for carbon capture and storage should be integral to the planning of any new fossil fuel power plants and the costs of this should be built into the assessment and business plans. Similarly, the costs of providing for eventual decommissioning and waste disposal should be built into the assessment and business plans of any new nuclear plant that is permitted. There should be no concealed subsidies for any fully developed energy systems.

5.9 At present, investors and other sources of finance are proving reluctant to commit significant resources to the construction of a new generation of nuclear plants in Europe, because of the many uncertainties about the economic, political and regulatory climate and the long time lag between the heavy investment involved and the economic payback.

5.10 The approach taken by Finland, which has set up a consortium of major users which have purchased most of the electricity generated on a take-or-pay basis at a stable price, should be encouraged and facilitated.

5.11 The Commission is urged to support research and development programmes, especially on fusion and fourth-generation nuclear technology, although it is aware that this will not be commercially available before 2030 ([14]). Fourth-generation technology is intended to create a 'clean' nuclear sector that resolves the problems associated with waste management and proliferation, and that further reduces the risk of fallout, with reduced consumption of fissile material. Fourth-generation technology can make an effective contribution to generating hydrogen. The development of fusion energy should be vigorously pursued so that its distinct benefits in terms of safety and resources can be harnessed in the second half of the century.

5.12 The resources available to Euratom with which to provide guarantees for investments and, in consequence, to reduce the financial burden on companies which can make use of the European institutions' extremely high ratings, are blocked, and could be brought into line with the higher costs and inflation that have occurred during the period, without sacrificing other support programmes, for instance on energy efficiency or renewable sources, possibly with additional dedicated means.

5.13 Neither are the available resources or the corresponding research programmes sufficient in the area of waste treatment and protection from ionising radiation. The EESC urges the Commission, the Council and Parliament to provide the Euratom 7FP with further resources — also through joint technological initiatives — for this purpose, as is being done for example in the fields of fuel cells and medicines. The EESC also calls on the Member States to make their contribution with beefed up national research programmes in radiobiology and radiation protection, epidemiology and permanent storage.

5.14 The dedicated nuclear financing model, independent of other framework programmes, should be extended to energy efficiency and renewable energy development programmes.

5.15 Member States should plan forums at national level along the lines of the Nuclear Energy Forum held by the Commission in Prague and Bratislava, focusing on three topics: opportunities, risks, and transparency and information.

5.16 Streamlining the issuing of licences and selection of sites through a single European procedure could undoubtedly enhance investment certainty and commissioning times, but the public would categorically reject European rules less stringent than the national ones. Consideration must be given to the European interest in setting strict and harmonised safety standards, given the transnational nature of the attendant risks (e.g., power stations near national borders). Design and rules could be harmonised for the next generation of reactors.

5.17 Consumers should be able to share the benefits of less costly electricity generation. At present, prices on the power exchange are based on cost of the most expensive method of electricity generation (combined coal-gas cycle). The different sources should be quoted, with differentiated prices.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([14]) GIF Generation IV International Forum 2008.

Opinion of the European Economic and Social Committee on 'High-speed access for all: development of the scope of universal service for electronic communications'

(2009/C 175/02)

On 3 July 2008 the French presidency decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on

High-speed access for all: development of the scope of universal service for electronic communications

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 10 November 2008. The rapporteur was Mr HENCKS.

At its 449th plenary session, held on 3 and 4 December (meeting of 4 December), the European Economic and Social Committee adopted the following opinion by 125 votes to 3 with no abstentions.

1. **Recommendations**

1.1 Nowadays, the information and communication technologies (ICT) underpinning an information society which is open to all must incorporate the needs of all members of society.

1.2 Nevertheless, electronic means of communication remain inaccessible to many citizens who do not have access to networks and services or lack the skills. To date, the universal service for electronic communications, which requires a defined minimum service of specified quality to be made available to all users at an affordable price, has failed to close the digital divide.

1.3 Since its implementation, the scope of universal service has remained virtually unchanged and is still restricted to a single connection to a public telephone narrowband network.

1.4 However, general access to broadband is not just a key factor in the development of modern economies and an important aspect of the Lisbon agenda, but has become an essential aspect of welfare and digital inclusion.

1.5 Thus, the EESC considers it necessary to adapt universal service to technological developments and user needs, and therefore advocates:

— extending the scope of universal service and making universal availability compulsory (within reasonable timeframes to be established, and within a multiannual programme), DSL access with a minimum transmission speed of 2Mbps-10Mbps or mobile or wireless access (WIMAX, satellite, etc.) with similar transmission speeds;

— not focusing exclusively on geographic exclusion but also on the social exclusion that accompanies the lack of purchasing power or limited skills of certain user groups and that universal service should be expanded to ensure availability for all users regardless of their geographic, financial or social situation;

— supporting national and local digital inclusion projects as well as the micro-projects of communities and organisations that assist people experiencing difficulty in grasping technology tools. This would be done mainly through microfinance for local training projects, public internet access points and interactive internet kiosks in public areas offering free internet access;

— encouraging Member States to provide financial support for families or people who would find the cost of basic equipment (computer, software, modem), access and service prohibitive;

— facilitating the financing of universal service via national public subsidies and EU funds, which is the only alternative for countries where operators would be unable to bear the financial burden of universal service; and

— urging the Commission to publish examples of best practices in the field on a regular basis.

2. **Introduction**

2.1 In 1993 ([1]), for the first time, the Commission took a detailed look at the concept of a universal service in the telecommunications sector, which, at the time, had been developed to serve as a safety net to ensure '*access to a defined minimum service of specified quality to all users everywhere and, in the light of specific national conditions, at an affordable price*'.

2.2 The concept of universal service was subsequently consolidated in several directives ([2]) and, due to ongoing convergence between telecommunications, the media and information technologies, universal service was extended to electronic communication services.

([1]) COM(93) 159 final.

([2]) Directives 95/62/EC; 97/33/EC; 98/10/EC; 2002/22/EC.

2.3 The development of the information society has widened the divide between those who use the potential of electronic communication networks in their private and working lives and those who are not in a position to use its potential (the digital divide), either because they do not have access to ICT or because they lack the skills or interest.

2.4 According to a Eurobarometer survey ([3]), 49 % of households in EU27 (in winter 2007) had an internet connection (52 % in EU15 and 33 % in the 12 new Member States), whereas more than half of Europeans (57 %) had a computer at home.

2.5 Although internet connection rates are rising constantly across the EU, the fact still remains that on average one out of two households in the EU — and less than a quarter of Bulgarian, Greek and Romanian households — have an internet connection.

2.6 As a result, these means of electronic communication, which are indispensable for the creation of the information society, are not accessible to many citizens, whereas a considerable amount of information is only available in ICT format.

2.7 For many years, the risk of digital divide has been a constant concern for the EU, which regularly adapts and builds on its electronic communications rules by introducing specific provisions for the preservation of a universal service, users' rights, and personal data protection, initiatives to which the EESC has contributed many opinions ([4]).

2.8 In the Riga Declaration ([5]) on e-Inclusion, adopted on 11 June 2006, the Member States undertook to significantly reduce regional disparities in internet access across the EU by increasing broadband coverage in under-served locations, and to halve the gap in internet usage by 2010 for groups at risk of exclusion.

2.9 Despite this declaration, the scope of universal service remains unchanged.

2.10 In 2007, the Commission presented a wide-ranging proposal to recast existing EU rules on electronic communications including, inter alia, an amended Universal Service Directive ([6]).

2.11 The main proposed amendments to the Universal Service Directive concern the improvement of information for end-users, use of and access to e-communications for disabled users, emergency service calls, and ensuring basic connectivity and quality of service ([7]).

2.12 Disabled persons and people with special needs still face numerous difficulties in accessing services that are essential to social and economic life ([8]). The EESC therefore clearly welcomes the fact that the 2007 proposal for an amendment of the Universal Services Directive ([9]) replaces the *possibility* for Member States to take specific measures for disabled users with an explicit *obligation* to do so ([10]).

2.13 However, the proposal for an amendment to the Universal Service Directive does not alter the scope of universal service or its provision to consumers and end-users.

3. **Current scope of universal service**

3.1 Member States must ensure that all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location (telephone enquiry services, directories, public pay telephones, or special measures for disabled users) must be met by at least one undertaking.

3.2 Since national mobile telephony operators' licences entail total geographic and/or population coverage, voice telephony has, in the meantime, become universally available, even though pricing often lacks transparency.

([3]) Special Eurobarometer 293/June 2008: E-Communications Household Survey, November — December 2007.

([4]) Communication from the Commission — Electronic Communications: the Road to the Knowledge Economy COM(2003) 65 final, 11/2/2003; opinion CESE on *Europe at high speed* (rapporteur Mr McDonogh), OJ C 120, 20.5.2005, p. 22; opinion CESE on *Bridging the Broadband Gap* (rapporteur Mr McDonogh), OJ C 318, 23.12.2006, p. 229; opinion CESE on i2010 — *An information society for growth and employment* (rapporteur Mr Lagerholm), OJ C 110, 9.5.2006, p. 83; opinion CESE on *eAccessibility* (rapporteur Mr Cabra de Luna), OJ C 110, 9.5.2006, p. 26; opinion CESE on *Future eAccessibility legislation*.

([5]) See http://ec.europa.eu/information_society/events/ict_riga_2006/doc/declaration_riga.pdf.

([6]) Proposal for a Directive amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007) 698 final).

([7]) See opinion CESE on *Electronic communications networks/Telecoms Reform Package* (OJ C 224 of 30.8.2008, p.50, rapporteur: Mr Hernández Bataller).

([8]) Progress Report on the Single European Electronic Communications Market 2007 (13th Report), COM(2008)153.

([9]) COM(2007) 698 final.

([10]) See opinion CESE on *eAccessibility* (rapporteur: Mr Cabra de Luna) OJ C 110 of 9.5.2006, p. 26.

3.3 The connection to the network is nevertheless limited to one narrowband connection. There is no requirement for a specific data or bit rate but the connection must be capable of supplying *'functional Internet access, taking into account prevailing technologies used by a majority of subscribers and technological feasibility'* ([11]).

4. **Widening the scope of universal service**

4.1 *General comments*

4.1.1 The concept of universal service and its scope should evolve to reflect advances in technology, market developments and changes in user needs.

4.1.2 In the second periodic review of the scope of universal service in electronic communications networks ([12]) the Commission considers that the conditions for broadening the scope of application as defined in Annex V of the Universal Service Directive are not currently fulfilled. However, it acknowledges that it is reasonable to anticipate that, in a relatively short horizon of time, narrowband will no longer answer the requirement of being 'sufficient to permit functional internet access'.

4.1.3 The EESC feels that an update is already necessary now and should focus on the following elements.

4.2 *Access to a basic set of services*

4.2.1 While some cases of digital exclusion are due to behaviour or culture, and can be mitigated over time, others are linked to structural inequalities in the organisation of the economy and society.

4.2.2 This in turn leads to other inequalities with regard to unequal access to employment, training and lifelong learning opportunities; consumer goods and services; public services; social inclusion; the expression of citizenship; and democratic participation.

4.2.3 Digital exclusion is multifaceted, encompassing not only the equipment itself, but also access, the necessary training and user support; it requires parallel action on:

— access to training on new technologies,

— access to equipment; and

— connections.

4.3 *User training*

4.3.1 Undoubtedly, the increased skill levels required by the proliferation of digital technologies will increase usage and access inequalities, even if such technologies are opened up to all.

4.3.2 Those unable to use a computer or the internet, who often manifest a total lack of interest, are at an ever increasing disadvantage. This creates a social divide not only for the excluded but also for those who have difficulty adapting to new technologies.

4.3.3 For this reason, special attention should be given to older people who are reluctant to familiarise themselves with the digital environment (the generation gap), for whom digital literacy programmes should be set up to cater for their specific needs ([13]).

4.3.4 Support should therefore be provided for national and local digital inclusion projects as well as the micro-projects of communities and organisations that assist people experiencing difficulty to get to grips with technological tools. This would be done mainly through microfinance for local training projects, public internet access points and interactive internet kiosks in public areas providing free internet access. The EESC believes that the Commission should publish examples of best practices in the field on a regular basis.

4.4 *Access to equipment*

4.4.1 Many families and individuals are denied access to the electronic communications network and related services, as the basic equipment (PC, software, modem) can be prohibitively expensive for them.

4.4.2 The EESC calls on the Member States to provide economic support, within the universal service framework, to facilitate internet access and use.

4.5 *Connections*

4.5.1 It is now evident that ICT, which underpin an information society that is intended to be open to all, must cover the needs of all persons in society, in particular those most vulnerable to social exclusion, to address the problem of the digital divide and an entrenched two-tier society.

([11]) See COM(2007) 698.

([12]) COM(2008) 572 final.

([13]) See exploratory opinion CESE 1524/2008 on *Taking into account the needs of older people*, (rapporteur: MsHeinisch).

4.5.2 The combined effects of the convergence of the global internet-based environment, networking and digitalisation increasingly demand a high speed network connection when using new applications.

4.5.3 According to the Communication of 20 March 2006 ([14]) on Bridging the broadband gap *'Widespread broadband access is a key condition for the development of modern economies and is an important aspect of the Lisbon agenda.'* The Communication of 29.09.2008 recognises that *'that there will be geographic areas where it is unlikely that the market will provide the service on a reasonable timescale'* and that *'there will come a time when "info-exclusion" becomes a significant issue'*.

4.5.4 For some years now the EESC has been calling for broadband access to be included in universal service.

4.5.5 The Universal Service Directive was supplemented in 2002 with the inclusion of *functional Internet access* within the scope of universal service. Functional access is defined here as the transmission of data communications at rates sufficient to enable internet access.

4.5.6 While this addition may have seemed a worthy improvement at a time when online communications were routed via dial-up telephone-based connections, these days, applications such as eHealth, eBusiness, eGovernment and eLearning, which are vital to European growth and quality of life in the years ahead, require broadband.

4.5.7 The EESC therefore considers it vital for *functional internet access* to be clarified and proposes that universal service providers be required (within a reasonable timeframe to be established, and within a multiannual programme) to provide DSL access at a minimum transmission speed of 2Mbps-10Mbps or mobile or wireless access (WIMAX, satellite, etc.) at similar speeds. This is because we are dealing with values that have to evolve according to technological developments and consumer needs.

4.6 *Availability for all users regardless of geographic location*

4.6.1 In remote and rural areas, especially in some new Member States, the market is often unable to provide affordable access to electronic communication infrastructure at an adequate level of service.

4.6.2 With regard to high speed access, there are considerable differences between urban and rural areas. DSL coverage in rural areas is 71.3 % as opposed to 94 % in urban areas ([8]). If transmission speed is too slow, it restricts the use of broadband by companies in rural areas as well as its introduction to households, which are unable to experience a genuinely multimedia environment.

([14]) COM(2006) 129 final.

4.6.3 Digital exclusion affects different social groups depending on certain variables, be they demographic (age, gender, type of household, etc.), socio-economic (education, employment, status, income, etc.) or geographic (housing, location, specific regional or local features, geopolitical factors, etc.).

4.6.4 Therefore, the focus should not solely be on geographic exclusion but also on the social exclusion that accompanies the lack of purchasing power or limited skills of certain user groups.

4.6.5 The EESC therefore thinks that universal service should be expanded to ensure access for all users regardless of their geographic, financial or social situation.

4.7 *Defined level of quality*

4.7.1 In its proposal to amend the Universal Service Directive the Commission proposes granting power to the national regulatory authorities to prevent degradation of quality of service, the blocking of access and the slowing of traffic over the networks by setting minimum quality levels for network transmission services for end-users.

4.7.2 The EESC thinks that the minimum quality level should be the same for all Member States and that therefore, a priori, the European legislator should set minimum quality standards and not the national regulatory authorities.

4.8 *Affordability*

4.8.1 Instead of affordable or reasonable prices, we should speak in terms of a 'price that everyone can afford', as this more accurately conveys what is intended.

4.8.2 Affordability of access and service at EU level is part of the definition of universal service, but not of its scope at EU level; this is because affordability is dependent on specific national conditions e.g. the average household income.

4.8.3 The EESC would suggest that Member States consider the possibility of introducing social rates for broadband internet access and use, as exist in certain Member States, as part of the universal service.

5. **Financing**

5.1 The EESC realises that universal service obligations for broadband entail a heavy financial burden for operators, which often can only be undertaken at a loss.

5.2 These costs nevertheless depend largely on the technology used. If, on the one hand, these costs can be lowered by replacing landline connections with mobile connections, given the marginal cost of adding a new subscriber to the radio communications network of subscribers, we should not forget that, on the other hand, landline communication costs are cheaper for the user than mobile communication.

5.3 When a universal service obligation represents an unfair burden on a provider, the 2002 Universal Service Directive allows Member States to use different financing mechanisms, namely:

— recovery via public funds;

— levies on users;

— contributions from all or certain specified classes of undertaking.

5.4 The Structural Funds or rural development funds could, under certain conditions, also contribute to the development of lagging regions and rural areas.

5.5 At the EU level, with regard to access to ICT networks in areas and regions of Europe where the digital divide is felt, the EESC reiterates its request ([15]) that the Structural Funds, rural development funds and R&D funds should earmark specific amounts for e-inclusion.

5.6 The convergence of the global internet environment and the numerous operators (access infrastructure, Internet platforms and content providers) is making it increasingly difficult to define the range of markets contributing to the fund and is becoming a constant source of litigation and claims.

5.7 Furthermore, the levies on operators are generally reflected (at least partly) in the final price.

5.8 The EESC warns against the residual costs of universal service being compensated by the direct or indirect introduction of charges or increased rates for the end-user, which would be incompatible with the concept of 'affordability'.

5.9 The EESC believes that the financing of universal service via public subsidies, combined with investments financed by EU funds, is the only alternative for countries where the financial burden of universal service obligations is out of proportion with the normal conditions for running a business.

5.10 Financing universal service via a general taxation system, which distributes the burden across a very wide fiscal spectrum, means that the loss of social well-being will be much lower than it would be if universal service were financed solely by levies on operators and consumers.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

([15]) Opinion CESE on *Future eAccessibility legislation*, (rapporteur: Mr Hernandez Bataller), OJ C 175 of 27.7.2007, p. 91.

Opinion of the European Economic and Social Committee on 'Effective governance of the renewed Lisbon Strategy'

(2009/C 175/03)

In a letter to Mr DIMITRIADIS dated 11 June 2008, the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on the

Effective governance of the renewed Lisbon Strategy

On 25 May 2008 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms FLORIO as rapporteur-general at its 449th plenary session, held on 3 and 4 December 2008 (meeting of 4 December 2008), and adopted the following opinion by 100 votes to 5 with 2 abstentions.

PREAMBLE

In times of great uncertainty there is a need for long-term vision, consistent policies and the participation of all stakeholders. The Lisbon Strategy offers an overarching framework which enables the European Union to strengthen its single voice at global level.

The more active inclusion of organised civil society will unleash hidden potential. The concept and implementation of the strategy proves that it should be a mixture between top-down and bottom-up approaches. A good governance of the Lisbon Strategy should be used to promote convergences of policies and economic growth and employment.

1. **Conclusions and recommendations**

1.1 The Lisbon Strategy is a project for European society as a whole enabling it to meet the challenges of a globalised world. The EESC considers that due to the current financial markets crisis and the subsequent economic consequences and increasing uncertainties, European competitiveness, sustainable development and social cohesion remain of key importance. The Committee underlines that the three pillars of the Agenda — growth and jobs, social cohesion and sustainability — require a continuous interactive and balanced approach.

1.2 This opinion is first and foremost an answer to the request of the European Commission ([1]). It is about the governance of the Lisbon Strategy and it represents the continuity of earlier contributions by both the EESC and EU's civil society organisations to the Lisbon process.

1.3 The EESC emphasises that the Strategy requires sufficient support from national governments and therefore underlines that they have a political and moral obligation to agree and envisage reforms with civil society organisations. It is of key importance that the non-governmental stakeholders in the Member States can fully participate in setting the agenda of the Lisbon process. The national Economic and Social Council's (ESC) or similar civil society organisations should fulfil the role that national legislation and practice assigns them with regard to the Lisbon Strategy ([2]).

1.4 There are substantial differences in governance between the Member States. In some of them consultation and information procedures are well organised and in others they need considerable improvement. Exchange of practices should be promoted. Therefore, the EESC is conducting fact-finding missions to the Member States to discuss the exchange of best practices and the implementation of the reforms with civil society stakeholders ([3]).

([1]) Ms Wallström, the Vice-President of the European Commission requested in her letter of 11 June 2008 to Mr Dimitriadis, President of the EESC, that the EESC draw up an exploratory opinion on the Lisbon Growth and Jobs Strategy. This request to the EESC by the Commission is in line with the 2008 Spring Summit's general mandate which '… invites the Commission and Member States to strengthen the involvement of relevant stakeholders in the Lisbon process …'.

([2]) The EESC notes that it is in no way interfering in Member States in the existing procedure of consultation, competencies and legitimacy of social partners.

([3]) Representatives from France, Spain, Belgium and the Netherlands expressed their satisfaction with governance of the process in their respective Member States. Please see the findings of the first mission in Appendix 2.

1.5 The EESC underlines that the reforms of the strategy provide the citizens with important economic and social stability combined with sustainable development objectives. The various players in the public and the private sector should each identify their own role and positive contribution, thus combining economic effectiveness with social justice in view of the well-being of people in Europe.

1.6 The EESC considers it highly desirable that all stakeholders (at national, regional and local level), be directly involved in defining effective governance at the appropriate level. The different levels of consultation require different forms of participation and working methods.

1.7 Taking into account differences between Member States; the EESC recommends the creation of permanent dialogues in Member States, involving on the one hand national ESCs and on the other the social partners, and which could also involve other social stakeholders (SMEs, social economy ([4])), and universities and think-tanks. Organisations that promote social cohesion and equal opportunities should also be involved.

1.8 The EESC proposes that at the end of each Lisbon cycle a conference (as a follow-up to the national permanent dialogue) could be held with stakeholders and civil society organisations concerned to address successes and shortcomings. In general, emphasizing and promoting successes and achievements will provide society with a stronger basis for continuing the reform process.

1.9 The EESC stresses that there is a need for a better and more detailed monitoring system (role and actions of different stakeholders in the implementation process) and therefore proposes more general use of the quantitative and qualitative benchmarking model (see point 2.8) which is being tested in some countries, thus enabling a stronger role for civil society organisations in the implementation and monitoring processes.

1.10 The EESC estimates that there is an urgent need for a wider public discussion of the methodology and implementation aspects of the strategy and calls upon all organised civil society actors to engage in a wider and more in-depth debate of the Lisbon reforms at the different levels. The special role of national ESCs or similar civil society organisations in Member States without national ESCs should be strengthened in those cases where this role is underdeveloped. Other consultative bodies dealing with particular aspects of the Lisbon Strategy (national councils on sustainable development, equal opportunities or combating poverty) must also be involved, alongside bodies for the consultation of the social partners.

1.11 The EESC considers it necessary that new concrete steps are taken by the European Commission and Member States to enhance the implementation, using different communication methods, especially the electronic communication ones (identification of best practices, scoreboards etc). Cross-border cooperation and the sharing of best-practices should be promoted.

1.12 The EESC may be instrumental both as a platform for the exchange of information between national ESCs, social partners and other civil society actors and the European institutions and as a platform for the exchange of views and experiences between national non-government related players. The EESC highly appreciates the contributions to the discussions made by national ESCs and other civil society organisations.

1.13 The EESC stresses that in all cases the national Lisbon coordinators should have regular cooperation during the elaboration, implementation and evaluation of the NRPs with all well-defined stakeholders. The EESC calls on the Member States governments to step up activity to inform their citizens on the results of civil and social dialogue in relation to the Lisbon objectives.

2. **Stakeholders role in the governance process — new forms and tools for effective governance**

2.1 As the international economy is facing very serious challenges and uncertainties, positive economic sentiment has declined significantly in Europe. In this situation the Lisbon Agenda and implementation of balanced structural reforms becomes ever more important and immediate solutions are needed.

([4]) 'Social economy is structured around three large families of organisations: co-operatives, mutual societies and associations, with the recent addition of foundations', The Social Economy in the EU, pg 11, CESE/COMM/05/2005.

2.2 The EESC sees the effective governance of the Strategy as extremely important for its coherent implementation and underlines that the empowerment of different levels (national, regional and local) could encourage proposals and solutions.

2.3 The EESC notes that in many Member States the Strategy was initially perceived as an interaction between national governments and EU institutions. The EESC played a key part together with national ESCs and other civil society organisations in improving governance compared to the initial situation. The Committee notes with regret that participation has not progressed to the same extent in all Member States.

2.4 The national Lisbon coordinators should more actively involve civil society organisations and social partners in the activities and reforms necessary to support the Lisbon Strategy (e.g. timely information, joint event planning, etc), and communicate the strategy to the wider public more effectively.

2.5 Close cooperation between national ESCs, social partners and other civil society organisations would contribute to positive policy externalities and create new synergies. Participation by all the stakeholders including representatives of disfavoured groups (people with disabilities, immigrants, etc.) should be ensured.

2.6 Successful implementation will require more effective use of EU financing of the various Funds (Structural Funds etc) consistent with the Lisbon objectives.

2.7 *Effective multi-level governance*

2.7.1 New and innovative forms of governance are needed to respond adequately to global challenges. The EESC recommends establishing *permanent dialogues* (including national ESCs, social partners, SMEs, universities, other civil society stakeholders including social economy organisations and those working to promote social cohesion and equal opportunities for all). These dialogues should help to identify bottlenecks in the implementation process and to promote new incentives for the areas which are lagging behind. In this way national ESCs or similar organisations can contribute in formulating proposals in order to respond to the problems which have been raised.

2.7.2 These permanent dialogues could, in the countries where it is deemed necessary, serve as instruments for effective multi-level governance, in cooperation with the national Lisbon coordinator's office. They could help to evaluate actions taken in each priority area (based on country-specific recommendations of the Commission) possibly using a quantitative and qualitative benchmarking system at national, regional and local level (see point 2.8). This can also be of help in cross-border benchmarking.

2.7.3 *Transparency* (access to data, compliance with deadlines) should be guaranteed during meetings between the European Commission and social partners, NGOs and the various civil society organisations.

2.7.4 One instrument that could assist in the implementation of the Lisbon Agenda is the *Open Method of Cooperation* (OMC). The Committee has stated on several occasions that the OMC could be used better and more effectively. This can be achieved by using the newly introduced '*common principles*' ([5]) approach and by allowing organised civil society's participation in formulating and even negotiating the objectives of the Lisbon Strategy at European level. However, in the present severe financial and economic situation, further steps need to be made by all the governments and stakeholders to fix better objectives.

2.7.5 Stakeholders should develop new methods for sharing best-practices: multi-level networking would involve the two-way exchange of information between the various levels of government, while the setting up of cross-border objectives would result from closer cooperation between bordering areas in two or more Member States.

2.8 *Quantitative and qualitative benchmarking*

2.8.1 Among the differences between Members States there are divergences in collecting relevant data for structural indicators. Ways and means have to be found in order to get high standard objective information on the indicators across the Member States. To that end strengthening existing links between the responsible agencies (for instance national statistical offices) as Eurostat is striving to do, is even more desirable in order to create the indispensable common statistical base. This data should be broadly accessible and the discussions on the criteria to be selected should be as transparent as possible.

([5]) The common principle method focuses on very specific themes where Member States want progress to be made even if EU competence is limited, ref. EESC Opinion *A New European Social Action Programme*, OJ C 27, 3.2.2009, p. 99.

2.8.2 Quantitative and qualitative benchmarking, based on the NRP objectives and set up by stakeholders in cooperation with government representatives, would provide effective and concrete information for measuring the progress made in each Member State based on structural indicators ([6]) as well as on the general objectives of the Lisbon Strategy. Each national ESC or similar organisation would need to analyse and establish its own priority criteria. National ESCs in countries such as Belgium, Bulgaria and France have already started benchmarking at regular intervals (e.g. every two years) the 14 indicators agreed by the governments of Member States and some additional structural indicators, using statistics which are freely accessible on the Eurostat website. Other national ESCs could follow suit if they chose to do so.

2.8.3 National criteria could be modified based on the requirements of each level (national, regional, local and sectoral ([7])) and adapted accordingly. National benchmarks in each priority area (as defined by the 2006 Spring European Council) would focus on the collection of national and regional data in order to provide concrete performance indicators and measures. The database should be open to national ESCs as well as to social partners and other civil society stakeholders. The following practical steps are proposed:

— An accessible internet-based benchmarking on the EESC website (CESLink website ([8])) for the real-time and efficient gathering and analysis of data ([9]).

— Data could be collected once or more per three-year Lisbon cycle by national ESCs or similar organisations or have to be guaranteed by the existent national participation systems.

— Results could also by analysed by periodically-held round tables and presented during an annual conference organised by the EESC.

2.8.4 In this way stakeholders would be able to set realistic targets and provide coherent information for the revision of NRPs. Furthermore, they will be easy to update and enable continuous evaluation. At the same time it will facilitate the identification of best practices across the Member States.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([6]) In December 2003 14 structural indicators were commonly agreed by the governments of the Member States. The 14 structural indicators are: GDP per capita in PPS, labour productivity, employment rate, employment rate of older workers, youth education attainment level, gross domestic expenditure on R&D, comparative price levels, business investment, at risk-of-poverty rate after social transfers, long-term unemployment rate, dispersion of regional employment rates, greenhouse gas emissions, energy intensity of the economy, and volume of freight transport relative to GDP. Eurostat regularly provides information about structural indicators: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1133,47800773,1133_47802588&_dad=portal&_schema=PORTAL.

([7]) Sectoral — each sector of economic activity would also need to define the steps needed to reach the Lisbon objectives (e.g.: innovation and competitiveness).

([8]) http://www.eesc.europa.eu/ceslink/09-fr/presentation-ceslink-fr.html.

([9]) The EESC can contribute to the process by making webspace available for sharing results and exchanging of information.

APPENDIX I

MAIN CONTRIBUTIONS ON THE LISBON STRATEGY PREPARED BY THE EESC TOGETHER WITH ITS NETWORK OF NATIONAL ESC'S AND SIMILAR ORGANISATIONS

Summary Reports to the Spring European Council:

— **Implementation of the Lisbon Strategy — Contributions further to the European Council of 22-23 March 2005 — A summary report prepared in collaboration with national ESCs of the EU — Contributions of two candidate countries — Report by the Liaison Group**

CESE 1468/2005 rev. (on website CESE:

http://www.eesc.europa.eu/lisbon_strategy/events/09_03_06_improving/documents/ces1468-2005_rev_d_en.pdf)

— **Lisbon Strategy 2008-2010. The Role of Organised Civil Society. Summary Report to the European Council (13 and 14 March 2008). Implementation of the Lisbon Strategy: Current Situation and Future Prospects.**

CESE 40/2008

Resolution to the Spring European Council:

— **Resolution of the European Economic and Social Committee on *The implementation of the renewed Lisbon Strategy* (Spring 2007 Resolution)**

CESE 298/2007

Rapporteur: **Mr van IERSEL**

Co-rapporteur: **Mr BARABAS**

OPINIONS ON THE PRIORITY AREAS OF THE LISBON STRATEGY

— **The road to the European knowledge-based society — the contribution of organised civil society to the Lisbon Strategy** (exploratory opinion)

OJ C 65 of 17.03.2006, p. 94

Rapporteur: **Mr OLSSON**

Co-rapporteurs: **Ms BELABED, Mr van IERSEL**

— **Business potential, especially of SMEs (Lisbon Strategy) (own-initiative opinion)**

OJ C 256 of 27.10.2007, p. 8

Rapporteur: **Ms FAES**

— **Investment in Knowledge and Innovation (Lisbon Strategy) (own-initiative opinion)**

OJ C 256 of 27.10.2007, p. 17

Rapporteur: **Mr WOLF**

— **Employment of priority categories (Lisbon Strategy)**

OJ C 256 of 27.10.2007, p. 93

Rapporteur: **Mr GREIF**

— **The definition of an energy policy for Europe (Lisbon Strategy) (own-initiative opinion)**

OJ C 256 of 27.10.2007, p. 31

Rapporteur: **Ms SIRKEINEN**

OTHER DOCUMENTS STEMMING FROM THE LISBON WORKING STRUCTURES

— **Brochure on *58 concretes measures to ensure the success of the Lisbon Strategy***

FURTHER OPINIONS DRAWN UP BY THE SECTIONS INDEPENDENTLY OF THE LISBON WORKING STRUCTURES

— **Climate Change and the Lisbon Strategy (own-initiative opinion)**

OJ C 44 of 16.2.2008, p. 69

Rapporteur: **Mr EHNMARK**

— **Entrepreneurship mindsets and the Lisbon Agenda (own-initiative opinion)**

OJ C 44 of 16.2.2008, p. 84

Rapporteur: **Ms SHARMA**

Co-rapporteur: **Mr OLSSON**

APPENDIX II

Summary report of the mission to Bucharest on 13 October 2008

The EESC delegation met with Romanian civil society organisations at the premises of the national ESC. Discussions were held with representatives of 17 civil society organisations.

Employers and trade unions agree on a number of issues, but they are not listened to by the Government. The following findings were made:

General points:

— The Government consults the social partners on the NRP, but the timetable is often unrealistically short. Very rarely are any suggestions made by the social partners considered or reflected in the NRP.

— The NRP is properly addressing energy/climate challenges in the country.

— Social dialogue is not functioning well and its advantages should be better communicated to the citizens. Therefore, all social partners should cooperate better and join their efforts to represent socio-economic interests.

— Due to the unbalanced wage policy over three million of the most competitive workers have left the country and it faces serious shortages of labour supply. At least 500 000 workers are required in order to be able to respond to the needs of different sectors.

— The legal framework for the creation and functioning of SMEs should be reformed.

— There is a need for more fiscal instruments supporting growth and jobs in Romania, particular attention should be paid to the 750 000 people with disabilities.

— Life-long learning system is seriously underdeveloped.

— Romanian civil society is worried about the security of supplies of commodities, energy etc.

— Corruption is still undermining development in various sectors.

Specific points:

— Labour law implementation remains problematic and the National Labour Inspection is underperforming (*black economy*).

— Flexicurity implementation is problematic; interpretation and implementation by the authorities is creating insecurity.

— Vocational training system, in parallel with the so-called 'certification system', needs to respond better to the needs of the different sectors. The present situation is seriously undermining the competitiveness of the whole economy. Assistance is needed in the creation, implementation and assessment phase.

— Parafiscal taxes are hindering SMEs.

— Civil society organisations have permanent capacity/funding problem, and are not yet properly developed. A coalition of NGOs is present in the Structural Funds Steering Committees, but more involvement is needed.

— Educational programmes (in general school curricula need better coordination) should address energy/climate and sustainability challenges.

The social partners do receive information from the European Commission. At the national level all partners called on the Government to consult other civil society organisations and develop better structured civil dialogue. This should be mirrored in the reform of the Romanian national ESC, as the legal base exists and was initially proposed by the Government, but other civil society organisations are not yet represented.

Opinion of the European Economic and Social Committee on 'Economic democracy in the internal market'

(2009/C 175/04)

On 27 September 2007, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

Economic democracy in the internal market.

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 6 November 2008. The rapporteur was Ms SÁNCHEZ MIGUEL.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 110 votes to 29, with 22 abstentions.

1. **Conclusions**

1.1 Securing genuine democracy in the internal market is a basic requirement for ensuring that the rights of Europe's citizens are respected; only when this idea is accepted will we be in a position where all market players understand and endorse the market's importance to European integration.

1.2 To date, it is consumer protection that has enabled progress to be made towards a balance between the different market players, but European competition policy has certainly provided the legislative instruments that curb restrictions on competition, which have such detrimental effects on consumers, workers and the general public.

1.3 Economic democracy in the market means not only securing equality between all market players but also a better quality of life for everyone, which can be achieved by:

— developing and implementing the legislative instruments of competition policy and recognising the need to involve consumers and the other parties concerned in the Community and national bodies that have responsibility in this field.

— expanding this policy, in order to protect the economic interests of those directly affected by unlawful competitive practices.

1.4 For this objective to be met, a number of practical measures would need to be taken to raise and maintain the confidence of all players in the internal market. These measures could focus on:

— harmonising all relevant legislation and making it comparable, at least on key issues of substantive and procedural law.

— linking the protection of market players to the fundamental rights recognised in the Treaties, without it being necessary to establish new procedures, so as not to increase the administrative burden.

— involving the different market players in the bodies that regulate competition and setting up a fluid information network — proposals that the EESC has reiterated in a number of opinions.

1.5 The EESC has played an active role in promoting equal rights across all policies and greater civil society involvement in the Community bodies, especially in those regulating competition. In the Committee's view, achieving the objectives of the Lisbon Agenda, by creating a more competitive and dynamic economy, now requires securing economic democracy in the internal market.

2. **Background**

2.1 The Lisbon Treaty, in Article 6 TEU ([1]), establishes that the Union recognises the rights, freedoms and principles set down in the Charter of Fundamental Rights of the European Union ([2]), which shall have the same legal value as the Treaties.

2.2 The Charter establishes, *inter alia*, equality, the right to property, consumer protection and access to services of general interest as fundamental rights of the Union, which have an impact on the functioning and establishment of the internal market.

2.3 The principle of equality of citizens is one of the founding values of the EU (Article 2 TEU) and, as a democratic principle of the Union, is an obligation that, according to Article 9 TEU, the EU must observe in all its activities, including economic activities carried out in the internal market.

2.4 The EU has the exclusive power to establish the competition rules ([3]) necessary for the functioning of the internal market (Article 3(1)(b)).

([1]) The articles are numbered according to the consolidated version of the Treaty on European Union and the Treaty on the Functioning of the Union published in OJ C 115, 9.5.2008.

([2]) The text refers to the modification of the Charter carried out on 12 December 2007 (Strasbourg), published in OJ C 303, 14.12.2007. This second version was needed as footnote explanations had been added to the Charter after it was first adopted at the Nice summit in December 2000.

([3]) See the *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, published in OJ C 31, 5.2.2004, p. 5).

2.4.1 In concrete terms, collusive practices and the abuse of a dominant position (antitrust rules) in particular are incompatible with the internal market and are therefore prohibited, because they are damaging to consumers, businesses and other market players such as workers.

2.4.2 Poor or misapplication of the rules on mergers can also be severely damaging to consumers, businesses and other internal market players such as workers.

2.4.3 The point of reference when assessing the efficiencies put forward is that consumers must not suffer damage as a result of the merger. The efficiencies must be substantial and achieved promptly, and must be beneficial to consumers within the relevant markets in which competition problems would otherwise be likely to emerge.

2.5 The EU has shared competence in the field of consumer protection (Article 4(2)(f)).

2.5.1 In defining and implementing other EU policies and actions, consumer protection requirements should be taken into account, in accordance with the new Article 12 TFEU.

2.5.2 This translates to a cross-cutting approach to consumer policy, expressly recognised within original Community law, under which, for the completion of the internal market, consumer interests must be considered in all relevant political and economic fields in order to guarantee a high level of consumer protection throughout the EU.

2.5.3 When it comes to the proposals for approximation of consumer protection laws, the Commission must take as a base a high level of protection (Article 114(3) TFEU). This obligation means that it is the Commission's duty to promote consumer interests and ensure a high level of consumer protection by the EU (Article 169 TFEU).

2.5.4 Generally speaking ([4]), the harmonisation of consumer protection has hitherto been based on the principle of '*minimum harmonisation*', under which Member States can adopt or maintain higher protection measures and which has on occasion led to legislative clashes between consumer protection and the completion of the internal market.

2.6 In its opinion on *Regulating competition and consumer protection* ([5]) the EESC highlighted that although free competition offered benefits to all market participants and consumers in particular, in the main liberalised sectors, real restrictions on free competition had arisen, resulting in competitors being excluded from the market and consumers' economic rights being limited.

2.6.1 It stressed the need to strengthen systems for informing and consulting consumers, and considered that the European Competition Network should adapt its activities to incorporate any information and observations that national or Community consumer organisations wished to provide in order to make competition policy more efficient in the markets and to ensure that consumers' economic rights were recognised.

2.6.2 With regard to compensation of damages caused by infringement of antitrust rules, the EESC has already expressed its opinion ([6]) on the Commission's Green Paper, calling for common guidelines setting the conditions for bringing an action for damages arising from infringements of Articles 81 and 82 of the Treaty.

2.6.3 The EESC has also expressed its opinion on the establishment of a Community regulation on collective action for compensation brought by bodies representing social and economic players in the internal market, particularly that brought by consumer organisations ([7]).

2.6.4 The EESC is currently drawing up an opinion on the White Paper on Damages actions for breach of the EC antitrust rules ([8]), in anticipation of the opinion on this matter and which should be referred to in this context.

2.6.5 Consequently, this opinion does not aim to address issues relating to civil compensation of damages resulting from infringement of antitrust rules or the bringing of collective actions by consumer organisations in the internal market, as these are subjects on which the EESC has already made its position known. Instead, this opinion will focus on economic democracy in the internal market.

3. **Approaching the concept of economic democracy in the internal market**

3.1 Competition policy aims to create and safeguard conditions enabling markets to operate competitively, for the benefit of both consumers and businesses. It involves:

— effectively combating practices that distort competitive market conditions;

— creating the conditions needed for the active involvement in competition policy of consumers and all those with economic rights resulting from their economic activities in the market, including workers;

— helping to ensure that information has a constant influence and consultation can be carried out flexibly, with visible results;

([4]) One exception is Directive 2005/27/EC on unfair commercial practices.

([5]) OJ C 309, 16.12.2006, p. 1.

([6]) OJ C 324, 30.12.2006, p. 1.

([7]) OJ C 162, 25.6.2008, p. 1.

([8]) COM(2008) 165 final. OJ C 309, 16.12.2006, p. 1.

— establishing the legal instruments or measures to properly protect the equality of market players — not forgetting small and medium-sized enterprises, which would also benefit considerably from this Community policy — the right to property, consumer protection and access to services of general interest.

3.2 This is why there is a need to guarantee '*economic democracy in the internal market*'. This aim is implicit in the objectives of the Lisbon Agenda which call for the EU to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth, creating more and better jobs and greater social cohesion ([9]).

3.3 To guarantee the existence in the internal market of an economic democracy that improves the quality of life of European citizens, there are three broad areas in which action and progress are required.

3.3.1 The first area concerns the development and implementation of traditional competition policy instruments, relating to antitrust rules, mergers and state aid, and focusing particularly on certain, primarily liberalised sectors.

3.3.1.1 In other words, this refers to services of general economic interest, which have moved from a system of monopoly to a newly opened market system, where one company holds a dominant position and competition is restricted due to the low market penetration of other operators.

3.3.1.2 In this area, support should be given to consumer action that makes it feasible to implement antitrust rules. In other words, it should be consumers, who instigate the relevant procedures when they observe a potential breach of antitrust rules, because they have the authority to do so. The main ways of achieving this are: informing, educating and raising the awareness of consumers themselves and of course giving consumers and consumer organisations the authority to act, as well as access to the relevant institutions and procedures.

3.3.2 The second area concerns the study of competition policy that affects consumers and all those with economic rights resulting from their economic activities in the market, including workers.

3.3.2.1 Practices by non-compliant businesses which distort competition, whether concertedly or by abusing a dominant position, can eventually reduce the income or increase the costs of the injured parties, which affects their right to property over that income and makes them victims of a breach of the law.

3.3.2.2 Therefore, the effects of infringements of competition rules can be compared to an undue appropriation of income from consumers, from all those who receive income from their economic activities and from companies operating in the market in compliance with competition rules. This new vision of competition protection policy would also strengthen the position of small and medium-sized enterprises which, as is widely known, form the backbone of Europe's economy.

3.3.3 The third area concerns strengthening and developing essential cooperation between the members of the European Competition Network and the Commission, between national courts and the Commission, and between national consumer authorities, national consumer bodies and the Commission.

3.3.3.1 Mutual assistance will make it possible to decide more quickly who should bring the case concerned, and to resolve cases more effectively.

4. **Comments on issues surrounding the concept of economic democracy**

4.1 In order to achieve genuine economic democracy, the EU should adapt its competition policy and its measures to harmonise national legislation to meet the needs and expectations of European consumers and of all market players. Practical steps must consequently be taken in these areas to secure and improve the confidence of all parties involved in the internal market:

4.2 *Harmonisation of legislation:*

4.2.1 Without comparable legislation, at least for key issues regarding both material and procedural law, it will be very difficult to conceive of real economic democracy in the internal market as recognised by Article 114 TFEU *et sequitur*, particularly Article 116.

4.2.1.1 A genuine internal market can only become a reality when consumers feel sufficiently secure and confident to make a purchase anywhere in the European Union, secure in the knowledge that they have equivalent and effective protection from any possible infringement of their economic rights by businesses. The cross-border movement of goods and services will enable consumers to seek out better deals and innovative products and services that will help them to make the most advantageous choice. Minimising differences in consumer protection laws throughout the EU is thus essential.

([9]) Presidency conclusions. Feira European Council, 2000.

4.2.2 Although the Member States have adopted national provisions equivalent to Articles 101 and 102 (former Articles 81 and 82), there are still major differences between different national competition laws. These differences are apparent both in the material definitions of the concepts of dominance, abuse and economic dependence and in the procedural rights of consumers, the recognition of the role of consumer organisations, and the relations between these organisations and the national competition authorities.

