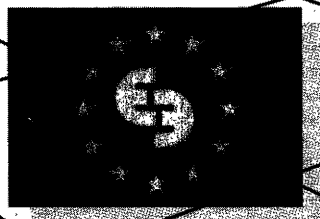


**ECONOMIC AND SOCIAL
CONSULTATIVE ASSEMBLY**

1992



Transport Policy in the EC

*EUROPEAN
COMMUNITIES*

*ECONOMIC AND
SOCIAL COMMITTEE*

Brussels 1991

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FOREWORD

The Community's pace towards 1992 and the opening of the Single European Market is gathering momentum, but in terms of transport there is still much to be accomplished. An integrated and dynamic transport structure is essential to service the requirements of the European Community, not just in accommodating the new internal dimension of its market, but also with respect to external changes in the international frame. Concrete solutions for all transport problems are needed, capable of responding to the unfolding changes in the economic and social fabric of a more integrated Europe.

Transport within the Community remains essentially fragmented, having developed differently in the Member States in terms of technology, operation, and finance. Effective coordination and implementation of European transport policy must take account of all interests involved and enhance service to customers, while paying close attention to social, and environmental conditions, potentially vulnerable within such structural change.

For this reason, in its Opinions concerning shipping, air, road, and rail travel, the Economic and Social Committee has focused on a global perspective of European transport policy, and will certainly continue to do so in its forthcoming Opinion on the Transport 2000+ report, issued recently by a working group set up by the European Commission.

An overall decline in the Community fleet illustrates the need for reform in this sector, and the ESC supports the introduction of an EC register that could monitor European shipping. The Committee also proposes measures to ensure lower operating costs and stimulate investment, making shipping firms more competitive internationally, and reducing the market share of non-EC ships and crews carrying EC trade.

Liberalization of air transport, together with establishing a system of European Air Traffic Control and reducing congestion, are fundamental in providing a better service for European citizens. The Committee proposes that the Commission's measures be extended to include charter and freight services in the context of the overall policy for transport. Due to the complexity of liberalization measures in the airline industry, the experiences of other countries should be carefully considered, and the ESC calls for the application of the most logical model to facilitate the transition.

On the Community's roads, different methods of financing in Member States cause operating costs for road hauliers to differ. The ESC considers that territoriality be the basis for the taxation of goods vehicles, in order to overcome distortions, which should at least cover their marginal cost. Furthermore, the Committee considers that, whilst road tolls may be abolished relatively quickly, increases in fuel tax should be introduced on a gradual basis, and should be set in conjunction with ecological policy.

Technical fragmentation of the Community's rail network poses greater problems for the coordination of European rail policy, while problems of congestion on the roads and in the skies point to the necessity of its effective implementation. The ESC highlights the need for coordination by a conciliatory body, and for close consultation with Member States' governments, in particular concerning the European High Speed rail network. The necessary requirement of rail policy must allow companies to effectively compete, not just with each other, but within the transport sector as a whole, while maintaining high standards of service, and as stressed in all the ESC Opinions, without further detrimental effects to safety, social conditions, and the environment.

OPINION
of the
Economic and Social Committee
on the
Proposal for a Council Regulation establishing a Community ship
register and providing for the flying of the Community flag by
sea-going vessels;
Proposal for a Council Regulation on a common definition of a
Community shipowner;
Proposal for a Council Regulation applying the principle of
freedom to provide services to maritime transport within
Member States
(Positive measures for maritime transport)
(COM(89) 266 final)

At its Plenary Session on 23 February 1989, the Economic and Social Committee instructed its Transport Section to produce, on the basis of Article 20(4) of the Rules of Procedure, an Own-initiative Opinion on Positive Measures for Maritime Transport.

On 16 August 1989 the Council decided to consult the Economic and Social Committee under Article 84 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation establishing a Community ship register and providing for the flying of the Community flag by sea-going vessels;

Proposal for a Council Regulation on a common definition of a Community shipowner;

Proposal for a Council Regulation applying the principle of freedom to provide services to maritime transport within Member States

embodied in the Communication by the Commission to the Council entitled:

"A Future for the Community shipping industry: Measures to improve the operating conditions of Community shipping"
(COM(89) 266 final)⁽¹⁾

and accompanied by a document for information from the Commission to the Council entitled:

"Financial and fiscal measures concerning shipping operations with ships registered in the Community"
(SEC(89) 921 final).

Positive measures for maritime transport

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 8 November 1989. The Rapporteur was Mr WHITWORTH; Co-Rapporteur: Mr ALEXOPOULOS.

At its 271st Plenary Session (meeting of 16 November 1989) the Economic and Social Committee adopted by 43 votes to 7, with 7 abstentions, the following Opinion:

* * *

1. Background

- 1.1. In March 1985⁽²⁾, the Commission put forward a Memorandum in an attempt to create a coherent framework for an EC shipping policy, based on a philosophy of free trade. It was devoted mainly to what might be called the "external relations" aspects of shipping, although it also met the requirement to apply the Community's competition rules to the sea transport sector. It provided a means for coordinating the national policies of Member States in the face of protectionism and unfair economic practices by countries outside the Community and also the first stages of a gradual opening-up of a genuine common market in intra-Community sea transport services.
- 1.2. The Economic and Social Committee considered this first stage of the Community's shipping policy in great depth and produced a comprehensive Opinion and Report on it (Co-Rapporteurs: Mr MOLS-SØRENSEN and Dr BREDIMA) in two parts in November 1985⁽³⁾ and May 1986⁽⁴⁾ (published in a single volume in June 1986).

(1) OJ C 263, 16 October 1989, page 11.
(2) OJ C 212, 23 August 1985, page 2
(3) OJ C 344, 31 December 1985, page 31
(4) OJ C 207, 18 August 1986, page 31

- 1.3. The Opinion welcomed the memorandum as an indication that the Commission had at last begun to consider the maritime industry as an industry in its own right. It stated:

"The publication of the document is timely since the merchant fleets of the EC Member States are either in decline or facing the prospect of decline at a time when competition from non-EC fleets is growing and the level and pattern of world trade is undergoing a fundamental change. Until now the Community has lacked a coherent and comprehensive policy for the maritime transport sector and it is now crucial that such a policy should address the means of halting the fleets' decline, if not reversing it..."

"The shipping industry is important to the Community as an earner of foreign exchange and as an employer both at sea and ashore. In addition to its strategic value and its important role in defence, it is also vital as a provider of transport services for external trade to and from the Community as well as for trade within and between Member States. A viable Community-flag fleet is essential if services to exporters and importers in the European Community are not to be dominated by third party shipping interests. Therefore the Community needs a maritime transport policy concerned with the promotion of all maritime activities such as the carriage of goods and passengers by companies in Member States, the use of a viable Community fleet registered in Member States and the employment of seafarers from Member States".

For the most part, these considerations apply equally today.

- 1.4. In December 1986, in the first stage of EC shipping policy, the Council of Ministers adopted a package of four maritime regulations⁽⁵⁾ governing:
- the principle of freedom to provide services between Member States and between Member States and third countries (Regulation 4055/86);
 - competition rules (Regulation 4056/86);
 - unfair pricing practices (Regulation 4057/86); and
 - free access to cargoes (Regulation 4058/86).
- 1.5. When they adopted these regulations, the Community Governments recognized that this marked only the first stage in the elaboration of a Community shipping policy whose aims were to maintain and develop an efficient, competitive Community shipping industry to ensure the provision of competitive shipping services, in particular, for the benefit of Community trade.
- 1.6. The Council of Ministers agreed that if these aims were to be achieved efforts would be needed to reduce the disparities in "operating conditions and costs" between the Community fleets as a whole and their foreign competitors and that in this connection measures were required to promote the Community fleet. Accordingly, it invited the Commission to submit appropriate proposals relating to fiscal, social and technical aspects as rapidly as possible, with a view to contributing to the completion of the internal market by 1992.
- 1.7. During the intervening three years, the Commission has been working to this remit. A symposium was held in Antwerp in May 1987 at which the then Transport Commissioner promised speedy action to produce a programme of positive measures. The Commission instructed various independent institutions to undertake studies, including a social survey of seafarers' conditions (MERC - 1987), a study on the current financial and fiscal arrangements governing shipping in the Member States (KMPG) and a Report on EC Maritime Industries (Moore Stephens).