4.2.2.1 The principle of 'minimum harmonisation', which is applied when harmonising national legislation, is the most appropriate way of uniting the aims that have been set for the internal market and for consumer protection. When compared, however, with the principle of 'country of origin' in conjunction with another type of 'internal market clause' on the mutual recognition of consumer protection legislation, this principle is incompatible with a 'high level of consumer protection'.

4.2.2.2 In order to attain this high level of consumer protection and, furthermore, in line with the latest Community strategies for consumer policy (2002/2006 and 2007/2013), it would make sense to move towards full harmonisation on individual issues deemed to be of vital importance, such as principles, definitions and certain procedural aspects.

4.2.3 Victims of infringement of competition rules must obtain effective, full damages, and offenders should not be able to make any unfair financial gain. To this end, instruments could be adopted such as:

— procedures enabling public authorities to confiscate undue profits. Any unlawful funds recovered should be used for purposes of general interest as previously defined in national legislation, and should be used primarily to fund public measures for supporting victims. National measures should comply with the principles of equivalence and effectiveness under the terms set out by the ECJ;

— establishment of effective, dissuasive and proportionate enforcement measures (administrative or criminal) for the most serious infringements affecting the functioning and establishment of the internal market. The definition of 'unlawful' should cover subjects over which the EU has exclusive competence, in order to ensure optimum implementation of Community law through the definition of minimum, common criteria for offences ([10]). The Lisbon Treaty provides for the adoption of minimum provisions on the definition of criminal offences and sanctions via the co-decision process, establishing minimum standards for particularly serious crime with a cross-border dimension (Article 83(1) TFEU);

— publicising penalties can be an effective measure, by setting up publicly accessible resources such as offender databases, etc. Penalties for anti-competitive practices have a dissuasive effect on potential offenders. Publicising decisions to apply penalties shows the victims of infringement how important the issue is and helps to raise public awareness of antitrust measures;

— These measures would in any event supplement compensation for damages which, as referred to above, does not fall within the remit of this opinion, and will be covered by the opinion dealing with the White Paper on Damages actions for breach of the EC antitrust rules.

4.2.3.1 In order to make damage compensation more effective, one question that should be asked is whether national courts would be authorised to decide on the end use of administrative fines and incorporate them into the civil process to evaluate compensation of infringement victims.

4.2.4 How to adequately combine full legislative harmonisation in certain cases without reducing consumer protection in some Member States is one of the aims that legislative reforms affecting regulation of the internal market should take into account.

4.3 *Impact on fundamental rights*

4.3.1 The infringement of internal market laws affects a number of fundamental EU rights, such as the principle of equality (Article 20 of the Charter of Fundamental Rights), the right to property (Article 17 CFR), consumer protection (Article 38 CFR) and access to services of general interest (Article 36 CFR), which the EU's institutions and bodies also have the duty to protect. Some of these rights, especially the principle of equality and the prohibition of unequal treatment, have been given legislative form in the field of competition as a guiding principle for all economic players, with regard to both their competitors and consumers ([11]).

4.3.2 This raises the following questions:

— Are special measures needed to protect these rights?

— What could be the best measure under Community law?

— Would it be fitting, under Articles 17, 20 and 38 of the Charter of Fundamental Rights, to set down the rights of consumers, businesses and all those with economic rights resulting from their economic activities in the market, including workers, as specific rules within Community free competition legislation?

([10]) See the Commission's proposal on the protection of the environment through criminal law (COM(2007) 51 final), and ECJ case law (cases C-176/03 and C-440/05).

([11]) See articles 101(1)(d) and 102(c) TFEU.

4.3.3 Setting a 'high level of protection' could be considered to be one means of applying and protecting fundamental rights in the market, because establishing a special method or a single procedure would entail further red tape. The EESC considers that it would be more appropriate to use existing instruments, giving consumer organisations greater authority. It would be desirable to promote, through the appropriate policies and channels, the inclusion in specific EU and Member State legislation — especially in certain areas, such as contracts for essential goods and services, antitrust, unfair practices — clauses expressly recognising the rights of consumers or of any other person with economic rights, including workers and ensuring that these rights are protected by legislation. This would also help to inform the public and to raise people's awareness, something that as has already been stated, the Committee considers to be essential.

4.4 *Participation of market players*

4.4.1 The Lisbon Treaty, via Article 15 TFEU, stipulates that in order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible. Transparency is a basic prerequisite if the public is to accept Community policies.

4.4.2 Participation must be developed by setting up smooth, effective communication systems between the Commission, competition authorities and consumer organisations, so that preventive action towards cross-border infringements can be taken at the outset and to achieve this, answers to the following questions must be found:

— What measures could be used to improve cooperation?

— How can preventive aspects be stepped up?

The European Parliament proposes ([12]) establishing a 'European Consumer Ombudsman', and supports the idea of appointing advisers responsible for consumer relations within the European Commission. In this context: It might be useful to consider setting up an 'ad hoc' position such as a European consumer ombudsman, or it might be more constructive to extend the powers of the existing European Ombudsman. With the aim of introducing the criterion of reasonableness as regards the methods used to ensure a high level of consumer protection in competition policy and in order to make the best use of existing resources, the EESC considers that it would initially be enough to appoint an adviser responsible for consumer relations ([13]) within the Commission departments that have a particular interest in consumer policy.

4.4.3 The administrative procedure within the Commission may need to be reformed when it comes to instituting penalty proceedings, in full compliance with the confidentiality principle. The problem could be solved by applying the provisions of Article 41 of the European Charter or Fundamental Rights guaranteeing access to the file, the right to be heard, reasons for decisions and the right to appeal.

4.4.4 Feedback on the minimum standards for consultation should be improved, making it mandatory for each DG to undertake an impact assessment of the consultation for all the proposals made, and not just for strategic proposals, as the EESC has pointed out ([14]). Moreover, the Commission should examine issues of major importance for all European citizens, such as the languages that consultations are carried out in, the neutrality of questions and the response times.

4.4.5 The role that consumer organisations and other representative bodies could play is one issue that needs to be solved, once it is accepted that they have the authority to act throughout the complaints procedure. This matter will have to be resolved by means of an appropriate legislative instrument, once discussions have concluded on the White Paper on Damages actions for breach of the EC antitrust rules referred to above.

4.4.6 One key aspect is to raise public awareness of the importance of civil participation in competition policy. Prohibited practices (such as cartels formed by certain companies) must not be seen by the public as unassailable or resolvable only at the highest political or economic echelons. Rather, they should be seen to have serious social consequences, endangering and even undermining victims' right to property. For all of these reasons, discussions would have to take place and solutions found to determine the most suitable education and awareness measures in order to ensure that European consumers understand the consequences of

([12]) Report by MEP Lasse Lehtinen on the EU Consumer Policy strategy 2007-2013.

([13]) Article 153(2) of the Treaty Establishing the European Community states that 'Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities'. This obligation is incumbent on all officials working in the European institutions. The post of adviser responsible for consumer relations could help to alert other officials and remind them of their commitment to the public in their daily work.

([14]) See: Green Paper — European Transparency Initiative — OJ C 324, 30.12.2006.

such unlawful practices. This would primarily entail continuing to support all aspects of the European Consumer Centres Network's activities and running publicity campaigns, both general ones and specific campaigns covering certain areas, which would help to inform the public in a swift and straightforward manner of their rights as consumers and of the centres or bodies they should turn to in order to make a complaint or seek advice.

4.5 *Services of general interest*

4.5.1 The legal basis for Community intervention with regard to services of general interest is found in Article 14 TFEU and protocol No 26. In order to ensure high quality, economic accessibility and security, equal treatment and the promotion of universal access and user rights, the following questions need to be raised and answered:

— How should periodical assessments be carried out at Community level?

— What measures should be adopted to deal with distortion of competition in recently liberalised sectors?

— How can it be ensured that it is consumers who benefit from market-opening processes?

4.5.2 Broadly speaking, the lack of transparency in the management of these services, in addition to the unjustified tariffs imposed on business customers and consumers mean that these questions need to be answered.

4.6 *The role of competition policy in the internal market*

4.6.1 The EU has exclusive power to establish the competition rules needed for the functioning of the internal market.

4.6.2 Competition policy must ensure that the best options in terms of price, quality and variety are available to consumers, particularly when it comes to basic goods and services such as food, housing, education, healthcare, energy, transport and telecommunications, thus bringing them lower prices.

4.6.3 Nevertheless, what is needed, in addition to market efficiency, is to improve the quality of life and wellbeing of consumers. To achieve this, a legislative institutional framework must be established for active consumer participation, rather than making consumers the passive subjects of the welfare concept.

4.6.3.1 To this end, the current legislative framework must change, by readjusting the way that the rules are interpreted or by creating new legal bodies for competition policy. Lastly, it would be useful to consider the adoption of new legal measures to supplement or replace the current ones.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

Opinion of the European Economic and Social Committee on 'The proactive law approach: a further step towards better regulation at EU level'

(2009/C 175/05)

On 17 January 2008, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

The proactive law approach: a further step towards better regulation at EU level.

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 6 November 2008. The rapporteur was Mr PEGADO LIZ.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 155 votes with 5 abstentions.

1. **Conclusions**

1.1 This opinion is based on the premise that the law, rather than the legislation invented by legal experts, reflects the conduct that a given society accepts and demands as a prerequisite for social order; the law does not consist of formal concepts that last forever and are set in stone; but of rules and principles — written and unwritten — that reflect the collective legitimate interests of each and every citizen at a given point in history.

1.2 In every legal system, it is the legislator's traditional task to interpret society's collective interests, to define, in legislation, where appropriate, what constitutes lawful conduct and to sanction practices that breach this conduct. It is recognised for long that the laws promulgated in this way should not only be just and equitable; they should also be comprehensible, accessible, acceptable and enforceable. Yet in today's society, this is no longer enough.

1.3 For too long, the emphasis in the legal field has been on the past. Legislators and the judiciary have responded to deficits, disputes, missed deadlines and breaches, seeking to resolve and remedy. Disputes, proceedings, and remedies to force compliance cost too much. That cost cannot be measured in terms of money alone.

1.4 The EESC urges a paradigm shift. The time has come to give up the centuries-old reactive approach to law and to adopt a *proactive approach*. It is time to look at law in a different way: to look *forward* rather than back, to focus on *how the law is used and operates* in everyday life and how it is received in the community it seeks to regulate. While responding to and resolving problems remain important, preventing causes of problems is vital, along with serving the needs and facilitating the productive interaction of citizens and businesses.

1.5 Proactive Law is about enabling and empowering — it is done by, with and for the users of the law, individuals and businesses; the vision here is of a society where people and businesses are aware of their rights and responsibilities, can take advantage of the benefits that the law can confer, know their legal duties so as to avoid problems where possible, and can resolve unavoidable disputes early using the most appropriate methods.

1.6 The Proactive Law approach looks for a mix of methods to reach the desired objectives: the focus is not just on legal rules and their formal enforcement. To set the desired goals and to secure the most appropriate mix of means to achieve them requires involving stakeholders early, aligning objectives, creating a shared vision, and building support and guidance for successful implementation from early on. The EESC is convinced that the new way of thinking represented by the proactive approach is generally applicable to law and law-making.

1.7 By its very nature, the Community legal system is precisely the type of area in which the proactive approach should be adopted when planning, drawing up and implementing laws; against this backdrop, the EESC would argue that rules and regulations are not the only way nor always the best way to achieve the desired objectives; at times, the regulator may best support valuable goals by refraining from regulating and, where appropriate, encouraging self-regulation and co-regulation. This being the case, the fundamental principles of subsidiarity, proportionality, precaution and sustainability take on new importance and a new dimension.

1.8 The EESC believes that the single market can benefit greatly when EU law and its makers — legislators and administrators in the broadest sense — shift their focus from inward, from inside the legal system, rules and institutions, to outward, to the users of the law: to society, citizens and businesses that the legal system is intended to serve.

1.9 While the transposition and implementation of laws are important steps towards better regulation at EU level, regulatory success should be measured by how the goals are achieved at the level of the users of the law, EU citizens and businesses. The laws should be communicated in ways that are meaningful to their intended audience, first and foremost to those whose behaviour is affected and not just to the relevant institutions and administrators.

1.10 The application of the Proactive Law approach should be considered systematically in all lawmaking and implementation within the EU. The EESC strongly believes that by making this approach not only part of the Better Regulation agenda, and but also a priority for legislators and administrators at the EU, national and regional levels, it would be possible to build a strong legal foundation for individuals and businesses to prosper.

2. **Recommendations**

2.1 Legal certainty is one of the basic preconditions of a well functioning society. The users of the law must know and understand the law to make it work. This is where the EESC calls attention to the *Proactive Law approach*. It is a future-oriented approach where the goal is to promote what is desirable and *ex ante* maximise opportunities while minimising problems and risks.

2.2 By adopting this own-initiative Opinion, the EESC emphasises that 'better regulation' should be geared towards an optimal mix of regulatory means which best promote societal objectives and a well functioning, citizen- and business-friendly legal environment.

2.3 The purpose of this opinion is to show how the Proactive Law approach can favour better regulation by providing a new way of thinking which takes as its starting point the real-life needs and aspirations of individuals and businesses.

2.4 When drafting laws, the legislator should be concerned about producing operationally efficient rules that reflect real-life needs and are implemented in such a manner that the ultimate objectives of those rules are accomplished.

2.5 The life cycle of a piece of legislation does not begin with the drafting of a proposal or end when it has been formally adopted. A piece of legislation is not the goal; its successful implementation is. Nor does implementation just mean enforcement by institutions, it also means adoption, acceptance and, where necessary, a change of behaviour on the part of the intended individuals and organisations.

2.6 We can anticipate some consequences of this approach — including practical ones:

— the active and effective participation, rather than mere consultation, of stakeholders before and during the drafting of any proposals and throughout the decision-making process,

— impact assessments would take into consideration not only economic but also social and ethical aspects; not only the business environment but also consumers, not only the opinions of organised civil society, but also the voice of the anonymous citizen,

— anticipating solutions rather than problems, and using the law to achieve and enforce goals and to make rights and freedoms a reality in a given cultural context,

— drafting laws as straightforwardly as possible and as closely as possible to their users, ensuring that the language used is readily comprehensible and straightforward,

— eliminating redundant, inconsistent, outdated and non-applicable laws, and harmonising the understanding of terms, definitions, descriptions, limitations and interpretations into common frames of reference,

— pressing for the introduction of new areas of contractual freedom, self-regulation and co-regulation and areas which may be covered by standards or codes of conduct at national and European level,

— focusing on the 'model laws' approach to legislating ('28th regimes') rather than on overly detailed and unnecessary total harmonisation.

2.7 The way of doing this could be initiated through research projects and dialogue with stakeholders on the specific role of the Proactive Law approach throughout the life-cycle and at all levels of regulation.

2.8 The EESC thus recommends that the Commission, the Council and the European Parliament adopt the proactive approach when planning, drawing up, revising and implementing Community law and encourage Member States also to do so wherever appropriate.

3. **Introduction: a pinch of legal theory**

3.1 In the field of rules or 'what should be', what characterises 'legal' provisions, as opposed to moral or aesthetic rules, is forcibility; the possibility that compliance can be demanded by the courts and that a breach can be sanctioned. One typical feature of the 'ius cogens' or 'compelling law' is the possibility of 'enforcement', in principle by means of a judicial mechanism, to ensure that the law is applied, or, in the event it is not, that those in breach are penalised.

3.2 At the very heart of 'what should be', however, is the concept that compliance with laws is, generally speaking, voluntary and that recourse to legal proceedings is the exception — the 'ultima ratio'. Without the voluntary and widespread agreement of the public to comply with the duties imposed by the rules, their effectiveness would be irremediably compromised.

3.3 Hence the legislator's responsibility to lay down laws that by and large encourage people to observe them voluntarily and to comply with them spontaneously. These responses are, in fact, prerequisites for everyone's rights to be respected and are a cornerstone of living as part of society. Against this backdrop, the concern for 'good lawmaking' and 'better lawmaking' ([1]) takes on particular significance and has major implications for the interpretation, integration and application of laws.

3.4 This means that, in addition to being equitable or 'just' ([2]), the law must be:

— comprehensible,

— accessible,

— acceptable ([3]), and

— enforceable.

Unless these criteria are met, the law tends to be rejected by those it is intended to apply to, is not implemented by those whose duty it is to ensure it is observed and falls into disuse, with the 'force' of justice being unable to apply it effectively.

3.5 Whilst this is an important issue for national legal systems, it assumes even greater importance in a legal system such as the European Union's, in which the two 'halves' of the rule of law are usually separate: the 'obligation' inherent in lawmaking is a Community competence, whereas application and the related sanctions rely in principle on national legal systems' power of coercion.

3.6 This perhaps explains why the concern for 'better lawmaking' that exists in all Member States, and which is by no means new, has recently assumed particular significance for the Community institutions.

3.7 Predictability, sustainability and foreseeability are basic requirements for a well functioning, citizen- and business-friendly legal environment. Stakeholders need a reasonable amount of legal certainty to set their goals, to implement their plans and to achieve predictable results. Legislators, in the broadest sense, should be concerned about securing such certainty and providing a stable legal infrastructure, while accomplishing what legislation is intended to do.

3.8 This is the background to this own-initiative opinion, which aims to highlight an innovative approach to law, originating in the *Nordic School of Proactive Law* and its predecessors ([4]), and to see to what extent this could represent a further step towards better regulation at the EU level. Due consideration has been taken of all the many Opinions of the Committee on this subject, which represent already a very important body of doctrine and whose heritage is included and welcomed in this Opinion.

4. **A glimpse into better regulation, better implementation and better enforcement of EU legislation**

4.1 The concept of better lawmaking, which focuses on the perspective of the users of legislation ([5]), encompasses a number of principles that have gained momentum over the last few years: preliminary consultation, combating legislative inflation,

([1]) The meaning of 'better lawmaking' for the use of EC institutions can be found in EESC Opinion on *Better lawmaking*, CESE, OJ C 24, 31.1.2006, p. 39, rapp. Mr RETUREAU . The 'legal' content of this notion can be found in the *Inter-Institutional Agreement* of 2003, OJ C 321, 31.12.2003.

([2]) Whatever this may mean in light of the predominant values in a given society and at a particular point in history; a large number of Greek tragedies examine this conflict between 'legislated' law and 'just' law.

([3]) The two main conditions for regulations to be acceptable are that they are 'relevant and proportionate' (Cf. EESC OJ C 48, 21.2.2002, p. 130 Opinion on *Simplification* of 29.11.2001, point 1.6, rapp. Mr WALKER.

([4]) Additional information can be found in Helena HAAPIO, An Ounce of Prevention — Proactive Legal Care for Corporate Contracting Success, published in the Finnish legal journal JFT, Tidskrift utgiven av Juridiska Föreningen i Finland, issue 1/2007, as well as in Helena HAAPIO (Ed.): *A Proactive Approach to Contracting and Law*, Turku 2008. and in Peter WAHLGREN & Cecilia MAGNUSSON SJÖBERG (Eds): *A Proactive Approach*, Volume 49 of Scandinavian Studies in Law, Stockholm 2006; see http://www.cenneth.com/sisl/tom.php?choice=volumes&page=49.html.

([5]) As it has been very correctly stated in the EESC Opinion on *Better Regulation* (OJ C 24, 31.1.2006, p. 39, point 1.1.2., rapp. Mr RETUREAU), *'Better lawmaking means primarily, looking at a situation from the viewpoint of the user of the legal instrument. This explains the importance of a participatory approach, involving preliminary consultation and taking account of the representative nature of civil society organisations and social partners…'.*

removing obsolete legislation or proposals, reducing the administrative burden and costs, simplifying the Community acquis, better drafting of legislative proposals including ex ante and ex post impact assessments, reducing legislation to its essentials and concentrating on the objectives and the sustainability of legislation while keeping it flexible.

4.2 The European Commission ([6]), the European Parliament ([7]) and the European Economic and Social Committee ([8]) have long promoted and argued for *better regulation, simplification* and *communication* as main policy objectives in the context of the completion of the single market. Among the first documents on this subject we should not forget the important MOLITOR REPORT, from 1995, with its 18 recommendations, which are still up to date ([9]).

4.3 Better lawmaking also includes proportionality and subsidiarity and may involve stakeholders in drafting legislation, i.e. by means of self- and co-regulation, under the close scrutiny of the legislator, as set out in the *Inter-Institutional Agreement on Better Law-making* of 2003 ([10]), and developed in successive Annual Reports from the Commission.

([6]) Main Commission documents on the topic:
- *EU Sustainable Development Strategy*, COM(2001) 264 final
- *Communication on Impact Assessment*, COM(2002) 276 final
- *Better Regulation Action Plan — Simplifying and improving the regulatory environment*, COM(2002) 278 final
- *Collection and use of expertise*, COM(2002) 713 final
- *Updating and simplifying the Community acquis*, COM(2003) 71 final
- *Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment*, COM(2005) 535 final
- *A strategic review of Better Regulation in the European Union*, COM(2006) 689
- *First progress report on the strategy for the simplification of the regulatory environment*, COM(2006) 690 final
- *Second progress report on the strategy for the simplification of the regulatory environment*, COM(2008) 33 final
- *Joint Practical Guide for the drafting of Community legislation (for persons involved in the drafting of legislation within the EU institutions).*

([7]) Main EP documents:
- *Report on Better lawmaking 2004: application of the principle of subsidiarity — 12th annual report*, A6-0082/2006
- *Report on the Commission's 21st and 22nd Annual reports on monitoring the application of Community law (2003 and 2004)*, A6-0089/2006
- *Report on institutional and legal implications of the use of 'soft law' instruments*, A6-0259/2007
- *Report on Better regulation in European Union*, A6-0273/2007
- *Report on minimising administrative costs imposed by legislation*, A6-0275/2007
- *Report on Better lawmaking 2005: application of the principles of subsidiarity and proportionality -13th annual report*, A6-0280/2007
- *Report on the Single Market Review: tackling barriers and inefficiencies through better implementation and enforcement*, A6-0295/2007
- *Report on the Commission's 23rd Annual report on monitoring the application of Community law (2005)*, A6-0462/2007

([8]) Main EESC documents:
- Own-initiative opinion on *Simplifying rules in the single market*, OJ C 14, 16.1.2001, p. 1
- Own-initiative opinion on *Simplification*, OJ C 48, 21.2.2002, p. 130
- Exploratory opinion on *Simplifying and improving the regulatory environment*, COM(2001) 726 final, OJ C 125, 27.5.2002, p. 105
- Own-initiative opinion on *Simplification with particular reference to European Governance: Better lawmaking*, OJ C 133, 6.6.2003, p. 5
- Opinion on *Updating and simplifying the acquis communautaire*, COM(2003) 71 final, OJ C 112, 30.4.2004, p. 4
- Brochure entitled *What is the state of the enlarged Single Market? — 25 Findings by the Single Market Observatory* EESC C-2004-07-EN
- Information report on *The State of co-regulation and self-regulation in the Single Market*, CESE 1182/2004 fin
- Brochure entitled *Improving the EU regulatory framework — upstream and downstream of the legislative process, EESC 2005-16-EN*
- Exploratory opinion on the request of the UK Presidency on *Better lawmaking*, OJ C 24, 31.1.2006, p. 39
- Own-initiative opinion on *How to improve the implementation and enforcement of EU legislation*, OJ C 24, 31.1.2006, p. 52
- Opinion on *Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment*, COM(2005) 535 final, OJ C 309, 16.12.2006, p. 18
- Exploratory opinion on the request of the European Commission on *Simplification of the regulatory environment for machines*, OJ C 10, 15.1.2008, p. 8

([9]) Report of the Group of Independent Experts on Legislation and Administrative Simplification (COM(95)0288 — C4-0255/95 — SEC(95)1379). A special reference should also be made to the MANDELKERN Report (November 2001) and to its recommendations, summarised in the EESC Opinion OJ C 125, 27.5.2002, p. 105, rapp. Mr WALKER.

([10]) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF

4.4 Better lawmaking does not necessarily mean less regulation or deregulation ([11]) and indeed legal security is one of the essential requirements of a well-functioning Single Market ([12]).

4.5 Since 2000, the EESC's Single Market Observatory (SMO) has focused on stakeholders' initiatives that anticipate better lawmaking from the civil society viewpoint. Closely following the work programme of the European Commission as an institutional forum of expression for organised civil society, the EESC has over the years provided the Commission with advice in a number of opinions on issues relating to better regulation ([13]).

4.6 In conjunction with the European Commission, the SMO has developed a database dedicated to European Self- and Co-Regulation ([14]). On the basis of the data it has collected on self-regulatory initiatives, the SMO now intends to work on models (efficiency indicators, guidelines on monitoring and enforcement, etc.) and to build a cluster with academic circles, think tanks, stakeholders and institutions on self- and co-regulation issues.

5. **An ounce of prevention: the proactive approach**

5.1 Traditionally, the focus in the legal field has been on the *past*. Legal research has been mainly concerned with *failures* — shortcomings, delays, and failures to comply with the law.

5.2 The focus of the *proactive* approach is different; it is on the *future*. Being *proactive* is the opposite of being *reactive* or *passive*. The approach specifically called *Proactive Law* emerged in Finland in the 1990s. In response to a need to further develop practical methods and legal theories in this emerging field, the *Nordic School of Proactive Law (NSPL)* was established in 2004 ([15]).

5.3 The word *proactive* implies acting in anticipation, taking control, and self-initiation ([16]). These elements are all part of the *Proactive Law* approach, which differentiates two further aspects of *proactivity*: one being the *promotive* dimension (promoting what is desirable; encouraging good behaviour) and the other being the *preventive* dimension (preventing what is not desirable, keeping legal risks from materialising).

5.4 The *Proactive Law* approach is focused on *success* rather than failure. It is about taking the initiative to promote and strengthen factors that drive success. The origins of *Proactive Law* lie in *Proactive Contracting* ([17]). Originally, the goal was to provide a framework for integrating legal foresight into the tangible practice of everyday business and to merge good contract, legal, project, quality and risk management practices.

5.5 While *Proactive Law* has taken considerable inspiration from *Preventive Law* ([18]), the latter looks at matters mainly from a lawyer's viewpoint, focusing on the prevention of legal risks and disputes. In *Proactive Law*, the emphasis is on *securing success* and making it possible to achieve the desired goals in the situation at hand. Using the analogy of health care and preventive medicine, the *Proactive Law* approach can be said to combine aspects of health promotion with those of disease prevention: the goal is to help individuals and businesses stay in good 'legal health' and avoid the 'disease' of legal uncertainties, disputes and litigation.

([11]) Already in its Opinion CES OJ C 14, 16.1.2001, p. 1, rapp. Mr VEVER, the EESC acknowledged that '*the aim is not drastic and simplistic deregulation which would jeopardise the quality of both products and services and the overall interest of all "users" — be they business people, workers or consumers. Both the economy and society need rules in order to enable them to operate effectively*' (point 2.8). In its Opinion on *Better Lawmaking*,OJ C 24, 31.1.2006, p. 39 the EESC stated that '*simplifying means reducing the complexity of the law as much as possible, but it does not necessarily mean a drastic cut-back in the body of Community law or deregulation, which would run counter to civil society's expectations regarding security and the need, voiced by business, particularly SME's, for legal certainty and stability*'; and, in its Opinion on the *Review of the Single Market* (OJ C 93, 27.4.2007, p. 25, rapp. Mr CASSIDY), the EESC remembered that '*creating fewer regulations does not necessarily produce a better regulatory framework*' (point 1.1.7.).

([12]) '*Less (legislation) is more*', http://bre.berr.gov.uk/regulation/news/2005/050720_bill.asp

([13]) The Committee has also repeatedly made contributions to the Presidencies of the Council of the EU by way of exploratory opinions OJ C 175, 27.7.2007.

([14]) http://eesc.europa.eu/self-and-coregulation/index.asp.

([15]) See http://www.proactivelaw.org.

([16]) Dictionary definitions of the word *proactive* highlight two key elements: an *anticipatory* element, involving acting in advance of a future situation, such as 'acting in anticipation of future problems, needs, or changes' (Merriam-Webster Online Dictionary), and an element of *taking c*ontrol and *causing change*, for example: 'controlling a situation by causing something to happen rather than waiting to respond to it after it happens' (proactive. Dictionary.com. *WordNet® 3.0*. Princeton University). — Recent research on proactive behaviour relies on similar definitions. Parker et al. (2006) define *proactive behaviour* as self-initiated anticipatory action that aims to change and improve the situation or oneself. See the Proactivity Research in Organisations Programme, http://proactivity.group.shef.ac.uk/.

([17]) The first book on *Proactive Contracting* was published in Finnish in 2002: Soile Pohjonen (Ed.): *Ennakoiva sopiminen*. Helsinki 2002.

([18]) Louis M. BROWN was first to introduce the approach by this name in his treatise entitled *Manual of Preventive Law*, Prentice-Hall, Inc., New York 1950.

6. **How the proactive approach can further contribute to better regulation, better implementation and better enforcement of EU legislation**

6.1 One of the fundamental objectives of the European Union is to offer its citizens an area of freedom, security and justice without internal borders; an area based on the principles of transparency and democratic control. Yet justice does not materialise simply as a result of providing access to courts or remedial actions afterwards. What is needed is a strong legal foundation for individuals and businesses to succeed.

6.2 Individuals and businesses expect a reasonable amount of certainty, clarity and consistency on the part of the legislator so that they can define their goals, implement their plans, and achieve predictable results.

6.3 Legislators should surely be concerned if individuals or businesses are not sufficiently informed that they know when the law might apply to them, can find out more about their legal position should they so wish, or can avoid disputes where possible or resolve these using the most appropriate techniques ([19]). Experience and research tell us that today, individuals and businesses, consumers and SMEs in particular, are not always sufficiently informed.

6.4 The European Parliament, the Council and the Commission have defined some common commitments and objectives to improve the quality of lawmaking and to promote simplicity, clarity and consistency when drafting laws and transparency in the legislative process in the *Inter-Institutional Agreement on Better Lawmaking*.

6.5 It is clear, however, that better regulation cannot be achieved by the signatory institutions alone ([20]). Simplification and other programmes need to be developed and reinforced at national and regional level. Coordinated commitment is required, and national, regional and local authorities responsible for implementing EU law need to be involved, along with the users of legislation ([21]).

6.6 The European Union has already taken steps in the direction of the proactive approach. In this respect, the EESC welcomes:

— the decision to create a Single Market and later on, a Single Currency;

— the fact that, under the Treaty, the social partners can negotiate legislation in the social field;

— the 'Small Business Act' (SBA)/ 'think small first' (COM(2008) 394 final, 25.6.2008) with its Annex: Exchanging good practice in SME policy ([22]);

— the examples of good practice from Member States serving as inspiration for implementing the SBA ([23]), those collected under the European Charter for Small Enterprises, and

— the European Enterprise Awards recognising excellence in promoting regional entrepreneurship;

— the Revised Impact Assessment Guidelines of the Commission;

— the Solvit on-line problem solving network;

— the IPR Help Desk service (for intellectual property rights);

— the Commission's encouragement of the development of European Standards;

— the EESC self- and co-regulation website and database.

6.7 So far, these steps seem to be somewhat disparate, and there does not appear to be much research taking place or cross-sectoral learning from the experience gained. It would be worthwhile to study the outcomes of the steps taken and their relevance, implications and value as applied to other areas. The EESC suggests that these initiatives be closely followed and used for recognising and sharing best practices.

6.8 On the other hand, some recent examples of unnecessary problems and difficulties can illustrate the need for a proactive approach:

— The directive 2006/123/EC of 12 December 2006 on services in the internal market (known as the 'Bolkestein' Directive) ([24]).

([19]) *See* civil.justice.2000 — A Vision of the Civil Justice System in the Information Age 2000. http://www.dca.gov.uk/consult/meta/cj2000fr.htm#section1.

([20]) In the own-initiative opinion on *Simplifying Rules in the Single Market* OJ C 14, 16.1.2001, p. 1 the rapp. Mr VEVER already drew our attention '*to the fact that virtually all EU rules derive exclusively from the close circle of EU institutions which have decision making or co-decision making powers*' and that '*this failure to establish a proper culture of partnership with the socio-economic players, combined with the adoption of an essential political and administrative approach to decision making, makes it difficult for civil society representatives to play a responsible role in the simplification drive*' (point 3.5.).

([21]) The linkages between EU and national and regional administration have been highlighted in the EESC Opinion CESE OJ C 325, 30.12.2006, p. 3 rapp. Mr van IERSEL.

([22]) EESC opinion OJ C 27, 3.2.2009, p. 7, rapp. Mr CAPPELLINI, and EESC opinion, rapp. Mr MALOSSE (in progress).

([23]) See Annex 1 to the above Communication.

([24]) EESC Opinion CESE OJ C 175, 27.7.2007, p. 14, rapp. Ms ALLEWELDT.

— The directive 2005/29/EC of 11.05.2005, on unfair commercial practices ([25]).

— The directive 2008/48/EC of 23 April 2008 on credit agreements for consumers ([26]) although already generally contested by almost all the interested stakeholders ([27]).

— The whole package of the consumer 'acquis' ([28]), generally recognised as not having been correctly drafted, well transposed and duly implemented ([29]).

— The exercise of the 'common frame of reference' (CFR) with the sound purpose of simplifying the legislation on contract law, but ending with a 'monster' of about 800 pages, only for the 'general part' ([30])!

— The recent proposal of directive on immigration ([31])

— The recognised failure on retail financial services and particularly on over indebtedness ([32]).

— The growing transposition deficit in Member States, as even recognised by the Commission ([33]).

6.9 The purpose of this opinion is to show how the *Proactive Law* approach can favour better regulation by providing a new way of thinking: one which takes as its starting point the real- life needs and aspirations of individuals and businesses, rather than legal tools and how they should be used.

6.10 This means that when drafting laws, the legislator should be concerned about producing operationally efficient rules that reflect real-life needs and are implemented in such a manner that the ultimate objectives of those rules are accomplished. The rules should be communicated in ways that are meaningful to their intended audience, so that they are understood and can be followed by those who are affected.

6.11 The life cycle of a piece of legislation does not begin with the drafting of a proposal or end when it has been formally adopted. A piece of legislation is not the goal; its successful implementation is. Nor does implementation just mean enforcement by institutions, it also means adoption, acceptance and, where necessary, a change of behaviour on the part of the intended individuals and organisations. Here, research shows that when the social partners are involved in negotiating agreements which subsequently become European law, implementation is more successful.

6.12 We can anticipate some consequences of this approach — including practical ones — for the decision-making process relating to EU lawmaking, implementation and enforcement.

6.12.1 Firstly, the active and effective participation, rather than mere consultation, of stakeholders before and during the drafting of any proposals and throughout the decision-making process, so that the starting point would be real-life problems and their solutions and the decision-making process would be a continuous dialogue and a mutual learning process based on achieving certain goals ([34]).

([25]) EESC Opinion CESE OJ C 108, 30.4.2004, p. 81, rapp. Mr HERNÁNDEZ BATALLER.

([26]) OJ L 133, 22.5.2008, p. 66.

([27]) EESC Opinion CESE OJ C 234, 30.9.2003, p. 1, rapp. Mr PEGADO LIZ.

([28]) At least the 8 directives chosen from the 22 known as the 'main acquis on consumer protection', on contracts negotiated away from business premises (Directive 85/577/EEC of 20.12.85), 'package travel, package holidays and package tours' (Directive 90/314/EEC of 13.6.1990), 'unfair terms in consumer contracts' (Directive 93/13 of 5.4.1993), 'time-share' (Directive 94/47/EC of 26.10.1994), 'distance contracts' (Directive 97/7/EC of 20.5.1997, 'indication of prices' (Directive 98/6/EC of 16.2.1998), 'injunctions' (Directive 98/27/EC of 19.05.1998) and 'sale of consumer goods and associated guarantees' (Directive 1999/44/EC of 25.5.1999).

([29]) EESC Opinion CESE OJ C 256, 27.10.2007, p. 27, rapp. Mr ADAMS.

([30]) Cf. 'EC Consumer Law Compendium — Comparative Analysis', Bielefeld University, (12.12.2006), Profs Hans SCHULTE-NOLKE, Christian TWIG-FELSENER and Dr. Martin EBERS.

([31]) EESC Opinion CESE OJ C 44, 16.2.2008, p. 91, rapp. Mr PARIZA CASTAÑOS.

([32]) See 'Single Market in Financial Services Progress Report 2006' of 21.2.2007 and the EESC Opinions OJ C 151, 17.6.2008, p. 1 on *The Green Paper on retail financial services in the internal market*, rapp. Mr IOZIA and Ms MADER SAUSSAYE; OJ C 44, 16.2.2008, p. 74 on *Credit and social exclusion in an affluent society*, rapp. Mr PEGADO LIZ; OJ C 65, 17.3.2006, p. 113 on *The Green Paper Mortgage Credit in the EU*, rapp. Mr BURANI; OJ C 27, 3.2.2009, p. 18 on *The White Paper on the Integration of EU Mortgage Credit Markets*, rapp. Mr GRASSO.

([33]) See the Communication from the Commission 'A Europe of results-applying Community law' (COM(2007) 502 final), the related OJ C 204, 9.8.2008, p. 9, rapp. Mr RETUREAU and the very impressive article on 'Active Transposition of EU Legislation' by Dr. Michael KAEDING (EIPASCOPE 2007/03, page 27).

([34]) In its Opinion on *Simplification*, the EESC already stated that *'the formal consultation process should not be limited to interlocutors of the Commission own choosing. There is a need to engage all stakeholders in the process (…) The consultation process should be widened by inviting submissions from all interested parties so that consultation should be effectively at the option of the consultee'* (OJ C 133, 6.6.2003, p. 5, points 4.1 and 4.1.1.1., rapp. Mr SIMPSON).

6.12.2 Secondly, impact assessments would take into consideration not only economic but also social and ethical aspects; not only the business environment but also consumers as the ultimate recipients of legal measures and initiatives; not only the opinions of organised civil society, but also the voice of the anonymous citizen ([35]).

6.12.3 Thirdly, anticipating solutions rather than problems, and using the law to achieve and enforce goals and to make rights and freedoms a reality in a given cultural context, rather than concentrating on formalistic legal logic ([36]).

6.12.4 Also, drafting laws as straightforwardly as possible and as closely as possible to their users, ensuring that the language used is readily comprehensible and straightforward, and communicating their contents in appropriate manner, accompanying and guiding their implementation and enforcement in all phases of their life-cycle.

6.12.5 Furthermore, eliminating redundant, inconsistent, outdated and non-applicable laws, and harmonising the understanding of terms, definitions, descriptions, limitations and interpretations into common frames of reference ([37]). Also very important is to stop the creation of new terms or 'Eurospeak' of doubtful meaning, that are commonly used without the majority really knowing what they mean.

6.12.6 Also, pressing for the introduction of new areas of contractual freedom, self-regulation and co-regulation and areas which may be covered by standards or codes of conduct at national and European level ([38]), and identifying and removing legislative obstacles that stand in their way.

6.12.7 Finally, focusing on the 'model laws' approach to legislating ('28th regimes') rather than on overly detailed and unnecessary total harmonisation, and leaving considerable and appropriate room for self and co-regulation whenever this is adequate.

6.13 The way of doing this could be initiated through research projects and dialogue with stakeholders on the specific role of the *Proactive Law approach* throughout the life-cycle and at all levels of regulation. The first steps could include round-table discussions or seminars with academic circles, think tanks, stakeholders and institutions in order to put up a framework and an action plan for further initiatives, the purpose of which would be to implement consideration of the proactive approach in every instance, much in the same way that consideration of subsidiarity and proportionality currently always do. In view of its clea rfocus on better regulation issues, the SMO might be the platform for further discussion on the *Proactive Law approach*.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

([35]) See, in particular, EESC Opinions on *Better Lawmaking* OJ C 24, 31.1.2006, p. 39 and on *Quality standardsfor the contents, procedures and methods of social impact assessments from the point of view of the social partners and other civil society players* OJ C 175, 27.7.2007, p. 21, both by the rapp. Mr RETUREAU.

([36]) As it was already emphasised in the EESC Opinion on *Better implementation of EU legislation* (OJ C 24, 31.1.2006, p. 52 rapp. Mr van IERSEL) *'for a law to be enforceable it must be sufficiently clear and to be effective it must provide an appropriate response to specific problems. Bad laws lead to a proliferation of laws and excessive amounts of rules that impose an unnecessary compliance burden on businesses and confuse citizens'* (point 1.6).

([37]) A first approach to this method has been defined in the Communication from the Commission on 'Updating and simplifying the Community acquis' (COM(2003) 71 final), object of the EESC Opinion CESE OJ C 112, 30.4.2004, p. 4, rapp. Mr RETUREAU.

([38]) Opinion on *The Priorities of the Single Market 2005-2010* (OJ C 255, 14.10.2005, p. 22), rapp. Mr CASSIDY.

Opinion of the European Economic and Social Committee on 'Meeting the challenges of the WEEE management in the EU'

(2009/C 175/06)

On 17 January 2008 the European Economic and Social Committee decided to draw up an own-initiative opinion, in accordance with Rule 29(2) of its Rules of Procedure, on

WEEE Management.

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 30 October 2008. The rapporteur was SYLVIA GAUCI.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 4 December), the European Economic and Social Committee adopted the following opinion by 119 votes in favour and 1 abstention.

1. **Conclusions and recommendations**

1.1 The WEEE Directive has a simplification potential in order to reduce the administrative burden on the market forces.

1.2 In reviewing the Directive, the European Union together with national authorities should ensure that the Directive creates a level playing field across all EU countries. This will benefit the environment, business operators and European citizens.

1.3 Due to the fact that materials are more valuable now than 5-10 years ago, many WEEE items escape the established collection routes. The consequence is that some items are not properly treated. Hazardous, non-valuable pieces of discarded fridges, for example capacitors, are removed without being treated. Today, producers are held responsible for management of WEEE over which they have little or no control. All actors in the chain, including therefore scrap dealers, traders, should face the same responsibilities.

1.4 Schools play a major role in educating young citizens with regard to their contribution in the fight against waste. Young citizens should thus be alerted concerning the dangers linked to the end-of-life of the electrowaste in an attempt to promote its prevention, reuse, recovery and recycling. Education is first and foremost a responsibility of Member States, but producer organisations can and do play a major role as well.

1.5 The review of the Directive should allow for a better interaction between provisions for the protection of human health and the environment on the one hand and rules that affect the smooth functioning of the Internal Market on the other. In particular, the producer definition should not lead to more barriers to the Internal Market. In addition, this will be more in conformity with recent European Court of Justice case law that requires the environmental protection not to run counter the principles of the Internal Market.

1.6 Currently, market-share based collective systems have proved successful in managing WEEE properly. A revised Directive should not create any obstacles to the practice of sharing costs of WEEE management on the basis of current market shares. The way forward for Annex II is to allow interested parties to continue developing treatment standards.

1.7 Finally, tackling the electrical and electronic waste stream in the EU in a cost-effective manner should help eradicate the shipment of this type of waste to third countries, where the environmental standards are lower and the risks for the manpower handling this waste are higher. The Directive should thus fulfil its social aim to protect the environment and reduce the impact of waste on human health. The implementation of treatment standards in third countries should be promoted.

2. **Introduction**

2.1 Directive 2002/96/EC [1] on waste electrical and electronic equipment is designed to tackle the fast increasing waste stream of electrical and electronic equipment (EEE) and complements European Union measures on landfill and incineration of waste.

2.2 On the basis of many sources and different estimation techniques, the amount of new EEE put on the EU27 market is estimated at 10.3 million tonnes per year. A number of forecasting assumptions predict that by 2020, total WEEE arisings will grow annually between 2.5 % and 2.7 % reaching about 12.3 million tonnes. The total quantity collected in 2006 was 2 million tons.

2.3 It is thus important at this stage to assess whether the Directive has delivered the expected results in terms of environmental protection. It is also relevant to find out which improvements are possible and which are the most appropriate means to achieve them.

[1] EESC's opinion on WEEE, OJ C 116, 20.4.2001, p. 38-43.

2.4 In particular, the WEEE Directive has put in place a number of waste management patterns in order to achieve increased recycling of electrical and electronic equipment and limit the total quantity of waste going to final disposal.

2.5 Producers are incentivised to design electrical and electronic equipment in an environmentally more efficient way, while taking waste management aspects fully into account. For this reason, the WEEE directive involves the concept of extended producer responsibility. In order to comply with the legislation, producers of EEE will need to consider the entire life cycle of electrical and electronic products, including the product's durability, upgrading, reparability, disassembly and the use of easily recycled materials. They are also responsible for taking back and recycling electrical and electronic equipment provided they fall under one out of the ten broad product categories ([2]). Finally, they need to provide data to demonstrate compliance.

2.6 The extended producer responsibility is triggered as soon as a market operator identifies himself through the national producer registers, drawn by national authorities in each Member State. The term 'producer' covers various types of activities and includes namely the producers of own brand products, or the importers, or the resellers. The scope of the term 'producer' is so broad as to involve as many business activities as possible and thus achieve a cost efficient WEEE management scheme. Yet the problem is that the broad coverage leads to the situation that one product can have multiple producers responsible for management, which is legally unacceptable.

2.7 The WEEE directive aims to encourage separate collection by setting quantitative targets. By 31 December 2006 at the latest, EU countries should have achieved a rate of separate collection of at least 4 kg on average per inhabitant per year of waste electrical and electronic equipment from private households. A new mandatory target should be set by December 2008.

2.8 The WEEE directive also promotes reuse and recycling by establishing recovery, reuse and recycling targets.

2.9 The last pillar on which the WEEE Directive rests is the role of the final users, in other words, the consumers. The consumers are able to return their equipment free of charge. In order to prevent the generation of hazardous EEE waste, substance bans and restrictions are put in place on the basis of Directive 2002/95/EC (RoHS) ([3]).

3. General comments — Problems identified

3.1 From the actions described above, Member States were expected to draw their national WEEE management plans in order to be compliant with the Directive. A first assessment of the national implementation of the WEEE legislation can lead to the following conclusions:

— the scope covered by the Directive has given rise to diverging interpretations across the EU, whereby the same product is not necessarily within the scope in all member states, and therefore affects producers in terms of different levels of compliance across Europe;

— the collection targets are easily met by most countries in the EU-15, but remain challenging for most new Member States;

— there is a low performance of collection for product categories others than Category 1 ([4]);

— small items tend not to be returned to collection points and therefore fall outside the established WEEE channels;

— the availability of collection points of WEEE in quite a few member states is not as developed as it should be;

— there is a lack of reporting ([5]) on the quality of treatment of WEEE;

— the two most crucial activities representing administrative burden are registering to national producer registers and reporting;

— the national transposition of the WEEE Directive only took place after 13 August 2004 — and for some countries it is still uncompleted to date. It is therefore too early for a comprehensive social monitoring and evaluation.

([2]) There are ten categories of EEE covered by the Directive.
- Category 1 — Large Household Appliances
- Category 2 — Small Household Appliances
- Category 3 — IT & Telecoms Equipment
- Category 4 — Consumer Equipment
- Category 5 — Lighting Equipment
- Category 6 — Electrical & Electronic Tools
- Category 7 — Toys, Leisure & Sports Equipment
- Category 8 — Medical Devices
- Category 9 — Monitoring & Control Equipment
- Category 10 — Automatic Dispensers.

([3]) The RoHS Directive requires the substitution of various heavy metals (lead, mercury, cadmium, and hexavalent chromium) and brominated flame retardants (polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE)) in new electrical and electronic equipment put on the market from 1 July 2006.

([4]) See footnote No 2.

([5]) In conformity with Article 12 of the WEEE Directive on 'Information and reporting' producers should collect information, including substantiated estimates, on an annual basis on the quantities and categories of electrical and electronic equipment put on the market, collected through all routes, reused, recycled and recovered within the Member States, and on collected waste exported, by weight or, if this is not possible, by numbers.

4. **Specific comments — Way forward**

4.1 The review of the Directive should aim at maximising its environmental results (collect more) and increasing the costs efficiency of WEEE treatment (treat better).

4.2 Meeting the challenges of the WEEE management in the EU also means reducing the administrative burden on businesses, so that they remain economically competitive and can invest resources in improving the environmental performance of their activities, be it in the product design, the collection schemes, the take-back systems or the information provision to the public.

4.3 National administrations and private initiatives can finance education programmes at schools, in order for children at an early stage to be acquainted with good practices about the disposal and the recycling of electrical and electronic equipment. These programmes should be implemented at local level, hence their content should be tailored to local conditions and consumption patters.

4.4 The most positive environmental improvements and highest cost-efficiency can be realised in the following ways:

— rearrange the product oriented scope ([6]) towards a treatment category oriented scope;

— differentiate the target setting for collection amounts, recycling percentages and treatment requirements;

— achieve a level playing field for different stakeholders across the EU; in particular:

  — The producer definition should cover the same operators across all EU Member States. To this end, an operator who puts a product on the community market should be deemed to be the producer in all EU national markets;

  — National producer registers should function in a more harmonised manner: The different administrative requirements of various national registration and financing schemes are indeed leading to increased costs for producers operating cross boarder on the internal market. Producer registers differ in the information collection from producers and their operating principles. Among others, the definitions for types of equipment, criteria for weight, basis for the figures that are reported and consideration for sales to other Member States differ between registers. The frequency and periodicity of reporting data also vary. The European institutions could issue recommendations and guidance in order to achieve this objective, through appropriate consultation of stakeholders;

  — A European network of national registers could be created in order to exchange information. Producers could register in a single Member State, reflecting the activities of that registrant in the entire EU. This would simplify the administrative burden for registrants and at the same time lead to a more efficient enforcement of the directive. More harmonizing and less bureaucracy would make it easier to reach the environmental improvements and goals;

  — The labelling requirements for the marketing of electrical and electronic equipment should be further harmonised. Failing to do so, the free movement of goods in the internal Market will be continuously hampered.

— clarify and consequently enforce in a homogeneous manner the harmonized approach across the EU Member States;

— reflect on how national governments can encourage research for environmental improvements in the WEEE management;

— finally, the consumers' role in guiding the WEEE policy must be further analysed. In the end, it is the consumer who has to return his e-waste and will also pay, no matter how the financing is arranged.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([6]) See product categories as described under footnote No 2.

Opinion of the European Economic and Social Committee on 'The need for concerted action at EU level to strengthen civil society in rural areas, with particular regard to new Member States'

(2009/C 175/07)

On 17 January 2008, the European Economic and Social Committee decided, under Rule 29(2) of the Rules of Procedure, to draw up an own-initiative opinion on

Civil society in rural areas: the need for concerted action at EU level to strengthen civil society in rural areas, with particular regard to new Member States.

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 30 October 2008. The rapporteur was Mr KRZYSZTOF KAMIENIECKI.

At its 449th plenary session of 3 and 4 December 2008 (meeting of 4 December), the European Economic and Social Committee adopted the following opinion by 107 votes to 6, with 11 abstentions:

1. **Conclusions and recommendations**

1.1 For a very long time, rural policy focussed exclusively on matters directly concerned with agricultural production. Only over the past twenty years has the view become more widespread that rural areas are too diverse to be able to apply uniform policy instruments drawn up at European or national level and that development goals and the objective of ensuring equal opportunities could not be effectively achieved without the commitment and involvement of the rural population itself.

1.2 The current debate on the Common Agricultural Policy and rural policy is crucial for the future of European villages. Aside from experts and politicians, the voice of rural communities should also be heard in this debate.

1.3 The Leader initiative sets a good example here, and is therefore seen by the new Member States as an opportunity to promote action and to make more effective use of development resources in rural areas. It is vital that both EU and national sources support various types of initiative to strengthen civil society in rural areas.

1.4 The development of civil society in the rural areas of European Member States is influenced by economic changes (growing competition on markets), social changes (rural depopulation) and environmental changes (climate change); these changes have been particularly acute over the past few decades. The current processes overlap with far-reaching historical changes shaping economic development. Rural areas in the new Member States have experienced particularly dramatic changes.

1.5 One avenue for the development of civil society is the adaptation of development instruments to the capabilities and needs of specific rural areas, requiring wider use of the bottom-up "territorial" approach. Education also has a key role to play.

1.6 Non-governmental organisations in Eastern and Central European countries were set up as early as the late 1980s. Compared to their EU-15 counterparts, non-governmental organisations are still coming up against more barriers, due to differences in economic development, more limited access to new technologies and the various — including private — sources of funding, not to mention legal conditions and the attitude of the public authorities.

1.7 A greater emphasis should be placed on ensuring that rural organisations have access to financing. Financing should also be stable and flexible, while enabling the actual operational costs of organisations to be covered (institutional grants).

1.8 Special institutional solutions are needed to boost the potential of rural organisations, not least in countries which are preparing for EU membership. Various types of instrument must also be put in place to help rural communities access information.

1.9 The rural population, which as a rule is not as well educated and has more limited access to information, is having major difficulties in finding its feet in this fast changing reality.

1.10 In the EU as a whole, the development of civil society in rural areas faces the following challenges:

— barriers to accessing knowledge and information;

— a lack of entrepreneurial skills;

— demographic problems and a lack of gender equality [1];

— lower-quality social infrastructure than in cities.

[1] The issue of women in rural areas has already been discussed by the EESC in opinion OJ C 204, 18.7.2000, p. 29.

1.11 At the level of national policy, greater coordination is needed between decisions on rural areas taken within the framework of healthcare, education, social assistance, agricultural policy or rural policy in the narrow sense. Actions are also needed to strengthen ties between rural and urban areas.

1.12 There are still not enough instruments enabling rural inhabitants to find alternative sources of income. Part of the State's role is to create the conditions for dialogue between its institutions and society.

1.13 Local authorities have a key role to play here. They should act as a catalyst for the development of rural communities and stimulate joint activities undertaken by them.

1.14 The problem of a lack of trust between the representatives of civil society and local authorities is particularly severe in the new Member States. Civil society organisations perceive local government as standing in the way of community initiatives, while local councillors see local community leaders as potential competitors.

1.15 The possible introduction of "rural proofing" on a wider scale should be considered, as a method of studying the impact of specific legal or policy solutions (e.g. relating to education systems or public procurement) on rural areas.

2. **Background**

2.1 The changes taking place in rural areas of the EU make it imperative to analyse trends in the development of rural communities, the extent to which they are able to take their own decisions on the future, and the degree to which policies, legislation and government institutions are supporting relations between people and emerging needs for cooperation.

2.2 Given that civil society plays many roles, it may be asserted that it facilitates life and fills the gap between individuals and families and the State.

2.3 European integration influences the dynamics of change in rural areas, and observing this process from the perspective of laying foundations for civil society is a key task for the EESC.

2.4 The development of civil society in the rural areas of European Member States is influenced by economic changes (growing competition on markets), social changes (rural depopulation) and environmental changes (climate change); these changes have been particularly acute over the past few decades. The current processes overlap with far-reaching, historical changes affecting economic development.

2.5 Rural areas in the new Member States have experienced particularly dramatic changes. These changes are affecting all areas of life simultaneously — not only the economic sphere (including the banking sector), but also the social sphere (reform of healthcare, the social protection system), and the legal sphere (the changing role of local authorities, the law on non-governmental organisations, financial and tax regulations, etc.).

2.6 The former workers of major production farms, where the traditional features of the rural community became distorted, represent a legacy of the earlier period.

2.7 The rural population, which as a rule is not as well educated and has more limited access to information, is having major difficulties in finding its feet in this fast changing reality.

2.8 In the EU-15 some of these changes had already taken place, over a longer period. Despite this, these countries were also unable to avoid negative consequences, which, among other things, were associated with the concentration of agricultural production.

2.9 Moreover, the countries of the EU 15 have a much higher appreciation of the value of rural areas than is the case for the new Member States. Both public opinion and the media in the new Member States tend to mainly focus their attention on agricultural issues.

2.10 The first official non-governmental organisations to support rural development in Eastern and Central European countries were set up as early as the late 1980s. Compared to their EU-15 counterparts, non-governmental organisations are still coming up against more barriers, including differences in economic development, more limited access to new technologies and the various — including private — sources of funding, not to mention legal conditions and the attitude of the public authorities, which lack experience and have little faith in cooperation with the social sector.

2.10.1 Official figures for e.g. the ratio of NGOs to residents point to a lower level of community involvement in rural areas. However, if we take into account informal groups, neighbourhood networks, as well as the level of involvement by the rural population in matters concerning the areas where they live or knowledge of initiatives undertaken by the local authority, it appears that social capital of this kind is often higher in rural areas than in large towns and cities.

2.11 Since the start of the century, the development of rural organisations in the countries of Central and Eastern Europe has gained significant momentum. Furthermore, they have started to cooperate with one another and to set up structures at regional and national level. In several countries these were based on the model used in Scandinavia, where in almost every rural area there are local associations. In other countries, rural NGOs have established national agreements and "fora" to support cooperation and the exchange of experience and to represent rural communities in

contacts with the authorities. Organisations of this kind in the new Member States, which enjoy the support of Scandinavian organisations, have set up PREPARE — Partnerships for Rural Europe, which helps them to support one another and to improve the way in which they work.

3. **The European Union and civil society in rural areas**

3.1 For a very long time, rural policy focussed exclusively on matters directly concerned with agricultural production, and was uniform throughout the EU. By contrast, policy on infrastructure investment in rural areas, for example, was generally drawn up at national level. Only in the late 1980s did the view become more widespread that rural areas are too diverse to be able to apply uniform policy instruments drawn up at European or national level and that development goals and the objective of ensuring equal opportunities could not be effectively achieved without the commitment and involvement of the rural population itself.

3.2 The recently developed rural development programmes include instruments and solutions which to some extent meet the needs of rural civil society. One such instrument is the Leader programme, with a key role for NGOs in Local Action Groups (in the new programming period, the Leader approach will be applied to 40 % of rural areas in the EU).

3.3 NGOs can also benefit from other measures under rural development programmes concerning areas such as rural services; however, it is important to devise solutions for each country enabling organisations to provide services and build public-social or public-private partnerships which are open to NGOs. There is also scope for supporting NGOs through national rural networks.

3.4 The approach advocated by the Leader initiatives can be adapted according to conditions and needs in individual Member States. In many countries such an approach has been applied far more widely than the Leader initiative, with national and regional resources being employed to offer effective support for local initiatives (this has happened in Ireland, Spain and Germany, for example).

3.5 New Member States view the Leader initiative as an opportunity to promote action and to make more effective use of development resources in rural areas. It is vital that support is provided from both EU and national sources for the various types of initiative which help to strengthen civil society in rural areas.

3.5.1 Support for community action to meet the shared local needs of rural inhabitants is a highly positive trend in EU policy. Efforts to create civil society, ideally on a bottom-up basis, face numerous problems, not least in view of the need to overcome administrative barriers.

4. **National policies and civil society in rural areas**

4.1 A debate is now under way on the Community's agricultural policy and its policy towards rural areas. The outcome of this debate will have an impact not only on any changes to the funds earmarked for rural areas in the current budgetary period, but also on the guidelines for the future policy for the 2013-2020 period and beyond. It is extremely important that, aside from experts and politicians, the voice of rural communities is also heard in this debate.

4.2 New Member States lack experience of cooperation not only between the government and civil society, but also between individual ministries and departments within the same government. There is therefore virtually no coordination between decisions on rural areas taken within the framework of healthcare, education, social assistance, agricultural policy or rural policy in the narrow sense.

4.3 For the new Member States, the programming of spending of EU funds for the 2007-2013 budgetary period is only the second "exercise" of its kind, which, combined with the limited experience of officials and frequent changes of government, mean that several opportunities for rural development made possible by EU policy will not be fully exploited.

4.4 It should not be forgotten that one of the main conditions for ensuring economic and social cohesion in the enlarged EU is strengthening ties between rural and urban areas. Creating formal, often artificial divisions linked, for example, to requirements for preserving "demarcation lines" between resources from various EU funds (e.g. ERDF and EAFRD), and this at a time of frequently changing conditions of access and disconnect between the various decision-making procedures in these funds, can hamper complementary measures and deepen the divide between rural and urban areas.

4.5 Rural areas are mainly the focus of measures linked to conventional agricultural production or typically "social" instruments (unemployment benefits or support for semi-subsistence farms). Although these measures are absolutely vital (particularly in countries where poverty is concentrated principally in rural areas, such as in Romania and Poland), they also preserve the status quo and do not provide a basis for change. There are still not enough instruments enabling rural inhabitants to find alternative sources of income. Job creation in rural areas is still supported by institutions with links to agricultural development offering programmes which do not sufficiently promote non-agricultural professions.

4.6 The Lisbon Strategy could potentially play a significant role here, as innovation and competitiveness, in the broad sense, are also possible in rural areas. Unfortunately, these concepts are too often associated with new technologies and research centres in large towns and cities. As a result, a vast swathe of Community-based innovation, and innovation associated with heritage, environmental values and local traditions, remains untapped.

4.7 In many Member States, particularly the new ones, national policies are restricted to a narrow understanding of innovation and competitiveness (e.g. the conditions for EU support for businesses, with unusually high thresholds, running to several million euros, for businesses applying for support, something which all but excludes beneficiaries from rural areas and small towns).

4.8 Conservative and opportunistic attitudes among national politicians vis-à-vis rural communities reflect a lack of determination on the part of the authorities to put in place the conditions for their development, the lack of forward-looking policies on rural areas, and fear of civil society acquiring a role which could make political parties less important. With national authorities adopting such a policy, many rural communities look to the European Union to provide an impetus for change.

4.9 However, it is up to national authorities to create the conditions for dialogue between national institutions and society, while developing a culture of openness and transparency. This is all the more important given that relatively few inhabitants of rural areas (e.g. 17 % in Poland) believe that democracy has an important role to play in community life.

5. **Local authorities and civil society in rural areas**

5.1 In rural areas, local authorities have a key role to play in supporting initiatives by civil society and in cooperating with its representatives. They should act as a catalyst for the development of rural communities and stimulate joint activities undertaken by them.

5.2 Cooperation between rural organisations and local authorities is often fraught with difficulties. Relations between local authorities in rural areas and community organisations together with leaders of such organisations are difficult in all the Member States, although the extent of the problem varies. Widespread examples of best practice inspire confidence and reflect current developments and opportunities.

5.3 The problem of a lack of trust between the representatives of civil society and local authorities is particularly severe in the new Member States. While local government is perceived as a barrier to community initiatives, local government institutions view intensifying activity by community leaders in their territories as a form of competition which threatens their position. Civil society organisations seeking local government support or partnership for their initiatives are viewed with suspicion and resentment.

5.4 The barriers created by a lack of trust can be overcome through the implementation of projects and the existence of visible benefits to the municipalities (communities) in which there is close cooperation between local authorities and leaders of civil society organisations.

5.5 In rural areas efforts are being made — for example in the form of training — to develop positive relations and communication between local authorities and civil society organisations; however, further educational measures are needed to achieve a long-term solution to the problem.

6. **Barriers to the development of civil society in rural areas**

6.1 In addition to problems which are mainly characteristic of Central and Eastern European countries, many issues affect rural areas throughout the EU, such as:

— barriers to access to knowledge and the need to provide rural communities with various forms of education;

— more limited access to information and less capacity to use it;

— lack of entrepreneurial skills, difficulties in moving from agricultural to rural business activity;

— lack of gender equality [1];

— regional demographic problems, reflected in a lack of either women or men to be partners in running rural households; in some regions, rural depopulation;

— lower-quality social infrastructure than in cities;

— bureaucratic restrictions and a lack of support from government administration.

7. **Prospects for the development of civil society in rural areas**

7.1 Civil society activity can be increased in rural areas by improving decision-making methods in the area of governance both at national level (by involving civil society in the joint formulation of rural policies, instead of simply consulting civil society on ready-made solutions devised by civil servants), and at local and regional level (by involving communities in decisions on the allocation of development funds to specific projects).

7.2 The adaptation of development instruments to the capabilities and needs of specific rural areas requires an ever wider use of a bottom-up approach. This means that this approach should not only be used with regard to specific actions under the rural area development programme, but also as part of structural funding and national policy.

7.3 A solution to the key problems facing rural areas is possible, thanks to partnership between public, private (business) and non-governmental sectors. Enabling a community operating as a local partnership to decide or, at the very least, to participate in decision-making on how funds are used in order to create jobs, mobilise the unemployed or prevent exclusion can lead to an increase in local residents' sense of responsibility for the situation in their area and in their readiness to get involved for the good of their local community.

7.4 More attention should be given to building ties between the research sector and rural organisations. It would also be worth identifying and promoting best practices which have been developed in this area by numerous countries.

7.5 Education has an enormous influence on the development of civil society in rural areas. Changes to educational systems in rural areas should provide for the facilitation of initiatives by rural inhabitants who decide to organise local schools as an expression of concern for the education of future generations and as a particular form of community action which requires cooperation by authorities. Another type of best practice in some EU countries which should become more widespread concerns adult education (e.g. ″folk″ universities).

7.6 The mere fact of doing something for the common good is enough to strengthen the community. Findings from recent years show that those communities which have managed — through community involvement — to overcome their paralysis and conquer their inertia are willing to share their experiences with other less resourceful communities ([2]).

7.7 Equally, a greater emphasis should be placed on ensuring that rural organisations have access to financing. In theory, these types of opportunities are provided by both EU and national or international funding. However, recent research indicates that small NGOs (and it is primarily these types of organisations which operate in rural areas) make only very limited use of the currently available sources of financing.

7.8 Conditions should therefore be created to make it easier to provide NGOs with stable, flexible financing, including funding to finance their operations (institutional grants — as opposed to 'project-based' financing) and to identify mechanisms which can provide organisations in rural areas with easier access to funding — e.g. through the creation of 'regranting' mechanisms by intermediary organisations (as is the case in the LEADER approach, albeit on a wider scale).

7.9 These types of solutions will also make it possible to shorten the fund allocation decision-making process, which is a key issue in the case of small, locally focused projects.

7.10 Making civil society more active in rural areas can lead to the improved coordination of various types of 'sectoral' policies (education, health, social, environmental protection etc.) — if only because, unlike public sector agencies, NGOs have a tradition of setting up cooperation networks and are more experienced in this area.

7.11 Nonetheless, the possible introduction of 'rural proofing' on a wider scale should be considered, as has been applied in certain Member States. this mechanism would involve analysis of how particular legal solutions (not directly connected with rural areas, in fields such as education or public procurement) affect the situation in rural areas. It is also vital to ensure that such assessments are carried out with the involvement of civil society organisations.

([2]) This can be seen not only within individual countries (e.g. in Poland where, as part of the Krajowa Sieć Grup Partnerskich [National Network of Partner Groups], more developed groups supervise and support less experienced groups), but also between countries (e.g. the assistance given by Polish rural organisations to Ukraine, by Slovak organisations to Serbia, or by Hungarian organisations to Albania). These types of activities, however, require institutional support and wider promotion as 'best practices.'

7.12 Consideration should also be given to institutional solutions which can help strengthen the potential of rural areas. There can be little doubt that such solutions (institutional support, assistance in organisational capacity building and promoting the concept of the public-social partnership) would be useful in those counties currently preparing for EU membership.

7.13 It is important to put in place various instruments to ensure improved access to information for rural communities — such instruments should take the specific situation of each country into account (e.g. involving the media and local administration, setting up information points), taking into account the extent of Internet access. Schools, agricultural organisations and trade unions could play a key role in this process of disseminating information, alongside NGOs.

7.14 At the same time, steps should also be taken to make the transfer of experiences between the new Member States and candidate countries easier.

7.15 It would also be useful to identify mechanisms which can encourage closer cooperation between urban and rural organisations — including through the appropriate development of rules for the use of EU funds. This would, however, mean overcoming 'sector-based' thinking and limiting the tendency to establish strict boundaries between various funds.

7.16 The current debate on the future of rural areas can provide an opportunity to raise awareness of rural issues among urban inhabitants as well. A number of interesting experimental projects have been carried out in recent years (e.g. as part of the European Citizens' Panel) [3]; these projects have managed to introduce the debate to a wider group of people who were not previously interested in such issues. Rural and urban organisations could get involved together in projects aimed at raising awareness.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

[3] www.citizenspanel.eu.

Opinion of the European Economic and Social Committee on 'The social implications of transport and energy developments'

(2009/C 175/08)

On 17 January 2008, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

The social implications of transport and energy developments.

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 10 November 2008. The rapporteur was Ms BATUT.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 4 December), the European Economic and Social Committee adopted the following opinion by 107 votes to 29, with 15 abstentions.

1. **Conclusions and recommendations**

1.1 *Conclusions*

1.1.1 **Transport and energy, an inseparable pair which are vital** for competitiveness, development, wellbeing and cohesion, are under three different kinds of pressure — economic, social and environmental — against the background of shortfalls in European energy supply and instability of external supply, which cause prices to fluctuate and may allow them to keep rising for a period of years.

The Committee considers that a broad-based, forward-looking debate is needed on the essential character of the transport-energy pair for the people of Europe, on the impact which it has on their way of life, especially in difficult times, and on the action which the European Union could take in this area in order to safeguard the wellbeing of its people.

1.1.2 **Maintaining** the European social model depends partly on the transport-energy pair, the rising price of which over the long term will affect the lives of individuals, businesses and employees, as well as mobility and employment in general. **The transport-energy pair is becoming the fourth exclusion factor**, alongside housing, employment and wages. The fact that some people do not have access to transport or energy excludes them from e-society. The success of the Lisbon strategy is under threat on three fronts — social, economic and environmental.

1.1.3 The market and prices: consumer prices incorporate factors like liberalisation, the euro exchange rate, the state of the financial markets, tax, the cost of renewables, the fight against climate change and external elements. The market cannot regulate everything on its own. Several instruments should be prepared to boost social inclusion and to promote a fairer apportionment of costs and prices.

1.2 *Recommendations*

1.2.1 The EESC considers that it would be **socially** useful at times of rising prices for the **EU to encourage** some categories of consumers **to differentiate**, on the basis of dialogue, **between the 'essential' component, where support could be offered, and the 'optional' component of the consumption of transport and energy**.

1.2.2 **The Structural Funds** could take on a new role in promoting energy solidarity and preserving public mobility

1.2.3 **The allocation of public funds** between R&D activities should be **balanced** at EU level to optimise climate protection and the Union's energy independence.

The EESC would like to see an ongoing effort to promote a level of research likely to lead to rapid and significant advances on new energy sources and their use, with no let-up in this constant effort as soon as prices fall, as happened following the first oil shock.

1.2.4 **The legal rules on state aid** should systematically exempt national support funds from competition rules concerning research, thus giving investors a degree of security likely to encourage the use of new technologies and the maintenance and creation of jobs.

1.2.5 The extension of the RSFF ([1]) to innovative SMEs would help to develop their competitiveness while encouraging specific improvements to the transport-energy pair.

([1]) RSFF: Risk-Sharing Finance Facility, a cooperation agreement set up by the EIB on 5.6.2007 and intended for RDI in Europe, with EUR 10 bn of funding.

1.2.6 **The extension of the EGF** ([2]) and the broadening of its access criteria would help mitigate the negative impact on workers of measures to combat climate change.

1.2.7 In order to help the European economy remain **competitive while also ensuring social cohesion**, the Committee would like to see:

— **a blueprint for a common industrial policy** angled towards sustainable development and successful transport co-modality ([3]);

— **an energy policy** based on solidarity between Member States and consistent with climate protection;

— **studies on the appropriateness and feasibility of a European energy SGI** for the public, with a common approach to prices, tax at the pump, financial security rules, economic development and climate protection: **the role of energy and transport public services in the Member States** ([4]), at the intersection of regulations, the regions, respect for people's fundamental rights and employment, would thus be improved;

— **quantitative and qualitative objectives and measurement instruments** on the efficiency of separating network and distribution activities, and the impact on prices;

— **consumer surveys** on the harmonisation of European taxation at the petrol pump, with the results widely publicised, and, once appropriate indicators have been drawn up, analysis of the impact on the environment of essential transport;

— **the opening of a genuine dialogue** on future climate plans in order to prevent distortions of competition and social dumping.

1.2.8 Moreover, **at company level**, the EESC considers it necessary, in relation to business and services in the European Union:

— to encourage the launch of **social dialogue and negotiation on essential transport and energy expenditure**, as a component of the minimum wage;

— to **promote the negotiation of sustainable mobility plans** for business or services;

— and to **establish a system of EMAS-type certification for businesses**;

— to **assess the gains attributable to the certified reduction of energy and transport consumption** by businesses or services, in accordance with the criteria to be laid down by means of dialogue, **with a view to sharing them out** in accordance with a method negotiated between businesses and their employees;

— **to carry out qualitative studies on the health of employees**, with regard to the use of transport and the energy sources to which they are exposed, **with a view to establishing safeguard measures**.

1.2.9 **At EU level the EESC considers it necessary to open up civil dialogue:**

— on the **cultural dimension and the human challenge** which need to be met throughout the Union to ensure that transport and energy are accessible to all at affordable prices, thus contributing to human welfare and understanding of the diversity of the Union;

— on the promotion of **civic education** covering the proper management of transport and energy, **beginning with the primary cycle**;

— on **public health in general by means of broad-based surveys**, in the context of the use of transport and energy sources to which people are exposed, **with a view to establishing safeguard measures**;

— the EESC considers that the Union could establish **a standardised information system**, comparable to that for VAT (not a label), **with the aim of raising the awareness of the public to transport/energy/environmental issues**, with a **line being added to the label** on every consumer good reading: **APCO$_2$ — added production of CO$_2$**;

— **the EESC considers that** the standardised system developed in Europe could be used in **world trade negotiations**, and that the results could be incorporated into existing trade documents, based on the Edifact model ([5]), with annual

([2]) European Globalisation Adjustment Fund.

([3]) Definition of co-modality: 'the efficient use of different modes of transport on their own and in combinations', June 2006 mid-term review of the Commission White Paper on European transport policy for 2010: time to decide.

([4]) Article 73 TEC: 'Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service'. See also Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway, OJ L 130, 15.6.1970, p. 1-3 and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

([5]) Electronic Data Interchange For Administration, Commerce, and Transport, a UN standard which defines both syntax and content: this is adapted by national and sectoral standardisation bodies to ensure that the needs of each activity are taken into account.

monitoring by civil society, by analogy with the UN's Economic Commission for Europe (UNECE) which reports each year on Edifact ([6]) to the Economic and Social Council of the United Nations. The Union could make use of the system at global level.

2. **Possible areas of action for the EU**

2.1 *Diplomacy*

2.1.1 The EU's energy independence, economic growth, maintaining Europeans' standard of living and social and environmental sustainability are connected with the supply capacity of the Member States.

2.2 *Markets*

2.2.1 Demand for transport and energy and the production of greenhouse gases are increasing. **European markets** for **energy** and the network industries remain fragmented, although there is a trend towards integration (2006 — linking of the markets of France, Belgium and the Netherlands, probably to be extended to include Germany in 2009, establishment of a European spot market ([7]), search for possible mergers). The path chosen, liberalisation with separation of networks (gas, electricity) may nonetheless pose threats in future, such as purchase by non-EU funds (sovereign wealth funds), acute shortages, with no jointly managed reserve capacity and lack of control over prices, with disastrous consequences for consumers. Nuclear power is once again a crucial issue for the European Union: it would be irresponsible not to address it at Community level.

2.2.2 Travel is necessary for work, tourism and getting to know Europe and other Europeans. This declines when energy prices are too high, with serious implications for individuals, companies, employment and economic activity.

2.2.3 An energy mix and inter-European solidarity are needed to prevent further fragmentation of the market. A mobile and inclusive society needs coherent regulation and regulatory enforcement bodies. And civil society can point the way.

2.3 *Price formation*

2.3.1 Factors affecting the formation of the prices paid by the consumer:

— **Liberalisation**: consumers have not experienced the full impact of the lower prices which were promised.

— **The interaction of prices** which have an impact on one another: energy prices on transport prices, the price of oil on the price of gas, which together determine sales policy; the practices of producers and distributors which drive the increase and extract the maximum profit and then halve prices when there is a lack of liquidity.

— **Exchange rates**: the strength of the euro against the dollar before the crisis ought to have helped to cushion the price rise, but very strong demand and high prices still impacted on the Eurogroup countries, particularly as high national taxes are levied at the pump ([8]); and since the crisis began the falling euro/dollar exchange rate has reduced the effect of lower producer prices.

— **The state of the financial markets**: the lack of liquidity caused by the crisis of late 2008 has led to a fall in the price of crude oil, with sellers adapting their prices to the ability of buyers to pay, so as to minimise their losses; but the price of petrol at the pump at the start of the crisis benefited little from the decreases, while the economic and social fallout of the crisis was beginning to be felt.

— **Taxation**, which is levied at high rates on energy and differs between Member States, should be reviewed and properly harmonised between European countries.

— **The niche for renewables**: They took advantage of global energy price increases which counteracted their initial cost, but there is as yet little tangible gain for the average consumer. At the same time, the fall in costs might weaken their position.

— **Externalities** such as the polluter pays principle already play a part, and others could play a part — such as opening up to true competition between suppliers of oil products or a harmonised European diesel price.

2.3.2 The EESC believes that **the role of the EU should be to promote solidarity**, promote a master plan for a common industrial policy based on research into sustainable development and successful co-modality in the transport sector and improve European political stability through regulations. A serious study of the impact on prices of the separation of network and distribution or operating activities would be helpful in drawing up these policies.

([6]) The 56-member Economic Commission for Europe (UNECE), is one of the five regional commissions of the UN's Economic and Social Council (ECOSOC). In addition to Europe, it also covers the United States, Canada, Israel and the Central Asian republics.

([7]) A spot market deals in currencies, rates or commodities for same-day or next-day delivery.

([8]) The German Federal Statistical Office DESTATIS estimates that energy prices have pushed up producer prices by 3.8 % in one year. In the same period, prices rose by 7 %, oil derivatives by 19 % and electricity by nearly 10 %. Without energy, prices would have risen by only 2.7 % over the year, according to DESTATIS. (Quoted by the newspaper Les Echos, France, 21-22 March 2008.)

2.4 *Funding*

2.4.1 Public funding

It is only necessary here to highlight certain aspects relating to the social implications ([9]). In the case of public funds, careful thought should be given at Community level to their allocation between activities yielding benefits in the short term and research work, in order to obtain the best balance at EU level between climate protection, the Union's energy independence and public welfare. Any balances remaining from the Community budget that have been allocated but not used should systematically be placed in a fund to support research and innovation. A guarantee could be given under the State aid legislation that national funds would be exempt from the application of the competition rules, which would give legal certainty to investors, thereby encouraging the use of new technologies and the creation and maintenance of employment. Support should be given to SMEs to help them reach the critical level of growth defined in Lisbon in 2000, maintain and increase employment and maintain their innovation capacity.

2.4.2 Aid for consumers

The European Union has powerful tools (Structural Funds, regional policy). Before the crisis the international experts thought that the upward trend in energy prices was a long-term phenomenon. The European Commission might examine the Community solidarity needed to limit exclusion by energy poverty should prices go up again and thus avoid a damaging impact on the EU's GDP, and in the event of a depression (falling prices accompanied by falling consumption as a result of reduced purchasing power, among other things), in order to support demand.

One of the social implications of transport and energy developments is to make everyone prisoners of rising prices when external pressures generated by globalisation and the financialisation of the economy, which led to the crisis, are depressing household incomes and purchasing power and the EU is experiencing underemployment. Furthermore, prices depend, to a large extent, on indirect taxation, which is not progressive.

The EESC believes that it would be socially useful for the EU to encourage price differentiation between 'essential' and 'optional' travel for the first kilometres travelled and the first litres of petrol and kilowatts of electricity used, based on an estimate of use and categories of user, to be determined by dialogue. Aid systems, for the benefit of the most disadvantaged, could then be established for the essential component.

The EESC considers that studies should be carried out on the feasibility of a European energy SGI which could be harnessed to the common energy policy. A common approach to prices would make this parameter a tool for maintaining economic development while also tackling climate change and promoting consumer interests by a fairer allocation of costs.

2.5 *Taxation*

2.5.1 Taxation plays a part in price formation (the environmental badge is the most recent example of this). The Member States have retained a certain amount of discretion. A policy of closer market integration would no doubt lead the EU to review the tax situation and would mean greater transparency for the citizen-consumer.

2.5.2 The TIPP, an excise duty defined by the Union, is levied by volume and VAT by value. VAT, like any indirect tax, is regressive, in that everyone has to pay it regardless of their income: the most disadvantaged socio-economic groups are therefore hardest hit. The people of the Member States are, however, unequal when it comes to tax at the pump, and this should be the subject of public studies and enquiries aimed at consumers with a view to finding the best solution leading to convergence. 'European' diesel would have an immediate transparency effect ([10]).

2.6 *Research*

2.6.1 The new impetus to productive investment must be on a scale likely to lead to significant and rapid advances, without which it will be impossible to ensure that the EU maintains its leading role in the fight against climate change, or to preserve the living standards of Europeans or the future of Europe. A free system for granting European patents in the field of renewable energies and clean, economic transport would reduce the lead time between discovery and marketing. Such a policy would not be incompatible with Article 194(1)(c) of the Treaty of Lisbon. We have to take certain reasonable risks. A 20 % increase in energy efficiency is now a requirement for EIB investments. This could be aimed at innovation ([11]) and made available to a number of companies.

([9]) EESC opinion, in particular Alleweldt, *Preparing transport infrastructure for the future*, CESE 93/2004, 28.1.2004; Krzaklewski, *Trans-European networks: Towards an integrated approach*, 28.3.2008, OJ C 204, 9.8.2008, p. 25.

([10]) 'Taxes on fuel complete the transport infrastructure charging picture by adding external costs to the prices paid by users. In particular, they incorporate the external cost component linked to greenhouse gas emissions. With the road transport sector now fully opened up to competition, the absence of harmonised fuel taxes seems increasingly to be an obstacle to the smooth functioning of the internal market.' White Paper — European transport policy for 2010: time to decide, European Commission, 2001.

([11]) See EESC Opinion, Rapporteur Mr Wolf, The possible positive or negative impact of increased environmental and energy requirements (policies) on the competitiveness of EU industry, 20.2.2008, OJ C 162, 25.6.2008, p. 72.

The opportunity for SMEs to benefit from the RSFF (see point 1.2.5) could increase the implementation of innovations in all regions. For example, car-sharing initiatives are developing but, as in St Brieuc and Rennes ([12]), they are dependent on the level of local subsidies, although they offer mobility, lower CO_2 emissions, time savings and social benefits through their accessibility to the disadvantaged, given the modest cost of using the service.

2.7 *The regions*

2.7.1 **Transport and energy are the lifeblood of the regions** and an opportunity for local development (see the impact of the opening of high-speed train lines on France's regions). But transport, which was traditionally a driving force for the economy and spatial planning, becomes a hindrance when energy costs are high.

2.7.2 The EU is adopting a policy on energy and the climate with quantitative targets and it will need instruments to measure them. It would be interesting to measure the qualitative aspects in a harmonised way throughout the Union, and the regional dimension of energy and transport is well placed for **evaluating the expression of needs**. At local level a detailed knowledge of trends makes it easier to manage resources.

2.7.3 The **regions receive aid** from the EU's regional policy. The breakdown of this aid could be used as a research indicator of public welfare with regard to transport and energy. Developments in the transport-energy pair can affect entire areas of the economy, with serious social consequences when their combined negative trends hit a sector like fisheries, whose profits have already been eroded by successive price increases in these two areas.

2.7.4 The distribution of economic activities and the management of **residential mobility in the cities** ([13]) determine daily commuting. A binding local employment clause could be supported, as appropriate, by the Structural Funds (whereby a percentage of jobs would be reserved for local residents and tax benefits would be granted to firms that adopted this policy). Employment, housing, equal opportunities and hence wages and the fourth factor of transport may or may not play a part in promoting social inclusion.

Solutions which avoid the social impact of adjusting costs borne by the community can be found, for example by the coordinating and drawing up of new priorities for urban policy in the areas of housing, employment and transport.

With a legally secure national and European framework, the sharing of actions between the regional and local authorities, companies and households could be optimised.

2.8 *Public services*

2.8.1 For energy the situation is 'oligopolistic' rather than fully competitive. The impact on access to the network and price policy is seen in an unfavourable light by the consumer (e.g. closure of small stations and bus services deemed unprofitable, consumer price rises, cost of energy etc.). National public services operate at the intersection between regulations, the actions of the regions, respect for the fundamental rights of the citizen and employment.

The role of government is to mitigate the impact of change and the resulting uncertainty for the public. Local authorities should act to cushion economic and financial shocks in their areas. Being in the front line of transport/energy developments, they are seeking solutions.

There is a need for new governance instruments operating at the local, regional, national and Community levels. Community programmes could be better publicised and more open to experimentation.

2.8.2 The distribution of jobs in local labour markets would be improved by being linked to the organisation of urban transport. The role played by the local public employment services is very important; they should take account of the new constraints on energy and transport.

2.8.3 Regional network coverage is the result of political choices and investment. Action on price formation means ensuring access and affordable prices and the inclusion of the disadvantaged. Transport, the need for it, its high cost, and in some cases its scarcity, can be regarded as the fourth factor in exclusion, after housing, employment and income. There is also a need for careful monitoring of the social consequences of the new obligations which will be imposed on transport (energy-climate package). Economic efficiency can be sought in a systemic approach to transport policy, intermodal links, competitiveness and profitability of all the geographical areas and time slots ([14]), and technological and social research so as to optimise resources and reduce costs. This requires political will and the involvement of stakeholders.

([12]) Breton municipality, France: the study group drawing up this opinion held a hearing in St Brieuc.

([13]) EESC Opinion, rapporteur Mr Ribbe,*Transport in urban and metropolitan areas*, OJ C 168, 20.7.2007, p. 77.

([14]) St Brieuc, Brittany, France — hearing of 6 October: establishment of 'virtual' local on-demand transport routes with a computerised coordination centre for the integrated of transport mode use by local users and providing information on other networks (ITS, Intelligent Transport System).

2.9 *Health*

Transport and energy developments also have an impact on public health, which justifies taking steps to offset earlier choices, subject to compliance with the Energy and Climate Package, already being prepared in the Commission White Paper on transport.

2.9.1 **The causes of damage to health arising from regular daily use of transport** for long commuting journeys have an impact on social systems: difficulties of staying in work, stress, asthenia, given the range of ailments observed in adults: allergies and RSI, and in young children: allergies, bronchiolitis, etc.

The use of non-sustainable energy causes pollution of air, fresh and salt water, soil, the food derived from it. Moreover, the return to nuclear energy with its potential dangers should be given consideration, as well as public education on nuclear energy, which is becoming a necessity in view of the increase in demand for this form of energy in the Member States which produce it and their ageing nuclear power plants.

2.10 *Employment*

2.10.1 Growth (**Lisbon** strategy) and sustainable development **come up against expensive energy and transport and now the effects of the financial crisis**. Social and employment-related issues connected with the social dimension of the Lisbon strategy must be taken into account. Liberalisation has already had major consequences for workers in the gas/electricity sector.

2.10.2 The increasing 'communitarisation' of climate policy in the EU call for a **genuine social dialogue** at macroeconomic level, leading to negotiations on future 'climate plans' for Europe, in order to avoid distorting competition and social dumping. The European Commission could help the social partners by introducing a mechanism enabling them to anticipate, prevent and, where necessary, take flanking measures to accompany the far-reaching economic and social changes which will result from the implementation of the new climate policies which will affect transport and energy.

2.10.3 The EESC believes that the resources devoted to applied research should be genuinely increased so that the development of innovative technologies can create jobs, in particular in SMEs and micro-businesses.

2.10.4 The EESC **supports extension of the EGF** (European Globalisation Adjustment Fund) to limit the negative effects on workers of measures to tackle climate change. The EESC considers that all disadvantaged social groups who are at risk of poverty or who suffer from exclusion should be covered, and that the workings of this fund consequently need to be reviewed, beginning with widening of the criteria for access to the EGF.

2.10.5 The EESC considers that unavoidable expenditure is weighing increasingly on the least well-off, threatening their **e-integration**, another factor contributing to loss of employment and social exclusion. The EU must ensure that prices remain affordable for ordinary people, while reinforcing energy security.

2.11 *Social dialogue within companies*

2.11.1 Developments in transport and energy have an impact at **microeconomic level** within the company, and the social dialogue should take account of this.

— The social dialogue could look at **staff and management training** in sustainable, energy efficient-lifestyles and non-polluting transport.

— There could be an **obligation to negotiate a sustainable mobility plan** for the company or service.

— The employer could be encouraged to r**ecognise employees' transport costs** as part of the minimum salary package, according to scales to be established by social dialogue.

— The establishment of **certification for businesses** ([15]), to be defined through social dialogue.

— The sharing should then be negotiated of the gains obtained from cutting energy consumption and transport use at work, which would be evaluated on the basis of criteria to be defined by dialogue.

This is a whole new area for social dialogue within companies.

2.12 *Culture and education*

2.12.1 Transport and energy have long had a **cultural dimension**, which has been made accessible to many citizens as a result of the democratisation of transport and energy. This dimension, which has become part and parcel of European integration, must be preserved. It is a **human challenge** for the understanding and practice of European diversity.

([15]) Eco-Management and Audit Scheme (EMAS)-type certification, 1995 Regulation, revised in 2002 and 2004, Regulation 761/2001 on voluntary participation.

2.12.2 The EESC therefore believes that the developments now underway present an opportunity to promote **citizenship education starting in schools** for a better understanding of other Europeans and a properly managed use of transport and energy resources. It would also aim to teach everyday acts of citizenship, while at the same time taking account of the most disadvantaged groups in society, such as the disabled, the elderly and those suffering from social exclusion. Such education could be combined with health education, which it would usefully complement ([16]).

2.13 *Action of organised civil society*

2.13.1 Individual action

Everyone is obliged to acquaint themselves with, and is entitled to expect **transparency** in, the decisions that come from both the institutions and structures such as regulatory bodies. The EESC believes that a major publicity campaign is needed.

The EESC reiterates its support for the Commission's proposal of 5 July 2007 ([17]) for a **European Charter on the Rights of Energy Consumers**, which would guarantee their rights, the protection of which '*cannot be left to market forces alone*' (Charter points 1.2 and 1.8).

2.13.2 Public action

Responding to the challenges of energy policy calls for a degree of **social mobilisation** which requires the **support of citizens and voluntary effort on their part**.

To this end the EESC suggests **raising public and consumer awareness by carbon labelling of all consumer products**.

Even when people have the opportunity to make responsible choices, they do not have the necessary information. Two complementary levels of action would enable the Union to act while maintaining the competitiveness of its businesses:

— at **macroeconomic level**, as demonstrated by the EESC Opinion of 20 February 2008 ([18]);

— at **microeconomic** level, where consumer choice would be made possible if companies, on the basis of standardised EMAS-type certification, **showed the carbon production added at each stage of the value chain** on the label of every product, good or service. Partial trials of this approach are already underway in Great Britain and, outside the EU, in Vancouver, Canada.

This **labelling system**, comparable to that for VAT, would raise people's awareness when consuming goods and services. '***APC-Added Production of CO_2***' would be shown on every accounting document, from the till receipt from the supermarket to the pay slip. It would apply to every product and service and would enable everyone in the EU to see what was at stake on the basis of objective information.