(5) OJ L 378, 31 December 1986, page 1

- 1.8. In August 1989, the Commission put forward its proposals for a second stage of Community shipping policy in a communication to the Council of Ministers⁽⁶⁾. The objectives of this policy are defined (in paragraph 3 of the Commission document) as to:

"provide sufficient incentive for Community shipowners to register their ships within the Community and man those ships, to the highest possible proportion, with Community seafarers."

It is further stated (in paragraph 50) that the Commission is not seeking to restore the earlier level of the fleet, nor to require Community-registered ships to be totally manned by nationals, but to achieve the three elements - Community ownership, registration and crew - "to a relative extent".

2. The Commission's analysis

- 2.1. The Commission's communication is in two parts: the first, entitled, "*A Future for the Community Shipping Industry: Measures to improve the Operating Conditions of Community Shipping*", analyses the present situation of the shipping industry and the scope for Community action, before describing a number of specific policy measures which might be taken by the Community to stem the decline of the Community fleet and achieve the objectives set out in paragraph 1.8. *It includes four draft instruments on:*
- the establishment of a Community ship register;
 - the improvement of port state control within the Community;
 - a common definition of a Community shipowner;
 - the application of freedom to provide services to maritime transport within Member States.
- 2.2. The second document, submitted for information only, relates to "Financial and fiscal measures concerning shipping operations with ships registered in the Community"⁽⁷⁾. It includes a series of "Guidelines for the examination of state aids to Community shipping companies".
- 2.3. The first document provides a comprehensive and helpful analysis of the economic situation besetting the Community fleets. It amply demonstrates the Commission's appreciation of the state of the shipping market and the reasons behind the dramatic decline in the fleets registered in Member States. The Commission notes, inter alia, that:
- a) apart from in FR Germany and Denmark, the reduction of older tonnage in Community fleets has not been accompanied by modernization and they are now older than most of their competitors;
 - b) the relative ageing of the Community fleet means less opportunity to benefit from developments in shipbuilding design aimed at increasing operational efficiency and decreasing running costs;
 - c) the contraction of Community fleets has led to reduced sea-going employment both of Community nationals and non-nationals; also to significant job losses in shore-based employment and in related industries;
 - d) while the problems facing shipping have eased in the last year, the changes in economic conditions do not eliminate the structural comparative disadvantage which Community shipping suffers as against many third country fleets. This cost disadvantage relates in particular to crew costs and differences in tax treatment;
 - e) the loss of a Community fleet would have an adverse influence on the quality and cost of transport to and from the Community and thus damage the Community's trading position;

(6) COM(89) 266 final of 3 August 1989

(7) SEC (89) 921 final

f) there would also be significant damage to Community interests in terms of employment, balance of payments and defence.

2.4. In this context the following figures derived from the Commission's appendices are highly relevant:

	1980	1984	1988
Size of EEC fleet	117.2 m grt	84.5 m grt	58.5 m grt
Percentage of world tonnage	29.4%	23.4%	15.4%
EEC sea-farers employed	276,417 (1978)	213,821 (1983)	143,431

2.5. The Commission also notes, in the context of measures introduced with the aim of reducing operating costs, that the use of offshore and dual registers has been greatly expanded. The Committee believes that the proliferation of dual registers in Member States gives rise to some concern. It also raises a series of questions with regard to their legal status under the EC Treaty and the package of shipping policy Regulations. It is of importance to consider the legal status and circumstances of such registers (some of which are based in Community territory and others not) with view to examining their compatibility with Community law.

2.6. The Commission also recognizes what the Committee perceives to be the unique position of shipping, in comparison with other Community export-oriented industries, as an operator of globally mobile plant and equipment with an equally mobile labour force, geographically isolated at its place of work from its country of origin or residence. Its competitors' trading circumstances differ radically, dependent on the centres from which they operate and the flags under which they register; in many cases both of these can be changed at will to enhance their competitive advantage. EC shipping is at the forefront of the open market economy and enjoys no quota or tariff protection - as does Community land-based industry. Indeed, the EC shipping markets are open to carriers of all nationalities, while EC carriers' freedom of access to the trades of many countries is restricted.

2.7. In recognizing the particular vulnerability of shipping in world trade the Commission points to the fact that there is no internal Community shipping market as distinct from the world market (insofar as deep sea shipping is concerned). As agreed by the Council in the debate preceding the adoption of the package of Regulations in December 1986, even sea transport between Member States of the Community is open to anybody from the rest of the world.

3. The Commission's Proposals - General Comments

3.1. The Committee believes it to be imperative that there should be a positive sectoral policy for Community shipping in the second phase, designed to improve competitiveness and productivity, encourage investment and develop the human resources employed in the industry. It is only by the maintenance of a healthy and competitive Community shipping industry that the best guarantees can be assured in the longer term of continuing employment of Community seafarers and of the continuing availability of efficient maritime transport services for EC trading interests. The Committee therefore welcomes the Commission's analysis of the present position of Community shipping and endorses its conclusion that there is an urgent need for Community action.

3.2. In developing its proposals for a second stage of European Community shipping policy the Commission has established a framework of specific criteria which are set out in paragraph 53 of its first document. The Committee broadly supports these criteria as well as the fundamental objectives underlying the proposals (recorded in paragraph 1.8. above). The

Committee hopes that the Commission will continue to pursue these objectives as widely as possible, despite its conclusion that the three elements can only be achieved "to a relative extent". It emphasizes that the Commission's statement (point 52) to the effect that European operating conditions are to be adjusted to those existing on the world shipping market should not lead to any downgrading of operating conditions for EC ships and employment conditions for EC seafarers.

- 3.3. However, the Committee does not believe that, taken as a whole, the package of proposed measures will have sufficient impact to achieve the stated objectives. The Commission itself states that the objectives can be achieved only if the operating conditions of the Community fleet improve its competitive position in the world market (paragraph 3). It goes on to emphasize (in paragraph 30) the competitive disadvantage of the Community fleet and to state, correctly, that the cost disadvantages of operating under Community flags have proved too great for many shipowners.
- 3.4. The Committee believes that this competitive disadvantage can only be effectively redressed if the package of Commission proposals were to incorporate firm and specific proposals to alleviate the cost burdens imposed by Member States on shipping companies in areas related to employment costs and company taxation.
- 3.5. Employment costs and personal taxation**
 - 3.5.1. In its 1985 Opinion the Committee suggested that the Commission should actively promote favourable direct tax regimes for Community seafarers and also explore other such means of helping to maintain the employment of EC nationals on vessels of Member States.
 - 3.5.2. The Committee affirms its emphatic rejection of a state of affairs in which the Community becomes increasingly dependent on non-EC ships and crews to carry its overseas trade. The continuing loss of tonnage from EC flags and the continuing decline in job opportunities for EC seafarers must be arrested and reversed, leading to the re-establishment of a Community maritime labour force with appropriate training and skills.
 - 3.5.3. A paramount necessity is effective action to reduce the differential in overall manning costs which has led to the loss of job opportunities for EC seafarers in favour of third world crews. For, as the Commission demonstrates in its analysis and the statistical tables annexed, it is the level of these costs which represents the principal area of disadvantage for EC fleets in relation to their competitors.
 - 3.5.4. Wage disparities between the various EC Member States and between EC and third world crews, significant in themselves, are further exacerbated by the burden of personal income tax and social security contributions imposed on EC seafarers and their employers. A combination of the data produced by the Social Survey sponsored by the Commission shows that a huge gap exists in the various Member States between the net pay received by the seafarer and the gross cost to the employer. The overall cost to the employer varies between 150% and 200% of the seafarer's take-home pay. Under many competing flags, such costs do not exist at all and seafarers lack the corresponding protection.
 - 3.5.5. Early and positive action should therefore be taken by the Community to apply specific measures to reduce the level of Community manning costs, without prejudice to the seafarers concerned, by:
 - the abolition of income tax on the earnings at sea of all seafarers on EC ships; and
 - the alleviation, to the greatest possible extent, of social security costs for employers and employees relating to the employment of seafarers serving on EC ships;in order to minimize the gap between net pay and gross cost.
 - 3.5.6. It is only by action along these lines that the EC fleets' competitive disadvantages in the vital area of manning costs can be at least partially reduced.

3.5.7. It cannot be emphasized too strongly that these proposals do not in any way suggest any deterioration in the take-home pay, employment conditions or social security entitlements of EC seafarers. Their benefits would remain unchanged but their employment prospects would be greatly enhanced.

3.6. Fiscal measures and company taxation

3.6.1. The Committee considers that the objectives of Community action in the fiscal area should be:

- to make the EC fleets more competitive in practical terms with lower-cost, non-EC fleets (while acknowledging the need not to exacerbate over-supply by a proliferation of subsidies) and
- to encourage investment in the shipping industry per se and therefore promote a healthy, EC-owned merchant fleet able to ensure the EC's import/export trade.

Where appropriate, the Community also should provide funds that would contribute to the achievement of these aims.

3.6.2. The capital cost of acquiring a ship, particularly a new ship, is the largest cost burden for a shipping company. As the Commission demonstrates, there are presently a variety of national regimes within the Community designed to assist national shipping companies in this area. These include a widely differing mixture of direct subsidies, home credit schemes, tax-free reserves, favourable depreciation allowances, loan guarantees, and favourable rates of company taxation. Although some EC shipping companies get significant help from their governments, others get very little or no such help. Such support should be available to all EC shipowners to re-invigorate investment, modernize the EC fleets and enhance their competitive position. At the same time, it should be noted that many aggressive competitors from the Far East, the Eastern Bloc, and USA in particular get substantial government aid.

3.6.3. More specifically, the Commission should develop an instrument which would permit:

- a reduction of the overall fiscal burden on shipping companies established in Member States and vessels sailing under the flags of Member States;
- favourable treatment, for tax purposes, of profits from shipping activities in international markets, including profits on the sale of ships;
- flexible fiscal allowances against the costs of purchasing new and second-hand ships to facilitate re-investment in shipping.

3.6.4. The EC shipping industry stands to benefit from the retention of an efficient and prosperous EC shipbuilding industry. The Committee has given its views on measures which should be taken to ensure the latter in a number of previous Opinions, most recently in December 1986⁽⁸⁾.

3.6.5. It is vitally important, too, that neither the Community nor Member States should undertake action which actually damages shipping financially. In this respect, attention is drawn to the fact that some Member States still impose restrictions on access to world capital and insurance markets. The Commission should ensure the principle of free access for the EC shipping industry to these markets.

3.6.6. With regard to the Community's ability to provide funds (in accordance with the suggestions in paragraph 3.6.1. above), the Committee notes that the maritime transport industry makes a substantial contribution to the Community budget through the charging of customs and other duties on the freight element of the value of goods imported into Member States

(8) OJ No. C 68 of 16 March 1987, page 9

using EC ships. These duties are assigned to the Community as own resources for the financing of common expenditure. The Committee in no way wishes to change this arrangement, since non-payment of duty on freight charges on board EC ships would introduce an element of flag protection and therefore be contrary to the thrust of the Community's wider shipping policy. However, it notes that this fact places one commercial activity - i.e. shipping - in the Community in an exceptional position in relation to other commercial and production activities and that, on very rough assumptions, the overall value of the Community's own resources derived from this source approaches ECU 500 m in the current year.

- 3.7. While the Commission addresses the foregoing and a number of related aspects in its second document, "for information", it stops a very long way short of advocating positive action in any of these critical areas.
- 3.8. In putting forward its proposals, the Commission appears to have felt itself inhibited by what it believes to be a number of constraints on Community action:
 - the Community has no funds at its disposal from which aid can be made available;
 - the Community cannot compel Member States to give any particular financial or fiscal aid to their shipowners - each Member State must itself determine the extent to which it wishes to support its fleet. The Commission can only examine whether such support is compatible with the Treaty;
 - Community proposals for fiscal measures in favour of a *particular* industry would run counter to the principle of tax neutrality between the economic sectors.
- 3.9. It appears that the Commission feels that it is not permitted to propose supportive measures specific to shipping because it cannot guarantee that each Member State will be equally willing to implement them. Without this guarantee the proposal of such measures would contribute further to distortion of competition between Member States. The result could be that positive sectoral policies would be outlawed unless a mechanism can be found for coordinating such measures across the Community.
- 3.10. The Committee recognizes the necessity for any positive measures for maritime transport to be consistent with the principles of the Internal Market. In this context it believes that care must be taken to ensure that no competitive distortion is created between the various transport modes where they are effectively in competition with one another - e.g. at the interface of short-sea and internal shipping in rivers and estuaries.
- 3.11. Nevertheless the Committee believes that owing largely to the Commission's interpretation of the limits on Community action imposed by the Treaty provisions, the measures as presently proposed fall well short of the Commission's own objectives. Useful and helpful though some of the detailed proposals are (and this is acknowledged in the Committee's specific comments), without positive and specific measures to alleviate the burdens imposed by Member States in the areas of employment costs and company taxation, the Commission's package is insufficient to promote the EC fleets and halt the decline in the Community shipping industry.
- 3.12. Despite the fact that the Community may not have the legal authority to oblige the Member States to provide special assistance, there is nothing to prevent the Commission from proposing to the Council of Ministers that it adopt a Decision calling upon the Member States, as a matter of urgency, to take concrete, balanced action, e.g. in the field of fiscal policy, to strengthen the competitive position of the EC fleets. The Commission itself draws attention in its proposals (point 48) to the need for joint action on the part of the Member States and the EC to counteract the reduction in the EC fleets. Furthermore, fiscal measures have been used in other areas to help achieve particular objectives, without giving rise to objections on the grounds of an infringement of fiscal neutrality. The same situation applies in the case of the objective of ensuring the long-term competitiveness of the EC fleets.

- 3.13. Finally, and before embarking on its detailed comments on the Commission's proposals, the Committee would emphasize that it is important for the first stage of EC shipping policy to be firmly implemented. The Committee notes that, while progress has been made in some areas, there is still scope for greater commitment and forcefulness of implementation regarding Regulations 4055/86 on the Freedom to Provide Services and 4058/86 on Free Access to Cargoes, both generally and in international trades and in certain bilateral trades involving EC Member States and third countries. The Committee is disappointed that greater progress has not been made in this regard and is convinced that a strong commitment to the application of the four regulations of 1986 is an important objective to be pursued in parallel with the development of positive measures in the next phase. Active implementation of the shipping provisions of the Lomé Convention, which called for free shipping relations between the EC and the African, Caribbean and Pacific (ACP) States and for adherence to the UN Liner Code and its accompanying resolutions, is also necessary.
- 3.14. In this context the Committee expects the Community to ensure that, in accordance with these Regulations, consumers of maritime services (shippers, manufacturing industry, agriculture, etc.) will continue to have free recourse to cost-efficient carriers operating in markets subject to fair commercial competition and that the obligations attached to the exemption of liner conferences from the EC competition rules are adhered to.