Payment of the costs of CO_2 production would not be linked to this. The priority at this point is to **raise awareness** among everyone using a **simple method** in all sectors.

The EESC considers that international trade negotiations could adopt this European practice. The results could be included in trade documents that have already been standardised, along the lines of *Edifact* and subject to annual monitoring by civil society: the Economic Commission for Europe, for example, reports to the United Nations Economic and Social Council (ECOSOC) annually on the state of *Edifact*.

The EU has a head start in recognising the need to consider transport, energy and the environment together as three parts of the same policy. It could turn this to good account at international level.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

([16]) See EESC Opinion, Rapporteur Ms Sharma, *Obesity in Europe — role and responsibilities of civil society*, OJ C 24, 31.1.2006, p. 63.

([17]) EESC opinion, rapporteur Mr Iozia, *Towards a European Charter on the Rights of Energy Consumers*, 16.1.2008, OJ C 151, 17.6.2008, p. 27.

([18]) EESC opinion, Wolf, referred to above.

Opinion of the European Economic and Social Committee on 'The European aeronautics industry: current situation and prospects'

(2009/C 175/09)

On 27 September 2007, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The European aeronautics industry: current situation and prospects.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 November 2008 The rapporteur was Mr OPRAN and the co-rapporteur was Mr BAUDOUIN.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December 2008), the European Economic and Social Committee adopted the following opinion by 110 votes in favour, 9 against with 5 abstentions.

PREFACE

This opinion concerns the fixed-wing sector of the EU civil aeronautics industry serving the passenger and freight transport market. Other sectors (military aeronautics, helicopters, maintenance etc.) are explicitly excluded from the scope of this opinion.

Part I — Conclusions and recommendations

Objective: Maintaining the global leadership of the fixed-wing sector of the EU civil aeronautics industry: identifying threats, defining priorities and proposals for a successful strategy for 2008-2012

1. The STAR 21 report reveals that the industry has played a greater role in developing partnerships with the world of research (universities, other higher education institutions, government laboratories, etc.). The aeronautic sector is a melting pot of crucial skills and technologies and an essential lever for innovation. This industry is built on the civil and defence sectors, which are interdependent and rely on the application of state-of-the-art technologies.

1.1 The aeronautics industry — both civil and military — plays a decisive role as a solid industrial base and in terms of technological development and economic growth. It also carries weight at the international level and influences economic and political decisions.

1.2 Moreover, it contributes to creating high-skill employment in Europe and pays relatively higher salaries than other sectors.

1.3 In short, the Lisbon Strategy (2000) and the conclusions of the Barcelona European Council (2002) [1] are still as relevant as ever.

2. The Committee believes that there are five key factors that present a real risk to the European aeronautics industry unless they are anticipated by political and industrial decision-makers.

2.1 The exponential increase in the cost of developing aircraft, combined with the inability of manufacturers to finance the entire development of new models themselves, in their European industrial strategies, leads to the financial risk being transferred to equipment suppliers and subcontractors, ever longer delays in obtaining a return on investment and an increase in debt and insecurity for equipment suppliers and subcontractors.

2.2 The weakness of the US dollar, beginning in 2005 until the start of the current global crisis and continuing today with a fluctuating and volatile exchange rate (characterised by a general growth tendency vis-à-vis the euro, with no economic justification), entails:

— a loss of competitiveness for European industry [2];

— constant efforts to minimise fixed costs (the wage bill);

— an incentive to relocate to the dollar zone;

— a reduction of the number of subcontractors in Europe;

— an encouragement of partnership development in other areas outside Europe.

[1] 'In order to narrow the gap between the EU and its major competitors, an overall effort must be made to boost R&D and innovation significantly in the European Union, with particular emphasis on frontier technologies.'

[2] Between 2000 and 2007, the euro rose by 48 % (66 % if you take into account the average exchange rate of the first eight months of 2008) against the US dollar; if this phenomenon, which has currently come to a halt, resumes (or even intensifies), it could force Airbus to cancel 'Power8' (developed for a maximum euro:dollar parity of 1.37) and introduce further cutbacks, which would have disastrous social and political consequences.

2.3 The effect known as the '*Papy Boom*', which will reach its height in 2015 ([3]), will cause many high-skill jobs to be lost (half of those employed in the European air transport sector are due to retire by 2015), which means that strategic skills could be lost forever.

2.4 Increasing competition and the emergence of new and very aggressive competition in the regional aeronautics sector (from India and Brazil) has led the industry to cut costs in order to improve its competitiveness and profitability, as well as establish partnerships with emerging countries such as China despite the risks involved in technology transfers and the establishment of local manufacturing operations to penetrate these new markets. This competition also causes manufacturers to focus on the core business of their customers.

2.5 Currently advantageous oil prices should not mask the persistent uncertainty as to short- and medium-term price fluctuations, in the context of a global economic crisis whose full scale and duration cannot yet be determined. These factors impact on demand, undermine airline companies and force manufacturers to consider ways of cutting aviation costs, particularly through the use of alternative fuels and corresponding technologies.

3. The Committee believes that the sector's key challenges consist in remaining competitive, being useful to the public and broadening its international reach.

4. The Committee therefore has several **recommendations** to propose and urges the Commission and the Member States to place emphasis on the leading role played by the aeronautics industry in the EU and its importance for the public due to its knock-on effect for many other European industries.

4.1 With reference to technological development, growth and cooperation, a new framework has to be set up to encourage businesses in different EU countries to work together more effectively in order to set and meet their industrial priorities. This will strengthen competitiveness and improve reactions to market fluctuations. There is an urgent need to set new quality and efficiency standards by maximising the effectiveness of R&D financing.

4.1.1 Coordination between the European Commission and the European Defence Agency (EDA) must be increased in order to promote the development of new dual-use technologies to be implemented in both the military and civilian segments of the aeronautics industry. At the same time, it is vital to ensure that the European commission and the EDA have control over the further dissemination of technology which may be of use in both the military and civilian segments of the aeronautics industry.

4.1.2 Industrialists should receive support — with particular attention being given to the development of SMEs in the equipment supplier sector of the supply chain — for a quick and in-depth implementation of CLEAN SKY JTI; this would, on the one hand, contribute to meeting the EU's environmental objectives and, on the other hand, enable the industry to play an important role in the establishment of a new-generation air traffic management system (SESAR-ATM) to support the Single European Sky programme (SES) ([4]).

4.2 The Committee advocates promoting the direct active participation of EU countries with a recognised tradition in aeronautics to set up a network of European aeronautics subcontractors with the capacity to give effective support to aircraft manufacturers such as Airbus, Saab, Alenia, ATR, etc. It is important to maintain and increase their skills, notably by concentrating on new technologies.

4.3 The EU regional aeronautics sector is making a significant recovery thanks to ATR aircraft ([5]) and the fuel economies they permit. The aeronautics market is also shifting towards RJ aircraft (regional jets) ([6]). The Committee underscores the importance of supporting businesses that have developed innovative industrial strategies like 'Open Innovation'; SuperJet International is probably the best example to date.

4.4 The Committee considers it vital for Member States to reduce the dependence of subcontractors on current principals (support for market diversification and internationalisation) and draw up a charter for long-term reciprocal commitment between manufacturers and their subcontractors.

([3]) The '*papy boom*' (French: 'granddad boom') refers to the large number of retirements taking place between 2000 and 2020 in the developed countries. It is a logical and predictable consequence of the post-war baby boom and the drop in the birth rate, which results in demographic ageing. This phenomenon will have a major impact on the economy, raise health care and pension costs and lead to a reduction in the active population.

([4]) An EU initiative to structure airspace and air navigation services at pan-European level in order to better manage air traffic and provide a uniform and high level of safety in Europe's skies.

([5]) ATR, which had received 12 orders in 2004, received 113 firm orders in 2007 (source: ATR).

([6]) *Regional jet*: civil passenger aircraft with a seating capacity of less than 100 (which, in due course, will encroach on the single-aisle 'short haul' sector).

4.5 The Committee is convinced that there is an urgent need to support the development of innovative strategies by subcontractors in order to enable them to supply new high added-value products and services in the long term and to help them work together in order to reach critical mass.

4.6 Despite the EU-US dispute at the WTO, the Committee advises the Commission and the Member States to consider a financing procedure that would ensure the continuity of the manufacturing process. This procedure could take the form of pooled loans for subcontractors in the sector. It could also take the form of loan guarantees based on refundable advances or EIB (European Investment Bank) loans at preferential rates. It would also be appropriate to develop measures to cover financial risks of, for instance, fluctuating exchange rates.

4.7 In addition to the industrial aspect, the Committee believes that developments and changes in employment should be anticipated by introducing job and skills forecast management at all levels, i.e. the occupational sectors and EU, national, regional and local bodies. Setting up observatories for occupations in the aeronautics sector would help to identify the jobs of tomorrow and training needs, in cooperation with academic authorities.

4.8 The Committee underlines the importance of creating economic monitoring tools in order to follow developments in the performance of businesses and identify risks as early as possible. On the one hand, these tools have to be innovative in training terms and, on the other hand, they have to strengthen ties between research, universities and the industry so that young people and workers can be better prepared for the jobs of tomorrow and technological changes on the horizon.

4.9 The development of interactions between poles of competitiveness in order to meet environmental and technological objectives set by the EU should lead to networking and a better distribution of roles and European funds, which would prevent competition among European regions and improve synergies.

4.10 EU financial participation should fall within the framework of competitiveness poles. These were created so that that the EU could remain at the forefront of state-of-the-art technologies with a competitive and innovative industry that meets high environmental quality (HEQ) standards. For instance, when using composite materials for their strength and lightness we should take into consideration whether or not they can be recycled or destroyed.

4.11 The Committee stresses the importance of a rapid implementation of a set of measures on:

— making air transport more environment-friendly;

— passenger satisfaction and safety;

— the reduction of CO_2 emissions by the air transport sector (in line with EU policies on the overall reduction of CO_2 emissions in Europe), noise pollution and fuel consumption;

— the development of concepts that make it easier to dismantle old equipment (use of recyclable materials etc.).

4.12 The Committee believes that the Commission and the Member States should react very swiftly to the need for a strategic aeronautics policy. Such a policy would include the implementation of practical measures at EU level and in regions with an aeronautics tradition in order to better forecast change and minimise its social impact. The Commission and the Member States should facilitate the implementation of a social dialogue committee within the EU aeronautics sector, as recommended by the social partners.

Part II — Reasons

5. *Context and background*

5.1 In 2007, analysts predicted that air traffic would more than double within the next twenty years at an average growth rate of 6 % per annum (5 billion passengers by 2025 as opposed to approximately 2 billion in 2006). In order to meet the expected increase in traffic, forecasts for orders for new aircraft (90-plus seating capacity) over the next twenty years are optimistic and range between 22 600 (source Airbus) and 23 600 (source Boeing) aircraft.

5.2 The growing liberalisation of air transport, the explosion of demand in emerging countries (Asia-Pacific and the Middle East) and the financial recovery of airlines in 2007, should be able to sustain the process.

5.3 On 27 September 2007, the EESC assembly authorised the Consultative Commission on Industrial Change (CCMI) to draw up an own-initiative opinion on the future of the aeronautics industry in Europe (excluding the military aeronautics sector, helicopters, maintenance, etc.).

5.3.1 The Committee decided to draw up this opinion because the aeronautics industry is of fundamental importance to European industry as a whole due to its weight in terms of production, exports, employment and investment in R&D. It is also the driving force for a number of industries (subcontractors and downstream sectors such as aircraft maintenance) and for entire regions. No less important, it is a standard bearer for European added value and proves that joint efforts enable Europe to compete against global competitors, such as the United States.

5.3.2 The experience gained by the CCMI in drawing up its opinion on *Value and supply chain development in a European and global context* ([7]) will prove useful for carrying out an analysis of the aeronautics industry, which is a very complex sector in this respect.

5.4 Furthermore, a new set of **risks** threaten growth and are liable to generate new problems.

5.4.1 Heavy manufacturer dependence on emerging markets could mean that an unexpected slowdown in growth in Asia (not just in China and India) would have an immediate and very harmful impact on the entire sector.

5.4.2 Profound changes in relations between principals and equipment suppliers, and continual restructuring by principals have destabilised the sector. It is now difficult to measure the consequences of the increase in financial risks for tier one equipment suppliers, who are put under pressure by principals via risk-sharing agreements.

5.4.3 There is insufficient national and EU financing for the development of new technologies. It would also be useful to allocate funds to fundamental research in relation to business strategy and innovation strategy.

5.4.4 A drift towards the use of composite materials has made a complete reorganisation of the chain necessary (sell-off of Airbus plants, etc.) before the technology has even had time to prove itself, cf., for example, the massive use of composite materials in the B787, for which there are more than 800 orders despite the fact that the plane has yet to be qualified.

5.4.5 Between 2000 and 2007, the euro rose by 48 % (66 % if the average exchange rate of the first eight months of 2008 is taken into account) against the US dollar. If this trend, which has currently come to a halt, resumes (or even intensifies), Airbus may be forced to launch new cost-cutting plans (a 10c depreciation of the dollar costs the aircraft manufacturer EUR 1 billion, as the president of Airbus has pointed out several times) which could have dramatic consequences for subcontractors, many of whom are unable to afford cover, leading to more relocations, which would have a disastrous social and political impact.

5.4.6 The technical setbacks affecting the A380 and the A400M, as well as the B787, and their immediate consequences clearly illustrate the difficulties manufacturers have in mastering the growing complexity of new aircraft.

5.4.7 The impact of the current international crisis cannot yet be predicted accurately. At least in the short term, the drop in oil prices may be beneficial for airlines. However, the crisis is dampening international tourism and consequently reducing the demand for air tickets.

5.5 Irrespective of possible developments in air transport and despite current growth, the economic and social impact of ongoing and future reorganisation in this sector in Europe is real and there is a serious risk of the further decline of the European air transport sector.

5.6 This process could entail major risks such as the loss of key skills and Europe's world leadership due to its inability to make the necessary investment in developing new key technologies, as well as the disappearance of a substantial number of European subcontractors from the supply chain and massive job losses.

6. *Main goals and challenges for the EU aeronautics industry*

6.1 The Committee believes that the key issues for the sector are maintaining competitiveness and improving its public image.

6.2 It is difficult for new operators to enter the aeronautics sector, and becoming a leading player has become impossible. There are only two manufacturers of 100-seater plus aircraft left on the world market: Airbus and Boeing. The technology, skills and infrastructure that are being permanently eroded or lost are extremely difficult to recreate.

6.3 Europe must therefore ensure that countries with a recognised aeronautics tradition are able to:

6.3.1 maintain and build on their skills, especially by focusing on high technologies, and participate in the construction of a European network of subcontractors with the capacity to give effective support to principals such as Airbus, Saab, ATR etc.;

6.3.2 play a greater role in developing partnerships with the world of research (universities, other higher education institutions, government laboratories, etc.) in the field of fundamental research.

6.4 Europe cannot ignore the strong links between military and civilian research in the United States. Although the B787 programme is behind schedule, Boeing has received financial support from NASA and DARPA in order to accomplish the technological leap involved in the transition to composite structures. The Committee therefore considers it necessary to increase coordination between the European Commission and the European Defence Agency (EDA) in order to promote the development of new dual-use technologies to be implemented in both the military and the civilian segments of the aeronautics industry.

([7]) Opinion CESE, OJ C 168, 20.7.2007, p. 1.

6.5 The aeronautics industry cannot disregard the REACH Regulation, EC 1907/2006, adopted by the European Parliament and the Council on 18 December 2006 and in force from 1 June 2007. This was initially expected to require the evaluation, authorisation and, potentially, restriction of around 30 000 substances on the European market in significant quantities. However, in recent weeks, all 100 000 'existing substances' are reported to have been pre-registered. This will increase the risk of supply disruption, in particular when assessing substances used in complex or composite materials. It is therefore imperative for the EU to support businesses with composite-intensive activities situated at the poles of competitiveness when they assess the risks of the individual component substances. In this way the Commission and the Member States can help the European air transport industry to meet environmental objectives.

6.6 The EU has committed to lowering CO_2 emissions, noise pollution and fuel consumption (also by promoting biofuels). The Commission will therefore have to provide industry, including SMEs, with the necessary framework for a rapid and smooth implementation of the joint technological initiative 'Clean Sky'.

6.7 With regard to short-haul air traffic, Europe should take timely steps to develop an R&D programme for aircraft of this type in order to facilitate the replacement of A320 with NSR ([8]) aircraft by helping the European industry to avoid the mistake made with the A350. This has now become urgent due to impending fundamental industrial changes concerning single-aisle planes with 100-plus seating capacity.

6.7.1 Indeed, the next ten years should see the end of the Boeing-Airbus duopoly in this strategic sector, which is expected to account for approximately 65 % of the 29 400 new aircraft to be built by 2027 (about 19 160 aircraft) ([9]) but only 40 % of value, a sign of growing competition and strong pressure downward on the price of this type of aircraft.

6.7.2 New entrants, such as the recently merged Avic 1 + 2 (China), Sukhoi (Russia), Bombardier (Canada) and Embraer (Brazil), will probably be operational in 2015-2020. Europe will not necessarily win the price war in this sector but, on the other hand, it can hold its own by maintaining its technological edge through innovation.

6.8 Regional air traffic is rising by 8 % per annum. Orders reached a peak in 2007 for regional jets (RJ) and turboprop aircraft (for which orders doubled). Given the background (rising cost of fuel and the financial crisis), the success of turboprops is expected to continue with a probable transfer from the RJ to the turboprop market. Nevertheless, the growth of the RJ market should continue since demand for this category is strong and is expected to encroach on the Boeing and Airbus segment, with new ranges of aircraft, such as the Bombardier CSeries and new entrants such as Sukhoi and Avic.

6.8.1 The EU regional aeronautic sector is making a significant recovery thanks to ATR planes and the fuel economies they permit. The aeronautics market is also shifting towards RJ-type aircraft, a segment where, in contrast to the limited competition in the LCA sector (Airbus-Boeing duopoly), there is keen competition between prime contractors Bombardier (Canada) and Embraer (Brazil), followed at some distance by ATR and several other national operators (e.g. Japan, Russia, China).

6.8.2 In the RJ sector, Europe's dominant position, now almost entirely lost, could be regained thanks to SuperJet International. This 51:49 joint venture between Alenia Aeronautica (Italy) and Sukhoi Aircraft (Russia), which is developing a 75-100 seater regional jet range, is a concrete example of best practice in relaunching European regional jet production that is well adapted to a fluctuating oil price situation.

6.8.3 This programme draws on the best European and international expertise, namely via partnerships with major French suppliers (Thales and Safran supply 30 % of the aircraft's value) as well as other European suppliers including Liebherr (Germany) and Intertechnique (France), non-EU suppliers like Honeywell (USA), and other international centres of excellence, such as those located in India.

6.9 The aeronautics industry is a bone of contention between Europe and the United States. Nevertheless, the financing of US civil aeronautics activities via military contracts could be construed as a hidden government subsidy, which in fact distorts competition. Up until a few months ago, this was further amplified by the weakness of the dollar. Support from EU and national institutions in the form of refundable or similar advances not only complies with the EU-USA Large Civil Aircraft (LCA) agreement, but is also a transparent instrument — and compatible with market rules — for financing the development of new programmes.

([8]) *New Short Range*.

([9]) Source: Boeing Forecast 2008-2027.

6.10 Given the fluctuations in the euro-dollar situation, it does not make sense for the major principals (Airbus) to transfer the exchange rate risk to their subcontractors by paying them in dollars when EADS, Airbus's parent company, has incomparably greater currency hedging capacity than its subcontractors. These same principals try to transfer the financial and technological risks of new programmes to tier one and two subcontractors.

6.10.1 Against this background, could the development of active partnerships between principals and subcontractors be an option? These could take various forms. Risk sharing and the work package would have to be discussed. The partnership would also have to include R&D. The principal would have to cover the total cost of the most high-tech applied research, whereas SME-SMI subcontractors would contribute to industrial process research.

6.10.2 Another form of active partnership might concern the supply of raw materials. We know that Airbus buys titanium and resells it to its subcontractors at cost price. It would undoubtedly be useful if principals contributed to pooling raw material procurement. One possibility worth considering would be for SME-SMI subcontractors and principals to make arrangements to pool raw material supplies, which would lower the cost.

6.11 At present SME-SMI subcontractors are very dependent on a single aeronautics principal (e.g. Airbus). In many cases, the rate of dependence is about 70 %, especially in the mechanical engineering, metallurgy and electronic component sectors, and it is around 67 % in the service sector ([10]).

6.11.1 For this reason, principally to mitigate the aeronautics sector's cyclical impact, SME-SMI subcontractors need to diversify their activities to other sectors by relying on Europe's strongest points. However, these businesses need high adaptation capacity to establish themselves in areas of activity not originally their own. They must also be able to manage several types of activity by allocating financial and human resources to them. This means that, on the one hand, SME-SMI subcontractors should have access to regional and/or European funds in order to develop and manage diversified activity and place it on an industrial footing. The principal should contribute to the diversification efforts and provide the skills required in various fields.

6.11.2 Needless to say, this raises the issue of spin-out in one form or another. One example is the region of Aquitaine, where an ex-Aérospatiale plant developed a plasma torch marketed by Europlasma.

([10]) Source: Insee, Dossier No. 138, March 2007.

6.12 All industrial change requires a substantial financial effort. This is why businesses need the support of the public authorities, be they national or European. In this spirit, and in compliance with WTO rules, the EU should take the fluctuation of the dollar into consideration. What can the EU do to help reduce the financial risk to the aeronautics sector associated with the euro/dollar exchange rate? Transferring the exchange rate risk to subcontractors cannot be considered an altogether satisfactory solution because it does not alter the fact that the euro-dollar parity leaves us at a competitive disadvantage, especially vis-à-vis the United States.

6.12.1 The Midi-Pyrénées region is an interesting case. Since 2000, when the A380 was launched, the region was implementing the ADER plan (Action Plan for the Development of Regional Enterprises) to support SME-SMI subcontracting aeronautics companies. This initiative produced interesting results and is to be continued in order to help SME-SMI subcontractors adapt to the Airbus POWER8 plan.

6.12.2 The new measure, ADER II, will provide case-by-case support to help businesses form groupings, increase their technological capacity, enter new markets, pool resources for purchasing raw materials, etc.

6.13 The globalisation of aeronautics has a strong impact on salaries and jobs. To counter this, research and training measures must be strengthened and supported in order to tap job creation potential. One option could be human resource planning.

6.13.1 Human resource planning should serve to anticipate future change. It should allow workers to cope better with future uncertainty, to develop long-term projects, to give meaning to their work, and to develop their career and investment in their company, while taking account of their needs and aspirations. It should enable businesses to adapt to change and competition.

6.13.2 Human resource planning must be part of a proper career and skills framework with very long-term objectives (30 years). Its goal should be to define training and skills development needs that it would be desirable to implement in the medium term in the supply of initial and lifelong training from the perspective of the industry as well as that of trainers and workers' representatives. It could be part of a debate on the employment pool.

6.14 Maintaining an aeronautics industry with a high level of technology and skills depends on the industry being able to recruit personnel with a high level of initial training in areas currently in development such as composite materials or the environment. Furthermore, other areas, such as industrial risk management, new materials, clean fuels, etc., must be developed.

6.14.1 Training schemes should not concentrate solely on white collar workers but also on blue collar jobs, which have suffered from a bad image for too long and have been neglected by most European educational systems, although they are important to the competitiveness of the European aeronautics industry.

6.14.2 Initial training should also include apprenticeships, with agreements between schools, universities or manual occupations and companies. Lifelong vocational training should facilitate major retraining, and retraining for workers with very low skills. But it is primarily an essential and practical tool for implementing a strategic plan, narrowing any gaps that might exist between current resources and future needs. More generally, all European workers should be able to access a minimum level of training throughout their lives.

6.15 All measures, whatever their nature, require the highest possible level of consultation between company management and worker representatives. This consultation often exists at a national level but must be extended to the European level. An initial step has been accomplished via Directive 94/45/EC on the establishment of a European Works Council. Since company managements establish their strategy at European level, European works councils are the only appropriate bodies for gathering information at the relevant level and taking stock of the situation prior to any negotiations. The Commission and the Member States should facilitate the establishment of a social dialogue committee for the European aeronautics sector.

7. *Proposals for future opinions*

7.1 The aeronautics sector is so complex that it is impossible to study all its aspects in this opinion. The CCMI should therefore consider continuing its work on this subject in future opinions at the earliest opportunity.

7.2 Future opinions could address the following areas:

— the military aeronautics sector;

— military and civilian helicopters;

— aeronautics maintenance;

— military and civilian avionics, including advanced weapons systems;

— new state-of-the-art procedures, standards and equipment for aircraft landing in emergency conditions.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

Opinion of the European Economic and Social Committee on the 'Developments in the retail industry and impact on suppliers and consumers'

(2009/C 175/10)

On 27 September 2007, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

Developments in the retail industry and impact on suppliers and consumers.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 November 2008. The rapporteur was Ms SHARMA.

At its 449th plenary session, held on 3 and 4 December (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 136 votes to 21 with 20 abstentions.

1. **Conclusions, recommendations and proposals**

1.1 High Volume Retail in the Europe plays an important role in term of its financial contribution to the economy, job creation and its diverse offer to consumers. More recently evidence, and allegations, have presented themselves on the impact of this growth. In the context of the Lisbon Strategy, reflecting competitiveness, growth and more and better jobs; this opinion has identified specific areas that should offer greater transparency and due diligence, within the industry as well as protection for retailer, suppliers, employees and consumers.

1.2 The EU Commission: DG Internal Market and DG Enterprise are all currently conducting research studies into HVR developments especially in the areas of margins, the length and stakeholders in the supply chain and the retail industry as a whole. DG Employment will look into the skills capacity requirements of retailing approaching 2020. The Committee offers its support in assisting the Commission wherever possible.

1.3 The Committee makes the following recommendations proposing measures which maintain growth and ensure healthy competition for retailers and suppliers, protect employees and additionally pass on a long-term benefit for consumers, all in consideration of sustainability.

1.4 The EESC will continue to track HVR developments, in particular by analysing developments among large retailers in smaller European countries and in relation to sectors not covered by the current study, such as the household electrics sector.

1.5 Following research commissioned by the EESC [1], it is clear that in Western Europe both in food and clothing, as well as other sectors such as DIY, sports, leisure and culture, there is concentration of HVR. However this is not, in the main, as a result of the impact of mergers, takeovers or acquisitions in the sector. Although large international retailers have emerged in recent years, retailing still remains a sector focused mainly at national level.

1.6 The growth and success of retail is a positive story for the European economy. Many retailers, once SMEs, have become more efficient, competitive, productive and more responsive to customer needs in order to succeed. Private models as well as cooperatives and social economy models have demonstrated growth. Many European businesses are now successful global companies, with new operations being set up in China, the United States, the Far East and Russia. Domestic strength has allowed the most successful firms to export their business models into some of the most challenging retail markets in the world. That has brought great benefits to employees, shareholders and indeed consumers in Europe who benefit through a wider product choice and competitive prices.

1.7 Retail is a dynamic, innovative and competitive sector that consistent national competition authority investigations have demonstrated to be vibrant and competitive [2]. It is important that commercial success is not penalised, except when practices are involved which are incompatible with the completion of the internal market, in particular the existence of clear evidence of abuse of market power or harm to consumers in contravention of Article 81 of the EU Treaty. A competitive market is an effective way of protecting consumers and operating efficiency can bring further benefit. In a free and fair market place, retailers compete based on service delivery, product quality and value for money.

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(1) The evolution of the high-volume retail sector in Europe over the past 5 years, EESC CCMI, Prepared by London Economics http://www.eesc.europa.eu/sections/ccmi/externalstudies/documents/HVR_Final_Report_revised_with_annex.doc.

(2) UK Competition Commission investigation on grocery market: http://www.competition-commission.org.uk/inquiries/ref2006/grocery/index.htm. The final version is expected to be published in the second half of 2008.
[2] Austrian Federal Competition Authority inquiry on Supermarket Buyer Power: http://www.bwb.gv.at/BWB/English/groceries_sector_inquiry.htm

1.8 Even if there are understandable differences and disparities within an economic grouping of 27 states, the Committee feels there is a need for cooperation, or even coordination, at European level to allow trade to play its universal service role. Such a step could lead to a more harmonised European system for measuring and tracing commercial activity so as to provide greater encouragement for its development.

1.9 In order to reflect transparent operating procedures between suppliers and HVR the EESC would recommend further debate on the added value and legality under EU Competition Law of a voluntary Code of Practice governing retailer and supplier relations at Member State level as well as a clear and transparent analysis of the supply chain which has a multitude of stakeholders other than the primary supplier and the HVR.

1.10 The creation of a self regulatory Voluntary Code of Practice, supported with written contracts between retailer and supplier, covering transactions from throughout the supply chain, from 'farm to fork', could be introduced at national level.

1.11 Such a code should also enable more medium-sized, or even small and cottage, businesses in the production and services sectors to have a minimum set of guarantees when accessing HVR.

1.12 The Code would allow for and retain the current flexibility in trading and negotiations, allowing for sudden changes in conditions (i.e. inflation or oil prices), benefiting both supplier and retailer, but which would prevent HVR and/or large suppliers from exerting pressure or abusive practices.

1.13 Such a Code could include:

— Standard Operating Terms of Business between Retailer and Supplier, with a defined period of notice for any changes, in those terms to take effect, including termination of contracts.

— No retrospective reductions on agreed prices through applied pressure.

— No obligation through applied pressure to contribute to marketing costs or retailer costs above those agreed in the original contract.

— No compensation payments by suppliers for loss of retailer profits, unless defined and agreed in advance, or where the supplier has not delivered the required amounts.

— No return of unsold goods, except for specified reasons, and agreed in the terms of the contract.

— No payments for wastage, negligence or default above those in the original contract, where the specifics are unambiguous.

— No lump sum payments to secure orders or positions. In relation to promotions, all payments must be clear and transparent.

— All promotions must be agreed by both parties in advance with a clear period of notice, and written transparent terms surrounding the promotion.

— Forecasting errors by the retailer must not be passed back to the supplier, including during periods of promotion. Where forecasting is done in conjunction with the supplier the terms must be documented.

— The characteristics and conditions of production of the products sold — particularly imports — should be provided by producers and distributors in response to consumers' expectations.

— A written customer complaints procedure must be issued to the supplier as part of the contract terms.

1.14 This Code must be communicated to all purchasing and management staff within the retailer. Additionally, the retailers would be required to appoint an in-house code compliance officer, keeping records of contracts with suppliers and automatic notification to suppliers of changes in contractual terms.

1.15 Additionally, EESC would recommend at national level the appointment of a mediator to arbitrate on disputes, evaluate and monitor the implementation of the Code, with the power to gather information from all stakeholders and proactively investigate breaches of the Code. This proposal would be in line with the recommendation from the EESC in relation to the Small Business Act.

1.16 European legislation needs to be effectively implemented with regards to trading. However, in particular, defining payment terms must be modified to cover a maximum period for payment. Although current legislation exists it has been transposed at national level with minimal harmonisation or opt out clauses.

1.17 In reference to planning applications for HVR relevant government departments should design a 'competition test', such as the 'need' test or 'town centre first' policy for local authorities to assess competition between the various forms of distribution locally, current land covenants, infrastructure and community benefit. The aim here is to ensure that concerns are addressed regarding the existing and future diversity of commercial supplies, the essential cohabitation between local traders, HVR and shopping malls in population centres.

1.18 Retailing exists mainly at national level and as such, to ensure effective implementation of the Code a public authority (national competition authorities) should review at regular intervals any reports from the ombudsman of problematic practices, allowing them to request directly information from the retailers/suppliers and have a baseline analysis and record of progress in the industry. Where repeated allegations are occurring, legislation could be developed to address the problem. This public authority should also be encouraged to publicise to all stakeholders in the chain the use and benefit of such a code of practice and to enforce it.

1.19 As a concluding point, Members States should ensure the environment offers opportunities for high levels of competition between retailers, without prejudice to the need to ensure a balance between the different sectors and safeguard the urban order, thus creating benefits for the consumer through reduced prices and increased variety of choice.

2. **Reasons**

2.1 The CCMI promotes coordination and coherence of Community action in relation to the main industrial changes in the context of an enlarged Europe and ensures a balance between the need for socially acceptable change and the retention of the competitive edge for EU industry.

2.2 More recently evidence is presenting itself on the growth of the HVR sector and its impact and influence on society. In the context of the Lisbon Strategy, reflecting competitiveness, growth and more and better jobs; this opinion will identify specific areas throughout the length of the value chain, as far as the consumers, that may require EU interventions or mechanisms.

2.3 For the purpose of this opinion, the EESC commissioned a study which tried to set a definition for HVR (See Annex 1 London Economic Study). However as noted in the study, the parameters set on each trialled definition produced varying results. Due to the numbers of retailers exceeding the definition of an SME and the lack of statistics particularly in new Member States, the cumulative definitions have been used for the purpose of this opinion. High Volume Retailers (HVR) are firms having more than 5 % of market share or a turnover higher than €200m, employing 250 persons or more. Additionally it is valuable to analyse the top 5 firms in each market, as well as the private or social nature of the business model.

2.4 Additionally the study focussed on eight countries across Europe: UK, France, Germany, Spain, Italy, Romania, Poland and Czech Republic in both the food sector and clothing. Concentration is evident in other sectors including DIY, electrical, leisure and culture but is not covered in this report. The analysis made in this opinion is based on statistical evidence ([3]). Many additional studies have been made by varying sectors across the supply chain, including employees and consumers, and these have been referenced to highlight the complexities of gaining factual evidence and the volume of research conducted to date ([4]).

2.5 Large retailers across the EU are attracting more customers through the strength of their offer. Figures for 2005 show that Carrefour (France), Metro Group (Germany), Tesco (UK) and Rewe (Germany) have the largest market shares in Western, Central and Eastern Europe. In Germany, France, Ireland and Sweden the top 5 retailers made up more than 70 % of the grocery market in 2005.

2.6 Many HVR, including cooperatives and social economy models of retail, commenced trading as SMEs and many lessons could be learned by their spectacular growth. All have made significant contributions to the Lisbon agenda in terms of competitiveness, jobs and growth. HVR is supported by a strong and often a concentrated wholesale and manufacturing sector. Pressure from dominate suppliers impacts on retailers margins and the competitiveness of SME suppliers. It is hoped that the findings from the EU Commission studies into the retail market due over the next few years: DG Internal Market, and DG Enterprise will focus on the length and number of stakeholders in the supply chain, as well as the margin distribution across the retail industry as a whole.

2.7 Growth and new developments within the retail industry, including the arrival of speciality stores in the clothing sector, have major consequences for companies, including SMEs and independents, employees, suppliers and consumers. This CCMI own-initiative report reviews objective data on the development of the large scale retail sector during the last five years, concentrating on European HVR particularly in groceries, (food), and clothing.

([3]) As 1.

([4]) I) Impact of Textiles and Clothing Sectors Liberalisation on Prices, The Kiel Institute For The World Economy, Kiel, Germany. EU Commission, Trade. Final Report 2007-4-18, http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_134778.pdf.
II) Business relations in the EU Clothing Chain: from industry to retail and distribution. Bocconi University, ESSEC Business School, Baker McKenzie. Final report, October 2007 http://ec.europa.eu/enterprise/textile/documents/clothing_study_oct_2007.pdf.

2.8 Overview current situation in grocery and clothing:

— Retail sales of food amounted to EUR 754 billion in 2006 ([5]), representing an increase of 3.4 % in real terms from 2003. It can be seen that France, the UK, and Germany account for more than 65 % of the total sales, with Italy, Spain and Poland accounting for a further 30 %. Less than 5 % of the total spending occurred in Romania, Hungary and the Czech Republic combined.

— Data for retail sales of clothing is more difficult to obtain. Retail sales amounted to € 120 billion in 2006, having grown by 2.5 % in real terms since 2003. Almost all retail sales occurred in the UK, Germany, France and Italy, although this may be a reflection of the limited data availability in the New Member States.

— The retailers with the largest turnover at national level operate in the food sector. The largest operator, Tesco, is significantly ahead of its rivals, with 2006 sales EUR 10 billion higher than Carrefour in second place.

— When comparing food and clothing retailers the largest clothing firm (Marks and Spencer) appears only in 25th place.

— Many HVR classed as grocers also sell clothing, textiles and electrical items and their turnover cannot be assumed to be only on food.

— There has been an increase by more than 25 % sales of HVR in the food sector in both Italy and Spain, since 2003. HVR in Czech Republic and Romania also experienced a significant growth (albeit Romania started from an extremely low base).

— In the clothing sector, HVR are only present in three of the nine markets in the study. HVR in both Germany and the UK experienced steady sales growth (5 % and 3 % respectively). The one HVR in Italy however (the Benetton Group) saw a decline in sales in real terms between 2003 and 2006 ([6]).

2.9 The food & drink sector (groceries) globally is currently experiencing the fastest increase in its cost base (raw materials) for generations. Mainly grain prices, affecting staple diets and animal feeds due to global increased affluence, poor harvests and government — mandated biofuels targets affecting supply, will push prices to new heights impacting on the consumer.

2.10 Today a representative basket of products is significantly more expensive than in previous years and varies greatly across Member States. Recent increases in raw materials could deplete any profits for suppliers. For retailers operating on even smaller profit margins increases at the checkout impacts on inflationary figures in the Treasury, which then feeds very quickly into pay negotiations in the workforce. Shelf price inflation together with current rises in oil prices affect the whole supply chain and consumers alike and is currently a worrying scenario for all.

2.11 As consumers enjoy the freedom to move retailers due to the high competition, retailers do everything possible to increase efficiencies and economies of scale. Many suppliers have grown in size alongside the development of the retailer and valuable lessons can be learnt from their strategies.

The supply chain itself can be lengthy with margins added throughout the chain by stakeholders including distributors, packers, secondary producers, processors and wholesalers in both food and clothing.

2.12 The clothing sector across Europe shows relative price stability, particularly as a result of the slow growth in EU economy as a result of changing patterns of consumption, the liberalisation of international trade, consolidation of China as a leading clothing producer together with the increasing appreciation of European currencies. Additionally market dynamics are changing as traditional grocery supermarkets expand their non-food lines and particularly clothing and smaller speciality independent stores are replaced by chains such as Zara and H&M ([7]).

([5]) Internet shopping sales for retailers are included in the total sales figures and have not been addressed separately in this document as evidence shows although sales are expanding they constitute on 1-2 % of grocery sales in the UK.

([6]) London Economics Interim Report; The Evolution of the High Volume Retail Sector in Europe over the past 5 years. February 2008.

([7]) Bocconi University; Business Relations in the EU clothing Chain; October 2007 Final report, October 2007 http://ec.europa.eu/enterprise/textile/documents/clothing_study_oct_2007.pdf.

2.13 The evolution of the difference between prices in indices does not necessarily reflect the evolution of price spreads, which are the difference in the prices in levels ([8]). Moreover, one should be cautious on the type of conclusions drawn from this analysis. The differences in the evolution of prices do not necessarily reflect changes in the profit margins for producers and retailers. This is because prices are affected by many other variables, e.g.: changes in Value Added Taxes ([9]), wages, import prices or technical improvements could explain a drop, or increase, of consumer prices which could be unrelated with the prices producers receive.

2.14 European retailers share the view that achieving sustainable consumption and production is a key challenge for the future. Retailers witness, on a daily basis, the changing demands of their customers, the constantly evolving needs for suitable and accurate information, the rapid introduction of new eco-products, and ever 'greener' supply chain processes. In this context, European retailers are voluntarily proposing a Sustainable Consumption Action Programme, and Retailer Environmental Action Programme (REAP) whilst working closely with the European Commission in supporting the attainment of the EU's 2020 climate change objectives.

3. **Areas for Monitoring:**

3.1 In order to alleviate the following concerns raised by civil society, future debate on the possible mechanisms that could be pursued would need to rely on clear and transparent reporting procedures of poor practice, and in all cases evidence being produced to support grievances. This applies to all stakeholders.

3.2 The Member States must guarantee levels of competition that ensure an appropriate development of all forms of trade, so as to create benefits for the consumer in terms of reduced prices and variety of choice.

3.3 Regulations promoting fair trading practices, applied at national levels can take into account local social preferences, such as opening hours or labour issues, and therefore the EESC recommendation of voluntary codes of practice need to be designed and applied at Member State level, especially as retail is very much a local market.

3.4 In the interests of 'Better Regulation' ([10]) there have been pro-competitive reforms at EU level to remove restrictive legislation and hence the EESC recommendation for self regulation by the industry. The establishment of a Code set by retailers at national level could be interpreted as aiding collusion between retailers, in effect anti-competitive. However public policy must aim at reviewing such codes as increasing transparency and due diligence for both retailer and supplier and in the long term increasing benefit for the consumer.

3.5 Retail and supply chain practices are subject to much allegation, and hence the EESC recommendation of the need for contracts and a Code of Practice at Member State level (see recommendations and conclusions) to address the claims by making the process more transparent, protecting both retailer and supplier, whilst allowing a mediator access to intervene if necessary.

3.6 Competition policy and other regulatory policies affecting the retail sector are complementary to trade policy. It appears that a major policy challenge is to strike a balance where retailers are allowed to exploit economies of scale in sourcing and operations, but not to exploit market power.

3.7 A further area for monitoring where the Code of practice could also be applied is on imports. Today imports in both food and clothing play a major role in market forces. The proportion of imported food is generally higher in the Western countries, with the proportion of imports in food consumption is in Eastern European countries quickly rising.

3.8 Western countries show a very high import penetration in the clothing sector ([11]). In many cases the percentage is greater than 100 %. This is because the total value of exports is greater than the total value of production, meaning that some goods are imported and then re-exported to other markets.

([8]) For example, if producer prices are 100 and consumer prices are 200, a 10 % increase in both prices does not mean that the margin remains constant. Because of the different levels the margin would widen from 100 (200-100) to 110 (220-110).

([9]) 'The prices measured are those actually faced by consumers, so for example they include sales taxes on products, such as Value Added Tax, and they reflect end-of-season sales prices', Harmonized Indices of Consumer Prices (HICPs) A Short Guide for Users, Eurostat, March 2004.

([10]) http://ec.europa.eu/governance/better_regulation/index_en.htm.

([11]) The clothing sector is defined as all products with in 'manufacture of wearing apparel; dressing and dying of fur'.

4. **Retail Employees**

4.1 The retail sector is of vital importance to the Lisbon strategy in terms of the number of people employed in the sector. DG Employment are currently conducting a research study on the identification of emerging competences and the evolution of future skills needs and employment in the retail and trade sector at the 2020 horizon. A similar study is being conducted on the textile, clothing and leather products sector. These two studies are part of a project covering 16 economic sectors all applying a common foresight methodology to identify future skills and employment evolution on the basis of scenario analysis.

4.2 Within the London Economics conducted study, around 1,2 million people are employed in HVR in the food sector in the UK. The remaining countries employ much less, but overall HVR in Western European countries employ a higher number of workers than Eastern European countries. The number of employees has increased since 2003 in every country except in France and the Czech Republic where it has remained constant.

4.3 The share of employment in HVR is very different across Europe. In the UK and Germany, HVR employ respectively more than 75 % and 60 % of workers in food and department stores whereas in Poland they employ about 20 % and in Romania less than 5 %.

4.4 Overall, female participation in the wholesale and retail sectors is higher than in the entire workforce across Europe but such difference is much higher in the 10 New Member States that in the EU15. The only exception is France that shows a lower share of women in the wholesale and retail sector compared to the economy as a whole.

4.5 There are some interesting differences in the age distribution between Member States. The UK, for example has a much higher proportion of young workers (aged under 25) than anywhere else, but also a higher proportion of workers older than 65 (although still a very small amount). Italy, the Czech Republic and Hungary have a lower number of young workers but have a higher proportion of workers aged 25-49.

4.6 Part-time work is higher in the wholesale and retail sectors than in the entire European economy, although there are important differences across countries, between and also the EU15 and NMS10.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

Opinion of the European Economic and Social Committee on 'Industrial change, territorial development and responsibility of companies'

(2009/C 175/11)

On 17 January 2008 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to drawn up an own-initiative opinion on

Industrial change, territorial development and responsibility of companies.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 November 2008. The rapporteur was Mr Pezzini and the co-rapporteur was Mr GAY.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 168 votes to one with three abstentions.

1. **Conclusions and recommendations**

1.1 The Committee feels that it is essential, in the context of the Lisbon and Gothenburg Strategies, to reinvigorate local networks, in other words organic groups of public and private operators, structures and infrastructure which, in joint initiatives for local development, combine high levels of prosperity and competitiveness with social and environmental responsibility across the board. This is basically a process which defines the result of a series of interactions at each point in the area.

1.2 The Committee strongly advocates **a Community initiative on the development of 'socially responsible regions' (SRRs)**, flanking the objectives of grassroots democracy with plans to make administrations and all public and private operators shoulder their responsibilities, working towards an integrated strategy of making the best use of local resources to increase competitiveness.

1.3 The Committee calls for the SRR initiative to be accompanied by a **European action plan** aimed at:

— promoting the introduction of the territorial dimension in EU policies, particularly in the context of the Lisbon and Gothenburg Strategies;

— fostering the incorporation into national, regional and local policies of the priorities set out in the Territorial Agenda and Leipzig Charter;

— encouraging and co-funding territorial participatory foresight exercises, aimed at generating a shared vision of socially responsible territorial development; and

— launching regional networks of excellence and European Groupings of Territorial Cooperation on this subject.

1.4 In the follow-up to the SRR Community initiative ([1]) and related action plan, the Committee thinks that:

— the Community should substantially relieve the administrative and bureaucratic burden on the regions' economic and social operators, by simplifying the content and the procedures used by the EU and applying the 'open method of coordination';

— Member States should apply Community provisions uniformly, so as to preserve the unity of the EU internal market;

— local and regional authorities should fully involve economic and social operators and develop compatibility strategies as regards cooperation, innovation and competition; and

— the private sector should foster constructive social dialogue encompassing civil society focused on a shared vision that anticipates industrial change.

1.5 The Committee strongly supports the development of grassroots democracy that can involve the regions' political, economic and social operators in measures aimed at increasing quality of life and stimulating **competitive, sustainable economic and social development of EU regions**.

1.6 The Committee feels that major investment is needed in **developing a shared, innovative and participatory culture**. The call for democratic values must come from the regional community concerned as a whole, and from a large number of operators and institutions representing the interests of the various sectors of activity. In this context businesses should be seen as a community which generates wealth with a view to the development of a better society in the region.

1.7 In this regard, the Committee calls for a rapid follow-through on the European Council's comments of 13 and 14 March 2008 on (i) the key role of the local and regional level in delivering growth and jobs and (ii) the importance of developing all political, economic and social operators' local/regional governance abilities.

([1]) Cf. point 1.2.

1.8 The Committee also firmly believes that Europe needs to become **a centre of excellence in the development of SRRs** ([2]), building on successes with EMAS and Corporate Social Responsibility (CSR) and expanding the reference framework to the regional dimension. The aim here is to ensure that the joint heritage of responsibility is a constant factor for **employers**, who must be able to benefit from networks and clusters and be fully involved in the macroeconomic process of regional strategic development.

1.9 In particular, the Committee thinks that micro and small **businesses** and the social economy, with its vast and significant experience, should be able to benefit from assistance, expertise and improved access to credit and micro-credit, with the aim of developing a form of business management that respects the environment, the region and its inhabitants.

1.10 The Committee feels that the Community SRR initiative and its action plan should also promote local structured social dialogue and encourage twinning between local institutions, especially across borders. Stronger partnerships should boost the overall capacity-building, expertise and performance of regional authorities with different performance levels which often find themselves competing with each other.

1.11 Lastly, the Committee stresses the importance of multi-level governance systems which ensure high levels of coordination, so as not to separate at local level that which the single market has brought together, preventing regional dispersion and discrimination which would make the European economy even weaker on international markets.

2. **Introduction**

2.1 At the EU Council Presidency Conference on territorial dialogue, held on 4 March 2008, the role of local and regional communities in achieving the revised Lisbon objectives was stressed as a priority of cohesion policy.

2.2 With this opinion the Committee seeks to define the relationship between regions and political, economic and social operators with a view to implementing the Lisbon Strategy and building a competitive knowledge-based economy on the internal and international markets.

2.3 The starting point is enhancing the ability to anticipate economic, social and environmental change and the organisation of those helping to build a **'socially responsible region' (SRR)** ([3]) and defining the responsibilities of businesses, administrations, the social partners and all those helping to make the region more competitive while focused on a dynamic, inclusive, cohesive European social model ([4]).

2.4 Depending on their composition, regional economies can be exposed to international competition to greater or lesser degrees. Moreover, the GDP (or value added) indicator no longer reflects the prosperity of a region for two reasons. In this regard the Committee welcomes the Commission's recent publication of the *Green Paper on territorial cohesion — Turning territorial diversity into strength* ([5]), which will be addressed in a separate opinion.

2.4.1 Firstly, not all distributed income from work and capital or tax paid by market productive forces benefits the region of origin — some resources are 'exported'.

2.4.2 Secondly and more importantly, regions also receive funds from resources other than productive forces (public employees' salaries, pensions, unearned income, spending by tourists, income of people working elsewhere, social benefits other than pensions, etc.).

2.5 There is an ever-wider and more detailed range of management instruments which government bodies and businesses can use to support sustainable development programmes and policies, principally:

2.5.1 Rules/standards

— directives and regulations on environmental issues;

— environmental management systems;

— ISO 14000 certification and ISO 26000 guidelines;

— BS OHSAS 18001/2007 — safety in the workplace standards;

— the EMAS Regulation;

— social audits (SA8000);

— green purchasing and green public procurement;

— product life-cycle analysis;

— Integrated Product Policy;

([2]) Cf. point 1.2

([3]) Cf. point 1.2.

([4]) 'The European Social Model should provide an idea of a democratic, green, competitive, solidarity-based and socially inclusive area for all citizens of Europe.' (EESC Opinion on *Social cohesion: fleshing out a European social model*, OJ C 309 of 16.12.2006, page 119).

([5]) COM(2008) 616 final.

2.5.2 Structures

— clusters, industrial districts, centres of excellence/competitiveness, technology parks;

— Local Agenda 21 action plans;

— local/regional observatories on the territorial impact of development;

— local business clubs;

— European Social Fund support for regional governance;

— European Groupings of Territorial Cooperation — EGTC — new instruments provided for under Regulation (EC) No 1082/2006 of 5 July 2006 ([6]);

— analysis and foresight platforms;

— public-private partnerships (PPPs)

2.5.3 Agreements:

— 'flexicurity' initiatives ([7]);

— corporate social responsibility — CSR;

— structured regional social dialogue;

— environmental accounting/balance sheets;

— sustainability reporting;

— spatial planning instruments;

— regional environmental balance sheets;

— local and regional socio-economic agreements (territorial pacts, programme agreements etc.);

— special economic zones, within the constraints of competition policy ([8]).

2.6 The Committee feels that it is essential to further consolidate, supplement and coordinate implementation of these legislative, regulatory and voluntary instruments in order to coordinate the different objectives and the various levels of participation to achieve efficient, effective results to which all have contributed.

2.7 In view of the 2007 Leipzig Charter ([9]) and EU Territorial Agenda, on which the Committee has commented ([10]), there has been more and more focus on territorial cohesion, with a view to:

— greater local involvement;

— reconciling balanced, sustainable development with the need to boost Europe's competitiveness with investments in areas with the highest growth potential;

— achieving synergy and compatibility between Community policies;

— developing better governance mechanisms ([11]).

2.8 The Territorial Agenda is a strategic framework giving direction to regional development policies in line with the Lisbon and Gothenburg Strategies.

2.9 In its Opinion on territorial governance of industrial change ([12]), the Committee pointed out that 'regional/local identity as a quality is based on a combination of belonging, recognition and empathy regarding a set of shared values and a shared vision of the future'. The Committee also called for an integrated territorial approach (ITA) and a governance strategy for development of a socially responsible region. It thought that this strategy should entail in particular:

— constant improvements in the quality, knowledge-base, skills and innovative capacity of the local and regional production system;

— the development of regional networks for the public and private sectors;

— high levels of environmental and social sustainability;

— efficient and consolidated processes for the formation and dissemination of knowledge, information and on-going training;

— the preparation of 'local and regional social balance sheets';

— comparative analyses of sustainable local and regional systems by social operators themselves.

([6]) The list of Member States that have adapted their legislation to enable the implementation of EGTC is available at the Committee of the Regions' website (under 'Activities/Events').

([7]) To identify and bring about new sources of employment, with the support of the social partners.

([8]) Cf. Regulation (EC) No. 450/2008 of 23 April 2008 (OJ L 145 of 4.6.2008).

([9]) Leipzig Charter on Sustainable European Cities of 25 May 2007.

([10]) Opinion on the *Territorial Agenda*, OJ C 168, 20.7.2007, p. 16-21.

([11]) Cf. Opinion on *The territorial governance of industrial change: the role of the social partners and the contribution of the Competitiveness and Innovation Programme*, OJ C 318, 23.12.2006, p. 12-19.

([12]) Cf. previous footnote.

2.10 In addition to **close coordination** in order to secure synergies and prevent overlaps or inconsistencies, these initiatives require on the part of local, regional, national and European authorities:

— **advanced education and training structures** designed to provide a functional response to the demands of economic and industrial development, based on knowledge and competitiveness;

— institutional and association-based **capacity building** and social dialogue **initiatives**;

— **an integrated regional policy** able to make the most of local development potential, enhancing capacity for innovative change and anticipation;

— consolidated **social dialogue** at regional/local level ([13]), as a key to **maximising the benefits of anticipating industrial and market change and education and training flows**;

— **promotion of corporate social responsibility**, with voluntary adoption of CSR by businesses as their contribution to sustainable development;

— **enhancement of the integrated multi-level governance system** of 'socially responsible regions' ([14]), defined as regions which succeed in combining adequate levels of well-being with the obligations inherent in social responsibility.

2.10.1 This process should also boost the skills and competences of political and administrative decision-makers, with a view to ensuring the stable conditions required to attract long-term investment to their regions and to spawn micro and small businesses in a context of lasting development.

2.11 The Committee attaches great importance to the process followed by a region before it can call itself a '**socially responsible region**' (**SRR**) ([15]).

2.11.1 A region achieves this status when it succeeds through participatory democracy in integrating social and environmental concerns into economic decisions, models and principles for boosting competitiveness, good practices and ongoing dialogue between stakeholders, in order to encourage innovation and competitiveness.

([13]) Cf. Opinion on *Restructuring and employment — Anticipating and accompanying restructuring in order to develop employment: the role of the European Union*, COM(2005) 120 final, OJ C 65, 17.3.2006, p. 58-62.

([14]) Cf. Opinion on a *Thematic Strategy on the Urban Environment*, COM(2005) 718 final — SEC(2006) 16, OJ C 318 of 23.12.2006, p. 86-92.

([15]) Cf. renewed Council strategy (document 10117/06 of 9.6.2006, points 29 and 30). Cf. also point 1.2 of this opinion.

3. 'Grassroots democracy' towards competitive and sustainable development

3.1 To improve the quality of life and **competitive, sustainable socio-economic development of EU regions** the Committee believes that grassroots democracy needs to be developed that can involve the regions' political, economic and social operators. The various public and private players should work together to address the strengths and weaknesses of these regions, and their growth prospects for businesses and jobs.

3.2 The forms and procedures of **grassroots democracy** as a fundamental pillar of European governance vary greatly according to the different national contexts, but the basic elements should be:

— **coordination of operators, social groups and institutions** to achieve objectives discussed and coordinated in a framework of structured dialogue and joint and several responsibilities among the social partners and, in particular, with workers' representatives and business clubs;

— **application of the** subsidiarity, territorial cohesion and participatory democracy **principles**, as laid down in the Lisbon Treaty;

— **well-coordinated multi-level governance structure**, ensuring grassroots decision-making in line with those tiers of political, economic, social and environmental responsibilities that are most representative of regional competences and identity, with due regard for consistency with national and European frameworks, with an open, cooperative, coordinated approach, aiming to achieve synergy between the different levels;

— **development of a regional learning community** based on a capacity for self-assessment and ongoing adjustment of local development strategies and objectives and on strengthening a widespread, all-embracing culture of innovation;

— **development of a joint, shared, forward-looking view** of the relationship between the economy and the local community

  — to identify the region's 'specific resources',

  — to assess the challenges and threats of competition from other regions,

  — to explore opportunities to enter national and international markets,

  — to look for ways and means of using local professional skilled resources to resolve specific local issues,

— to take forward-looking decisions promoting competitive-economy initiatives;

— **promotion of the creation and enhancement of regional economic and social councils** or similar instruments ([16]) — already operating in some Member States — as institutional partners in regional decision-making and action, with the right to initiate and monitor initiatives;

— **introduction of advanced participatory regional management instruments such as** e-government, SWOT analyses ([17]), participatory foresight exercises ([18]), EMAS ([19]) schemes applying to the public and private sectors across the board, corporate social responsibility standards, benchmarking techniques, open coordination scoreboards, district and inter-district networks ([20]) and web-based distributed learning systems;

— **active role by chambers of commerce, industry, crafts and agriculture, as well as by** professional associations and consumer organisations;

— **cultural fostering of excellence in terms of university studies and optimising of relations between industry and academia.**

3.3 Regional development requires full implementation of grassroots democracy but also structured local governance to manage development ([21]).

3.4 Good regional governance must aim in the first place to encourage and develop all forms of cooperation and all partnership processes on a win-win basis between businesses themselves and between businesses and collective interests.

3.5 **Regional democratic governance** is a decentralised, inclusive decision-making process which the Committee feels should be based on principles of transparency and responsibility and on a participatory approach entailing analysis, definition, implementation and management of a shared strategic vision of medium-to-long-term development.

3.6 In a multi-level partnership system, the Committee feels that an optimum combination of bottom-up and top-down processes is essential: indeed the trade-off between the two processes is a pre-requisite for success.

3.7 The Committee feels that major investment is needed in **developing an innovative, participatory culture**, as the call for democratic values must come from the regional community concerned as a whole and from a large number of operators and institutions representing the interests of the various sectors.

3.8 The Committee firmly believes that the development of the EU's regions must involve effective, sustainable development strategies based on the concept of 'socially responsible regions' to optimise their specific potential.

3.8.1 The Committee reiterates the comments it made in a recent opinion on this subject ([22]).

4. Community endeavour to develop 'socially responsible regions'

4.1 The Committee strongly advocates **a Community initiative on the development of 'socially responsible regions' (SRRs)** combining the objectives of grassroots democracy; strengthening of a widespread participatory, innovative culture; effective regional governance which is consistent with the national and Community Lisbon agenda frameworks; and a multi-partner, multi-sector partnership which can enhance the appeal and competitiveness of the region on the international market, anticipating industrial change and enhancing local social capital.

4.1.1 A primary role of the SRR initiative is to ensure that action taken at European, national, regional and local levels is coordinated and consistent.

4.2 The Committee believes that the SRR initiative should be accompanied by a genuine **European action plan** aimed at:

— promoting the introduction of the territorial dimension of EU policies;

— fostering the incorporation of the priorities set out in the Territorial Agenda and Leipzig Charter;

([16]) Cf. for example the regional social dialogue commissions in Poland.

([17]) SWOT = *Strengths, Weaknesses, Opportunities and Threats analysis*

([18]) 'Foresight is a systematic, participatory, future-intelligence-gathering and medium-to-long-term vision-building process.' Cf. Foren: *Foresight for regional development*.

([19]) EMAS = Eco-Management and Audit Scheme

([20]) Cf. EESC Opinion on *European industrial districts and the new knowledge networks*, OJ C 255 of 14.10.2005, p. 1-13.

([21]) Cf. OECD *Territorial Outlook* — 2001 edition.

([22]) Opinion on *The territorial governance of industrial change*(…) (cf. footnote 11).

— encouraging and co-funding territorial participatory foresight exercises;

— gradually introducing the open method of coordination and support for implementation of grassroots democracy instruments;

— uniform monitoring and coordinated uniform implementation of the various EU instruments for territorial cooperation, particularly the EGTC ([23]);

— setting up a territorial development inter-service coordination unit within the Commission, tasked with framing and implementing an SRR information and communication strategy;

— developing the use of regional impact assessment instruments before and after the adoption of measures applicable in the regions, particularly concerning SMEs;

— co-funding measures aimed at the training and capacity building of the regions' public and private operators in developing SRR initiatives;

— promoting structured social dialogue in the regions, an 'SRR 21 quality mark';

— promoting and supporting the setting-up and development of Euroregions ([24]);

— supporting the development of districts (and metadistricts ([25])) and networks of districts to promote small and medium-sized businesses on the European and global markets.

4.3 The Committee believes that **the European SRR initiative — and its accompanying action plan** — must combine and coordinate the voluntary and regulatory instruments indicated in point 2.7 within a coherent system, where the responsibility of businesses from all sectors — including the financial sector and the local public sector — is essential to achieve the objectives of local strategies for growth and jobs in the context of national and European strategies.

([23]) EGTC: a cooperation instrument at Community level which enables cooperative groupings to implement territorial cooperation projects co-financed by the Community or carry out actions of territorial cooperation which are at the initiative of the Member States — Regulation (EC) No 1082/2006, OJ L 210 of 31.7.2006.

([24]) EUROREGIONS: structures for cross-border cooperation between one or more regions in different European Union and/or neighbourhood countries to promote common interests across borders and to cooperate for the common good of border communities.

([25]) Cf. EESC Opinion on *European industrial districts and the new knowledge networks*, OJ C 255 of 14.10.2005.

4.4 The Committee feels that **CSR** ([26]) must be a voluntary part of this open coordination framework, facilitated and encouraged — particularly as regards micro and small businesses, which are the backbone of local development — by the climate of participation and joint, shared vision.

4.4.1 The SRR initiative must develop widespread personal and ethical values of a **participatory culture promoting innovation** around a common identity, which must not become solely that of employers but must be present and active in all the public and private sectors of the region and reference regional and interregional networks and clusters/districts.

4.5 **Regional 'learning communities'** must be able to use interactive, interoperative telematic structures and infrastructure, starting with e-government and the IDABC platform ([27]), which provides on-line pan-European administrative services to public administrations, businesses and individuals with the aim of improving the efficiency of the European public administrations and cooperation among them and with organised civil society.

4.6 The Committee firmly believes that Europe needs to become **a centre of excellence in the development of SRRs**, building on successes with EMAS and CSR while expanding the reference framework to the regional dimension.

4.6.1 To be effective, regional strategic development should not be concerned with political factors such as the electoral renewal of local authorities but should interact with all the region's political entities, in power or in opposition, and build a heritage of **ongoing joint responsibility** of voters and/or elected representatives.

4.7 Micro and small **businesses** should be able to benefit from assistance in the form of expertise to introduce simple language and procedures and improve access to credit and microcredit, so as to encourage business management which respects the environment, the region and its social capital.

4.7.1 Social-economy businesses also have a role to play in the development of socially responsible regions as they encourage social cohesion and sustainability, distribute profits among their members and apply participatory, democratic management.

([26]) Cf. EESC Opinions on *Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility* (COM(2006) 136 final), OJ C 325 of 30.12.2006, p. 53-60, and on the *Green Paper — Promoting a European framework for Corporate Social Responsibility* (COM(2001) 366 final), OJ C 125 of 27.5.2002, p. 44-55.

([27]) IDABC = Interoperable Delivery of Pan-European e-Government Services to Public Administrations, Business and Citizens; cf. EESC Opinion published in OJ C 80 of 30.3.2004, p.83.

4.8 **Local schools, universities and research institutions** should be linked together in European regional and interregional networks of excellence — as provided for in the Capacities programme of the Seventh framework programme for research, technological development and demonstration activities and the Education and Training 2010 programme — so as to provide local establishments with talents and qualifications which are often lacking in small businesses but necessary for the regional development strategy to succeed.

4.9 The Committee feels that the Community SRR initiative should also promote local **structured social dialogue**, together with twinning between local institutions, to encourage stronger capacity-building partnerships between regional authorities with different performance levels. The launch of an SRR 21 charter could also increase SRR consistency and effectiveness.

4.10 Lastly, the Committee calls for an assessment, benchmarking and monitoring action to be included in the Community SRR initiative, for a database of regional per-capita income to be set up and a for report to be drawn up every two years and submitted to the European Parliament, the Council and the Committee.

5. **The contribution of national public authorities**

5.1 Member States should apply the provisions uniformly, so as to preserve the unity of the EU internal market, and should use support mechanisms and disincentives. *Inter alia*, national public authorities should:

— work on cutting red tape and streamlining structures and processes, to free up resources for sustainable, competitive development and jobs;

— agree on a general strategic reference framework — in a participatory and consensual manner and with a direct input from the social partners and representatives of organised civil society — for developing national policy on socially responsible regions;

— strengthen frameworks for coordinating and decentralising the public sector, so as to demarcate governance roles and responsibilities at central, regional and local levels;

— draw up fiscal decentralisation policy guidelines incorporating the means of transfer between the various levels of governance, as previously suggested by the Committee ([28]);

— enhance and increase the endeavours of bodies to manage and coordinate the process of decentralisation and governance at local level;

— establish budget headings for developing dedicated human resources and for co-funding training programmes, the creation of networks and interoperable telecommunications facilities at national and European levels;

— ensure the consistent application at national level of the Interreg IV instruments and of the Regulation on EGTC — cross-border bodies that allow for the participation of Member States, alongside local and regional authorities and territorial cooperation entities with their own legal personality under Community law;

— develop a new urban-rural partnership favouring an integrated regional approach and promoting parity of access to infrastructure and knowledge;

— foster competitive and innovative cross-border regional clusters; and strengthen trans-European technological networks, trans-European risk management, polycentric urban development, and the development of environmental and cultural resources;

— ensure consistency and coordination in the regional dimension of sectoral policies, avoiding conflicting sectoral measures that could generate inefficiencies and prove totally ineffective and counter-productive on the ground; develop instruments for Territorial Impact Assessment — (**TIA**) with due reference to Environmental Impact Assessment (**EIA**) ([29]) and Strategic Environmental Assessment (**SEA**) ([30]).

5.2 Regional and local public authorities should:

— involve economic and social interest groups upstream of the drafting of strategic regional development projects;

— develop education systems, universities and schools of excellence, which are essential for the economic and social development of SRRs;

— increasingly introduce cost-effectiveness, quality and sustainable-development criteria into public investment choices and SGI management;

— carry out periodic assessments of public investment plans;

— ensure before the launch of public investment projects that the amounts and timeframes specified in finance plans are guaranteed;

([28]) Opinion on the *Impact of the territoriality of tax law on industrial change*, OJ C 120 of 16.5.2008, p. 51-57.

([29]) Directive 85/337/EEC, as amended by Council Directive 97/11/EC of 03.03.1997 and by Directive 2003/35/EC of 26.5.2003.

([30]) SEA Directive 2001/42/EC. The purpose of the SEA Directive is to ensure that environmental consequences of certain plans and programmes are identified and assessed — in particular in terms of their territorial dimension — during their preparation and before their adoption.

— ensure that external funding for public investment projects is actually used within the specified deadlines;

— ensure an active base of SMEs throughout regions; SMEs provide coordination between urban, peri-urban and rural areas, preserving jobs, income, communities and tax resources in the latter;

— encourage reinvestment of capital and profits locally for the purposes of setting up grants for projects and purchasing of local businesses and regional financial instruments for development and venture capital, without prejudice to the single market;

— not remove corporation tax revenue too far from its geographical origin (by transferring it to supra-regional levels), without detriment to the redistribution requirements of the fiscal solidarity system;

— train local elected politicians in current spatial planning mechanisms, focused on services of general interest and economy-supporting infrastructure, with a view to modern management of sustainable business development.

5.3 Regional and local authorities should implement priority actions on the exchange of best practices and interregional networks, together with appropriate foresight mechanisms for defining a joint, shared vision.

6. **The contribution of businesses: businesses should act responsibly towards their regions**

6.1 The Committee believes that, without creating any more red tape, businesses need to help reinvigorate local networks, of which they are a driving force and an integral part:

— report on their social, environmental and regional (or societal) best practices and introduce instruments which can identify levels of corporate social responsibility;

— encourage placing of skilled human resources within and around the business, by creating jobs and training current and prospective employees;

— keep employees properly informed of the business's strategy and its projects, particularly relating to jobs and training;

— cooperate with local economic operators to create sustainable growth potential in the area generated by healthy, trust-based commercial relations between businesses;

— where possible ensure technology transfer to local businesses, particularly SMEs, so that the region is revitalised by progress in technology and highly skilled staff;

— engage proactively in science and technology development activities in the region to embed in it knowledge and know-how, liaising with research institutes and universities, other businesses and local professional bodies;

— encourage suppliers and their subcontractors to adopt the same principles of cooperation with local authorities and observe the same social, environmental and regional management rules in their companies;

— establish links between businesses, particularly the largest, with stakeholders (local and public authorities) to discuss and make progress on the technological, commercial and social issues and challenges facing businesses locally.

7. **Achievements on the ground: success stories**

7.1 Various European initiatives and policies have been launched to address the challenge of socially responsible regional development in the EU and to give increased, positive visibility to the territorial dimension of EU policies. Examples of these initiatives can be found on the CCMI web page (http://www.eesc.europa.eu/sections/ccmi/index_en.asp), which also contains information on a hearing held in Lille on 25 September 2008 as part of the preparatory work for this Opinion (see the relevant heading).

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

APPENDIX I

to the opinion on 'Industrial change, territorial development and responsibility of companies'

(CCMI/055)

Report on the hearing held in Lille on 25 September 2008, at the headquarters of the Nord-Pas de Calais Regional Council

Under the French presidency of the European Union, the European Economic and Social Committee's Consultative Commission on Industrial Change (CCMI) and the Nord-Pas de Calais (NPdC) Regional Council organised a hearing on Industrial change, territorial development and responsibility of companies (subject of the opinion for which this is the appendix), which took place in the regional council's hemicycle. The hearing was attended by over 90 key guests from 12 European countries and high-level local and regional bodies, both public and private, together with representatives from three of the European Commission's directorates-general.

With the participation of the regional council president, Daniel Percheron, the CCMI president, Joost van Iersel, the study group president, Martin Siecker, the rapporteur, Antonello Pezzini, and the co-rapporteur, Bernard Gay, promoter of this important initiative, a wide-ranging and animated debate was held on regional and local development, governance, the revitalisation of production, the need for shared views of future trends, sectoral and inter-sectoral prospects for the growth of competitive employment, and mechanisms for active democracy through the development of a participatory culture in an area successfully combining an adequate level of wellbeing with the duties which are an integral part of social responsibility.

In our globalised economy, territorial development and industrial change are closely connected and interdependent. The opinion aims to take a territorial approach to assessing the prospects for socio-economic change, focusing primarily on the development strategies designed by local and regional bodies and on the centres of competence set up by private and public stakeholders. The analysis thus focuses on the regions' capacity to cope with and adapt to irreversible changes through collective responsibility-sharing systems, taking into account the concept of corporate societal responsibility.

NPdC is considered a region with a rich fund of experience in these fields and the CCMI therefore asked it to cooperate in organising a hearing in Lille. The two organisations pooled their resources with a view to taking stock of the experiences of regional development stakeholders and noting their proposals for harmonious regional development.

Listening to the problems, solutions and experiences outlined by the most qualified representatives of the 'real world' in the NPdC region (businessmen, presidents of business clubs and hubs of competitiveness, trade unions and representatives of the social economy, universities, the professions and public administration at various levels) and the wide-ranging exchange of ideas which ensued led to the identification of innovative strategies and key priorities which, alongside the generous hospitality of the NPdC regional council and the friendly relations established during the hearing, forged strong contacts with a profound impact on the CCMI's work.

APPENDIX II

to the opinion on 'Industrial change, territorial development and responsibility of companies'

(CCMI/055)

Various European initiatives and policies have been launched to address the challenge of socially responsible regional development in the EU and to give increased, positive visibility to the territorial dimension of EU policies:

— **Lille-Kortrijk-Tournai — Eurometropolis (France-Belgium)**: Eurometropolis is the first significant example of a European Grouping of Territorial Cooperation (EGTC). It was launched on 28 January 2008 and comprises 14 partners — four in France (central government, Nord-Pas de Calais region, Département du Nord and the Urban Community of Lille Métropole) and 10 in Belgium (the federal government, region of Flanders, the French-speaking Community, provinces and joint municipal authorities). Equally important was the establishment in the 1990s of the **Transmanche Euroregion**, comprising the English county of Kent, the French Nord-Pas de Calais region and Belgium, in a network useful for identifying cooperation projects, thus maximising the capacity to take action in the EU's 2007-2013 programming period.

— **Bilbao Metropoli 30**: The process of revitalising the Bilbao metropolitan area was launched in the early 1990s with a public-private partnership involving over 80 public and private bodies, over 30 associated bodies and 17 international networks. It was based on a joint strategic plan and a shared vision of the territorial, economic, social, environmental and cultural development needed to transform the metropolitan area — and by extension the entire Basque Country — into one of the most advanced and competitive areas in Europe.

— **ALSO — Marche region**: The ALSO project (Achievement of Lisbon and Gothenburg Strategy Objectives) has been developed by Italy's Marche region, together with numerous partners, including local and regional authorities, development agencies and universities from various EU countries, in the context of the INTERACT programme. Its ultimate aim is to orient territorial cooperation towards achieving the objectives of the Lisbon and Gothenburg Strategies.

— **Metropolis Hamburg — interregional cooperation**: Partnership between the city of Hamburg and the regions of Lower Saxony and Schleswig-Holstein, based on voluntary cooperation between three federal states on both sides of the river Elbe.

— **Alps-Mediterranean Euroregion (France — Italy)**: This Euroregion comprises three Italian regions (Liguria, Piedmont and Valle d'Aosta) and two French regions (Provence-Alpes-Côte d'Azur and Rhône-Alpes). It is aimed at close cooperation on increasing exchanges in common areas of competence, so as to strengthen ties between the respective communities in the political, economic, social and cultural spheres.

— **Ister-Granum**: This Euroregion is the first EGTC in central Europe. Recently formed, though based on previous cooperation schemes, the Ister-Granum Euroregion incorporates 47 local authority areas in Hungary and 39 in Slovakia. This new EGTC has about 20 joint projects in the pipeline, specifically in the fields of health systems and medical care, IT and media, tourism, and integrated transport infrastructure, particularly regarding the Danube. It is based in Esztergom, Hungary and provides for the participation of local and regional authorities solely and not of central government.

— **Baltic Euroregion**: This partnership between the regions grouped around the Baltic Sea has existed since 1998. For the 2007-2013 programming period, the European Commission has approved EUR 75 million in financing for this Euroregion which henceforth includes parts of Poland, Sweden, Germany, Denmark and Lithuania. The Euroregion's objective is to boost sustainable development and the economic competitiveness of its constituent regions.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

449TH PLENARY SESSION HELD ON 3 AND 4 DECEMBER 2008

Opinion of the European Economic and Social Committee on the 'Green Paper — effective enforcement of judgments in the European Union: the transparency of debtors' assets'

COM(2008) 128 final

(2009/C 175/12)

On 6 March 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Green Paper — Effective enforcement of judgments in the European Union: the transparency of debtors' assets.

COM(2008) 128 final.

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 6 November 2008. The rapporteur was Mr PEGADO LIZ.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 161 votes to two with seven abstentions:

1. **Conclusions**

1.1 The Green Paper on the effective enforcement of judgments in the European Union: the transparency of debtors' assets (COM(2008) 128 final of 6 March 2008) follows on from the Green Paper on the attachment of bank accounts (COM(2006) 618 final) and fits in with the broad range of measures that the Commission has adopted in the aim of establishing a European judicial area in order to support the judicial aspects of the completion of the single market.

1.2 The EESC has by and large supported these initiatives, but has at the same time highlighted the need for them to be properly justified in terms of subsidiarity and proportionality. The initiatives should also comply with the basic principles of procedural law common to all Member States and should fully respect people's fundamental rights.

1.3 In both its opinion on the previous Green Paper, on the attachment of bank accounts, and in this opinion, the EESC has taken the view that the initiatives are inadequately geared to the specific situations they are intended to address. A number of the measures put forward also far exceed, in terms of proportionality, what is necessary and what cannot be achieved through existing national measures. In some cases, they could even result in breaches of fundamental rights, such as the right to privacy or to a fair opportunity to defend oneself.

1.4 In the EESC's view, much progress can and must be made on the areas currently under consideration, through better cooperation between national authorities, greater efficiency and swiftness in the workings of existing national systems, better access to existing registers and information, a more extensive exchange of information and a better mutual understanding of how national systems work and of how to make them more flexible.

1.5 The EESC is thus firmly opposed to the ideas of a) setting up a central register of European citizens, b) giving any creditor total and indiscriminate access to tax and social security registers and c) adopting a standard Community-level declaration form detailing all of a debtor's assets,

1.6 The Committee considers that the creation of a comparative database, compiled by competent professionals and continually updated, could help to provide a clearer picture of national enforcement systems and their practical operation.

1.7 Lastly, the EESC suggests that particular consideration be given to a number of alternative initiatives (point 5.8) that share the aim put forward in the Green Paper but which do not require further Community legislation.

2. **Gist of the Green Paper**

2.1 With this Green Paper, the Commission is launching a second consultation ([1]) of interested parties on how to improve the enforcement of judgments, concerned here with how to overcome the problems arising from difficulties in accessing reliable information on debtors' whereabouts or their assets.

2.2 The Commission considers that knowing a debtor's correct address and having access to accurate information about his assets are the starting point for more effective enforcement proceedings. It acknowledges, however, that national systems of registers and debtors' declarations of assets, whilst comparable, differ considerably in terms of conditions of access, procedures for obtaining information and the content of the information itself, which all undermine the reliability and speed of such systems.

2.3 The Commission recognises that cross-border debt recovery is hampered by the differences between national legal systems and by insufficient knowledge on the part of creditors about the information structures in other Member States. The Green Paper is thus a step towards the possible European-level adoption of a series of measures to improve the transparency of debtors' assets and strengthen the rights of creditors and national enforcement authorities to obtain information that will ensure the effective enforcement of judgments to enforce payment of civil and commercial debts, whilst respecting the principles of the protection of the debtor's privacy, as laid down in Directive 95/46/EC.

2.4 To this end, the Commission takes a detailed look at the measures under consideration, which it summarises in the form of 10 questions.

([1]) The first was the Green Paper on the attachment of bank accounts [COM(2006) 618 final]; EESC opinion: OJ C 10, 15.1.2008, p. 2.

3. **Background**

3.1 This initiative quite rightly fits in with the broad range of measures that the Commission has adopted in the laudable aim of establishing a European judicial area in order to support the judicial aspects of the completion of the single market ([2]). Here the focus is on facilitating the enforcement of judgments in the European Union through measures that help to identify the debtor's home address or registered office where he can be served the enforcement order, as well as accurate information on assets belonging to him which could cover the outstanding debt, and which could be located in any part of any Member State.

3.2 This time, the Commission has taken the trouble — for which it deserves praise — to ask for reactions not only from the 15 Member States whose situation was examined in the study forming the basis for this Green Paper ([3]), but also from the other 12 Member States that are now part of the European Union. Nevertheless, the data collected are not always accurate and have on occasion been misinterpreted.

3.3 It should also be pointed out that this initiative appears to have taken on board the recommendation made by the EESC in its opinion on the Green Paper on the attachment of bank accounts, concerning the considerable need for '(…) a proper assessment of measures aimed at ensuring greater transparency regarding debtors' assets (…)'.

3.4 Regrettably, the Commission provides no statistical data concerning the scale of the problem it is seeking to address. Nor does it clearly define the nature of the problem or who precisely might benefit from the measures it is putting forward.

4. **General comments**

4.1 This Green Paper follows on from and supplements the Green Paper on the attachment of bank accounts [COM(2006) 618 final], on which the EESC issued an opinion on 31 July 2007 ([4]), to which the reader is referred.

4.2 As stated above, the issue raised in this Green Paper inevitably precedes the attachment of bank accounts and accurately reflects the need for sufficient information on a debtor's assets to be available in

([2]) A sufficiently exhaustive list of such measures can be found in the EESC opinion — OJ C 10, 15.1.2008, p. 2, on the aforementioned Green Paper on the attachment of bank accounts, to which the reader is referred.

([3]) For a full understanding of this Green Paper, account must be taken not only of the Commission Working Paper SEC(2006) 1341 of 24.10.2006 but also of Study No. JAI/A3/2002/02, in the version updated on 18.2.2004, by Prof. Dr. Burkhard Hess, Director of the Institute for Comparative International Private Law at the University of Heidelberg, the text of which can be found at http://europa.eu.int.comm/justice_home/doc_centr/civil/studies/doc_civil_studies_

([4]) OJ C 10, 15.1.2008, p. 2.

order to provide creditors with an effective common guarantee, which is a fundamental and definitive principle of civil procedural law. Any consideration of this issue, however, must question the Community-level harmonisation of a whole range of areas within the field of substantive civil law that inevitably precede this matter.

4.3 The EESC thus acknowledges the need for the authorities responsible for enforcement in any Member State to have access to accurate information on a debtor's whereabouts, starting with his registered office or home address, and on the property, both moveable and immovable, that forms his assets, irrespective of its location.

4.4 As also applies to the opinion referred to above, the EESC does, however, have serious reservations and well-founded doubts concerning the real need for specific measures to harmonise legislation at Community level in the area in question, although it recognises that the European Union does have competence in this field and that a legal base for such measures does exist.

4.5 Indeed, all of the requirements for better information, better data and better access identified in the Green Paper still do not necessarily suggest the need to establish new, Community-level registers or obligations for a debtor to declare his assets. This measure is furthermore unlikely to meet the criterion of proportionality, and could result in unacceptable breaches of fundamental rights.

4.6 The EESC considers that, rather than setting up registers held centrally in Brussels, covering the general population, traders or consumers, movable or immovable property or tax and social security registers, a more effective exchange of information between national authorities and easier and more rapid access to existing data would provide sufficient guarantees of equal opportunities and treatment when identifying a debtor's assets, whatever the creditor's nature or nationality.

4.7 This does not mean that the Community should not devise incentives and guidelines on improvements to be made to the content and workings of and access to the abovementioned public registers and to other private data-bases, provided that the data are duly protected, in line with the applicable Community directives and on condition that the information is limited solely to the stated purpose of the request and to the extent needed to repay outstanding debts.

4.8 There should be no discrimination between private and public creditors in accessing data, and the latter should not benefit — as a result of their privileged position — from having more rapid and easier access to public registers, whether these cover tax or social security systems or a debtor's assets.

4.9 Cooperation with third countries, specifically Andorra, Switzerland, Liechtenstein and all other countries with close links to tax havens or financial markets in Europe, should also be guaranteed.

5. **Specific comments: the 8 questions**

5.1 *A Community-level initiative?*

5.1.1 The ten questions raised in this Green Paper are actually eight, each of which is considered in detail.

5.1.2 As to whether measures to improve the transparency of debtors' assets should be adopted at Community level, the EESC considers that, in line with the reservations expressed above in 'General comments', Community-level initiatives should be implemented solely to ensure better coordination and cooperation between national authorities and to improve the content of and access to existing national registers, which would make it possible to identify and locate debtors and the assets needed to repay outstanding loans.

5.2 *A manual of national enforcement systems?*

5.2.1 In the EESC's view, any measure that could help to improve knowledge and information concerning national laws and practices should be supported and encouraged. The Committee does not believe, however, that this can be achieved by producing a basic 'manual', given the complexity of the matter. This manual cannot be simplified for use by the general public, as quality and accuracy might be lost in the process.

5.2.2 The EESC therefore suggests that the Commission instead consider the option of setting up a database of comparative law on the enforcement procedure in the 27 Member States, with guarantees that the database will be updated on an ongoing basis, will include explanatory notes, and will be accessible via electronic means and in all Member-State languages. This database should be produced by competent and qualified professionals from the respective Member States.

5.3 *Better information in commercial registers and improving access to them?*

5.3.1 The degree of harmonisation that already exists in this field would appear to be sufficient for the stated aims. The EESC does not deem it necessary or appropriate to go further by establishing central commercial registers at Community level, whilst not ruling out the possibility of harmonising the common elements involved.

5.3.2 Furthermore, nothing precludes adopting measures to improve the content of the information in such registers, including, in particular, individual businessmen, updating this information and making it easier to access, specifically by electronic means.

5.3.3 The same should apply to land registers, as demonstrated by EULIS (the European Land Information Service), a European consortium of land registries ([5]).

5.4 *Better access to population registers?*

5.4.1 By the same token, no central register of the entire population of Europe is feasible, since it falls to the Member States to maintain central or local civil registers of their populations and to set conditions for access to these registers, ensuring that no undue discrimination is applied.

5.4.2 The enforcement authorities in any country should, however, still be guaranteed easy access to such registers in order to obtain information regarding the address of individual debtors, specifically through electronic means.

5.5 *Better access to tax and social security registers?*

5.5.1 The EESC firmly rejects the idea of granting widespread and indiscriminate access to tax and social security registers.

5.5.2 The Committee considers that only the judicial authorities should have access to such information, in clearly defined situations and with guarantees that the personal data contained in such registers will be properly protected.

5.5.3 In any event, access of this nature in a country other than that of the enforcing authority should always involve cooperation with a judicial authority in the country in which the register is held.

5.6 *Better exchange of information between enforcement authorities?*

5.6.1 As stated in the general comments above, the EESC considers that the area of improved cooperation between national enforcement authorities on exchanging information is precisely where Community initiatives should be implemented, by setting up a system for the direct electronic exchange of information in order to identify and locate debtors and to determine their assets.

5.6.2 It is important, however, to ensure that in Member States where the enforcement authorities are not public bodies, the information obtained is monitored by the competent judicial authorities supervising the enforcement proceedings.

5.6.3 With the necessary changes, systems such as those provided for in Regulation 1206/2001 ([6]) on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, or in Directive 76/308/EEC, could be models worth adopting ([7]).

5.6.4 The use of electronic means here, or even the establishment of an intranet system linking all national authorities to one another, must be viewed as essential.

5.6.5 The information circulated through this cooperation network should only be accessible to the authorities responsible for enforcement, such as enforcement agents, parties requesting enforcement, courts and insolvency practitioners. Further, debtors should in all cases be informed of the results.

5.6.6 Use of the IMI — the Internal Market Information system — should not be discounted as a possibility for exchanging information between national enforcement authorities.

5.7 *A European assets declaration?*

5.7.1 The EESC is firmly against the Community-level adoption of a standard declaration form that would disclose all of a debtor's assets for the purposes of enforcement and totally rejects the idea that failure to comply with this obligation could lead to imprisonment.

5.7.2 Primarily, because not all of a debtor's assets are distrainable and the onus is on the Member States to define the assets that cannot be attached, fully, partially or in relative terms.

5.7.3 It should be added that the obligation for a debtor to disclose his assets should be confined to those assets necessary to repay the debt and that it is up to the national judicial systems to ensure that this statement of a debtor's assets is completed accurately, or financial penalties may ensue.

5.7.4 Further, in the Committee's view, establishing a Community-level standard form for a uniform declaration of assets far exceeds the objectives that a measure of this type should have. The EESC considers instead that this is precisely the type of area in which closer cooperation should take place between enforcement bodies. These bodies should work together, using the legitimate means available to them, to identify those of a debtor's assets that are necessary to repay a debt, specifically giving enforcement agents the power to conduct their own investigations of a debtor's assets.

([5]) This consortium is an association of land registries created in 2006, and represents a first step towards providing access to land registries in the consortium's member countries (England, Ireland, Lithuania, Norway, Wales, the Netherlands and Sweden) website: www.eulis.org.

([6]) Council Regulation 1206/2001 of 28 May 2001, in OJ L 174, 27.6.2001. In this area, one issue of particular importance is that of communication between authorities regarding language differences, which the provisions of Article 5 of this regulation have proved unable to address.

([7]) Council Directive 76/308/EEC of 15 March 1976, in OJ L 073, 19.3.1976.

5.7.5 In any event, the debtor should always have the right to avoid having to disclose attachable assets if he has already repaid the outstanding debt, demonstrates that he has sufficient assets to repay the debt or provides securities or equivalent payment guarantees, such as bank guarantees or a similar security. The debtor should also have the right to oppose the attachment of assets not needed to repay the outstanding debt or any ancillary sums prescribed by law.

5.7.6 Another element that must be rejected out of hand, because it breaches fundamental principles of respect for a debtor's privacy, is the publication of any declaration of a debtor's assets in a publicly accessible register (a 'debtors' list').

5.8 *Any other measures to improve transparency?*

5.8.1 The following suggestions are put forward, merely by way of observation:

a) Access could be provided to the register listing a debtor's shares and holdings in any company

b) Access could be provided, with the appropriate precautions in place, to consumers' data registers concerning consumer or mortgage credit

c) A single European vehicle register ([8]) could be set up

d) A register of all pending enforcement proceedings, which could be consulted online from any Member State, could be established

e) Access to registers of share investments exceeding a certain threshold could be allowed.

f) Access to land registries providing information on the owners of immovable property could be allowed.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([8]) As proposed in the EESC own-initiative opinion CESE on A European highway code and vehicle register, for which the rapporteur was the author of this opinion (OJ C 157, 28.6.2005, p. 34).

Opinion of the European Economic and Social Committee on the 'Directive of the European Parliament and of the Council amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims'

COM(2008) 213 final — 2008/0082 (COD)

(2009/C 175/13)

On 22 May 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Directive of the European Parliament and of the Council amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims

COM (2008) 213 final — 2008/0082 (COD).

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 6 November 2008. The rapporteur was Mr BURANI.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 172 votes to one with five abstentions.

1. **Summary and conclusions**

1.1 The Commission's initiative on payment systems, that was requested by the Council and is looked upon favourably by the market, sets out to update and bring greater certainty to the rules on settlement finality and on financial collateral agreements. As such, it also merits the support of the EESC. In a subject as highly specialised as that under examination, questions and doubts about the technical aspects or the proposal are bound to arise: these have been interpreted by specialists and decision-making bodies at the various stages of scrutiny of the Commission's text. The EESC only touches upon these issues in passing, preferring to contribute by debating Community policy on payment systems.

1.2 The initiative commenced more than a year ago, prior to the emergence of the US subprime crisis, which has since expanded with significant consequences for financial communities worldwide. The first symptoms of the crisis among individual establishments appeared in the form of liquidity difficulties, but which rapidly turned into solvability difficulties. The situation has become so serious as to trigger unavoidable government intervention in both the United States and Europe. The current situation puts the need for the market to be guaranteed by adequate collateral into sharp focus: new types of collateral are welcome, **provided that they are not detrimental to the quality of guarantees**.