4. The Commission's proposals for measures to improve operating conditions - detailed comments

4.1. The EUROS Register (paragraphs 55-66 of the Commission's document)

- 4.1.1. The Committee welcomes the concept of the EUROS Register and believes that its creation would, in itself, constitute a positive and significant step for Community shipping.
- 4.1.2. However, if the Register is to attract ships currently registered in Member States, let alone Community-controlled ships presently registered elsewhere, it must have specific benefits attached to it in the way of positive measures.
- 4.1.3. The Committee firmly believes that these should embrace the measures in the areas of employment costs and fiscal measures which it has described in parts 3.5. and 3.6. of this Opinion.
- 4.1.4. It is manifestly evident to the Committee that the provisions in Articles 7 to 11 of the draft Council Regulation establishing EUROS are highly controversial and will cause major problems in their present form to seafarers and shipowners alike. The seafarers naturally aspire to the full manning of EUROS ships with Community nationals. However, their main concern is likely to stem from the suggestion that non-nationals of EC Member States should be employed in ships of the EUROS register other than on EC wages and conditions. They would particularly deplore the possibility of any such conditions falling below the provisions of ILO Recommendation No. 109 and would be anxious that there should be proper social security arrangements for any non-EC seafarers.
- 4.1.5. The shipowners, on the other hand, will be anxious, particularly in the absence of comprehensive positive measures of the sort described in Point 3.5. of this Opinion, to be permitted a sufficient degree of flexibility in the manning arrangements to enable them to bring ships onto the EUROS Register and operate them economically in relation to their international competitors. They would entirely accept that there should be no undermining of the provisions of the relevant ILO instruments but find that the proposals in their present form, taken with those of the Commission document as a whole, do not provide for a sufficient degree of reduction of existing cost levels to redress the loss of competitive advantage which the Commission has identified. This would apply particularly where the EUROS provisions are more stringent than those of existing Member State legislation.

4.1.6. It is vitally important that there should be further detailed discussions with the representative organizations through the Joint Committee on Maritime Transport before the Commission Proposal is finalized.

4.1.7. More generally, the Committee believes that the EUROS proposal should be further developed and its accompanying benefits brought out more clearly. The Committee stresses that these benefits must be real and immediate if the Register is to develop its full potential as the catalyst for this second stage of the Community shipping policy. Further, the relationship between the EUROS register and the registers of Member States should be more closely examined. For example the mutual recognition of seafarers' certificates and the free transferability of ships should be equally applicable to the registers of Member States in accordance with the basic philosophy of the Internal Market.

4.2. Manning and research (paragraphs 67 to 81)

4.2.1. The Commission promotes research into on-board rationalization as a positive element of the second stage. While the Committee supports this in principle it believes that the scope for further rationalization on board ship is generally limited in EC fleets. Much has already been achieved in this respect as the result of positive cooperation between management and seafarers. Community support for research in the shipping industry is helpful, but only provided it is undertaken in full consultation with the industry, which has not always been the case in the past.

4.3. Mutual Recognition of Technical Standards (paragraphs 82 to 90)

4.3.1. The Committee welcomes the principle of mutual recognition of technical standards and easier transfer of ships, and endorses the proposition that these should be effected by coordinating the application by Member States of the international standards agreed in the IMO, with the intention that overall standards in the Community should be maintained and improved. Care should be taken however to avoid cumbersome administrative procedures stemming from the interpolation of detailed Community regulations between those laid down by the IMO and those prescribed by individual EC flag states.

4.4. Social Measures (paragraphs 91 to 96)

4.4.1. The Committee wishes to emphasize that the social aspects of the development of the Community's shipping policy are far wider and more important than those contained in this sub-section of the Commission's document. It is disappointed that this element has received such scant attention.

4.4.2. It notes that employment opportunities for EC seafarers have declined still further since 1985, when its earlier Opinion on maritime transport was adopted.

4.4.3. An overriding objective of the positive measures which the Committee urges the Commission to put in hand as a matter of immediacy is to ensure for the future the continuing availability of jobs in EC ships for substantial numbers of seafarers on EC conditions of employment.

4.4.4. The Committee recalls that the Treaty of Rome refers to the need to promote improved working conditions and an improved standard of living for workers so as to make possible their harmonization while the improvement is being maintained. It reaffirms its view expressed in its Opinion on the Transport Policy of the European Communities in the 1980s, and repeated in Part 2 in the 1985 Opinion, that:

"A common transport policy must be socially beneficial by catering for transport needs from an overall economic point of view and by helping to improve the living and working conditions of the people employed in transport."⁽⁹⁾

(9) OJ No. C 326 of 13 December 1982, page 12 (point 4.1.1.).

The Committee emphasizes now, as it did then, that the best way to ensure employment for seafarers is by securing the future of Member States' fleets and notes that many other jobs in maritime related industries (such as ports, insurance, classification, shipbroking, etc.) are dependent on the retention of a healthy and viable shipping industry.

- 4.4.5. That said, the Committee welcomes the proposed consultations with the Joint Committee on Maritime Transport and urges that these should be given a high priority.
- 4.4.6. Specifically, the mutual recognition of seafarers' qualifications is strongly supported as are all practical proposals for assistance or improvement to training and retraining. Further, the Committee believes that the Commission should promote a convergence of policies between Member States in regard to the provision of financial assistance for the training of seafarers, as well as for their repatriation from ports abroad.

4.5. IMO/ILO Standards (paragraphs 97 to 104)

- 4.5.1. The Committee unequivocally condemns the operation of ships - under whatever flag - where the provisions of the relevant ILO and IMO instruments, particularly ILO Convention No. 147 and the instruments covered by its appendix, are not observed and calls upon the Commission to use its influence to ensure maximum ratification, observance and enforcement.
- 4.5.2. In particular effective action should be taken to ensure continuing, stringent enforcement through the established port state control mechanisms of the generally accepted international standards regarding safety, pollution-prevention and the working environment in regard to non-Community flag vessels visiting EC ports. The quota of inspections to be carried out by Member States under the Memorandum of Understanding should be progressively increased. The Committee welcomes the recent changes in the instructions given to surveyors in May 1989, which embrace more comprehensively the requirements of the relevant ILO Conventions.
- 4.5.3. The draft Recommendation on Port State Control which encourages Member States to ratify specified conventions and to devote adequate resources to port state control activities within the framework of the current Memorandum of Understanding is therefore greatly welcomed. However, the Committee again stresses that the 25% inspection target should be progressively raised.

4.6. Transport of Food Aid (paragraphs 105 to 108)

- 4.6.1. The Committee welcomes the political will behind the Commission proposal but expresses certain reservations. It believes that all aid cargoes, not merely food aid, should be included. It also feels that any improved access to aid cargoes should apply to all ships operated by Community shipowners under the flag of a Member State and should not be confined to ships on the EUROS register. The Committee detects a protectionist tendency in the proposal which could give rise to retaliation in other developed countries and weaken arguments against similar cargo-preference measures elsewhere; the proposal should be reviewed to ensure that this is not the case.

4.7. Definition of a Community Shipowner (paragraphs 109 to 112)

- 4.7.1. The definition put forward by the Commission in these proposals is quite separate and distinct from that of persons entitled to have a vessel on the EUROS register (Art. 3 of the draft EUROS regulation). This definition should be extended and should embrace all shipping services provided for remuneration in addition to the carriage of goods or passengers, with the exception of fishing. The Committee would also point out that in 1986 the European Parliament decided to include in addition to the Commission's criteria for defining the

term "National Shipping Line" the criteria "ships flying the flag of a Member State" and "employment of Member State nationals". Further consideration should be given to these criteria. An acceptable definition would settle the vexed question of who should benefit from EC shipping policy and could prove to be the key to agreement on many issues within the "positive measures" package.

4.8. Cabotage (paragraphs 113 to 115)

- 4.8.1. The Commission's active proposal for liberalization in this area is welcomed although the Committee recognizes that further discussion will be necessary before a regulation satisfying all Member States and the aims of complete liberalization implicit in the completion of the Internal Market can be agreed. Nevertheless, it is important that this issue, which has been outstanding since the first stage of the Community Shipping Policy was proposed in 1985, should be resolved with the minimum of delay. Special attention will need to be given to the problems surrounding sea transport between Member States and their remote areas and islands which are of particular concern.
- 4.8.2. Some Member States have specific legislation on cabotage which predates the Treaty of Rome. Any Community scheme should harmonize these laws within the framework of the European Economic Community, which would facilitate the material and legal creation of a Community regime governing maritime cabotage.

4.9. Liner Consortia (paragraphs 116 to 119)

- 4.9.1. The Committee notes the importance of practical cooperation and rationalization of the type provided by liner consortia, particularly in the circumstances of overtonnaging. It reiterates the importance of reaching an acceptable and early solution to this issue, similar to that achieved for liner conferences in the first stage of the shipping policy.

4.10. VAT and Excise Duties (paragraphs 120 to 122)

- 4.10.1. The Committee welcomes the Commission's recognition of the difficulties facing shipping and its customers in regard to the application of VAT and excise duties to ships' supplies/stores, etc. and passenger fares. It is important that the Commission's proposals regarding the reform of the VAT system should be amended to take account of these. The Committee also welcomes the assurance that there is no intention to charge excise duty on ships' bunker fuel. However, no reference is made to the impact on ferry operations of the potential abolition of duty-free sales which currently produce important revenue to the carrier which significantly reduces the costs of travel between Member States. The importance and full potential impact of this issue on that sector and on EC Member States with substantial sea frontiers should be stressed.

5. The Commission's proposals on financial and fiscal measures - detailed comments

- 5.1. The fact that financial and fiscal measures in such vital areas as employment costs and corporate taxation are contained in a supplementary document "for information" and included in "Guidelines for the Examination of State Aids to Community Shipping Companies" is indicative that the Commission is seeking to restrict the prerogatives of Member States in these respects rather than to encourage the development of positive measures to a common pattern.
- 5.2. It would have been preferable if the Commission had been able to see its way to present these measures as constituting an action programme which Member States should adopt to provide concrete solutions to the situation of competitive disadvantage experienced by

EC shipowners on the world scene. As currently presented, they appear to negate the possibility of any practical policy within the Community or any individual Member State, designed to promote a positive climate for the shipping sector.

- 5.3. Clearly, the Commission has a duty to ensure that all forms of state aid to shipping and ship-related activity are compatible with the relevant provisions of the EC Treaty and do not lead to competition between Member States being distorted. Its aim must be to create a broadly equivalent competitive base within the Community. However, it should not be forgotten that the fiercest competition faced by the EC fleets is not within Europe but from third countries.
- 5.4. In addition to the general failure to promote the adoption of measures to reduce the cost disadvantages of operating ships under Community flags, the Committee has several specific criticisms of the Commission's guidelines:
 - the requirement for all assistance to be temporary and on a declining scale. Such criteria are incompatible with the necessary establishment by Member States of an on-going fiscal and commercial policy, particularly for industries as international as shipping;
 - the practical assessment of the individual elements contained in the concept of the proposed ceiling for assistance raises major potential difficulties;
 - further consideration needs to be given to the references to investment aid and to assistance in the form of reduced or eliminated income taxation liability;
 - it is unclear what is the precise link, if any, between the state assistance envisaged and registration under EUROS.

6. Conclusion

- 6.1. There is much within the Commission's policy proposals which the Committee welcomes, particularly the recognition of the unique market conditions within which the Community shipping industry must operate, the Commission's acceptance of the urgent need for positive measures, the imaginative concept of the EUROS register and the various helpful proposals in areas of ancillary importance. However, the Committee is disappointed that the overall impact of the specific measures proposed will fall far short of what the Commission's own analysis and objectives require.
- 6.2. The stated aim of the 1992 programme and the Single European Act is to do away with the fragmented nature of the Community's twelve domestic markets and to create a broadly uniform base from which industry and commerce in all Member States can compete effectively with the rest of the world. The lack of progress in bringing forward proposals for positive measures for maritime transport has led to unilateral actions by Member States which have revealed the differences in national priorities accorded to the shipping sector and in turn lead to an increasingly uneven competitive base. It is all the more disappointing that the proposals now on the table concentrate on the process of inward-looking harmonization within the Community and seem unlikely to satisfy the urgent need to redress the competitive disadvantages which EC shipping suffers vis-à-vis its non-EC competitors, bearing in mind the Commission's acknowledgement that no distinction can be drawn in shipping between intra-Community and worldwide markets.
- 6.3. While the Committee agrees in general with the Commission's perception of the problems and welcomes its recognition that action is required in a number of areas, it believes that without positive measures designed to achieve significant reductions in operating costs and the alleviation of fiscal burdens, to be applied on a consistent basis in all Member States, the competitive disadvantages of EC shipping will not be redressed. Thus, if further decline in the EC fleets and maritime labour force (with all the adverse consequences which the

Committee and the Commission have identified in common) is to be avoided, urgent reconsideration should be given to the proposals in the light of the recommendation in Parts 3.5. and 3.6. of this Opinion. It is also important that the application of the social measures described in part 4.4. be given a high priority.

Done at Brussels, 16 November 1989.

The Chairman
of the Economic and
Social Committee

Alberto MASPRONE

The Secretary-General
of the Economic and
Social Committee

Jacques MOREAU

A P P E N D I X
to the ESC Opinion

The following amendments, tabled on the basis of the Section Opinion in accordance with the Rules of Procedure, were defeated during the discussion:

Point 3.5.5.

Add the following sentence in the end:

"Where appropriate, the Community also should provide funds that would contribute to the achievement of these aims".

Reason

If the Community were to play a meaningful role in the area of favourable tax treatment of seafarers and of alleviation of social security costs relating to the employment of seafarers, it should provide funds - when necessary - to cover the loss incurred by national exchequers. Otherwise, the role of the Community - in taking measures, without providing funds - would be superficial.

Point 3.6.6.

Insert the following words at the beginning of second line:

"In points 3.5.5. and 3.6.1. above"

instead of the present text referring only to point 3.6.1.

Reason

Results from amendment 2.

Voting

For: 21

Against: 25

Abstentions: 10

OPINION
of the Economic and Social Committee
on
Development of civil aviation in the Community
(COM(89) 373 final)
and
Application of the Competition rules to air transport
(COM(89) 417 final)

(Second phase of liberalization)

In a letter dated 3 October 1989 and 27 September, the Council asked, under Article 198 and 84 of the Treaty, the Economic and Social Committee for an Opinion on the

*Development of Civil Aviation in the Community
(COM(89) 373 final)⁽¹⁾*

*Application of the Competition rules to Air Transport
(COM(89) 417 final)⁽²⁾.*

The Section for Transport and Communications, which was responsible for the preparatory work, adopted its Opinion on 14 February 1990. The Rapporteur was Mr KENNA.

At its 274th Plenary Session (meeting of 28 February 1990), the Economic and Social Committee adopted the following Opinion by 120 votes for, 9 against and 18 abstentions:

* * *

1. Introduction - The Commission Proposals

- 1.1. The proposals are the second phase of the package of liberalization measures in December 1987 which must be reviewed by 30 June 1990. The Commission aims to take a further step towards a more competitive air transport system in the Community, taking into account the interest of users, air carriers, airline staff, airports, the aeronautical industry and the general public. The Commission also introduces proposals concerning the application of the competition rules to air transport particularly in regard to third countries. This is in a separate proposal.
- 1.2. In this Opinion the Committee comments on the Commission proposals, although certain guidelines on principles were established by the Transport Council on 4/5 December 1989 which will have a significant effect on the Council's ultimate decisions in regard to the Commission's proposals for the Second Phase. The Committee regrets that these principles were adopted before its Opinion was considered.