1.3 It may well be wondered if the provision under which bank loans are to be considered eligible as collateral in financial collateral arrangements would have been included in the Commission's proposal if the question were to be raised now rather than a year ago. Bank loans are already accepted in a number of countries and make a real contribution to liquidity; they should therefore be viewed with approval. However, in the current fragile and volatile state of the markets, extending them to all Member States without prior harmonisation of the rules governing them might suggest greater prudence, leaving each central bank to continue 'monitoring' its own market in accordance with its own perceptions and needs.

1.4 More thought is needed, not so much about legal certainty, which the proposal quite rightly seeks to establish, but about the planned duration of the provisions contained in the proposal: the Legal Certainty Group has not yet finished its work, the UNIDROIT initiative is only just at the finishing stages and has not yet been signed, much less ratified, harmonisation of legislation on netting is a matter for future plans, and the harmonisation of legislation on insolvency procedures is a long-term goal. The EESC does not mean by this that the Commission's initiative is not helpful and worthy of support, but wishes to highlight that the market needs rules that are not only clear-cut, but also long-lasting. Hence the need to speed up legislative and regulatory work.

1.5 Last but by no means least, there are the prudential implications: the EESC wonders if the different aspects of the systemic risk inherent in operable systems, in one system operating within another, and in the quality of controls over the entire range of players, have been thoroughly assessed by the supervisory authorities, and if they have been asked to play a direct part in framing the proposals. As pointed out by the EESC opinion, market robustness prevails over all other considerations.

1.6 The EESC's opinion has not been influenced by the present situation. In 'normal' times, the rules on the operational capacity of participants and systems, together with the quality of collateral, must be strict, but **in emergencies must become flexible** without however becoming lax. The directive should contain a provision that would enable systems — under the responsibility of the supervisory authorities — to adopt **special measures to deal with emergencies**.

2. **Introduction**

2.1 The purpose of the Commission's initiative is to **bring the directive on settlement finality in payment and securities settlement systems, together with the directive on financial collateral arrangements, into line** with the latest market developments. Existing and newly introduced rules are extended to night-time settlement and to settlement between linked systems.

2.2 Market interconnection, which has been under way for some time, is becoming increasingly widespread: following the implementation of Directive 2004/39/EC and the European Code of conduct for clearing and settlement ('the Code'), interconnection is covered by clear and precise rules, facilitating its broad introduction. As well as introducing new types of settlement, the Commission's proposal also extends the list of types of asset that can be used as financial collateral: **credit claims accepted for the collateralisation of central bank credit operations** ('bank loans' or 'credit claims'). Since January 2007, the ECB has included credit claims as an eligible type of collateral for Eurosystem credit operations; this initiative has already been adopted independently by a number of central banks, but a legal framework allowing for cross-border use was lacking.

2.3 In brief, the existing legal framework, that the proposal for a directive aims to amend, is set out in the two EC directives: 98/26/EC on settlement finality (**SFD**, Settlement Finality Directive), and 2002/47/EC on financial collateral arrangements (**FCD**, Financial Collateral Directive).

2.4 In addition, and as is usual with amending directives, the Commission is taking the opportunity to introduce a number of **simplifications and clarifications**. The ultimate aim is to bring the regulations into line with market developments, a measure which is all the more necessary in the light of recent market turbulence, the effects of which may be greatly magnified as a consequence of globalisation.

2.5 The Commission's initiative was preceded by a preparatory phase lasting more than a year. Its evaluation report on the implementation of the SFD concluded that the system 'is functioning well', while pointing to the need for further analysis. The proposal is based on a series of consultations with the ECB, the national central banks, and a wide range of operators and organisations in the sector. **Consumer rights** receive special attention, and the proposal points out that 'the provisions relating to credit claims do not seek to encroach on the rights of consumers, and in particular the rights under the recently agreed Consumer Credit Directive', since the credit claims in question are those that are eligible for the collateralisation of central bank credit operations, '**which in principle excludes credit claims by individual customers**'.

2.6 Under normal circumstances, the new European rules appear to be properly geared to **dealing with emergencies**: the market's robustness should be ensured by the growing web of interconnections between payment and securities settlement systems that are already in operation, are all solid, have sufficient liquidity and are apparently closely monitored. Moreover, the Code (adopted in late 2006) has introduced an element of competitiveness — and consequently greater efficiency — to clearing and settlement systems, which is entirely to the benefit of users.

3. **General comments**

3.1 The operators see this initiative as a decisive step forward in creating a European financial area with harmonised rules: the new directive would effectively pave the way for any future measures that may have to be taken following the recommendations of the expert group set up by the Commission (the **Legal Certainty Group**) to remove legal barriers to the integration of Union markets. The directive would also enable a significant contribution to be made to **implementing the UNIDROIT initiative**, intended to establish **uniform rules of substantive law on intermediated securities** at international level, including rules on financial collateral arrangements.

3.2 No harmonisation, either European or international, can be considered as complete without a series of **additional or complementary measures**, which are likely to be included in future Commission programmes. One such additional measure should provide for the **harmonisation of rules governing netting agreements**, i.e. clearing of net amounts between parties, including clearing agreements under which the parties' respective obligations become immediately due (close-out netting).

3.3 Among additional measures, and certainly with a more long-term perspective, well-designed integration of the financial markets should help to bring about **greater consistency between national arrangements for insolvency procedures**: the current situation, with discrepancies at national level, can have a negative impact on financial collateral arrangements and clearing and settlement operations, entailing greater **systemic risk of instability**.

4. **Comments on the proposals concerning Directive 98/26/EC (SFD)**

4.1 Article 2 introduces a series of explanations and clarifications, some of which are purely routine while others are more important. Article 2(b) in particular clarifies the position of **electronic money institutions**, laying down unequivocally that, for the purposes of the directive, these are to be considered in exactly the same way as **credit institutions**.

4.1.1 While acknowledging that, insofar as they are participants in payment systems, they are on a par with fully-fledged credit institutions, the EESC would point out that the supervisory rules are not the same, or are so only in part. It remains to be seen if this will have an effect on the reliability of electronic money institutions in the event of serious market disturbance: the Committee has in the past expressed reservations about accepting them as members of the payment system. However, the Committee wishes to repeat a recommendation it has already made in the past: that **policies geared to achieving a level playing field for competition should be subordinate to those — which take priority — primarily ensuring market resilience, and consequently consumer protection (the end-investors)**.

4.1.2 These aspects assume even greater importance in light of the fact that **interoperable systems** (as defined in Article 2(n)) facilitate participants' access to clearing and settlement systems by means of the connections between them, unavoidably leading to a potential **increase in systemic risk**. This is the case in particular in the **securities settlement system** as a result of the links established between central securities depositories (CSD), responsible for holding traded financial instruments on a centralised, dematerialised basis [1], and central counterparties (CCP), which act as the single counterparty for the institutions involved in a system with respect to their respective transfer orders for traded financial instruments. The text of the directive should also make clear that the purpose of introducing a definition of 'interoperable systems' is not to allow the legally momentous creation of a 'super-system', but rather to enable the legal protection typically afforded to settlement finality to be extended to regulated transactions between systems.

4.2 The proposal to **allow one system to become a participant in another** also gives cause for concern. Clarification is needed: a system, as defined by Directive 98/26, is an arrangement or set of rules, which has no legal personality but is recognised by its various participants. This distinction should be made, with a view to greater legal certainty, in order to establish the responsibilities of the different parties, especially with regard to insolvency law.

4.3 Article 3 introduces an amendment, needed in order to 'remove any uncertainty about the status of night-time **settlement services**': it replaces the word 'day', currently in use, with the more specific '***working* day**' to reflect the fact that most markets work uninterruptedly through the night as well as the day. This measure is necessary, but should be accompanied by **harmonisation of netting agreements**. In addition, the previously mentioned differences between **insolvency arrangements**, which may be reflected in the provisions on financial collateral and clearance arrangements, must be resolved: harmonisation in this area, which although desirable is difficult to bring about, is of an all-embracing nature and goes beyond purely payment systems-related considerations.

5. **Comments on the proposals concerning Directive 2002/47 (FCD)**

5.1 The extension of Directive 2002/47 to **bank loans** (amendment to Article 1(4)(a)) is to be welcomed, since it permits greater availability of collateral and is therefore likely to improve market liquidity. However, the definition of 'credit claims eligible for the collateralisation of central bank credit operations' gives rise to some doubt: the **definition of 'eligibility' leaves too much discretion to each central bank** and leaves it unclear who is qualified and who is not. One solution to this problem might be to delete the words 'or credit claims eligible for the collateralisation of central bank credit operations' from Article 2(4)(a).

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

[1] Almost all centralised securities are nowadays managed in dematerialised form; those securities that are still represented in paper form are grouped together in large certificates (global or maxi-certificates) at central depositories in the various Member States.

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament — Better careers and more mobility: a European partnership for researchers'

COM(2008) 317 final

(2009/C 175/14)

On 23 May 2008 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 to the Council and the European Parliament — Better careers and more mobility: a European partnership for researchers

COM(2008) 317 final.

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 6 November 2008. The rapporteur was Mr SALVATORE.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 176 votes in favour and two abstentions.

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee is in full agreement with the Commission's communication, whose underlying principles highlight the strategic role of an effective European Research Area when regarding economic competitiveness and knowledge development. The launch of a European partnership for better careers for researchers and greater incentives for researcher mobility could bring this objective within reach. This would help to stem the brain drain and then attract top researchers to the EU area.

1.2 The Committee agrees on the importance of Member States taking decisive steps to adopt open, transparent and merit-based recruitment procedures and to remove all barriers to the free movement of researchers within the EU. From this perspective, the EURAXESS information system, which posts EU research job vacancies and information about research funding opportunities on the internet, is a valuable tool. For the system to be properly implemented bodies that could benefit must be encouraged to use it effectively.

1.2.1 From recruitment to the end of researchers' careers, merit should be based not only on the number and quality of publications, but also on scientific results. Consideration should be given to innovative capacity, particularly in the early phase, and, in keeping with allotted tasks, to organisational and management skills as careers advance. Experience in international partnerships should always be highly valued.

1.3 It is essential for researchers' professional growth that all opportunities for mobility be seized. However, legal and administrative barriers currently make this difficult. Mobility, understood as a period of time spent in another country or region or in another public or private research institute, or a change of discipline or sector, should be seen as making a precious contribution to researchers' professional development, and as such encouraged with financial/social security related incentives, and balanced with family needs.

1.4 The often precarious nature of research roles must be made a thing of the past. Measures aimed at ensuring contract continuity and promoting social security and entitlement to various forms of social provision and their transfer, should researchers move, must therefore be strongly encouraged. This issue can penalise researchers heavily, making it very difficult for them to rise to high positions.

1.5 The active participation of the relevant bodies of both sides of industry is needed in order to help deliver these objectives comprehensively and promptly.

2. **Introduction**

2.1 This Communication (COM(2008) 317) is based on the principles of the Lisbon Strategy and seeks to build a European partnership for improving the careers of researchers, deemed to be the fundamental and primary core for developing a knowledge-based economy and society.

2.2 The ever more complex, sudden and unprecedented societal changes of our times call for policies that pay greater attention to developing, and therefore passing on, knowledge.

2.3 These changes are connected with the growth of forms of knowledge development that transcend national borders. The exchange of knowledge, and with it economic exchanges, require new forms of regulation capable of managing this change within a shared cultural context: a European seedbed.

3. **General comments**

3.1 The aim of making Europe a more attractive place to conduct research activities must be placed within an integrated framework of researcher support policies. This process must provide for the intelligent and harmonised participation of Member States, not based on voluntary involvement alone as is the case under the current legal framework.

3.2 The Committee welcomes this new approach which, while attempting to take account of the present situation, eschews over-ambitious measures and, treading previously covered ground, asks Member States to take rapid, measurable initiatives to

— establish transparent recruitment procedures;

— meet the social security and supplementary pensions needs of mobile researchers;

— provide attractive employment and working conditions; and

— enhance the training, skills and experience of researchers.

These activities should be carried out with the involvement of both sides of industry.

3.3 Over the years, the efforts of the EU institutions have been considerable. We need only think back to the origins of the European Research Area as set out in COM(2000) 6 final on 18 January 2000, the European Council's objective to make Europe the most competitive and dynamic knowledge-based economy in the world by 2010, the early measures for researchers, and finally the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers. These efforts highlight how central the research system is to promoting innovation and giving researchers a vitally important role to play.

3.4 As matters stand, the European Research Area must be given the best possible chances of organising an extremely competitive and dynamic environment, where human resources have better long-term prospects throughout their career paths.

4. **Specific comments**

4.1 The Commission binds the European Charter's definition of a researcher (already outlined in 2004 by the EESC), namely: 'Professionals engaged in the conception or creation of new knowledge, products, processes, methods and systems, and in the management of the projects concerned', together with the function of transferring new knowledge. In this context, however, researchers must be encouraged by institutions to publish the results of their research in order to provide authoritative sources for communications specialists, so as to enable the non-specialist public to understand scientific arguments more clearly, particularly when they might have a major impact on public opinion (health, food risks, environmental emergencies, etc.).

4.2 The EESC therefore advocates identifying specific priorities for organising a favourable and attractive European context for people employed in research.

4.3 First of all, emphasis is placed on the importance of taking decisive steps towards Member States adopting open, transparent and merit-based recruitment procedures. Failure to guarantee a maximum of information on the recruitment and selection of staff would result in a system that was far from open. This type of information should be freely available and accessible. To this end, the Committee fully supports and hopes to see the development of the EURAXESS information system, that can pool and thus help match researcher supply and demand in the various institutes and European projects. The completion of this information system will require the full support of the Member States and the various research organisations, and a commitment from the latter to placing all the information on research posts and projects on the network.

4.4 We then need to know how to reward merit and promote better working and training conditions during the early part of research careers. We need to change tack. Prolonged insecurity following a challenging and rigorous course of research-oriented studies lead researchers to abandon this career and this does not create conditions for retaining or fostering the best talent. The way to foster talent is through innovative training paths aimed at securing high quality research and enabling researchers to develop the skills they need to take up positions of leadership.

4.5 Merit should be assessed not only on the basis of the number and quality of publications, but evaluated on the basis of job descriptions, together with the following skills:

— research management;

— degree of innovation;

— teaching and supervision activities;

— team work;

— international partnerships;

— knowledge transfer;

— fund raising for research;

— publishing and communicating scientific results;

— business experience and potential application of research results in industry;

— patents, development activities or inventions;

— creativity and independence.

Lastly, in view of the atypical nature of researchers' employment contracts, they should not be penalised for possible interruptions in their careers.

4.6 The atypical nature of the researcher's role, summed up by job insecurity, must not be allowed to have a negative impact on the quality of researchers' working and family lives. All forms of mobility, especially geographical mobility, which is desirable for professional growth, should be facilitated. Mobility is a powerful factor in the development of the free movement of knowledge and, moreover, it contributes towards training and cultural development for workers and the research system.

4.7 For this reason, the EESC advocates measures for facilitating networking between researchers from different backgrounds. This is the only way to increase the benefits of and opportunities for discussion, making mobility a factor of knowledge. It would be useful here to compare the more obvious differences between research systems in Europe and the USA, which is able to attract and hold on to talent, so as to adopt the more positive aspects of this model and adapt them to the European context, beginning, for instance, with recruitment procedures and then moving on to assessment and incentive systems for researchers' careers.

4.8 Building the European Research Area will therefore mean not only supporting the transfer from one country or institute to another of individual researchers' financing, but also sparking a virtuous cycle whereby bodies will find it to their advantage to recruit people with the best scientific qualifications. Researchers, like other categories where mobility is required, should be supported at European level, by means of practical incentives (payment and benefits) to move to new places, rather than obstructed as is often the case currently (causing a brain drain). In this respect, a mechanism used widely in Anglo-American universities is the allocation of additional 'overhead funding', in proportion to the research funding itself, by the financing body to the institution hosting the funded researcher.

4.9 On the other hand, researchers interested in mobility are often simultaneously in precarious contractual situations: this combination of factors (making mobility more uncertain), also leads to further difficulties in terms of welfare insurance. The Committee therefore welcomes the Commission's proposal that researchers and their employers should have easy and full access to specific information on social security in the various Member States. Social protection must be guaranteed, and the acquisition and transfer of rights to all forms of social insurance, including supplementary pensions, must be secured. Measures designed to secure contract continuity for researchers must also be given robust support, since whereas a precarious career pattern may seem natural for a few years early in a career, it can have a stultifying effect on researchers over the age of 40, offering little independence and little access to management positions.

4.10 The differentiation of research career paths should also be promoted: by developing non-traditional channels on leaving research careers, enabling individual researchers to use their skill-set in more rewarding ways. There is no contradiction with the concept of strengthening links between other public administration sectors and the research sector; for instance, establishing links between academia and research would give academic institutions access to excellent resources such as research personnel involved in quality and diversified teaching careers. Similarly, secondary school teachers with greater awareness of research themes, could take part in this strategic sector, offering input of a cultural nature while also enriching the body of knowledge transferred to pupils.

4.11 Whereas research is the powerhouse of development, its links with industry are growing continually stronger. Research in industry and high-tech innovative companies must drive economic development forwards. An integrated system linking research, innovation and industry should therefore be set up and maintained. Fruitful exchanges between professionals from the public and private sectors should therefore be encouraged. This exchange is often hindered by differing human resource management policies. The hope is that legislation in individual Member States and national employment agreements will soon succeed in narrowing the gap by means of specific measures (tax incentives, traineeships, mobility, Community programmes, etc.).

4.12 Encouragement should also be given to those types of business (*start-ups and spin-offs*) where the skills acquired by researchers can be applied to innovative business activities. Support might for instance include favourable conditions from the banks (or public finance facilities), as well as welfare and tax incentives.

4.13 Finally, the EESC welcomes the framework programme adopted by the Commission in COM(2008)317. The 2009 national action plan to be adopted by Member States should immediately, once the relevant stakeholders have been consulted, focus on the declared objectives in the light of the existing EU legal framework, current good practices, and also those that Member States have in common.

4.14 With the involvement of both sides of industry, the 2009 conference should be decisive in assessing the current situation and forming a common position on possible changes or improvements to be made.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

Opinion of the Section for the Single Market, Production and Consumption on the 'Proposal for a Decision of the European Parliament and of the Council Amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters'

COM(2008) 380 final — 2008/0122 (COD)

(2009/C 175/15)

On 12 November 2008 the Council decided to consult the European Economic and Social Committee, under Articles 61(c) and 67.5 of the Treaty establishing the European Community, on the

Proposal for a Decision of the European Parliament and of the Council amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters

COM(2008) 380 final — 2008/0122 (COD).

On 8 July 2008 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee decided to appoint Ms SÁNCHEZ MIGUEL as rapporteur-general at its 449th plenary session, held on 3 and 4 December (meeting of 3 December), and adopted the following opinion by 124 votes to two with one abstention.

1. **Conclusions**

1.1 The EESC welcomes the proposal to amend Decision 2001/470/EC that established the European Judicial Network in civil and commercial matters, not only because it meets the review requirement stipulated by the provision itself, but also because it does so on the basis of information gathered in the intervening period regarding its operation, and seeks to do better in its objective of informing European citizens.

1.2 The improved coordination established between the authorities making up the European Network and the national contact points, crucial to the creation and operation of the network, merits attention, as does the simplification of information by using appropriate technologies. This will help to provide easier access to the legal professions and to private citizens who want to be aware of opportunities to resolve cross-border civil and commercial disputes.

1.3 The participation not only of the judicial authorities, but also of the legal professions, will point to the appropriate legal instruments to uphold the rights and obligations of European citizens in their various civil and commercial activities. In this way, the aim of harmonisation in an area of freedom, security and justice within the EU will be more effectively furthered. The EU advocates the greatest possible openness and access to the Network for all stakeholders, as a way of boosting transparency and the European integration process.

2. **Introduction**

2.1 In the wake of the Tampere European Council of 15 and 16 October 1999, the European Commission launched a process of harmonising and creating legal instruments that would enable an area of freedom, security and justice to be established, and ensure the free movement of persons within EU borders. One of the most important of these instruments is the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]), introducing, among other measures, simplified enforcement procedures, changes to the protective measures to ensure enforcement of judgments, and the recognition of protective measures enforceable across Europe.

2.2 As part of the same approach, the Commission presented Decision 2001/470/EC ([2]), which set up the European Judicial Network in civil and commercial matters, the main aim of which was to create a European legal cooperation instrument to inform the legal professions, institutions, administrations and the general public on rights applicable in the various EU Member States, and on procedures to settle cross-border legal disputes.

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 — OJ L 12 of 16.1.2001.
EESC opinion — OJ C 117 of 26.4.2000, p. 6.

([2]) EESC opinion — OJ C 139 of 11.5.2001, p. 6.

2.3 The network was also intended to facilitate citizens' access to justice especially, as already indicated, in cross-border disputes, where neither content nor procedure always match. This is why special attention focuses on contact points that are readily accessible to all stakeholders, professional or private. The Commission reports on the situation at the beginning of 2008, indicating that there were 102 contact points, 140 central authorities, 12 liaison magistrates and 181 judicial authorities active in judicial cooperation.

2.4 It should be added that in Directive 2008/52/EC ([3]) on certain aspects of mediation in civil and commercial matters, reference was already made in the judicial procedure to Internet as a necessary instrument for mediating in cross-border legal disputes.

3. **General comments**

3.1 As laid down in Article 19 of the Decision 2001/470/EC, the Commission must present a report every five years on the results of the Network during the preceding period, based on information supplied by the Member State contact points. Depending on this information, adaptations may be proposed. This is the purpose of the amended Decision, so that the objectives sought are attained, on the legal basis of Article 61(c) of the Treaty, and in keeping with the principles of subsidiarity and proportionality.

3.2 The Network has so far succeeded in strengthening cooperation and information between judges and legal professionals within the EU. The EESC considers that the contact points should serve as fully-fledged information offices on national laws and procedures that are applicable to cross-border disputes. Access to the Network's information by citizens would be desirable.

3.3 The proposed reform as a whole seeks to fine-tune the Network, a mechanism that will enhance the planned objectives, especially with regard to the equipment and human resources allocated to it.

3.4 The EESC welcomes the proposed reform, on account not only of the measures to enhance the Network's operation, but also of the terminological clarifications, that will enable it to be used with greater legal precision.

3.4.1 The amendment to Article 2 of the Decision, for example, refers to the aim of the Network as 'judicial cooperation in civil and commercial matters' instead of the previously general wording 'cooperation in civil and commercial matters'.

3.4.2 It also provides for coordination between contact points, where there is more than one in a Member State, requiring a main contact point to be designated.

3.4.3 The main contact point is to be assisted by a judge who is not only a member of the Network, but is to liaise between the local judicial authorities.

3.5 In accordance with the main objective of the reform, Article 5 is amended to extend cooperation regarding information within the Network and the judicial authorities in order to facilitate the application of law to each individual case, even if such law is of another Member State or is an international legal instrument. The EESC considers that the Network would provide added value if it served to inform the public on existing judicial cooperation and the different judicial systems. The aim of such an expansion would be to approximate and guarantee the rights that citizens have acquired in their civil and commercial links within the EU.

3.6 It is important to highlight the amendment made to the information procedure — the new wording of Article 8 — which recognises the electronic register to be kept by the European Commission. The EESC only wishes to make one comment on this: it must be equipped with the necessary technical and economic means to act effectively as soon as possible.

4. **Specific comments**

4.1 The EESC agrees with the content of the proposed reform, together with the method used to carry it out. Moreover, the Network for cooperation between the legal authorities and professions in the Member States may be seen as a major achievement.

4.2 Although its positive character is recognised, it needs to be pointed out that Denmark's position, as a Network observer on the Network, leaves part of the common European area without judicial coordination, although they are covered by the same Community legislation. In spite of this, the new Article 11a provides for observers to participate in the Network, together with new members and third countries belonging to the new Lugano Convention ([4]), who will be able to attend certain Network meetings.

([3]) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008; OJ L 136 of 24.5.2008.
EESC opinion — JO C 286 du 17.11.2005, p. 1.

([4]) Adopted on 30.10.2007.

4.3 One point on which we believe there should be greater flexibility is the short deadline for responding to requests for judicial cooperation: although we acknowledge the present efficiency, it must be realised that with improved information and with more countries involved, compliance will become impossible. A range of situations covering organisational and technical aspects needs to be considered for each country, and even down to regional level. We will have to wait and see the results of the new reform, particularly with regard to the technical means provided for the contact points and the Network, and especially how the register works.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Addressing the challenge of energy efficiency through Information and Communication Technologies'

COM(2008) 241 final

(2009/C 175/16)

On 13 May 2008, 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 to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Addressing the challenge of energy efficiency through Information and Communication Technologies

COM(2008) 241 final.

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 10 November 2008. The rapporteur was Mr HERNÁNDEZ BATALLER.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 4 December), the European Economic and Social Committee adopted the following opinion by 123 votes to 3, with 21 abstentions.

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee believes that sustainable development should be a priority component of EU policies. One way of achieving sustainable development must be through energy efficiency, the development of new, alternative energy sources ('renewable', 'clean' or 'green') and ultimately the adoption of measures to combat climate change by reducing CO_2 emissions.

1.2 The Communication presented by the Commission is a step in this direction, as it recommends the promotion of national and regional programmes for research and technological development (RTD), with information and communication technologies (ICTs) seen as an enabler of energy efficiency.

1.3 The Committee agrees with the Commission's view that ICTs contribute in two ways to realising the objectives of sustainable development. Firstly, research, development and innovation regarding their components, equipment and services will allow energy to be saved in their use. Secondly, application of ICTs in different economic areas, at both the production and consumption stages, will allow 'dematerialisation' of many procedures and replacement of physical and material exchanges by online services, also saving energy. However, the Committee also believes it is important to introduce energy-saving throughout the process of manufacturing and using technological devices rather than focusing solely on energy-efficient consumption during the useful life of the device.

1.4 In accordance with these objectives, the Commission communication seeks to launch a preliminary phase of information gathering and analysis prior to a second communication in which the main areas for action will be identified [1]. The Committee nevertheless believes it is essential to promote measures aimed at encouraging energy efficiency in the medium and long term.

1.5 An important factor in achieving energy efficiency from the supply perspective is the replacement of equipment whose energy consumption is high owing to technological obsolescence or because it has reached the end of its useful life. At European level, more than 50 % of household electrical appliances are over 10 years old and can be considered energy-inefficient. As a preliminary or alternative to drawing up directives in this area, the Commission can promote criteria for industry which, with the support of national governments and the help of consumer and user organisations, facilitate plans for replacing such equipment.

1.6 The Committee believes, for instance, that the introduction of digital terrestrial television in the different Member States should be used as an opportunity to update receivers, so that the old cathode ray tubes (CRT) are replaced by liquid crystal display (LCD) television screens. This entails, for example, promoting the manufacture and sale, based on agreements with manufacturers and user organisations, of integrated equipment that guarantees interactivity rather than acquiring peripheral decoders that connect to analogue television sets. Technical studies indicate that CRT televisions consume three times as much energy as LCD ones, and energy consumption in 'stand-by' mode can be up to 60 % higher.

[1] One example of this preliminary information gathering and analysis is the recent Commission study *The implications of ICT for Energy Consumption* (e-Business Watch, Study report 09/2008, http://www.ebusiness-watch.org/studies/special_topics/2007/documents/Study_09-2008_Energy.pdf).

1.7 The Commission can adopt a similar approach in other spheres — such as the electricity network (production and distribution), smart buildings and smart lighting. This means developing electronic trading of electricity and new generating and distribution technologies; energy management, accounting and visualisation systems for energy-saving in buildings; and new developments in smart lighting — indoor, outdoor and street lighting — using light sources that can interact with their surroundings, adjusting electronically to lighting needs.

For instance, it is known that the energy used in manufacturing and developing computers is three times greater than consumption during their useful life. The high energy consumption of internet servers and search engines must also be taken into consideration, and specific solutions should be developed in this area taking particular account of the exponential growth in use of the internet, as well as the increase in energy consumption associated with technological convergence. It is also very important to assess the energy savings that can be achieved by using interoperable equipment that is technically standardised, resulting in less proliferation of equipment and better use being made of it, in line with the objectives of Directive 2005/32/EC ([2]).

Consumers can make an important contribution to this energy-saving effort through appropriate use of new technologies; in this case, too, development of computer programmes and technology gives consumers rapid and easy access to the information they need to use equipment efficiently and to quantify the resulting energy savings. For example, only leaving computers and peripheral devices switched on strictly while being used; avoiding screensavers or leaving computers on in low-consumption mode; and optimising the use of printers, etc. It is generally calculated that the 'phantom energy use' generated by devices in standby mode (see above) can amount to about 12 % of a household's annual electricity bill, which shoots up when poor use of technology is compounded by obsolete equipment. Clearly the need to replace equipment entails considerable costs for consumers, which in certain cases should be offset by social assistance.

([2]) OJ L 191 of 22.7.2005, p. 29.

1.8 This whole drive should be complemented by quality certification and precise and clear labelling information for users on the energy efficiency of given equipment, its 'environmental footprint' or 'carbon footprint', etc., raising awareness among the general public, and steering demand and promoting efficient and sustainable use of energy. Potential experience with ICTs in areas such as audiovisual appliances, electronic communications, the electricity sector, and smart buildings or lighting would be instructive for energy-saving measures in other key areas where the Commission has launched programmes, e.g. car manufacturing, manufacturing industry, transport.

The Committee urges the Commission to take active measures to provide information to consumers, businesses, administrations, etc. based on awareness-raising campaigns using different media supports.

1.9 The Commission should also stimulate the development of standardised and reliable indicators for quantifying and evaluating the energy savings that can be made by using ICTs. This would help to stem the growth in fraudulent or misleading use of such concepts as 'green' or 'clean' energy as a pure marketing strategy with no real justification that can be demonstrated and quantified in terms of savings and reducing emissions. Introducing such indicators would help to clarify whether or not a business practice is unfair, particularly in advertising that uses such 'eco-marketing' arguments.

At a time when the energy market is being privatised and liberalised, it is important to encourage businesses to opt for investment in energy savings and sustainability, helping them to see such investment as a commercial opportunity and a source of stable and skilled employment.

1.10 The Committee believes it is necessary to strengthen the political impetus in the EU to guarantee the resources needed to achieve the proposed energy-saving objectives, with compulsory measures regarding equipment to fill the gaps in national plans. Community action in this domain based on adoption of a directive would give added value to measures by the Member States, without affecting the Commission's support for establishing codes of good practice at national level and conducting comparative studies on energy optimisation to provide an incentive within the EU and encourage businesses to draw up reports on energy saving.

2. **Explanatory statement**

2.1 *Background*

2.1.1 The Commission communication is published within the context of:

— the priorities set by the European Council of Heads of State or Government held in spring 2007, which signalled the need to address climate change, to have sufficient, secure and competitive energy, and to guarantee a model for sustainable development in the 21st century. At the above-mentioned summit a consensus was reached on the need to make the integrated climate and energy policy the actual basis of the EU's political programme, fixing precise and legally-binding objectives to signal its determination in this sphere. The Commission believes it will be necessary in future to decouple continuing growth of the European economy, which is essential to achieve full employment and social inclusion, from energy consumption. Information and Communication Technologies (ICTs) ([3]) have an important role to play in reducing the energy intensity, and increasing the energy efficiency, of the economy;

— the package of measures adopted by the European Commission on 23 January 2008, designed to demonstrate that the above-mentioned objectives are not only technologically and economically feasible, but that they also provide a business opportunity for thousands of European companies;

— the European Strategic Energy Technology Plan and numerous other actions launched by the European Commission in different areas, all aiming to tackle the climate change challenges.

2.2 *General comments*

2.2.1 Against this background, the Communication under discussion is intended to stimulate an open debate between stakeholders in various selected areas, such as the ICT sector itself, and the electricity, smart buildings and smart lighting sectors. This means initiating a process of information-gathering and analysis, but also of consultation and partnership involving a maximum number of stakeholders: the European institutions (Parliament, Committee of the Regions, European Economic and Social Committee), Member States, industry, research bodies and consumers. These can play an important role in piloting new equipment and components.

([3]) ICT refers to micro- and nano-electronics components and systems, but also to future technologies such as photonics that promise both far greater computing power for a fraction of today's power consumption and high brightness, easily controllable, power-efficient lighting applications.

The Commission should do more to encourage consumers and users to pursue the energy saving objectives through ICTs, so that systems are intelligent not only in terms of energy-saving but also in the way the general public uses them. There are different procedures for putting into practice such participation in research, development and innovation processes, such as the European *living labs* network whereby users' opinions, attitudes and practices can be made known directly by means of mechanical observation through ICTs.

2.2.2 The synergies and agreements on good practice that could develop during this process can be used to boost pilot projects, by enhancing research and technological development (RTD). Where ICTs in particular are concerned, research on energy efficiency would take place under national and regional programmes, the EU Competitiveness and Innovation Framework Programme and the operational programmes funded by cohesion policy. This would prompt companies to evaluate their 'environmental footprint' and, working from this analysis, to take decisions based on the combination of advanced communication networks and renewable energies in order to achieve energy savings ('negawatts').

2.2.3 The EESC has already set out its position on various occasions regarding the importance of ICTs in achieving structural change and the major contribution they make to innovation, for instance in its opinions on nanotechnology ([4]), biotechnology ([5]), healthcare research ([6]) and in particular in the opinion on information technologies. The Seventh Framework Programme addresses these questions on a strongly horizontal basis. As far as R&D measures are concerned, from an economic and environmental point of view it is essential to use the most up-to-date technologies and to commit more Community funding in order to encourage research and innovation ([7]).

2.3 *Specific comments*

2.3.1 The Commission analyses in particular the electricity sector, which is currently undergoing a process of far-reaching change based on market liberalisation, multiplication of local energy networks, integration of renewable energy sources, spread of co- and micro-generation (micro-grids, virtual power plants), shortening the chain between energy generation and consumption, energy offsetting between users, and new demands by the general public.

([4]) OJ C 157, 28.6.2005, p. 22.

([5]) OJ C 234, 30.9.2003, p. 13, OJ C 61, 14.3.2003, p. 22 and OJ C 94, 18.4.2002, p. 23.

([6]) OJ C 74, 23.3.2005, p. 44.

([7]) OJ C 65, 17.3.2006, p. 9, rapporteur Mr Wolf, co-rapporteur Mr Pezzini: *Proposal for a Decision of the European Parliament and of the Council concerning the seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013).*

2.3.1.1 The question of upgrading the electricity network, from generation to distribution, which includes improving the efficiency of the network to avoid energy wastage, is addressed in the assessment of national energy efficiency action plans, on which the EESC has set out its views in an opinion, to which we refer ([8]).

2.3.1.2 The Commission also looks at the energy-saving options provided by smart buildings, both residential and commercial. Energy management, accounting and visualisation systems for energy-saving are specifically mentioned in this connection; these also have the advantage of promoting greater user awareness of such consumption. It must be borne in mind that over 40 % of energy consumption in Europe is building-related.

2.3.1.3 The Committee believes ([9]) that new cultural stimuli and incentives must be found, on the one hand to offset higher costs and on the other to raise interest in:

— project research,

— revised building methods,

— the use of better materials in the construction process, and

— new structural methods.

2.3.1.4 The EESC repeats ([10]) that from the point of view of the final consumer consideration must be given to the obstacles hindering the promotion and implementation of energy efficiency in buildings in Europe: barriers of a technical, economic, financial, legal, administrative, bureaucratic, institutional, management-related and socio-behavioural nature and barriers linked to inconsistencies in approach (imbalances between heating/air-conditioning, no consideration of the local climate).

Smart homes contribute to the quality of life, the comfort and security of their occupants and to economic and energy savings. Connectivity offers access to communication services (reception, adaptation and distribution of audio and television broadcast signals by terrestrial and satellite waves, ADSL, cable, electrical network), but also to other services which are highly effective in saving energy: detection of gas and water leaks, excessive consumption of electricity due to defects, automatic watering and air-conditioning control.

The incorporation of both active and passive procedures for improving the environmental conditions of housing can reduce household consumption by up to 50 % and, according to some studies, the combination of clean energies and mechanical environmental control systems by up to 70 %.

2.3.2 Developments in smart lighting — indoor, outdoor and street lighting — use light sources that can interact with the surroundings, adjusting electronically to lighting needs. Technologies such as light-emitting diodes (LEDs) or the newer organic light-emitting diodes (OLEDs) are already on the market, offering considerable energy-saving potential. About one fifth of world electricity consumption is accounted for by lighting.

2.3.2.1 The EESC supports the promotion and encouragement of voluntary agreements on adopting progressively smarter energy-efficient lighting for all outdoor and indoor public spaces.

2.3.2.2 Promoting 'green procurement' in the ICT sector in order to achieve a carbon-neutral industry by introducing voluntary agreements on pilot projects could be a way of directing and testing structural change.

The Commission should help to ensure that firms which invest in reducing their 'environmental footprint' are looked upon more favourably by consumers, as well as enjoying the cost reductions from energy saving. Naturally, firms should also switch to appropriate recycling of electronic components, residues and surpluses, as part of their environmental management. Recycling should be planned into the actual manufacture of equipment so that a high percentage of materials and components are reusable. Given the importance of this issue, the EESC is drawing up an own-initiative opinion on the subject in which it will give its views on the management of electro-waste.

2.3.2.3 The EESC has already recommended that **green procurement** be promoted ([11]) by: defining the technical characteristics of 'green' products, starting with those with the best environmental impact; including the cost of the product or service's lifecycle in its specifications; making a dedicated database available online; bringing EC directives on public procurement up to date by including references to standards, EMS systems, Ecolabels, and eco-design; and lastly, publishing national action plans for the adoption of green procurement. This support must focus in particular on the SME sector because of its importance in terms of production and employment, which is consistent with the Commission's concern to support such businesses.

([8]) Opinion CESE 1513/2008, rapporteur Mr Iozia: *Energy efficiency — assessment of national action plans.*

([9]) See opinion CESE rapporteur Mr Pezzini, OJ C 162 of 25.06.2008, p. 62: *Energy efficiency of buildings — the contribution of end users* (exploratory opinion).

([10]) OJ C 162, 25.6.2008, p. 62, point 1.11.

([11]) OJ C 224 of 30.08.2008, p. 1: *Eco-friendly production*. Rapporteur: Ms Darmanin.

2.3.3 ICTs are well placed to help reduce the effects of climate change ([12]) since ICT products and services can contribute to replacing goods and reducing travel (e.g. by promoting the use of videoconferencing systems). Primary energy consumption — and thus CO_2 emissions — can also be reduced significantly by introducing new forms of work (e.g. teleworking), electronic billing, distance learning or use of online forms, for example.

2.3.3.1 Companies can find new sources of income by providing ICT solutions for services that help other sectors to be more efficient, such as:

— encouraging the identification and realisation of opportunities to reduce greenhouse gases;

— drawing up lists of opportunities for reducing greenhouse gases for companies or sectors;

— strengthening the development of energy-efficiency projects within companies;

— identifying opportunities for reducing emissions in services;

— considering the cost-benefit implications of greenhouse gas emissions as an indicator when evaluating new projects.

2.3.3.2 It may be useful for companies operating in the ICT sector to set up 'Climate Change Offices'. Such offices could serve to:

— increase the use of renewable or surplus energy;

— ensure that processes are consistent with the company's energy policy, improving the energy efficiency of the processes in question;

— identify the best measures already implemented in the various projects carried out and promote them in the future;

— set objectives for reducing CO_2 emissions;

— seek accreditation of energy management systems by an external organisation;

— carry out an energy assessment, identifying areas where consumption is highest.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([12]) According to information from the International Telecommunication Union (ITU), this sector could contribute to reducing CO_2 emissions by over 48.4 million tonnes in ancillary sectors, if adequate solutions are introduced based on telecommunications (health, urban mobility, public authorities, etc.).

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Advancing the Internet Action Plan for the deployment of Internet Protocol version 6 (IPv6) in Europe'

COM(2008) 313 final

(2009/C 175/17)

On 27 May 2008, 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 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Advancing the Internet — Action Plan for the deployment of Internet Protocol version 6 (IPv6) in Europe

COM(2008) 313 final.

On 8 July 2008 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr McDONOGH as a rapporteur-general at its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), and adopted the following opinion unanimously.

1. **Conclusions**

1.1 The Committee welcomes the communication from the Commission on the action plan for the deployment of Internet Protocol version 6 (IPv6) in Europe. The Committee shares the concern of the Commission on the slow rate of adoption of IPv6 in Europe and agrees that urgent action is needed to support the widespread introduction of the next version of the Internet Protocol.

1.2 The slow progress on the introduction of IPv6 is threatening the Lisbon Strategy as implemented in the i2010 initiative ([1]). The economic multiplier effect of Internet-use and innovation is hugely important to the competitiveness of Europe. Analogous to the availability of broadband, IPv6 availability will be a major driver of the Internet economy and we are already trailing other regions (e.g. use of IPv6 to enable the Chinese Next Generation Internet CGNI project) ([2]) re IPv6 introduction; we cannot afford to fall further behind our major trading partners on the transition to IPv6.

1.3 The Committee welcomes many of the recommended actions contained in the communication; however it encourages the Commission to be more assertive about the leadership role that the EU should now take to rapidly accelerate the adoption of IPv6. In the absence of this leadership, the Committee believes that the Commission's objective of having 25 % of European users able to connect to the IPv6 Internet by 2010 is overly optimistic.

1.4 The Committee believes that the communication gives inadequate attention to the privacy and security issues raised by the adoption of IPv6 to power 'The Internet of Things' ([3]). These issues are of major importance to the people of the Union and need to be properly addressed to protect citizens' rights and to facilitate the acceptance of the IPv6 standard.

1.5 The already serious problem of a geographical digital divide in Europe will be acerbated by the transition to IPv6 unless the Commission takes specific action to address the problem and ensure that the less advantaged regions get special attention. EU-wide action is needed to make certain that there is parity across all member states on the availability of IPv6 as soon as possible.

1.6 IPv6 will herald-in a vast array of new internet-based technologies and services which will improve the lives of all citizens, but especially the less advantaged — the elderly, the disabled, the less-educated. The Committee believes that the roll-out of IPv6 across the EU requires strong government action and should not be left to the lowest common denominator of narrow commercial interest.

([1]) COM(2005) 229 final 'i2010 — A European Information Society for Growth and employment'.

([2]) http://www.ipv6.com/articles/general/IPv6-Olympics-2008.htm.

([3]) See, opinions CESE 'Radio Frequency Identification (RFID)' OJ C 256 of 27.10.2007 (p. 66) and CESE 'The Internet of Things', OJ C 77, 31.3.2009, p. 60.

1.7 The Committee directs the attention of the Commission to previous Opinions by the EESC which commented on the promotion of internet use, data protection issues, Internet security concerns and the geographical digital divide ([4]).

1.8 In this opinion, the Committee wants to comment on areas of specific concern and to make some recommendations.

2. **Recommendations**

2.1 The Commission should provide strong European level leadership and support for the rapid roll-out of IPv6 across Europe.

2.2 This leadership needs to be based on a compelling vision for the future of the Web enabled by IPv6 Internet and the many benefits that will accrue to all stakeholders.

2.3 The Commission should work more closely with the Internet Organisations to ensure that there is an integrated approach to provide the industry with European-level leadership for the rapid introduction of IPv6.

2.4 Extensive training and education programmes should be provided across the EU to ensure maximum understanding of IPv6 technology and the capability to adopt it successfully.

2.5 The Competitiveness and Innovation Framework Programme (CIP) ([5]) should be used to help defray the cost of IPv4 to IPv6 transition for the smaller Internet Service Providers (ISPs) and content providers.

2.6 The CIP should also be used to encourage the development of applications and services which will leverage the new standard.

2.7 To redress the imbalance between the interests of Internet Service Provider (ISP) company shareholders and the interests of citizens, the large ISPs should be obliged to provide EU-level leadership for the adoption of IPv6 across the Union. Renewal of ISP operator licenses should be tied to obligations to offer full IPv6 connectivity, without restriction, by 2010, and to provide extensive customer training on IPv6 implementation.

2.8 The Commission needs to lead a concentrated effort at EU-level and globally to deal with the serious security and privacy concerns raised by the adoption of IPv6.

2.9 The Committee recommends that the potential problem of a geographical digital divide between IPv6 haves and have-nots should be addressed through the mechanism of the National Broadband Strategies ([6]) or a similar instrument. Furthermore, the Regional Development Fund (ERDF) should be used to support IPv6 roll-out where appropriate.

3. **Background**

3.1 *Action Plan Overview*

The action plan drawn-up to support the widespread introduction of the next version of the Internet Protocol (IPv6) by 2010 notes:

— urgent implementation of IPv6 is required as the pool of IP addresses provided by the current protocol version 4 is being depleted;

— IPv6 provides a platform for innovation in IP-based services and applications and it is vital to keeping Europe at the forefront of technology-driven growth.

3.2 *Internet Protocol*

The 'Internet Protocol' (IP) gives any item connecting to the Internet a number, an address, so that it can communicate with other connected items. The current version, IPv4, provides for more than 4 billion such addresses ([7]). However, this will not be enough to keep pace with the continuing growth of the Internet.

An upgraded protocol, IPv6, has been gradually deployed since the late 90s ([8]); but its adoption has been very slow — IPv6 traffic is still a tiny percentage (>1 %) of overall Internet traffic) ([9]).