2. The Context of the Proposals

- 2.1. The Committee recognizes the importance of these proposals as a further step towards a more liberal air transport system for Europe as supported by the Committee in previous Opinions. The incorporation of these proposals in a comprehensive Air Transport Policy will bring the realization of a people's Europe much closer.

Air transport is also important for general economic and social integration of the Community. Hence the necessary infrastructure must be created by Member States and the Community for the development of safe, regular and reliable air transport services. The peripheral and under-developed areas of the Community, especially island Member States and regions, for whom air transport is usually the only option, derive important - indeed, crucial - benefits from improved access by air to the central areas of the EC.

- 2.2. The Commission's proposals are an interim step towards the completion of the market in air transport by the end of 1992. In addition the Committee reiterates its view that air transport is an integral part of the transport system and is relevant to other modes such as rail or road. It is not clear, at this stage, what regulations will apply to air transport in the Community after this date. The Committee calls for policies:

(1) OJ No. C 258 of 11 October 1989, page 3.

(2) OJ No. C 248 of 29 September 1989, page 7.

- which avoid the negative effects which followed from deregulation in the USA;
- which take account of the experience of liberalization elsewhere in the world;
- which enable Community airlines to compete effectively internationally.

This point is also discussed in 9.2. below.

- 2.3. The Committee notes that the Commission's proposals are concerned with scheduled air services (which form only a part of the totality of air transport) and not with charter flights. Charter services have, for a long time, been free of most regulatory restraints and have developed into a major part of the air transport network. The Committee supports continuation of such a policy, subject to non-discrimination between scheduled and charter services. The Commission should take account of the changing scope of charter services which have taken on more and more the characteristics of scheduled services.
- 2.4. The Committee considered the Commission's proposals against this background but also suggests that the following issues, points 3 to 7, have a bearing on the effectiveness of what the Commission intends to achieve. The Committee refers to its earlier Opinions, in particular those relating to infrastructure and the use of airspace, which are noted in the footnote below⁽³⁾.

3. Safety Issues

- 3.1. The Committee reiterates its concern that the highest possible safety standards be ensured. Liberalization measures must not lead to a reduction in safety standards.

4. Infrastructure/Congestion

- 4.1. The Committee stresses the importance of tackling the serious problems of congestion throughout European airspace and in and around airports as an integral part of the development of Air Transport Policy.

These problems must be tackled as a matter of urgency so as to:

- allow air transport services to expand in a competitive and efficient way as proposed;
- ensure continued viability of the airline industry;
- remove the extra cost burden on airlines as a result of the deterioration in service levels;
- maintain the highest safety standards in air transport;
- improve the quality of service to consumers.

The growing congestion, both in the air and on the ground, affects all airlines. However, smaller airlines, especially those operating from the peripheral regions of the Community which have more air traffic control borders to cross, have to bear an extra cost burden and inconvenience to travellers. Similarly, those in central areas suffer from the impact of the accumulation of flights in and out of these areas.

The Committee notes that the Council of Ministers decided in principle on 4 December 1989 to confirm the role and responsibility of Eurocontrol in this area.

This decision requires further action to ensure practical results in the shortest possible time. The Committee stresses the following points and recommends that these be examined by the Commission and the Council of Ministers in the coming months:

⁽³⁾ OJ No. C 303 of 25 November 1985, page 31. OJ No. C 194 of 31 July 1989, page 6.

- Substantial and coordinated investment is necessary in modern air traffic control equipment and in airports. EEC funding should be considered here.
- Eurocontrol should have the necessary authority to act decisively and have the necessary resources to meet targets.
- Harmonization of technical systems must be achieved.
- Action to ease congestion on air traffic routes by extending the use of air space now restricted for military/defence reasons.
- Action to improve access to and from airports, especially in areas where the relevant infrastructure is particularly weak.

The Committee draws attention to and recommends a thorough examination of proposals for action to solve the air traffic control and congestion problems such as those from the Association of European Airlines published in August 1989 and, more recently, a proposal from a German transport users organization. It also welcomes the positive work of ECAC in this field. The Committee considers that there is now available a sufficient volume of information from a number of studies to allow the problem to be tackled speedily.

5. Environment

- 5.1. It is also essential that the expansion of air transport, for whatever reason, relates to environmental policy. The Committee favours action in support of the environment.
- 5.2. The Committee calls on the Commission to take action to reduce noise levels and emissions at and near airports through the introduction of proposals currently in preparation. In any event airlines are introducing quieter aircraft for commercial and other reasons. However it must be acknowledged that wherever an airline must introduce quieter aircraft prematurely there are cost implications for the airline and this could lead to increased airfares. The policies of the Community in relation to aircraft noise also affect relations with third countries. A balanced situation must be reached.

6. Development of Air-Freight Services

- 6.1. The Committee is disappointed that proposals to liberalize freight only services were not included in the Commission's package. The development of air freight services is a crucial element in the capacity of industry in Member States, particularly those on the periphery, to develop trade within the completed Internal Market. The Committee notes that the Commission has presented a proposal on freight services and strongly recommends that it should be included as an integral part of the measures to be decided following the Council's guidelines of December 1989. The deadline should be June 1990.

7. Harmonization Measures

- 7.1. The Committee emphasizes the importance of harmonization in the social and technical fields. The Commission has indicated that harmonization proposals in the following areas will be introduced in the near future, the first three of which in cooperation with J.A.A.⁽⁴⁾
 - airworthiness requirements
 - maintenance standards
 - operational requirements
 - duty-time limitation for flying personnel

(4) Joint Aviation Authorities (ECAC subgroup)

- economic and technical fitness of airlines
- slot allocation code of conduct
- airport consultation with users and airport charges
- common specifications for ATC equipment
- requirements for licences for personnel in civil aviation.

The Committee expects to be consulted on these proposals.

The Committee notes and supports the decision in principle taken by the Council of Ministers in December 1989 to press forward with harmonization measures in parallel with liberalization of air transport, while agreeing that this should not result in delaying liberalization. Progress on further liberalization and on harmonization should proceed with equal rapidity.

- 7.2. While the proposed harmonization of indirect taxes (VAT, excise duties and the possible elimination of the sale of duty-free goods) is not included in the proposal under discussion, the Committee is concerned that these issues could *increase* air fares and freight tariffs. While such developments are of particular concern to those areas of the Community which are most dependent on access by air for exports to centrally located States, harmonization of indirect taxes, and particularly the elimination of present VAT exemptions applicable to air transport, will have an impact on all airlines and related services.⁽⁵⁾ The impact of harmonization of indirect taxes should not dilute the benefits of the liberalization of air transport and should be (like all fiscal and financial provisions) non discriminatory as between modes of transport.
- 7.3. The Committee suggests taking account of the socio-economic impact of the proposed measures on 1) employees of the firms affected and 2) consumers in outlying regions.
- 7.4. The Committee urges the Commission to examine the pricing practices of Airports so as to ensure that charges to airlines are not excessive.