([4]) See, for example, opinions CESE 'Information society/Computer-related crime' OJ C 311 of 7.11.2001, p. 12, 'Network and information security' OJ C 48 of 21.2.2002, p. 33, 'Safer use of the Internet' OJ C 157 of 28.6.2005 p. 136, 'E-business/Go Digital' OJ C 108 of 30.4.2004 p. 23, 'Secure Information Society' OJ C 97 of 28.4.2007 p. 21, etc.

([5]) Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013).

([6]) 'Connecting Europe at High Speed: National Broadband Strategies', COM(2004) 369.

([7]) IPv4 is specified in RFC 791, 1981. RFC stands for 'Request for Comments' See the 'Internet Engineering Task Force' (IETF); http://www.ietf.org.

([8]) RFC 2460, 1998. http://www.ietf.org/html.charters/OLD/ipv6-charter.html and http://www.ietf.org/html.charters/6man-charter.html.

([9]) 'Tracking the Ipv6 Migration' Aug 2008 research report by Arbor Networks http://www.arbornetworks.com/en/ipv6-report.html.

It is forecast that the IPv4 pool of addresses will be exhausted somewhere between 2010 and 2012 ([10]). The growth of the Internet and also the capacity for innovation in IP-based networks will be hindered without an appropriate solution to the IPv4 address problem.

3.3 *Need for IPv6*

IPv6 provides a long term solution to the address space problem: the number of addresses defined by the IPv6 protocol is huge (3.4×10^{38}).

IPv6 will allow every citizen, every network operator and every organisation in the world to have as many IP addresses as they need to connect every conceivable device or good directly to the global Internet. As Commissioner Reding graphically stated '*… If Europeans are to use the latest internet devices such as smart tags in shops, factories and airports, intelligent heating and lighting systems that save energy, and in-car networks and navigation systems, then we already face a thousand-fold increase in demand for IP addresses…* ([11]).'

A study funded by the Commission ([12]) demonstrated this potential for a number of market sectors such as home networks, building management, mobile communication, defence and security sector, and car industry.

3.4 *IPv6 and International competitiveness*

Other regions, in particular the Asian region, have already taken a strong interest in IPv6.

3.5 *Transition to IPv6*

There will be a transition phase (expected to last for 20+ years) when IPv4 and IPv6 will co-exist on the same machines and be transmitted over the same network links. During this transition expensive coping mechanisms will be employed to deal with the legacy dependence on IPv4: overlay technologies such as double stack protocol interfaces and tunnelling, and work-around tactics, such as NAT sub-addressing and IPv4 address auctions.

3.6 *Stakeholders*

The deployment of IPv6 requires the attention of many actors worldwide:

— **Internet organisations** (such as ICANN, RIRs, and IETF), which need to manage common IPv6 resources and services.

— **Internet Service Providers (ISPs)**, which need over time to offer IPv6 connectivity and IPv6 based services to customers.

— **Infrastructure vendors**, which need to integrate IPv6 capability into their products.

— **Content and service providers** (such as websites, instant messaging, e-mail services etc.), which need to enable IPv6 on their servers.

— **Business and consumer application vendors**, which need to ensure that their solutions are IPv6 compatible and to develop products and services that take advantage of IPv6 features.

— **End-users** (consumers, companies, academia, and public administrations), which need to purchase IPv6 capable products and services and to enable IPv6 on their own networks.

3.7 *Cost of Implementing IPv6*

It is impossible to reliably estimate the costs of introducing IPv6 globally. A steady incremental adoption of IPv6 by the various stakeholders will help to keep costs under control.

3.8 *The need for policy driving at European level*

Today, for most stakeholders the advantages of adopting IPv6 are not immediately visible. The benefits are long-term and so many stakeholders have taken a 'wait and see' position.

The cumulative result has been the delay in the widespread adoption of IPv6; unless positive action is taken now '*…Europe [would be] badly placed to take advantage of the latest internet technology, and could face a crisis when the old system runs out of addresses*' ([13]) …. Appropriate policy measures at the European level could give a market stimulus by encouraging people and organisations to move ahead positively.

3.9 *Actions Proposed by the Commission*

3.9.1 IPv6 to become widely implemented in Europe by 2010

3.9.2 Stimulate IPv6 accessibility to content, services, and applications

— Member States to enable IPv6 on public sector websites and eGovernment services.

— Industrial stakeholders to consider IPv6 as their primary platform for developing applications or appliances.

— Financial aid provided through standardisation support actions to improve interoperability of networks.

([10]) http://www.potaroo.net/tools/ipv4/index.html, http://www.tndh.net/~tony/ietf/ipv4-pool-combined-view.pdf. For an earlier estimate which contains a description of the analytical background: http://www.cisco.com/web/about/ac123/ac147/archived_issues/ipj_8-3/ipv4.html.

([11]) IP/08/803 Brussels 27/5/2008.

([12]) 'Impact of IPv6 on Vertical Markets', October 2007 (http://ec.europa.eu/information_society/policy/ipv6/docs/short-report_en.pdf).

([13]) IP/08/803, Brussels, 27 May 2008.

— Encouragement of research projects funded by Framework Programme 7, to utilise IPv6 whenever possible.

3.9.3 Generate demand for IPv6 connectivity and products through public procurement

— Member States to prepare for IPv6 within their own networks.

3.9.4 Ensure timely preparation for IPv6 deployment

— Targeted awareness campaigns to various user groups.

— Support for 'specific support actions' (within Framework Programme 7) to disseminate practical deployment knowledge.

— Encouragement for ISPs to provide full IPv6 connectivity to their customers by 2010.

3.9.5 Tackle security and privacy issues

— The Commission will monitor the privacy and security implications of widespread IPv6 deployment, in particular through consultation with stakeholders such as data protection authorities or law enforcement.

Also, concerns have been expressed about IPv6 and privacy, in particular by the Article 29 Data Protection Working Party ([14]).

3.10 *Execution of the Action Plan*

— The Action Plan is scheduled to be executed over the next 3 years.

— The Commission will continue to follow the activities of the Internet organisations, and where necessary make contributions to debates.

— The Commission will regularly report progress to the i2010 High Level Group.

4. **General Comments**

4.1 The transition to IPv6 is critical because the current Internet protocol standard — IPv4 — is rapidly running-out of available addresses: estimates forecast that the existing pool of IPv4 addresses will be exhausted before 2012. Unless the adoption of IPv6 is greatly accelerated the growth of the Internet will dramatically slow-down and the costs of Internet usage will be adversely affected by the legacy of IPv4 in EU networks. The effect of this delay will be higher costs in all areas of internet commerce, slower IP-based innovation and slower economic growth.

4.2 The communication notes that there has been slow progress towards the standard because there is no single authority to steer IPv6 introduction. The Committee recognises that individual countries and stakeholders have been driving programmes at national level to roll-out IPv6, but the Committee is dissatisfied with the support that the adoption of IPv6 has so far received at the European level.

The Committee is concerned that too much reliance has been put on commercial interests, especially the ISPs, to advance the adoption of IPv6. This has failed miserably. The economic and social consequences of the delay in IPv6 are too great to leave it to narrow commercial interests — IPv6 adoption is a matter for government. The Commission should now be advocating a greater leadership role for the EU, supported by appropriate policy and support instruments, and execute that role with urgency.

4.3 The lack of effective action on the introduction of IPv6 is threatening the Lisbon Strategy as implemented in the i2010 initiative ([1]). The economic multiplier effect of Internet-use and innovation is hugely important to the competitiveness of Europe; we cannot afford to fall behind our major trading partners on the transition to IPv6. Although some countries in the European Union have made special efforts to ensure that their country is IPv6-ready, the EU as a region is lagging behind IPv6 roll-out in other regions.

4.4 Under the banner of 'Internet Governance', the Commission needs to lead a concentrated effort at EU-level, and globally, to deal with the serious security and privacy concerns raised by the adoption of IPv6. IPv6, combined with technologies like Radio Frequency Identification (RFID) tags, will enable billions of objects to be networked in the 'Internet of Things', raising serious and complex issues regarding personal privacy and security.

We note that Commission will bring forward proposals in early 2009 on the protection of critical information infrastructures to enhance our capability to cope with Internet security concerns ([15]). The EESC, therefore, recommends that those proposals contain strong schemes for dealing with the new challenges posed by the introduction of IPv6.

([14]) Opinion 2/2002 on the use of unique identifiers in telecommunication terminal equipments: the example of IPV6, http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2002/wp58_en.pdf.

([15]) Speech /08/336, 17/6/2008, 'Seizing the Opportunities of the Global Internet Economy', OECD Ministerial Meeting 'Future of the internet economy' Seoul, Korea, 17-18 June 2008.

4.5 We await the recommendation from the Commission on the privacy aspects of RFIDs and on the governance of the Internet of Things ([16]). The new IPv6 protocol will facilitate a massive expansion in connectivity, with countless billions of every-day objects (cars, clothing, tools, etc.) eventually connecting to the Internet with their own unique IP address. To quote Commissioner Reding '…We must address these risks if the "internet of things" is to deliver its full potential for economic growth. In particular, we must answer citizens' concerns if we are not to get a rejection of these new technologies…' ([15]).

4.6 The Commission should provide strong European level leadership for the rapid roll-out of IPv6 across Europe. This leadership needs to be based on a compelling vision for the future of the Web enabled by IPv6 Internet — 'The Internet of Things', 'Ambient Intelligence' ([17]) etc. — and the many benefits that will accrue to all stakeholders.

4.7 The vision needs to be communicated through multiple channels with appropriate messages targeted at each specific audience (ISPs, content providers, application vendors and end-users), in a European-wide information campaign.

4.8 The adoption of IPv6 would be greatly facilitated by education and training programmes. The technology is much superior to Ipv4, but it requires good training to be implemented properly. The Commission, Member States' governments, ISPs and other leadership entities should ensure that IPv6 training and education programmes are readily accessible to all target groups of adopters.

4.9 The Commission should work more closely with the Internet Organisations — Internet Corporation for Assigned Names and Numbers (ICANN), Réseaux IP Européens (RIPE), Regional Internet Registries (RIRs), Internet Engineering Task Force (IETF) and others — to ensure that there is an integrated approach provide the IT sector with European-level leadership for the rapid introduction of IPv6.

4.10 The role of the Internet Service Providers (ISPs) is crucial in the roll-out and adoption of IPv6. Unfortunately, because of the threat of Voice over Internet Protocol (VoIP) to their current revenue models, the ISPs who also have mobile phone or fixed-line telephone businesses are resistant to IPv6 and the revolution it will bring to EU communications. But the narrow commercial interests of ISP shareholders should not be allowed to hurt the interests of all EU citizens. Large ISPs should be obliged — through the use of sanctions, penalties and licensing rules — to provide EU-level leadership for the adoption of IPv6 across the Union. They have the power and the resources to make a big impact on the problem.

4.11 The Competitiveness and Innovation Framework Programme (CIP) ([5]) should be used to help defray the cost of IPv4 to IPv6 transition for the smaller Internet Service Providers (ISPs) and content providers. The CIP should also be used to encourage the development of applications and services which will leverage the new standard.

4.12 The Committee believes that the communication gives inadequate attention to the privacy and security issues raised by the adoption of IPv6. These issues are of major importance to the people of the Union and need to be properly addressed to protect citizens' rights and to build trust and to facilitate the acceptance of the IPv6 standard.

4.13 The geographical digital divide ([18]) in Europe will be acerbated by the transition to IPv6 unless the Commission takes specific action to address the problem. Some countries in the Union are leading programmes at national level to ensure that all their Internet users will be able to connect to IPv6 by 2010. EU-wide action is needed to make certain that there is parity across all member states on the availability of IPv6 as soon as possible.

4.14 The Committee recommends that the potential problem of a geographical digital divide between IPv6 haves and have-nots should be addressed through the mechanism of the National Broadband Strategies ([6]) or a similar instrument. Furthermore, the Regional Development Fund (ERDF) should be used to support IPv6 roll-out where appropriate.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([16]) http://en.wikipedia.org/wiki/Internet_of_Things and http://www.itu.int/osg/spu/publications/internetofthings/InternetofThings_summary.pdf.

([17]) http://en.wikipedia.org/wiki/Ambient_intelligence.

([18]) COM(2003) 65, COM(2003) 673, COM(2004) 61, COM(2004) 369, COM(2004) 380.

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation (EC) No …/… amending Council Regulation (EC) No 219/2007 on the establishment of a joint undertaking to develop the new generation European air traffic management system (SESAR)'

COM(2008) 483 final — 2008/0159 (CNS)

(2009/C 175/18)

On 4 September 2008, the Council decided to consult the European Economic and Social Committee, under Articles 171 and 172 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation (EC) No …/… amending Council Regulation (EC) No 219/2007 on the establishment of a joint undertaking to develop the new generation European air traffic management system (SESAR)

COM(2008) 483 final –2008/0159 (CNS).

On 16 September 2008, the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms Le Nouail Marlière as a rapporteur-general at its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), and adopted the following opinion by 99 votes to 16 with 10 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee supports the proposal to align the Regulation and Statutes of the SESAR Joint Undertaking.

1.2 The Committee recommends that the Commission set a better example with regard to equal treatment of seconded staff and staff recruited to conduct the SESAR Project, with respect to the duration of contracts and job allocations on the conclusion of the programme to develop the new generation European air traffic management system.

2. **Commission proposal**

2.1 The Committee has been consulted on the proposal to align the Regulation and Statutes of the SESAR Joint Undertaking [1] with the EU's new approach to the establishment of other Joint Undertakings created in the context of the 7th Research and Development Framework Programme (FP7), i.e. CLEAN SKY [2], ENIAC [3], IMI [4], ARTEMIS [5] and FCH [6]. The Committee has issued opinions on all these proposals, bar one.

2.2 *Status of the SESAR Joint Undertaking*

2.2.1 The SESAR Joint Undertaking legally exists since 3/3/2007 and its seat is in Brussels. It has two founding members: the Community, represented by the European Commission, and Eurocontrol, represented by its Agency.

2.2.2 The setting up of the SESAR Joint Undertaking was initiated immediately after the entry into force of Regulation (EC) No 219/2007. In 2007 the governance (consisting of the Administrative Board and the Executive Director) and an initial administrative structure were put in place.

2.2.3 In June 2007 the SESAR Joint Undertaking launched a call for expressions of interest for candidate members. The call resulted in the pre-selection of 15 candidates for the purpose of constituting a strong initial core group of members for launching the development phase of SESAR. The 15 candidate members represent the major stakeholders of the air traffic management sector (Industry): air navigation service providers, airports and equipment manufacturers. The initial offers for contributions to the SESAR Joint Undertaking totalled over 1,4 billion EUR.

2.2.4 Industry has confirmed its commitment to the programme already demonstrated in the definition phase. It has been working together with the Joint Undertaking to establish a common understanding on how to work in partnership in the SESAR Joint Undertaking. The alignment of its ATM related research and development activities to SESAR and the allocation of the necessary resources constitute a major achievement. The finalisation of the membership process is scheduled for the end of 2008 with the objective to launch the development activities in early 2009.

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(1) Established by Council Regulation (EC) No. 219/2007 of 27 February 2007; OJ C 309 of 16.12.2006, p. 133.

(2) Council Regulation (EC) No. 71/2008 of 20.12.2007, OJ L 30 of 4.2.2008, p. 1.

(3) Council Regulation (EC) No. 72/2008 of 20.12.2007, OJ L 30 of 4.2.2008, p. 21.

(4) Council Regulation (EC) No. 73/2008 of 20.12.2007, OJ L 30 of 4.2.2008, p. 38.

(5) Council Regulation (EC) No. 74/2008 of 20.12.2007, OJ L 30 of 4.2.2008, p. 52.

(6) Council Regulation (EC) No. 521/2008 of 30.05.2008, OJ L 153, of 12.6.2008, p. 1.

2.2.5 Although in accordance with Article 2(2) of Regulation (EC) No 219/2007: 'Member States shall take all possible measures to afford the Joint Undertaking the most extensive exemption from taxation as possible as regards to VAT and other taxes and duties', the founding Regulation does not provide a legal basis that would grant the Joint Undertaking exemption from VAT and excise duties or any benefits resulting from the Protocol on privileges and immunities granted to EU institutions or Community bodies. Nor does it provide for its staff to be covered under the conditions of employment of the Staff Regulations of the European Communities, nor of other servants of the European Communities. Consequently, the Joint Undertaking and its staff are subject to the Belgian tax and employment legislation.

2.2.6 The estimated cost in terms of administrative expenditure resulting from particular status has been estimated to be 300 million EUR over the lifespan of the Joint Undertaking. 290 million EUR alone represent the amount of VAT and other taxes that will have to be paid by the SESAR Joint Undertaking. The remaining 10 million EUR are related to the staff costs.

2.2.7 This amount will be paid through the members' contributions to the SESAR Joint Undertaking and in particular from the Community Research and Development funds and therefore will have to be subtracted from the financing of the development activities.

2.3 *Nature of the proposed amendment*

2.3.1 The proposed amendments to Regulation 219/2007 take into account that the SESAR Joint Undertaking has already started its activities under a different legal status. They can be summarised as follows:

— Recognition of the SESAR Undertaking as a Community body (Article 2 of the Regulation)

— Application of the Staff Regulations of the European Communities, the conditions of employment of other servants of the European Communities and the rules adopted jointly by the Institutions of the European Communities for the purpose of applying them, to SESAR Joint Undertaking staff (Article 2a of the Regulation)

— Application of the Protocol on Privileges and Immunities of the European Communities to the SESAR Joint Undertaking, to its staff and to the Executive Director (Article 2b of the Regulation)

— Adaptation of the provisions on liability (Article 2c of the Regulation)

— Adaptation of the provisions on jurisdiction of the Court of Justice and applicable law (Article 2d of the Regulation)

— Quantification of the Community contribution and practical arrangements for its transfer to the Joint Undertaking (Article 4(2) of the Regulation)

— Amendment of the provision related to the modification of the Joint Undertaking's Statutes (Articles 3(2) & 5(4) of the Regulation and 24(2) of the Statutes). This amendment is not linked to the alignment of the Joint Undertaking status. It is a correction to the procedure for adopting amendments to the Joint Undertaking Statutes. The intention of the original provision was to enable the adoption of amendments to the Statutes by means of a regulatory comitology procedure involving the Single Sky Committee. However, the wording of the original provision does not clearly express this intention and therefore needs to be adapted

— Application of Article 185 of the Financial Regulations, in particular relating to: the adoption of financial rules in accordance with the framework financial regulations for bodies referred to in Article 185 of the Financial Regulation (Article 4a of the Regulation) as well as the discharge (Article 4b of the Regulation) and presentation of the budget (Article 15(2) & (4) of the Statutes)

— The procedure for the appointment of the Executive Director (Article 7(5) of the Statutes)

— The provisions on protection of the financial interests of the Community (Article 17(3) of the Statutes)

— Transitional provisions for the changeover of Joint Undertaking staff to Community Staff Regulations (Article 2 of the proposal).

3. **General Comments**

3.1 The Committee supports the Commission's general objective of taking account of the lessons learnt from the management of the Galileo Joint Undertaking and the establishment of the SESAR Joint Undertaking ([7]) and encouraging the Council to clarify the status of the SESAR Joint Undertaking. In addition, given the growing number of Joint Technology Initiatives (JTI) being conducted under the 7th Framework Programme, it also supports the objective of guaranteeing consistency with the general approach towards Joint Undertakings.

3.2 The Committee supports the efforts to ensure that resources are allocated to the SESAR Joint Undertaking in such a way that the main focus is on research and development with a view to ensuring a coherent approach to civil aviation security. By changing the status of the SESAR Joint Undertaking, the Commission expects to gain an extra 290 million Euros, as a result of exemption from taxation as regards to VAT and other taxes and duties. In addition, the changeover of staff to the status of EU officials will be an improvement and staff will have the option to become officials of the European Communities, without being obliged to do so. This change in staff status will also have a positive effect

([7]) The SESAR Joint Undertaking was only the second entity of this type established under Treaty Article 171, after the GALILEO JU.

(10 million Euros) on administrative costs, without being detrimental to pay, benefits and additional pension rights, since from the initial establishment of the SESAR Joint Undertaking, the Commission had taken steps to ensure that the SJU Statutes on employment conditions would be 'based on those of the servants of the European Communities'.

3.3 The Committee welcomes the fact that Community control of SESAR will be strengthened through the application of Community financial rules, a budget discharge, strategic management and human resources. This proposal accords with the suggestion made by the Committee in its previous opinion on SESAR namely that, 'it is vital to set up a legal entity capable of ensuring the coordinated management of the funds assigned to the SESAR project during its implementation phase'. The proposal should have positive consequences for supervision of the project. The Committee takes note of the Commission's increased responsibility in a programme receiving funding to the tune of 700 million Euros from the EU, 700 million Euros from Eurocontrol and 700 million Euros from the aeronautics industry. Since the latter two will be making a substantial proportion of their contribution in kind, the related VAT exemption will allocated to research and development.

3.4 The development phase of the SESAR Joint Undertaking should be launched at the beginning of 2009 so as to ensure that the industry stakeholders are involved and to enable them to plan their activities around the SESAR objectives. For this reason, the Committee agrees with the Commission's argument that the regulation should be adopted rapidly so that the agreements with the Members of SESAR can be aligned with the new provisions. Delays in the implementation of SESAR are not desirable, in view of the competition from the NextGen initiative in the United States.

4. **Specific Comments**

4.1 Since it has already been determined that the SJU will have a lifespan of eight years, on completion of the programme, seconded staff will return to Eurocontrol or the Commission departments they came from. Contracts for staff who were recruited externally will terminate according to the conditions established at the time of recruitment. The Committee notes the precedent this sets (i.e. the creation of an enterprise with a fixed term) and the resulting impact in terms of the relative insecurity of some of the jobs created. The Committee recommends that the Commission ensure that it sets an example of best practice with regard to equal treatment of staff seconded and recruited to carry out the SESAR programme.

4.2 Taking account of the particularities of this sector (i.e. Member States' sovereignty over their airspace, public-private partnerships and sovereign services) and given that the aim of the SESAR Joint Undertaking is harmonisation and research to produce optimum European air safety, the Committee therefore recommends that air safety should not be seen solely in technical terms (equipment) or commercial terms (routes), but should also take account of the fact that it relies on human beings (the men — and women — who contribute to it and should indubitably be more involved and given more consideration).

4.3 The Committee takes note of the Decision of the SESAR Joint Undertaking's Administrative Board of 24 April 2008, attended by representatives of the Commission, Eurocontrol, the armed forces, airspace users, providers of air navigation services, equipment suppliers, airports, staff representatives from the air traffic control sector, the scientific community, the Executive Director, the interim Administrative and Financial Director and the Secretariat, who 'endorsed the principles for the contemplated modification of the Statutes and the related process'.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on the competitiveness of the metals industries — A contribution to the EU's growth and jobs strategy'

COM(2008) 108 final — SEC(2008) 246

(2009/C 175/19)

On 22 February 2008 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 to the Council and the European Parliament on the competitiveness of the metals industries — A contribution to the EU's growth and jobs strategy

COM(2008) 108 final.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 November 2008 The rapporteur was Mr ZÖHRER and the co-rapporteur was Mr CHRUSZCZOW.

At its 449th plenary session, held on 3 and 4 December 2008(meeting of 3 December 2008), the European Economic and Social Committee adopted the following opinion by 160 votes in favour, 6 against, with 7abstentions.

1. **Conclusions and recommendations**

1.1 The tremendous real added value generated by the metals industry and downstream production makes a vital contribution to the development of the European economy as a whole. The metals industry faces global competition and in recent years has continually undergone radical changes and restructuring.

1.2 Future restructuring will be closely linked to the increasing globalisation of the value-added chain of the metals industry (from raw materials to processing). This will require a new approach in industrial policy geared towards innovation, skills and fair global conditions for competition.

1.3 The Committee essentially agrees with the Commission communication's analysis of the characteristics of the sector. However, it should be noted that the metals industry is not a homogeneous sector and it is difficult to make generalisations. Many of the Commission's proposed measures are a little too general. The Committee calls on the Commission to draw up a timetable with a concrete set of measures covering individual subsectors as a follow-up to the Communication.

1.3.1 The Committee proposes that studies on individual sectors be carried out which, building on the experiences of the ECSC, are accompanied by monitoring and social dialogue.

1.4 As regards energy policy, the Committee calls for market and price transparency measures to ensure secure supplies on the basis of long-terms contracts. Gaps in the supply networks must be closed. Furthermore, the Committee points to the significance of renewable energies and the contribution that industry itself makes to electricity and heat generation.

1.5 In respect of environmental policy, it is mainly a question of finding solutions which reconcile climate protection goals with employment, growth and global competitiveness. In order to avoid any competitive disadvantages for the European metals industry, the Committee calls for:

— priority to be given to international agreements

— measures to promote the spread of the best and most energy-efficient technologies

— consideration to be given to investments already undertaken

— the capacity of individual sectors to cut emissions to be taken into account, with due consideration for technical standards

— a speedy decision to acknowledge the dangers of carbon leakage.

1.5.1 The Committee supports the Commission's plans on the IPPC directive, waste legislation, REACH and standardisation but expects these individual proposals to be fleshed out.

1.6 Recycling raw materials and reducing material intensity, i.e. research into 'replacement materials' will take on increasing importance in future (because of the significance for environmental protection and for reasons of trade policy).

1.7 The Committee supports the Commission's commitment to stepping up innovation, research and development and improving skills. An example of this is the ULCOS project (Ultra Low CO_2 Steelmaking) — part of the European Steel Technology Platform (ESTEP). The Committee proposes that the efficiency of existing programmes be reviewed in the second half of the 7th framework programme and expects better coordination and support. Significant investment is needed in the area of education and training to improve the skills base.

1.8 For a metals industry facing global competition, trade policy matters are extremely important. The Committee agrees with the Commission that there should be close dialogue with third countries on trade policy matters. However, trade policy instruments which are consistent with WTO rules and are designed to combat practices that disadvantage or discriminate against the EU metals industry should continue to be available.

1.9 The metals industry is facing some far-reaching social challenges, such as:

— further restructuring

— ageing workforce

— increasing skills requirements

— safety and health protection.

The Committee is a little surprised that the Commission does not offer any concrete measures or recommendations on social aspects in its Communication. The Committee calls on the Commission to (further) promote social dialogue in the sectors concerned, as this is the right place to discuss these matters.

2. **Justification/content of the Communication**

2.1 This Communication assesses the competitiveness of the metals industries and makes recommendations on the way forward. It follows on from the 2005 Commission Communication on EU industrial policy which announced several sectoral initiatives, including a Communication assessing the impact of raw materials and energy supply on the competitiveness of the European metals industry ([1]), and takes into account the 2007 mid-term review of industrial policy ([2]).

2.2 As an intrinsically high-energy intensive sector, the metals industries are directly influenced by the Community policies on energy and climate change. The European Council underlined in March 2007 '*the great importance of the energy intensive sector*' and emphasised that '*cost efficient measures are needed to improve both the competitiveness and the environmental impact of such European industries*'. In this context, the Commission's climate action and renewable energy package of 23 January 2008 acknowledges the specific situation of energy-intensive industries which are directly exposed to global competition.

2.3 The Commission proposes a package of 16 measures in the areas of energy, environment, standardisation, innovation, research and development, skills, external relations and trade policy.

3. **General comments**

3.1 As in its opinion on the Commission Communication — Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy (COM(2005) 474 final) of 20 April 2006, the Committee broadly welcomes the Commission's sector-based measures to raise competitiveness and safeguard jobs.

3.2 The metals industry is one of the most important sectors in the value-added chain of many industries. According to industry estimates, the downstream sectors of the steel industry, for example, have a turnover of EUR 3 157 billion and employ 23 million workers (see appendix 1). Unfortunately, there are no estimates for other branches of the metals industry. Steel products are widely used as very important construction materials, especially for energy efficient infrastructure. Therefore the ability of the EU to further develop and adapt to climate change highly depends on the stability of steel supply on the EU market.

3.2.1 In view of the current crisis on the financial markets, the Committee believes it is especially important to emphasise that the tremendous real added value generated by the metals industry and downstream production makes a vital contribution to the development of the European economy. The leading role that the European metals industry plays in many areas is also the basis for the competitiveness of other branches of industry. This know-how must be maintained and further developed in Europe.

The metals industry is exposed to global competition and in recent years has continually undergone radical changes and restructuring. Although this has made the metals industry more competitive, it has also led to massive job losses. However, this restructuring cannot be explained purely on technological grounds or by the desire to improve productivity. Part of it also stems from the fact that certain manufacturing procedures have been outsourced beyond Europe (e.g. production of raw aluminium) whereby energy costs, environmental obligations and proximity to raw materials have played a role. This process is not complete and further restructuring should be expected. Such restructuring will be closely linked to the increasing globalisation of the value-added chain of the metals industry (from raw materials to processing).

([1]) COM(2005) 474 final, Annex II.

([2]) COM(2007) 374 final, 4.7.2007.

3.3 Owing to their high energy intensity, these industries are particularly affected by the current debate on climate protection. At issue is not just the question of maintaining competitiveness but also safeguarding jobs in the industries concerned. In its conclusions of 3 June 2008, the Competitiveness Council thus called on the Commission and Member States 'to continue to pursue actively discussions with industry and with third countries on the question of sectoral approaches, so as to encourage the taking of effective measures to reduce greenhouse gas emissions, thereby also addressing carbon leakage'.

3.4 Furthermore, the Committee agrees with the Commission's analysis of the characteristics of the sector. However, it should be borne in mind that the Communication is based on preparatory work which began as early as 2004 and that the metals industry is not a homogeneous sector.

3.4.1 However, there is still a lack of clarity as regards the definition of the sectors in question. The Commission refers to NACE code 27 for the definition, while the data in the documents (Communication and Annex) represents only part of the sub-sectors (primary industry and semi-manufactured goods). The Commission should come up with a more precise description here especially as it is difficult to make all-inclusive statements given the diversity of the various sub-sectors (26 industry sectors in five groups according to NACE 27) and the different structures (in the raw materials industry the majority are large businesses and in processing there are many SMEs).

3.5 In its Communication, the Commission proposes a series of measures aimed at improving conditions for the industries concerned. These must be seen in the context of other, seemingly contradictory political goals of the Community, which must be dealt with at the same time. The Committee finds it regrettable that many of the proposals are a little too general and calls on the Commission to draw up a timetable as a follow-up to the Communication with a concrete set of measures covering individual sub-sectors. This is essential primarily because investment decisions in the metals industry are medium to long term and will be influenced by these measures.

3.5.1 The Committee proposes cooperation with stakeholders to carry out studies on demand, production and technology trends in individual sectors which, building on the experiences of the ECSC, are accompanied by permanent monitoring and social dialogue. The steel industry serves as an example here. The ECSC Treaty provided for the collection of data on iron and steel which went well beyond the scope of general industry statistics. Since the ECSC Treaty expired in 2002, the European steel industry has successfully managed, at least on a transitional basis, to continue to collect some key statistics not covered by general industry statistics. This was made possible at European level by means of Regulation (EC) No 48/2004. The Committee is in favour of extending this temporary Regulation and recommends that similar comprehensive statistics be collected for other areas of the metals industry as well, since it is becoming increasingly apparent that general industry statistics do not provide enough information to be able to conclude that there is a specific need for policy action.

4. **Specific comments on the Commission's proposals**

4.1 *Energy policy*

4.1.1 As the Commission rightly states, fluctuations such as the recent rapid increase in gas and electricity prices and restrictions in securing long-term supply contracts are affecting the competitiveness of the EU metals industry.

4.1.2 Measures must be taken to provide for better forecasting of price trends, to guarantee more market transparency and to facilitate a free choice of energy providers. This must be supported by both legislation and an acknowledgement of the compatibility of practices with Community law.

4.1.3 Reviewing the possibilities for long-term supply contracts is one of the most important ways of making supply conditions more predictable. The extent to which energy providers can or cannot take part in the EU Emission Trading Scheme should also be borne in mind here.

4.1.4 Solutions to closing the gaps in energy transport infrastructure (trans-European networks) are essential if unrestricted access to the energy market is to be guaranteed for all the businesses concerned.

4.1.5 In the longer time, the further expansion of renewable energies will be a key factor in ensuring an independent supply for EU industries. Metal industries contribute to the success of the EU policy to increase generation of energy (electricity and heat) from Renewable Energy Sources. The steel making process together with coke ovens is a source of valuable gases — the blast furnace gas, converter gas (BOF) and coke oven gas. The gases contain different proportions of carbon oxide (up to 65 % in converter gas), carbon dioxide, nitrogen and hydrogen (up to 60 % in coke oven gas). Instead of being wasted and burned in torches, they should be used effectively to generate electricity and/or heat. To a large extent, this is already happening today, but there must be an effort to further develop these technologies.

4.1.6 Furthermore, the Committee points out that it has expressed its views on energy policy in several opinions (most recently CCMI/052 and various TEN opinions).

4.2 *Environmental policy*

4.2.1 The metals industry is already affected by a large number of EU rules on environmental policy, the implementation and observation of which consistently present industry with the challenge of agreeing various objectives (prevention of exhaust emissions, for example, is partly associated with increased energy consumption, something which in turn is detrimental to energy efficiency). It goes without saying that parts of the metals industry belong to the energy-intensive sectors which are exposed to significant cost-based competition from around the world. The industry is a major emitter of CO_2. If the Commission's proposed measures on climate change — and especially the expansion of the ETS — were applied to the metals industry without any further restrictions, that could lead to investments being relocated

(which is already the case today) and job losses (risk of carbon leakage). However, the desired impact on climate change will be unachievable as long as all countries do not subscribe to these targets.

4.2.2 Top priority should therefore be given to concluding binding, international agreements with clear criteria for effectiveness and monitoring, with a view to avoiding competitive disadvantages for European industries and counteracting climate change at global level.

4.2.3 Vast sections of the metals industry have already invested massively in energy-efficient technologies. The European steel industry, for example, is playing a leading role in reducing CO_2 emissions, with many businesses from this sector having reached the limit of what is technologically possible as far as cutting emissions in production is concerned. Therefore the goal to reduce GHG emission by 21 % in 2020, in comparison with 2005 emissions, should be addressed to ETS sectors (power sector and energy intensive industries) as a whole, and the distribution of efforts between the sectors should take into account industry's ability to reduce emissions within technological constraints, without affecting its manufacturing capacity.

4.2.3.1 The Council has established that the planned international agreements will result in a considerably more ambitious target of up to a 30 % cut in CO_2 emissions. The Committee stresses in this connection that it should be made clear in which areas these cuts are to be made. It goes without saying that this cannot be achieved purely in the sectors currently covered by the ETS. The Committee believes that measures in areas such as building insulation, transport and traffic organisation and general energy efficiency should also play a prominent role here.

4.2.4 The Committee believes therefore that the priority of any measures should first of all be to promote the best and most energy-efficient technologies and then research and development to improve these technologies and develop new materials. Technical standards must also be taken into account both in measures at EU level and in the negotiations on an international climate protection agreement.

The Commission should draw up a relevant plan as soon as possible incorporating all the planned measures and steps to avoid any further uncertainty in industry. The Committee refers in this connection to Article 10b) of the Commission proposal on the ETS ([3]).

4.2.5 As regards the IPPC Directive, the Committee supports the Commission's harmonisation plans, which, among other things, will help to produce simpler and better legislation. However, as the basis for the certification and operation of industrial sites, the codified Directive must take account of individual progress in technological development. The competitiveness of the EU metals industry must not be put at risk by obligations that are not commensurate with the technological possibilities.

4.2.6 The Committee agrees in principle with the Commission's proposals on waste legislation, REACH and standardisation but expects these individual proposals to be fleshed out.

4.3 *Innovation research and development and skills*

4.3.1 The Committee supports the Commission's commitment to stepping up innovation, research and development and to improving skills.

4.3.2 The European Steel Technology Platform -ESTEP- contributes to shape the future by suggesting ambitious R&D programmes (Strategic Research Agenda known as SRA) for a sustainable competitiveness. The priorities of this SRA aim at reducing the environmental burden of processes and to develop modern value-added products which are more efficient throughout their life cycle. ULCOS (Ultra low CO_2-steelmaking) for example is the first large project of ESTEP aiming at reducing drastically the CO_2 emissions. It is currently the most ambitious worldwide and it is already a great success as four promising routes have been selected and have now to be tested at industrial scale and be associated with Carbon Capture and Storage (CCS) technologies. ESTEP also contributes indirectly to both the climate change and Energy issues by inventing fully recyclable light steel solutions, e.g. for the automotive and construction sectors and efficient new solutions for the development of energy sources for the future (e.g. wind energy).

4.3.3 On the other hand, as staff education and training are essential to create a sustainable industry in Europe, significant investment is needed to improve the skills base; for example by hiring talented people from University and by developing lifelong learning, in particular e-learning. The support of both EU and Academia is necessary to achieve this social objective ([4]).

4.3.4 However, it proposes a review of the effectiveness of current programmes. For example, the European Steel Technology Platform's 'SRA' has produced some disappointing results following the 7th framework programme's first call for tender (less than 10 % success rate) because these calls do not appear to cover the Agenda's priorities. Better coordination and support is expected in the second part of the FP7.

([3]) COM(2008) 16 final of 23.1.2008

([4]) It should be noted here that there are already initiatives in the metals industry to promote/increase worker mobility in the European metals sector, such as the EMU pass (www.emu-pass.com).

4.4 *External relations and trade policy*

4.4.1 The Committee welcomes the Commission's strategy of giving high priority to supplying industry with raw materials. However, it should be noted here that this is not just a simple question of external relations and trade policy, as the Committee indicated in its opinion on the *Non-energy mining industry in Europe* (CCMI/056). It should be pointed out here that recycling raw materials and reducing material intensity, i.e. research into 'replacement materials' will take on increasing importance in future (not only for reasons of trade policy but also because of the importance for environmental protection).

4.4.2 Particular consideration should be given to the fact that in many raw material sectors there is a concentration of just a few international companies which are able to dictate prices.

4.4.3 The Committee shares the Commission's view that there should be close industrial dialogue with third countries on trade policy issues. However, trade policy instruments which are consistent with WTO rules and designed to deal with practices that disadvantage or discriminate against the EU metals industry must continue to be available and clear signals should be sent out that these will also be used if no progress is made through dialogue.

4.5 *Social aspects*

4.5.1 Given challenges such as the ageing workforce (above all, in the steel industry), skills requirements and ongoing structural change, the Committee is surprised that the Commission has not presented any measures or proposals to industry on the social aspects referred to in its Communication.

4.5.2 Particular attention should be drawn to the subject of safety and health protection, since the metals industry belongs to those industries that are exposed to a heightened risk.

4.5.3 In this connection, the Committee points once again to the importance of social dialogue.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliamenton innovative and sustainable forest-based industries in the EU A contribution to the EU's Growth and Jobs Strategy'

COM(2008) 113 final

(2009/C 175/20)

On 27 February 2008 the 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 to the Council and the European Parliament on innovative and sustainable forest-based industries in the EU — A contribution to the EU's Growth and Jobs Strategy

COM(2008) 113 final.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 November 2008. The rapporteur was Mr BURNS and the co-rapporteur was Mr STUDENT.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 167 votes in favour, 2 against, with 5 abstentions.

1. **Recommendations**

For the reasons stated in the opinion, the EESC recommends the following:

1.1 Widen the notion of forest-based industries (FBI) to include forest owners and other economic operators such as forest contractors for identifying problems and opportunities from the outset of the value chain.

1.2 Further improve, including through studies, existing European databases recording the volume and potential quality of all harvestable wood, as well as wood use (from both European and imported sources) by FBI, so as to make them complete, timely and comparable.

1.3 Support increased production and mobilisation of wood from Europe's forests and its equitable use for various purposes at national level.

1.4 Promote an increased use of wood and wood-based materials.

1.5 Support measures to improve the image of FBI.

1.6 Work actively towards the recognition of the role of wood and wood products in mitigating the effects of climate change, e.g. acting as carbon stores.

1.7 Safeguard the sector from negative effects deriving from the emissions trading scheme.

1.8 Eliminate barriers to trade in wood and wood products. Ensure a free but fair trade.

1.9 Address the research needs of the industries as defined in the context of the Forest-based Sector Technology Platform (FTP), through the Seventh Framework Programme and related programmes.

1.10 Encourage both relevant EU institutions and industry to pay special attention to enhancing the enforcement of those EU occupational health and safety policies, regulations and programmes that are relevant to FBI, so as to bring all EU countries up to the same standard.

1.11 Develop European vocational training and qualifications for the whole forestry-wood chain, based upon the needs of industry.

1.12 Encourage national and sub-national authorities to recognise and act upon the potential of commercial forestry and the FBI. Due attention should be given to increasing investment in road and other infrastructures in rural areas.

1.13 In conjunction with the Forest Action Plan, develop systems to evaluate the economic and social value of multifunctional forestry and non-timber services and ensure that in future they are recognized as constituent parts of a single industry, which includes forest-owners, forest contractors, etc.

2. **Background**

2.1 The Communication that forms the basis of this opinion (COM(2008) 113 final, hereafter referred to as 'the Communication') on 'Innovative and sustainable forest-based industries in the EU' has its origins in the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — The state of the competitiveness of the EU forest-based and related industries' (COM(1999) 457 final) and the 'Communication on Implementing the Community Lisbon Programme' (COM(2005) 474 final). Furthermore, it has a link to the EU Forest Action Plan

(COM(2006) 302 final), which spans five years (2007-2011) and is designed to support and enhance sustainable forest management and the multifunctional role of forests through 18 'key actions'. One of these (No 17) aims, in particular, to 'encourage the use of wood and other forest products from sustainably managed forests'.

2.2 The Communication in the first instance addresses the challenges faced by the 'forest-based industries' (FBI), defined as the industries producing pulp, paper and paper packaging, the wood-working industries (like sawmills and wood-based panels) and the cork and printing industries. As such, it does not deal directly with the forestry sector that provides for the main raw material of the FBI –wood– nor with other groups having businesses or making their living from the forest.

3. **Summary of the Commission's proposal**

3.1 In the Communication, the European Commission highlights the challenges facing FBI, dealing with issues such as global competition, climate change, energy, wood supply, etc., and the impact these may have on the future profitability and competitiveness of the sector.

3.2 FBI are an important part of European economy, often playing an important role in maintaining sustainable employment in rural areas.

3.3 The problems are addressed by means of 19 'actions' that fall under the following main headings:

a) Access to raw materials (8 actions)

b) Climate change policies and environmental legislation (4 actions)

c) Innovation and R&D (4 actions)

d) Trade and co-operation with third countries (2 actions)

e) Communication and information (1 action).

4. **General comments**

4.1 The EESC welcomes the attention drawn by the Commission to the challenges being faced by FBI and the list of actions as proposed. It strongly urges that these will not remain proposals, but will be implemented as soon as possible.

4.2 Though understanding the background and the basis for the Communication, the EESC does regret the low degree of attention or no attention being paid to operators at the beginning of the value chain, such as forest owners and forest contractors, or to the other functions to be fulfilled by forests and in forests (sometimes referred to as the forest cluster).

4.3 The EESC urges that more attention be paid to the necessity of profitable forestry as a precondition for the competitiveness of the whole value chain. Profitable forestry reinforces sustainable forest management (SFM) and provides incentives for investment in the sector and a secured wood supply.

5. **Specific comments**

5.1 *Access to raw materials*

5.1.1 The EESC is concerned that decisions affecting forestry and forest-based industries are not always based on complete, timely and comparable statistics regarding the availability and use of wood from Europe's forests, leading to a mismatch between supply and demand and a failure to meet the set goals. Likewise, it would be important to know and be able to forecast the volumes of wood used by FBI, be it from European or imported sources.

5.1.2 European policy initiatives, especially those promoting the use of biomass and renewable energy sources, have put additional pressure on the availability of (wood) raw material to FBI, partly due to the emergence of market-disturbing subsidies. The EESC is concerned about the impact of these on FBI. In view of the growing competition for wood raw material as a source for energy, the EESC is of the opinion that the use of forest resources for different purposes should be equitable. The EESC encourages the Commission to further investigate the concept of 'energy forests' (short rotational wood) to supply the biomass energy market.

5.1.3 The market should be governed by the normal market mechanisms and not be distorted by subvention schemes promoting one use over the other.

5.1.4 Though increased wood imports do not provide a workable solution to this emerging problem, such imports should not be hindered by quantitative, legislative or other burdens.

5.1.5 The EESC believes that the only long-term sustainable solution is to increase the volume of wood from Europe's forests by

— enhancing sustainable management of existing forest so that they can produce more commercially viable timber;

— increasing the forest area so that wood supply can better match demand.

5.1.6 The EESC is of the opinion that, due to the vital importance of the raw material to FBI, the Communication should have taken the opportunity to address subsidiarity-related issues, i.e. actions at national and sub-national levels to deal with the long-term supply of wood.

It is a fact that 'encouragement' to plant more commercial forestry is having no effect in several EU countries. The reasons appear to vary, in some countries there is indifference, whereas in some others an assumption that there is already enough wood. Meanwhile, several studies indicate a shortage of wood at EU level ([1]).

5.1.7 In order to be able to bring the wood to the customers, good road and other infrastructures are required. Low investment in road infrastructure in rural and remote areas increases the cost of transport. For example, a loaded lorry travelling on a rural road in comparison to travelling on straight, level roads, costs 75 % more (time and fuel) for the same distance travelled. The EESC is concerned about the lack of attention given to this by national or sub-national authorities. Furthermore, size and weight restrictions on road transport represent an additional cost burden.

5.2 *Climate change policies and environmental legislation*

5.2.1 Wood products store carbon throughout their service-life and can, through the substitution of other materials, lead to substantial savings in CO_2. The EESC believes that the EU should be more active in promoting the carbon storage by wood products and the positive contribution these can deliver to mitigate the effects of climate change.

This positive role of wood should be recognised fully in the post-2010 Kyoto process, and the EESC calls upon the Commission and the Member States to achieve this recognition at the forthcoming 'Conferences of the Parties to the Kyoto Protocol', COP14 (Poznan 2008) and COP15 (Copenhagen 2009).

5.2.2 The Commission has underestimated the threat posed by emissions trading to the European pulp and paper industries and, partly, the woodworking sector, which are affected by the ETS in two ways: directly by being in the system and indirectly via the sharp increases in electricity prices resulting from ETS ([2]). The current plans for the emissions trading directive will put a very high burden on the profitability of the industry and could well lead to mill closures or relocation. The latter would only be financially feasible for large companies; it is certainly not an option for smaller European businesses.

5.2.2.1 In its current form, the new ETS Directive proposal would lead, for the European paper industry and other energy-intensive sectors, to a significant market distortion and competitive disadvantage and eventually carbon leakage as major competing countries outside the EU would not face equivalent burdens and costs. The EESC considers it essential that the pulp and paper industries and wood-based panels industries be recognised as energy-intensive industries vulnerable to carbon leakage. That should happen immediately. The proposal to decide only in 2010 which sectors will still receive partial free allocation of CO_2 credits seems much too late.

5.3 *Innovation, R&D, education and training*

5.3.1 Innovation and R&D will certainly contribute to securing a future for FBI. The EESC welcomes the creation, by the sector, of the 'forest-based sector technology platform' and requests that due attention be paid to the future needs of all sub-sectors. R&D funding within the sector should be increased, in particular in FP7 and other linked programmes, and targeted towards innovative use of raw material and products.

5.3.2 Processes designed to encourage flexibility within Europe have not established secure and accessible measures for students and employees in FBI to acquire comparable and widely acceptable qualifications or develop skills through life-long learning programmes. Nor have various pilot initiatives under EU education and vocational training programmes produced a means by which changes in workplace practices can be observed collectively and incorporated simultaneously into national arrangements. Such drawbacks constrain trans-border mobility, frustrate international career ambitions and limit employers' access to the full range of talent within FBI. It may even contribute to a common perception that the qualifications available for forestry paper and wood occupations are generally of low value.

5.4 *Health and safety*

5.4.1 As in any other industrial activity, working in FBI presupposes a certain level of risk to workers' health and safety. While industry has made significant efforts in this area over the last decades, much remains to be done. Furthermore, given that not all Member States are confronted by the same problems in this area, due consideration should be given to tailoring the required responses to individual conditions on the ground in each Member State.

([1]) In particular, a UNECE 2007 study on 'Wood resources availability and demands', based on the Joint Wood Energy Enquiry of 2006.

([2]) *Ibidem*.

5.4.2 The latest rounds of EU enlargement have witnessed the arrival of Member States with relatively greater requirements for improving health and safety policy implementation than is commonly the case in the rest of the EU. In this regard, the Committee should like to stress the importance of both EU financial instruments and appropriate levels of commitment on behalf of FBI active in these Member States.

5.5 *Trade and cooperation with third countries*

5.5.1 FBI are active globally and exports are essential in maintaining competitiveness. The EESC is concerned that exports from EU companies are unnecessarily impeded by tariff and non-tariff barriers. The Commission should pursue the elimination of these with priority.

5.5.2 The EESC is also concerned about the measures taken by major trade partners, such as Russia, strongly impacting the supply of wood raw material to the EU and leading to production cuts.

5.6 *Communication and information*

5.6.1 Despite its important contribution to society and economy, the public image of FBI is not good. The value of European forests to society and to citizens is generally not understood ([3]). Schools often teach pupils that cutting down trees is bad and the world needs all the trees it can get. Illegal felling and other unsustainable forest management practices, for example in South America, South-East Asia and other regions, also harm the overall image of wood.

5.6.2 Considering the ongoing discussions on climate change and bioenergy, the momentum to promote the increased use of wood and wood-based materials has never been better. Forests absorb CO_2 and this carbon can then be stored in wood-based products. The image of the whole sector and its products should be enhanced with these climate arguments; this is something unique to the sector and needs to be promoted along with more information about the commercial value of our forests.

5.6.3 At present there are several promotional schemes that are supported by industry but these have only had a limited impact on improving the image of the forest-based industries. These schemes need to be developed and brought into all schools and the wider social community so all sectors of society can understand and value the importance of growing and using (European) timber.

5.7 *Encouraging the use of wood*

The Communication draws a lot of attention to the raw material supply of the industries (see item 5.1 above), but does not deal with the use of wood and wood-based products. In the drive towards more sustainable production and consumption, it would be appropriate to put emphasis on eliminating barriers and unnecessary legislative, administrative, financial and other burdens, therefore allowing a greater use of timber e.g. in the area of construction. Generally, the EESC considers that the specific nature and role of wood and wood-based products should be taken into account in different policy contexts.

5.8 *Multifunctional forestry*

One of the main recommendations in the 2006 EU Forest Action Plan is that forestry has to become 'multifunctional' and service society with benefits other than just the provision of wood. Due to a lack of information and data, the exact value to society provided by non-timber services (berry picking, mushrooms, herbal medicines, hunting and tourism) has not been determined. Be that as it may, these businesses create profit, employment and opportunities and therefore have a claim to be defined as part of the forestry.

Although it recognises the role of 'multifunctional forestry', the EESC is concerned that several national governments are putting too much emphasis on non-timber services to the detriment of the commercial role of their forests as producers of wood.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

([3]) See 'Perception of the wood-based industries — Qualitative study of the image of wood-based industries amongst the public in the Member States of the European Union' (© European Communities, 2002; ISBN 92-894-4125-9). This study can be accessed at: http://ec.europa.eu/enterprise/forest_based/perceptionstudy_en.pdf.

Opinion of the European Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees'

COM(2008) 419 final — 2008/0141 (COD)

(2009/C 175/21)

On 22 July the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a European Parliament and Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

COM(2008) 419 final — 2008/0141 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 November 2008. The rapporteur was Mr GREIF.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 4 December), the European Economic and Social Committee adopted the following opinion by 108 votes to 31 with 7 abstentions.

1. Conclusions: the case for more European Works Councils and improved cross-border social dialogue

1.1 The EESC explicitly welcomes the fact that the European Commission has taken steps to draft legislation since negotiations with the European social partners were not resumed in accordance with Article 138(4) of the Treaty. The present Commission proposal is intended to adapt the rights of European Works Councils (EWCs) to the conditions of the European internal market. The EESC identifies some substantial improvements in the proposal with a view to adapting the Community legal basis for EWCs to circumstances in Europe and so ensure more legal certainty and coherence in Community legislation on informing and consulting employees.

1.2 The EESC expects that the proposed clarifications and changes in the text and definitions in the directive will make the work of EWCs more effective and thus help to create more legal certainty, as well as improving the application of the directive and thus leading to more EWCs being set up. The EESC also points to the importance of finding pragmatic solutions that increase the effectiveness and efficiency of EWCs' work and therefore do not tend to impair company competitiveness but rather strengthen it. This means in particular that:

— Company management is now obliged to prepare all the information required for setting up a EWC.

— The European social partners will be directly involved in the process of setting up European Works Councils, as they have to be informed as to when negotiations are starting.

— The day-to-day business of EWCs can be made more effective by the possibility of setting-up a select committee, by broadening skills on the basis of training that is to be offered to EWC members without loss of wages, and by recognising the EWC as a body collectively representing the employees' interests.

— An existing EWC can more easily be adapted to new conditions because it can request re-negotiation of EWC agreements, especially where substantial structural changes are taking place that make it impossible to guarantee that all the employees in a group of undertakings can continue to be briefed and consulted in a viable way that conforms to the agreed standard.

1.3 However, the EESC laments the fact that the proposed recast version of the directive does not pursue its own objectives — set out in the explanatory memorandum and recitals — consistently enough and that certain things remain unclear. This applies to the following points in particular:

— Whereas the proposal from the social partners would make the terms of informing and consulting more precise, the rules on linking representation between the national and European levels in a logical and practicable way remain unclear.

— The definition of the EWC's competence as transnational restricts its remit rather than making it more precise as intended. 'Transnational' should also cover decisions that concern only one establishment in an EU Member State but are not taken in that Member State.

— Certain limitations in the application and scope of the original directive are retained or even re-introduced.

1.4 The priority of the EESC is to improve the EWC Directive so as to make its application more attractive and increase the number of EWCs. For efficiency reasons, among other things, the EESC endorses the aim of maintaining negotiations as the prime basis for EWC agreements. This makes for flexible solutions tailored to the individual company in a bid to shape transnational social dialogue in line with the specific requirements of each individual case.

1.5 To ensure that the new provisions are accompanied by an improvement in the substance of EWCs' work and their efficiency, the EESC recommends that any remaining imprecision and incoherence be removed from the text during the next stages of the legislative process, with improvements made on the following points in particular:

— The envisaged restriction to transnational competence may limit the rights and possible effectiveness of the EWC, and should therefore be reconsidered. No relevant employee representation body should be cut off from the information flows at the international headquarters of a company by rules that are too constraining.

— The negotiation period should be reduced to 18 months, since a shorter time for setting up a EWC is consistent with practical experience, and more time does not seem to be necessary. Effective measures should also be envisaged to ensure no negotiating partner can relinquish responsibility when a European representative body is to be set up.

— More precise definitions of the terms 'informing' and 'consulting' will increase the effectiveness as well as the recognition of EWCs, if it is made clear that it will be consulted when company decisions are taken rather than at the point where they are put into effect.

— The responsibility of management for properly informing employee representatives, both at transnational and national level, must be clearly stated. The aim of improving coordination of the right to information and consultation between the different levels should not result in new ambiguities or restrictions on this obligation.

— Maintaining existing thresholds for EWCs, or introducing new ones, conflicts with the basic European right of every employee to timely information and consultation.

— It must be made clear that new EWC agreements concluded during the period of transposition into national law must be at least of an equivalent standard to the current EWC Directive (Article 6 of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC), so that the legal certainty requirement is met for all those concerned.

— In order to make EWCs work more efficiently and enable them to better fulfil their function in undertakings, a recast EWC Directive should at least encourage an increase in options for holding meetings; it should explicitly recognise that the legal standards are to be considered as minimum standards and that states can therefore, on any point, always set better ones when transposing the Directive into their national laws.

1.6 The EESC is convinced that such an improvement in Community legislation on employee participation would not only be a major contribution to ensuring good and therefore socially responsible management in Europe, but would also strengthen the competitive advantage of Europe's economy and at the same time be a key component of the European social model.

2. Introduction: criteria for assessing the Commission's proposed recasting of the EWC Directive

2.1 On 2 July the European Commission presented a proposal for recasting the directive on the establishment of a European Works Council [1].

The EESC is very pleased that the European Commission has taken steps to draft legislation with a view to adapting the rights of European Works Councils (EWCs) to the conditions of the European internal market. In this opinion, the Committee considers primarily the extent to which the objectives set by the European Commission in its proposal can be reached, and ventures to suggest additions or changes to that end.

2.2 The EESC bases its position on its own work on employee participation, and on the EWC in particular [2]. The Committee again highlights the positive role of national and transnational employee participation in furthering social, economic and ecological integration in Europe (Lisbon objectives) and the particular role of the EWC.

The role of cross-border undertakings is very important for Europe's success. Europe will only hold its own in an environment of global competition if it pursues a qualitative strategy that not only looks at business costs, but also takes on board companies' social responsibility and their employees' involvement in the undertaking. The EESC therefore sees the EWC as an important EU policy instrument for strengthening the basis of cooperation between the main economic players within the context of a European sustainability strategy. This is how companies can make their contribution to European society. Since employees' commitment and skills are needed for the European quality strategy in international competition, their effective participation is therefore a decisive aspect of successful company management.

2.3 The EESC considers the European Commission's proposal for a directive to be the logical outcome of a long process of political discussion. Its opinion refers to of European Parliament

[1] COM(2008) 419 final.

[2] See EESC opinions on: *Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised*, rapporteur: Mr Piette, OJ C 10, 14.1.2004; *Social dialogue and employee participation, essential for anticipating and managing industrial change*, rapporteur: Mr Zöhrer, OJ C 24, 31.1.2006; and *European Works Councils: a new role in promoting European integration*, rapporteur: Mr Iozia, OJ C 318, 23.12.2006.

resolutions adopted in 2001 ([3]), 2006 and 2007 ([4]), and to the joint declaration of the social partners of 2005 ([5]).

These documents focused attention on issues that are also referred to in the present agreement of the European social partners on improving the Commission proposal, namely: providing a better definition of the right to information and consultation, with the aim of giving employees real opportunities to influence company decision-making; improving trade union participation rights; and enhancing the functioning of EWCs, for instance by providing and paying for training opportunities. Another reason given for revising the directive was to create a coherent and efficient legal framework and overcome inadequacies in transposing the EWC into national law.

2.4 The EESC is pleased that in this context the European social partners accept the current Commission proposal as the basis for revising the directive and note common positions on several points of substance that should be taken into account in the further revision process. The EESC explicitly welcomes this consensus and is taking account of the points in question in its proposals, since this will help achieve the draft directive's objectives.

2.5 The EESC upholds the objectives of the recast EWC Directive, which were already identified by the Commission as crucial in its proposal of 2 July 2008 ([6]):

— enhancing *legal certainty* for all those concerned, i.e. employers and employees;

— ensuring that *employees' rights* to transnational information and consultation *are effective* in the EU/EES so as to improve the efficiency of the EWC;

— improving the *application of the EWC Directive* and so above all *increasing the number of EWCs being set up*;

— *improving coherence between European directives* on employee information and consultation.

3. Improving legal certainty — ensuring that EU lawmaking on information and consultation is coherent

3.1 The recasting of Directive 94/45/EC is intended to bring the definition of informing and consulting employees into line with other Community legal instruments and so simplify the legal framework.

The EESC explicitly welcomes this aim, which is stated several times in the explanatory memorandum to the proposal, but notes that closer examination of the Commission's text shows that the intention is only partly fulfilled.

3.2 Take for example the recast version of the restriction on EWC competence to transnational matters:

3.2.1 Moving the provisions relating to the cross-border nature of company decisions from the current subsidiary requirements of the directive to Article 1(4) of the Commission proposal means that the EWC can now only deal with a matter if a company decision concerns either the undertaking as a whole or at least two undertakings or establishments in two different Member States.

3.2.2 This restriction to transnational competence introduced into the text of the directive is impracticable and in the Committee's view injudicious. For instance, it could result in employees in one EU Member State being cut off from the top decision-making level in the case of a multinational company with its head office in another EU Member State taking a decision that involved major changes in the employment conditions of those employees. In such a case the undertaking would not be obliged under the new definition to inform and consult the EWC.

3.2.3 In the Committee's view, there must still be a guarantee that the EWC will also become routinely involved if a company decision at first sight only appears to have effects in one EU Member State but is part of a decision that has transnational implications. The EESC would therefore recommend that Article 1(4) be changed so as to ensure that — in accordance with recital 12 of the new version — 'employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than the one in which they are employed' or affect the undertaking as a whole. At any rate, the scope of the EWC must not be limited by the recasting of the EWC Directive.

3.3 The recast definitions of informing and consulting in Article 2 can be considered good in principle, but they still do not measure up to the Commission's claim that it is adapting the Community legal basis in this area.

3.3.1 Although it is made clear in the subsidiary requirements annexed to the EWC Directive, as required by law, that consultation must take place in such a way as to enable employee representatives to discuss a management response to an EWC opinion before an envisaged decision is taken, this does not automatically make these rules a standard for all EWCs.

([3]) Based on the European Parliament report of 16 July 2001, rapporteur: Mr Menrad (A5-0282/2001 final).

([4]) P6-TA (2007)0185.

([5]) Joint Work Programme of the European Social Partners 2003-2005. See also the joint declaration of 7 April 2005 *Lessons learned on European Works Councils*, in which on the basis of their own comprehensive studies, which among other things underlined the importance of social dialogue in companies, the European social partners highlighted the positive development of social dialogue through EWCs.

([6]) See Commission document on consultation of the European social partners, C/2008/660, 20.2.2008.

3.3.2 Only the joint proposal of the European social partners, which would introduce the following precise definitions into Article 2, will ensure clarity and legal certainty here:

— The form and content of information provided must be such that it allows employee representatives to consider in detail any possible effects of decisions envisaged in order to prepare for possible consultation with the competent management representatives.

— Consultation should be understood as a procedure that allows the EWC to submit its own proposals within a period of time that permits the company management to take them into account, as long as the decision-making process is ongoing.

3.3.3 In this context, the EESC also wishes to point out a textual inconsistency in point 3 of the subsidiary requirements (Annex I), where the rights of employee representatives are upheld during exceptional circumstances:

The new Commission proposal states that these rights also apply when 'decisions' are taken that affect employees' interests to a considerable extent. The EESC thinks the reference should be to 'measures envisaged'. Otherwise the text will be inconsistent with the idea in the rest of the Commission text of timely information and consultation. The Committee asks that the wording be clarified in this sense.

3.4 The EESC welcomes the European Commission's intention in Article 12 to improve coordination of competences and thus work-sharing between the transnational body and national level of interest representation, and to draw a clearer distinction between them. However, it also has reservations here as to whether the objective has been adequately achieved.

It is in the interests of all those concerned that employee representatives at different levels should not receive information on the same issue at different points in time. It must therefore be ensured in the text of the directive that the EWC as well as employee representatives at national level is informed about decisions envisaged that are likely to lead to substantial changes in work organisation or contractual relations. This was also emphasised by the European social partners in their agreement.

3.5 The EESC is pleased that under Article 12(5) of the Commission proposal the improved standards in the revised EWC Directive may not be used — through harmonising national and European legislation — to curtail higher standards that have already been established under national law.

The EESC believes that the wording 'not *sufficient* grounds for any regression' in the Commission proposal is open to misunderstanding and does not guarantee this aim. The EESC would like the text of the directive to make it clear that this refers to the requirement in point 36 of the explanatory memorandum that there must be no reduction in the 'general level of protection of employees' at national level.

3.6 The EESC welcomes the proposed amendments in the provision which stipulates that an EWC agreement is no longer feasible to inform and consult all employees to the agreed standard (Articles 6(2)(g), 13(2) and 13(3).

— The clarifications in Article 13(3) are particularly welcome here, since they ensure that existing arrangements continue to have effect during the negotiations.

— However, the EESC would like there to be an obligation to apply the subsidiary requirements should negotiations fail, as is the case under Article 7 for failure to conclude an agreement. The legislation must provide certainty that there are no gaps in representation at transnational level during new negotiations.

3.7 Finally, the EESC also welcomes the Commission's endeavour in its proposal to establish a collective representation mandate for the EWC. This is also explicitly welcomed by the European social partners, although they emphasise in their declaration that the EWC must have the necessary resources to fulfil its mandate arising from the directive.

4. Ensuring that the European Works Council is effective — improving efficiency in everyday business operations

4.1 The EESC has already drawn attention to the key role played by European Works Councils, noting that their members are 'directly and actively committed to creating a new [European] society' ([7]).

European lawmaking must therefore ensure that that the EWC has the means to effectively fulfil both its democratic and economic role. In particular, the conditions must be established for providing the EWC with the necessary resources, and communication and training possibilities. The European social partners have also stressed this.

4.2 The Commission's proposal meets these requirements by for the first time explicitly conceding to EWC members from all the EU Member States the facility to pursue further training without loss of salary, based directly on the EWC mandate.

The opportunity to broaden skills will certainly help to improve efficiency and performance. But it would also have been more consistent to make clear that the costs of such training are to be borne by the company in accordance with usual practices.

([7]) See EESC opinion on *European Works Councils: a new role in promoting European integration*. Rapporteur: Mr Iozia. OJ C 318, 23.12.2006.

4.3 The intensity and frequency of any communication between the members of the EWC is another factor affecting its performance. The EESC therefore also welcomes some improvements contained in the Commission proposal in this regard:

— Thus the EWC can include a 'select committee' in the agreement (Article 6(e)) to perform management and coordination tasks; the committee can have up to five members and meet on a regular basis, in line with the new provision in point 1(d) of Annex I to the directive.

— This provides both employees and company management with a reliable and permanent contact point at transnational level, especially during exceptional circumstances.

4.4 However, the EESC feels that this wish to streamline the practical work of the EWC is not consistently followed through:

— Practical experience suggests that EWCs work efficiently when an undertaking provides adequate communication facilities. The EESC observes that this is achieved above all in undertakings where there is usually more than one meeting a year, accompanied shortly before and after by preparatory and follow-up meetings without management. This approach is frequently agreed on a voluntary basis, going beyond the legal requirement. The EESC therefore believes that a recast EWC Directive should at least encourage an increase in opportunities for meetings by explicitly recognising the legal standards as minimum standards.

4.5 The EESC wishes to make the general observation at this point that when the EU Member States transpose the new EWC Directive into national law they can go beyond the minimum requirements of the directive when fixing the resources necessary for the EWC's work:

— This is relevant for instance to the obligation on EWC members — set out in recast Article 10(2) and a welcome addition — to inform employees' representatives in the establishments or, in their absence, the workforce as a whole, of the content and outcome of the information and consultation procedure in the EWC.

— The EESC considers that when implementing the directive the Member States are called upon to ensure efficient transmission of information between the European and national/local level of employee representation. For instance, it would make sense here to provide for rules allowing direct access to establishments, at least for country representatives and the members of a EWC's steering committee. It should also be possible to organise a meeting of employees' representatives at national level in order to pass on information if there are more establishments than EWC representatives in an EU Member State and employee representation bodies have not been set up across establishments.

4.6 Practical experience from the EWC's work suggests that the range of subjects covered by the consultation should not be definitively restricted to the list mentioned in the subsidiary requirements (point 1(a), Annex I). Experience has shown that the EWC can be consulted on many more matters than structural change.

Dialogue with a large number of company managements indicates that a much broader spectrum is possible, e.g. including matters such as further training, or workplace health and safety and data protection. The EESC would have expected this to have been incorporated into the revision of the EWC legal base, and the EWC also to be given the right to propose issues.

4.7 The EESC endorses the Commission's idea of encouraging all categories of employees to join EWCs. In this connection it draws attention to its proposal in previous opinions that executives and professional and managerial staff also be included.

5. **Improving the application of the directive and increasing the number of European Works Councils**

5.1 Europe's democratic infrastructure is currently being vitalised by over 12 000 members of European Works Councils in some 850 companies operating transnationally. There is a consensus that EWCs improve social dialogue in those companies and contribute to better decision-making and implementation of decisions. It is in the declared self-interest of the European Commission to increase the number of EWCs covered by the directive. This idea is also supported by the EESC.

The Committee believes that in order to increase the potential for EWCs to be set up in the future, the recast version of the directive should contain rules and effective measures in Article 11(2) that make its application more attractive and avoidance, as well as irregular failure to apply it, more difficult, as already intended in a Commission document on consultation of the social partners ([8]).

5.2 This draft recast version shows that the European Commission considers the European social partners to have a very important and responsible role to play in the practical implementation and application of the EWC Directive.

— Article 5(2)(c) therefore introduces a new obligation to inform the social partners at European level about the start of negotiations and the composition of the special negotiating body that has to be set up.

— Thus the positive role which (European) trade unions and employers' associations are known from previous experience to play in supporting negotiations and renegotiations of EWC agreements (Article 5(4) and point 39 of the explanatory memorandum) is explicitly recognised.

([8]) The document in question suggested that the new directive should call on the EU Member States to provide for 'effective, proportionate and dissuasive' sanctions (see C/2008/660, p. 7).

5.3 In this connection, the EESC also welcomes the definite improvement made by the Commission proposal in the situation during the phase of setting up an EWC.

— Thus company management must transmit to all parties the information on the company structure and workforce required for starting negotiations (Article 4(4)).

— This necessary clarification should in future help to avoid potential disagreements over this point. Previously, problems have had to be brought before the ECJ on several occasions ([9]).

5.4 The EESC believes that European Works Councils could be set up more quickly if the legal deadline set for concluding an agreement once negotiations have started were considerably shorter.

— The current three-year negotiating period has not proved very useful in practice because it is too long. Most EWC negotiations have been concluded in a much shorter time.

— In crucial cases, the long deadline has led to interruptions and delays in negotiations. This has meant that agreements meeting the standards set out in Article 6 of the EWC Directive have not been concluded in some cases.

The EESC therefore suggests that in the new directive the maximum length of negotiations should be reduced, for instance to 18 months, as the European Parliament already proposed in 2001.

5.5 Finally, the EESC stresses its hope that new EWCs will also be set up during the period when a revised directive is being transposed into national law. The Committee is assuming that agreements to set up new bodies during this period will fully conform to the standards set out in Article 6 of the existing Directive 94/45/EC, or their transposed versions under national law, and that such agreements will also have legal validity under the new directive.

5.6 **Current threshold and restrictions**: The EESC notes that the recast version of the EWC Directive proposed by the Commission maintains thresholds for setting up EWCs, excludes groups of employees from particular sectors (e.g. merchant shipping), and limits information and consultation in economic affairs (ideological guidance). A new threshold is even introduced of 'at least 50 employees' per Member State for representation at transnational level. This does not take into account the fact that in a variety of Member States employee representation bodies also have to be set up when the number of employees is below this threshold. Therefore the wording of Article 5 2) b) (Establishment of a special negotiating body) and 5 1) c) of Annex 1 — Subsidiary Requirements (Membership of the European Works Council) — of the Commission proposal should take national worker representation into account.

The EESC sees here a significant conflict with the basic right of any employee under European law to timely information and consultation when he or she is affected by a decision. The EESC would also have expected this to be taken into account in the recast directive.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

([9]) See ECJ judgments on Bofrost (C-62/99), Kühne & Nagel (C-440/00) and ADS Anker GmbH (C-349/01).

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which were supported by at least a quarter of the votes cast, were rejected in the debate:

Point 1.5

Amend 4th indent to read as follows:

'— *The responsibility of management for properly informing employee representatives, both at transnational and national level, must be clearly stated. The aim of improving coordination of the right to information and consultation between the different levels should not result in new ambiguities or restrictions on this obligation or in slowing down the decision-making process.*'

Result of the vote	Votes in favour: 43	Votes against: 91	Abstentions: 5

Point 3.2 to point 3.2.3 inclusive

Delete.

Result of the vote	Votes in favour: 35	Votes against: 100	Abstentions: 5

Point 3.3.2

Amend 1st indent to read as follows:

'— *The form and content of information provided must be such that it allows employee representatives to consider in detail any possible effects of decisions envisaged in order to prepare for possible consultation with the competent management representatives without slowing down the decision-making process in companies.*'

Result of the vote	Votes in favour: 43	Votes against: 91	Abstentions: 5

Point 4.2

Amend second paragraph as follows:

'— *The opportunity to broaden skills will certain help to improve efficiency and performance. ~~But it would also have been more consistent to make clear that the costs of such training are to be borne by the company in accordance with usual practices.~~*'

Result of the vote	Votes in favour: 37	Votes against: 98	Abstentions: 9

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare'

COM(2008) 414 final — 2008/0142 (COD)

(2009/C 175/22)

On 23 July 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare

COM(2008) 414 final — 2008/0142 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 November 2008. The rapporteur was Mr BOUIS.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 4 December 2008), the European Economic and Social Committee adopted the following opinion by 80 votes to three.

1. **Comments and recommendations**

1.1 Having addressed problems relating to health and patients' rights in a number of opinions, the EESC is now examining this proposal for a Directive, especially since as well as presenting a response to the rulings of the European Court of Justice, the text concerns the rights of patients and steps to structure the coordination of European health policies in the Member States.

1.2 The text re-affirms that health systems fall under the remit of the Member States and leaves unchanged practices for reimbursing treatments provided. However, the provisions proposed will necessarily have an impact in the long term on health systems which are based on solidarity and financial sustainability. The EESC therefore raises questions about the specific application arrangements regarding the subsidiarity principle in health policy and makes some observations and recommendations.

1.3 The Committee is concerned about the risk of widening differences in care among various groups in society and would like the Directive to mention that care must be provided on the basis of the equal worth of all human beings and that people with the greatest need and/or the lowest level of social security cover must also be given priority access to care.

1.4 The basic right of each user to enjoy the necessary guarantees of quality and safety creates obligations with regard to standardisation, certification and evaluation of material and human capacity, and organisation of healthcare.

1.5 Access to cross-border healthcare services requires that healthcare organisations in the different countries complement and counterbalance each other in terms of their capacity with respect to technical services and human resources, medical equipment and the responsibilities of service providers. This presupposes a European policy to support healthcare facilities and the training of healthcare professionals. Particular attention should be paid to certain medical risks linked to increased patient mobility.

1.6 In the EESC's view, the text should not propose to make patient mobility common practice but should put forward a framework in which this right can be exercised, without neglecting the need for quality healthcare as close to the patient as possible. The mechanisms introduced should not be disproportionate to the scope of cross-border healthcare.

1.7 The EESC is concerned about the distinction made in the Directive between hospital and non-hospital care, a distinction that is based more on financial factors than on the reality of healthcare organisation in each country. It therefore recommends, in accordance with the subsidiarity principle and Article 86(2) of the Treaty, that each Member State provide its own definition of hospital and non-hospital care.

1.8 The access to healthcare in another Member State offered to each citizen must be without discrimination as defined in Article 13 of the Treaty and must respect patients' rights as set out by the EESC [1], based in particular on a European medical file and health booklet that have been properly updated and to which medical professionals and patients themselves have access.

1.9 An effective information policy is even more vital in relation to cross-border healthcare because it is the only way of honouring the principle of equality of access to care and enabling the user to make free and informed choices. This policy must be developed under the responsibility of the Member States.

1.10 Information also concerns grievance procedures in the case of harm and arrangements for dealing with legal disputes. It would thus be useful to introduce a single information point, and provision must be made for cases to be brought before the courts in the patients' place of residence. The EESC also recommends that the compulsory liability insurance system should be extended to include all healthcare professionals.

1.11 In order to limit inequalities in access to healthcare, where systems of retrospective reimbursement are concerned particular attention must be paid to reimbursement times and to differences in therapeutic practices and methods of delivering medicines or appliances between the country of treatment and the country of affiliation.

1.12 The reimbursement system must also take into account the risk of inequality and even legal disputes because sickness insurance systems are not homogeneous, but have particular national characteristics: direct settlement, co-payment, tiered fees, referring doctor, coding of treatments, etc.

1.13 All systems for providing information must not only ensure that messages sent meet security and quality requirements, but even more importantly must enable individuals to choose freely and make it easier to reconcile economic competitiveness, cohesion, social justice and collective solidarity.

1.14 National contact points must have links with the various workers', family and user organisations and work in close cooperation with sickness insurance schemes so that they transmit this information. They must also develop information and training activities for medical practitioners, paramedical staff and social workers in relation to options for cross-border healthcare.

1.15 Particular attention must be paid to ensuring continuity of care, patient follow-up, adjustment of medical devices and taking of medicines. To this end, healthcare professionals and systems must coordinate their activities with regard to medical specialties and patients' long-term treatment protocols.

1.16 The introduction of European reference networks must go hand in hand with development of fully interoperable information technologies that allow all patients to benefit, no matter where they live. Exchanging expertise should help to improve quality in the healthcare systems of the Member States to the advantage of all stakeholders — organisations, healthcare professionals and patients.

1.17 Aggregating the statistical data collected by the Member States should make it possible to evaluate the application of the Directive, but also to produce indicators that can be used to understand the strengths and weakness of healthcare systems, as well as people's needs and preferences. This evaluation should also be submitted to the EESC, which is committed, for its part, to conducting a follow-up and, if necessary, adopting further own-initiative opinions.

1.18 Applying real patient rights in relation to cross-border healthcare requires a certain adjustment time to allow a radical change in practices and a change in the attitudes and training of healthcare professionals to take place. It means incorporating into national legislation the principles of a European charter of reciprocal rights and duties of the various actors in the sphere of public health.

1.19 It is obvious to the EESC that the approach adopted has not been able to fully reconcile the issue of subsidiarity in health care and the need for a consistent modus operandi for cross border treatment. This leaves open the possibility of varying interpretation, a source of legal difficulties for both patients and health providers.

2. **Gist of the communication**

2.1 *Legal and political context*

2.1.1 In the light of ECJ case law, the Commission was asked in 2003 to examine ways of improving legal certainty in relation to cross-border healthcare.

2.1.2 The 2004 Directive on services in the internal market contained relevant provisions. The European Parliament and the Council rejected these because they considered that they did not take sufficient account of the particular features of healthcare policies, which vary considerably between countries, and of their technical complexities and financing issues. Public opinion is also very sensitive on this issue.

[1] EESC own-initiative opinion on *Patients' rights*, rapporteur Mr Bouis, OJ C 10 of 15.1.2008.

The Commission therefore decided to present a communication and a Directive in 2008 with a view to establishing a clear and transparent framework for provision of cross-border healthcare in the Union, namely healthcare services received abroad, where a patient moves to a healthcare provider in another Member State for treatment ('patient mobility'). The Commission puts forward a definition of hospital and non-hospital care to this effect.

2.2 *Proposed framework*

2.2.1 The proposal presented is based on Article 95 of the Treaty, which concerns the functioning of the internal market, Article 152 on public health, and the general principles of the Charter of Fundamental Rights as set out in the reform treaty.

2.2.2 In order to achieve the objectives, the relevant legal definitions and general provisions are structured around three main areas: the common principles in all EU health systems, a specific framework for cross-border healthcare, and European cooperation in the sphere of healthcare. The Directive sets out the principles that apply to reimbursing the costs of healthcare in another Member State, as well as the terms under which patient rights are to be exercised in practice, drawing a distinction between hospital and non-hospital costs.

2.2.3 This proposal does not modify the existing framework for coordination of social security schemes.

2.2.4 The Directive sets out the procedures to be followed and also provides for the introduction of appropriate mechanisms for informing and helping patients via national contact points. Any patient who cannot find healthcare within a reasonable time in their own country will be authorised to receive it in another Member State.

2.2.5 The Directive promotes more European cooperation through the setting-up of European reference networks, evaluation of healthcare technologies, and development of online information and communication technologies.

3. **General comments**

3.1 The EESC has addressed problems relating to health and patients' rights in a number of opinions and notes the European Commission's wish to consider the issue of cross-border healthcare.

3.2 The EESC feels that the intention should not be to make patient mobility common practice but rather to put forward a framework in which this right can be exercised. The mechanisms introduced should not be disproportionate — in terms of their scale or cost — to the scope of cross-border healthcare activity.

3.3 This text reflects the values of the European Union and of the Tallinn Charter ([2]), which are intended to ensure high-quality healthcare provision throughout Europe and their accessibility to everyone.

3.4 The proposal for a Directive in its present form tends to ignore the complexity, variety and divergence of the health systems of the 27 Member States. The Directive will almost certainly not be interpreted in the same way by the different healthcare systems in the respective Member States. The EESC therefore has questions to raise about the specific methods of application and wishes hospital and non-hospital care to be clearly defined so as to increase legal certainty for patients and health services.

3.4.1 The text re-affirms that health systems fall under the remit of the Member States and seems to fully respect their competence for organising health systems, delivery of medical care and reimbursement of services provided. However, the provisions proposed will have an impact in the longer term on health systems, their financial sustainability and the extent of the rights associated with them.

3.4.2 In view of the considerable differences in healthcare services provided and their cost, the reimbursement system poses a risk of inequality and even legal disputes because sickness insurance schemes are not homogeneous, but have particular national characteristics. The EESC fears that the Directive may provide an opportunity to open the healthcare market up to competition and in practice, following the introduction of the services directive, undermine the quality of healthcare in Europe overall.

3.4.3 The efficiency and proper use of healthcare services in a cross-border context require that healthcare organisations in the different countries complement and counterbalance each other in terms of their capacity with respect to technical services and human resources, medical equipment, and determining the responsibilities of service providers.

3.4.4 In all cases, whenever cross-border healthcare is provided, patients have the right to expect guarantees of the quality and safety of such care. This fundamental right raises the question of alignment between certification procedures, evaluation of professional practice, capacity of medical equipment, and compensation arrangements in the case of harm.

3.4.5 In the context of cross-border healthcare, high-quality treatment and trust in the care provided in a host country require that a number of conditions be met, in order to ensure continuity of care. These would include:

— widespread use of a health booklet kept by each individual patient from birth;

([2]) Charter signed in Tallinn on 27 June 2008 by the Ministers for Health of the WHO European Region.

— existence of a properly updated European medical file to which healthcare professionals and patients have access;

— a common formulation for reimbursement protocols;

— coordinated prescribing practices, including generalised use of generic names rather than trade names, notwithstanding the fact that medicines are subject to international trade rules;

— standards and certification for medical implants, appliances and devices;

— introduction of a European validation or even certification procedure for medical and paramedical hospital equipment;

— a Community procedure for marketing authorisations for medicines.

All these requirements mean that new technologies with interoperable IT systems will have to be developed.

3.4.6 Such changes in the way the system is organised and in professional practice will also require a change in the attitudes and training of healthcare professionals, as well as revision of the legal definition of the competences, role and responsibilities of healthcare authorities in each country, which will entail a necessary period of adjustment.

3.4.7 The possibility of cross-border healthcare offered to each patient must be an extension of equal access to the whole range of healthcare services and professionals, without discrimination on grounds of gender, race or ethnicity, religion or beliefs, handicap, age, or sexual orientation. Among other things, this will require an effective information policy covering two dimensions:

3.4.7.1 firstly, information on the supply of healthcare, which every citizen must have in order to decide to use cross-border healthcare and which is published under the responsibility of healthcare authorities, who will also have to ensure that this information is accessible to certain vulnerable groups, e.g. people who are socially isolated or financially insecure;

3.4.7.2 secondly, information which must be provided on the patient's medical condition, possible treatments — including benefits and risks — and the type of systems or professionals delivering the healthcare.

3.4.7.3 Since this information will be provided through an interaction with a healthcare professional, that person must themselves be up to date on what options exist in Europe. It is therefore essential to establish the link between healthcare providers and national contact points, and funding will have to be found for this. In addition, the language barrier must be overcome.

3.4.8 The information must be complete and relevant so as to enable the patient to make free and enlightened choices rather than being prey to customer poaching and commercialisation practices.

3.4.9 This obligation to provide information is the only way to realise the principle of equality of access to care as set out in the Directive, whatever the need for cross-border healthcare is.

4. **Specific comments**

4.1 *Article 3*

4.1.1 The EESC notes that the proposal for a Directive should apply without prejudice to Community provisions referred to, in particular Regulations 1408/71 and 883/2004.

4.2 *Article 4(d)*

4.2.1 The EESC considers the list of healthcare professionals to be incomplete and would like paramedical practitioners, such as speech therapists and orthoptists, to be added.

4.3 *Article 5*

4.3.1 The EESC draws particular attention to this article, noting that the challenge will be to guarantee that the healthcare provided meets people's needs and wishes by granting them rights, while also imposing responsibilities, in order to promote well-being by reconciling economic competitiveness, cohesion, social justice and collective solidarity. The EESC will pay careful attention to ascertaining that quality and safety standards are not defined in such a way as to undermine the diversity of national healthcare systems (Article 152(5) TEC).

4.3.2 The EESC emphasises the importance of healthcare systems for citizens, especially the most disadvantaged among them, as well as the impact on economic growth of better access to healthcare, and it stresses that any investment allowing access to healthcare services will be much more effective if it is coordinated.

4.4 *Article 6*

4.4.1 The EESC believes that great care must be taken to ensure in relation to systems of retrospective reimbursement that therapeutic practices, and methods of delivering medicines or appliances, are determined by the country of treatment rather than the country of affiliation, which is responsible for fixing the criteria for reimbursement. This means that equivalence lists must be laid down both for reimbursement rates and for obligations relating to continuity of care.

4.4.2 The EESC is concerned about the additional costs that will have to be borne by the patient in the event of unanticipated non-reimbursement. To ensure continuity in the long term it will be necessary to envisage a system whereby the country of affiliation pays the costs of such treatment, which could have a significant impact on financing systems.

4.4.3 The EESC is concerned to avoid two classes of medicine, from the point of view both of patients and of Member States, and therefore considers it necessary to clarify the issues of cost calculation systems in the country of treatment and of payment terms. The EESC emphasises that care must be taken to ensure that accounting arrangements cater for existing practices and are appropriate to the institutions involved.

4.5 *Article 6*

4.5.1 The EESC is particularly concerned about the distinction made in the Directive between hospital and non-hospital costs, noting that this is based more on financial factors than on the reality of healthcare organisation in each country.

4.5.2 While the Commission is proposing that a supplementary list be issued, the EESC recommends — in accordance with the subsidiarity principle and Article 86(2) of the Treaty — that the Member States should be responsible, except in the case of manifest abuse, for providing their own definition of hospital care. The necessary changes would then be made to Article 8(1) and (2).

4.6 *Article 9*

4.6.1 The EESC believes that prior authorisation systems may be valuable if they involve a process of assessment and providing information to the patient based on a dialogue that can be set up between the patient and his or her funding organisation. Such systems can also guarantee funding of specific services such as reimbursement of travel costs.

4.6.2 The EESC considers that any refusal of authorisation should be duly justified and explained to the patient, regardless of whether the criteria for prior authorisation were published in advance.

4.7 *Article 10*

4.7.1 It is important from the EESC's perspective that systems be introduced for informing patients so as to enable them to make a choice about cross-border healthcare. This information must include the requirements and limits of the service provided, as well reimbursement arrangements and the excess to be paid by the patient.

4.7.2 The EESC recommends that the compulsory liability insurance system ([3]) be extended to include all healthcare professionals and that information be provided on grievance procedures in the case of harm caused by medical accident, with or without negligence (therapeutic risk).

4.7.3 The EESC considers it appropriate to apply the principle of a single point of contact for procedures and lodging complaints, and that any legal dispute should be dealt with by the courts in the patient's place of residence.

4.7.4 The EESC believes that it would be useful to develop online information services and sites as a way of providing information to patients. However, information sources and systems cannot be limited to this medium, since a large number of people have little or no access to the internet. There would be a risk of promoting a two-speed health system in which only the more advantaged or better-informed social classes could enjoy access to cross-border healthcare.

4.8 *Article 12*

4.8.1 National contact points must have links with the various workers', family and healthcare user organisations, be designed in close cooperation with the health insurance schemes and the providers' self-regulation bodies, and function as the appropriate bodies for transmitting this information. Contact points must also develop information and training activities for medical practitioners, paramedical staff and social workers so that they are aware of the options available for cross-border healthcare, with each Member State being responsible for setting up its own national contact point.

4.9 *Article 14*

4.9.1 The EESC draws attention to this article, which guarantees continuity of care in terms of patients' use of medication, but it would like to see this rigorously applied in view of the potential risks of over-consumption or even trafficking.

4.10 *Article 15*

4.10.1 This article partly assuages the EESC's concern about disparities in the quality of healthcare services provided in the Member States. The introduction of European reference networks must still go hand in hand with development of information and communication technologies that allow all patients to benefit, no matter where they live.

([3]) Third-party insurance.

4.10.2 The following should be added to the objectives of the European networks:

— in Article 15(2)(a): 'appraisal and registration of therapeutic practices';

— In Article 15(2)(d): 'recognition of qualifications and monitoring of codes of ethics'.

4.10.3 In addition, although a procedure is envisaged for joining these networks, the EESC highlights the importance of evaluation, or even introducing a certification procedure.

4.10.4 In the list of specific criteria and conditions that the networks must fulfil, the EESC would like the following to be added:

— in Article 15(3)(a)(ix): 'Such collaboration is particularly essential in terms of involving users in defining a reasonable waiting period for treatment.'

— Article 15(3)(a)(x): 'promoting recognition and application of a common charter of patient rights guaranteeing the effective application of those rights both in the country of origin and in relation to cross-border healthcare'.

4.11 *Article 18*

4.11.1 Aggregating the statistical data collected by the Member States should make it possible to assess application of the Directive. It would also be good if this resulted in indicators being produced that can be used to understand in more detail the strengths and weakness of healthcare systems and to identify the needs and preferences of patients.

4.12 *Article 20*

4.12.1 The arrangements for prior authorisation should be made explicit and forwarded to the Commission as data for analysis.

4.12.2 The report should also be submitted to the EESC.

Brussels, 4 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive …/…/EC of the European Parliament and of the Council of […] on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent'

COM(2008) 544 final — 2008/0173 (COD)

(2009/C 175/23)

On 8 October 2008, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 44 of the Treaty establishing the European Community, on the

Proposal for a Directive …/…/EC of the European Parliament and of the Council of […] on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

COM(2008) 544 final — 2008/0173 (COD).

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 449th plenary session of 3 and 4 December 2008 (meeting of 3 December 2008), by 169 votes to two and four abstentions, to issue an opinion endorsing the proposed text.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive …/…/EC of […] determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods on the common system of value added tax (codification)'

COM(2008) 575 final — 2008/0181 (CNS)

(2009/C 175/24)

On 8 October, the Council of the European Union decided to consult the European Economic and Social Committee, under Articles 93 and 94 of the Treaty establishing the European Community, on the

Proposal for a Council Directive …/…/EC of […] determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods on the common system of value added tax (codification)

COM(2008) 575 final — 2008/0181 (CNS).

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 449th plenary session of 3 and 4 December 2008 (meeting of 3 December), by 167 votes in favour, three against with three abstentions, to issue an opinion endorsing the proposed text.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee
Mario SEPI

The Secretary-General of the European Economic and Social Committee
Martin WESTLAKE

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