8. Specific Objectives of these Proposals

- 8.1. The following are the major issues contained in the Commission's new proposals which constitute the means for achieving the primary objective of the package as a whole, namely, the provision of safe, regular, reliable and more competitive air services.
- 8.2. The Committee offers the following views on these specific proposals:

8.2.1. Fares

- 8.2.1.1. Greater freedom to establish fares than is now possible is an essential part of the liberalization process. The Committee is concerned that the requirements for the submission of fares 60 days before implementation as in Article 4 of the Commission proposals is excessive. Greater competition in fares arising from the first phase of liberalization and in some bilateral agreements indicate that more competitive fares together with the general expansion of the European economy result in substantially increased volumes of traffic, with benefits to the economy in general and especially for the airlines, users, and employment. The Committee therefore favours the measures to achieve these objectives.
- 8.2.1.2. The Committee notes the guidelines of the Council of Ministers of 4 December 1989 to postpone the introduction of double disapproval procedures until the end of 1992 in favour of a more efficient "zones" scheme. The Committee notes that the Commission proposal

(5) See Opinion of the Committee of 7 July 1988 (point 5.2.) OJ C 237/88.

for double disapproval would facilitate greater flexibility in setting air fares. However, the Committee stresses that the expansion of the zone system as proposed by the Council guideline should be achieved during the first half of 1990 so as to meet as closely as possible the objective of a more competitive airfare system.

The Committee notes that the proposal to allow fifth freedom carriers to be price leaders will be considered by the Council in finalizing the Commission proposals. The Committee is aware of the positive effects which such a measure could have on fares. However, it considers that care should be taken to ensure that the application of Article 3 (safeguard clause against predatory and other competitive pricing) take full account of potential adverse effects. This issue should be considered also in the context of the harmonization measures as in point 7 above.

8.2.2. Access to Markets

- 8.2.2.1. The Committee is in broad agreement with the Commission's proposals in regard to market access and particularly the elimination of the reverse discrimination clause. The Committee also notes that the Council Guidelines of 4/5 December 1989 would mean that Member States would be required to grant, on a non-discriminatory basis, an operating licence to airlines established in their territory when they comply with a number of measures yet to be established, such as social and safety measures.

8.2.3. Airports

- 8.2.3.1. The Committee notes and approves of the Commission's proposals that most airports will in future be open to the liberalizing effects of the package. Airports should be exempted only on the basis of objective criteria.

8.2.4. Fifth Freedom Rights (Article 8)

- 8.2.4.1. The Committee notes and approves of the proposals under this heading to liberalize fifth freedom routes which link two hub airports and also to increase fifth freedom capacity from 30% to 50%. The Committee notes that the Council of Ministers at the December meeting agreed in principle on this issue.

8.2.5. Cabotage (Article 9)

- 8.2.5.1. The Committee notes that the introduction of cabotage has been deferred to the end of 1992 subject to further studies, so as to establish the proper conditions and procedures. The Committee however is concerned that little progress has been made on cabotage in view of the completion of the Internal Market at the end of 1992. Pending an examination of the final proposals on cabotage, efforts should be made to prevent the establishment of monopoly positions within different Member States. The studies should also take account of the widely differing effects which cabotage could have on airlines due to differences in size and geographical location.

8.2.6. Capacity Sharing (Article 12)

- 8.2.6.1. The Committee agrees with the Commission's step-by-step approach to easing the capacity limitations. The Committee accepts the decision in principle taken by the Council of Ministers on 4 December that a different formula be established to allow capacity shares to be increased by 7.5 percentage points per annum up to the end of 1992. The Committee recommends maximum flexibility in any new proposal but draws attention to the need for action in regard to congestion and related infrastructural bottlenecks (ref. paragraph 4.1.).
- 8.2.6.2. In regard to inter-regional air services, the Committee reaffirms the vital importance of an efficient system for transporting persons and goods between the periphery and the centre of the Community and between neighbouring and other regions at the centre or on the

periphery. Air services have a fundamental role to play here, particularly in regions where historical conditions and/or local topography have thus far hindered the development of efficient systems of transport, particularly by rail. The Committee reiterates the need to promote the greatest possible logical modal integration in the context of the Community's overall transport policy, in which inter-regional air services must play an important role.

- 8.2.6.3. The Committee again stresses the importance of these services in relation to the economic and social cohesion of the Community. The Committee recognizes the importance of inter-regional air services in the development of trade, business travel and tourism to and from the peripheral States. The Committee, therefore, agrees with the Commission's proposal that inter-regional air services be further liberalized including the use of larger aircraft where appropriate.
- 8.2.6.4. The Committee accepts the proposed three years safeguard clause (Art. 4, 2) for aircraft of no more than 100 seats but only until the route in question develops to a stage where more than one flight per day is required. This translates into annual carryings of approximately 22,000 passengers. This figure is based on operations by a 100 seater aircraft carrying an average of 60 passengers per flight.

9. Application of the Rules of Competition

- 9.1. The Committee agrees with the Commission's proposals to allow, as in the first phase, group exemptions for inter-airline activities which are in the public interest, subject to conditions established by the Council.
- 9.2. In regard to the application of the rules of competition, as in the Commission's present proposal, the Committee acknowledges that the rules of competition apply to air transport, as was also noted in its Opinion on the Second Memorandum issued in September 1985.

With respect of the application of the rules of competition, the Committee however notes the following:

- The Committee finds that the application of competition rules should form an integral part of a comprehensive Community air transport policy. Airlines and users alike are best served by the maintenance of a competitive EC air transport industry.
- The EC Air Transport Policy, including the Competition Rules, therefore, should aim at improving the global competitive position of EC airlines, without prejudice to competition policy within the Community.

Furthermore the Committee has reservations about the fragmented and ad hoc application of air-transport policy to third countries' relations and suggest that it should be part of an overall external policy in the field of air transport. As an example, the application of the rules of competition in relations with third countries could constrain EC airlines, unless the Commission also has the power to ensure that EC airlines get access to markets which are controlled by authorities in third countries. In this context, there must be a clear distinction drawn between the role and authority of the Commission and that of Member States.

10. External policy

- 10.1. The Committee notes that the Council is considering a proposal to grant the Commission a mandate to negotiate traffic rights with third countries, beginning with EFTA. This, and other negotiations, should be undertaken in the context of an established overall external policy. The Committee expects to be consulted on these proposals.

11. State aids

- 11.1. As the Commission is considering proposals in relation to State aid to airlines, the Committee requests that the Commission establish and publish as soon as possible how they will assess the granting of such aid.

Done at Brussels, 28 February 1990.

The Chairman
of the Economic and
Social Committee

Alberto MASPRONE

The Secretary-General
of the Economic and
Social Committee

Jacques MOREAU

N.B.: Appendices overleaf.

APPENDIX 1

The following members, present or represented, voted in favour of the Opinion:

Mr	ALEXOPOULOS	Mr	FLUM	Mr	NOORDWAL
Mr	APARICIO BRAVO	Mr	FRANDI	Mr	de NORMANN
Mr	ARENA	Mr	FREEMAN	Mr	PARDON
Mr	ARETS	Mr	FRESI	Mr	PEARSON
Mr	ATAIDE FERREIRA	Mr	GARCIA MORALES	Mr	PELLETIER Ch.
Mr	BAGLIANO	Mr	GARDNER	Mr	PELLETIER R.
Mr	BAZIANAS	Mr	GERMOZZI	Mr	PERRIN-PELLETIER
Mr	BELTRAMI	Mr	GEUENICH	Mr	PETERSEN
Mr	BERETTA	Mr	GIACOMELLI	Mr	PETROPOULOS
Mr	BERGER	Mr	GREEN	Mr	POETON
Mr	BERNASCONI	Mr	HAAS	Mr	PROUMENS
Mr	BERTON	Mr	HANCOCK	Mr	QUEVEDO ROJO
Mr	BLESER	Mr	HILKENS	Mrs	RANGONI-MACCHIARELLI
Mr	BODDY	Mr	HÖRSKEN	Mr	RIBIERE
Mr	BOISSEREE	Mr	HOVGAARD JAKOBSEN	Mr	RIERA MARSÀ
Mr	BORDES-PAGES	Mr	JASCHICK	Mrs	ROBINSON
Mrs	BREDIMA SAVOPOULOU	Mr	JENKINS	Mr	ROLÃO GONÇALVES
Mr	BROICHER	Mr	KAARIS	Mr	ROMOLI
Mr	CAMPBELL	Mr	KAZAZIS	Mr	SCHADE-POULSEN
Mr	CARROLL	Mr	KENNA	Mr	SCHMITZ
Mr	CAVAZZUTI	Mr	KIRCHFELD	Mr	SCHNIEDERS
Mr	CEYRAC	Mr	de KNEGHT	Mr	SCHOEPGES
Mr	CHRISTIE	Mr	KRÖGER	Mr	SMITH A.R.
Mr	COLLAS	Mr	LARSEN	Mr	SMITH L.J.
Mr	CORELL AYORA	Mr	LIVERANI	Mr	STAEDELIN
Mr	CORTOIS	Mr	LÖW	Mr	STORIE-PUGH
Mr	COYLE	Mr	MACHADO von TSCHUSI	Mr	TAMLIN
Mr	van DAM	Mrs	MADDOCKS	Mr	TELLES
Mr	DELLA CROCE	Mr	MAINETTI	Mr	TESORO OLIVER
Miss	DODD	Mr	MARGALEF MASIA	Mr	TERMES CARRERO
Mr	DONCK	Mr	MARGOT	Mr	TUKKER
Mr	DRAGO	Mr	MARVIER	Mr	VALLEJO CALDERON
Mr	DRILLEAUD	Mr	MAYAYO BELLO	Mr	VANDEN BROUCKE
Mr	DROULIN	Mr	MEYER-HORN	Mr	VELASCO MANCEBO
Mr	van EECKERT	Mr	MORELAND	Mr	VIDAL
Mr	ELSTNER	Mr	MORSELLI	Mr	WAGNER
Mr	ETTY	Mr	MUHR	Mr	WHITWORTH
Mr	EULEN	Mr	MULLER	Mr	WICK
Mr	FLATHER	Mr	MURPHY	Mrs	WILLIAMS
		Mr	NETO DA SILVA	Mr	WHITWORTH
		Mr	NIEUWENHUIZE	Mr	YVERNEAU

The following members, present or represented, voted against the Opinion:

Mr	BURNEL	Mr	NIELSEN B.	Mr	SILVA
Mr	Vasco CAL	Mr	NIELSEN P.	Mr	TIXIER
Mr	DECAILLON	Mr	SERRA CARACCILO	Mr	WALDACK

The following members, present or represented, abstained:

Mr.	BREYIANNIS	Mrs	GREDAL	Mr	NIERHAUS
Mr	CALVET CHAMBON	Mr	LAKA MARTIN	Mr	RAFTOPOULOS
Mr	DASSIS	Mr	LAPPAS	Mr	ROUZIER
Mr	DOS SANTOS	Mr	LAUR	Mr	SANTILLAN CABEZA
Mr	GAYETOT	Mr	LUSTENHOUWER	Mr	SCHNITKER
Mr	GOMEZ MARTINEZ	Mr	MOURGUES	Mr	ZUFIAUR NARVAIZA

APPENDIX 2

The following amendment, tabled on the basis of the Section Opinion in accordance with the Rules of Procedure, was defeated during the discussion:

Point 7.1., last paragraph

Delete the words:

"... while agreeing that this should not result in delaying liberalization".

Reasons

On the one hand support is given to the decision of principle taken by the Council of Ministers on the need for harmonization to proceed in parallel with liberalization, which is positive. Then it is stated that harmonization cannot lead to a delay in liberalization, which is tantamount to saying that liberalization can be continued without harmonization.

There is therefore no longer any parallelism between liberalization and harmonization, which is contrary to the spirit of the decisions of the Council of Ministers and to the views expressed in previous ESC Opinions.

Voting

For: 64

Against: 68

Abstentions: 14.

OPINION
of the Economic and Social Committee
on the
Commission Communication on a Community railway policy
together with the following proposals
— **Council Directive on the development of the Community railways**
— **Regulation of the Council amending Regulation (EEC) No. 1191/69**
on action by Member States concerning the obligations inherent in
the concept of a public service in transport by rail,
road and inland waterway
— **Council Decision concerning the establishing of a network**
of high speed trains
— **Council Directive amending Directive 75/130 on the**
establishment of common rules for certain types of combined
carriage of goods between Member States
(COM(89) 564 final)

On 8 February 1990 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the following proposals annexed to the Commission's Communication on a Community railway policy (COM(89) 564 final)⁽¹⁾:

- *Council Directive on the development of the Community railways*
- *Regulation of the Council amending Regulation (EEC) No. 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway*
- *Council Decision concerning the establishing of a network of high speed trains*
- *Council Directive amending Directive 75/130 on the establishment of common rules for certain types of combined carriage of goods between Member States.*

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, drew up its Opinion on 13 June 1990, in the light of the Report by Mr HAAS.

At its 278th Plenary Session (meeting of 4 July 1990) the Economic and Social Committee adopted the following Opinion by a large majority with one abstention:

* * *

INTRODUCTION

The Committee intends to seize the opportunity offered by the submission of the Commission's Communication and its annexes to express clearly its dissatisfaction with the current state of Community railway policy.

A Commission proposal on the future development of railway policy has been with the Council for nearly six years, but still no decision has been taken. It has taken the Commission the same length of time to draw up the current proposals.

Common transport policy has meanwhile advanced much further in other areas, notably road haulage. This has had a detrimental effect on the railways, which will only worsen if the lack of progress on railway policy is allowed to persist. The railways must be able to participate in the Single Market on an equal footing with the other modes of transport.

Railway policy has developed differently in the various Member States. Moreover, the existing Community rules are not always applied fully, uniformly and in the spirit in which they were intended.

Although railway companies have undertaken some positive initiatives, the process of adapting to market needs has been slowed by their traditional and nationally orientated ways of thinking, as well as by other factors beyond their control.

This situation poses a very serious threat to the railways' future development. The railways' share of the transport market has - to a large extent for the reasons mentioned here - stagnated or declined, although the railways' business has increased in absolute terms. The imminent liberalization of the transport market, stronger competitive pressures, the growing demands of customers and the ever greater share of high value-added goods in the transport market all threaten to reinforce this trend.

All the bodies concerned by this question are asked to seek and adopt solutions to these problems in a more constructive spirit and at a faster pace than hitherto. It should be made clear that unless appropriate measures are adopted and implemented a considerable number of railway workers' jobs will be at risk, with all the social and human problems which that entails.

(1) OJ No. C 34, 14 February 1990, p. 8.

1. General comments on the Commission's Communication

1.1. Global assessment

- 1.1.1. The Economic and Social Committee in principle approves the Commission's proposals. The proposals are an essential component of the efforts to build a common railway system enabling the railway companies to operate under fair conditions of competition, subject to the comments set out below.
- 1.1.2. However, the Committee very much regrets that, particularly in the Council Directive on the Development of the Community Railways, some of the provisions are so vaguely worded that it is difficult to pinpoint their exact meaning and issue an Opinion on them. The Committee particularly regrets that so many measures are left to the discretion of the Member States' governments. There is therefore a danger that the decisions taken will be uncoordinated; the excessive vagueness and lack of precision of certain passages could prevent the emergence of a common European dimension to the organization of the various railway networks. If the various railways develop in different directions this will weaken their position on the Community transport market.
- The setting-up of a committee of an advisory nature (Annex I, proposal for a Directive, Article 10) is insufficient to guarantee the effective implementation of well-harmonized provisions.
- 1.1.3. The Committee regrets that in its Communication the Commission does not define the future role of the railways more precisely. The description in chapter 2, paragraph 8 of the Communication is not even up to date, if only because the tasks today successfully performed by the railways are more varied. The increase in traffic which can be expected from the Single Market, the opening-up of the frontiers with Eastern Europe and the bottlenecks emerging in road and air transport offer opportunities for the railways. The common transport policy, the Member States' transport policies and the policies for managing the various national railways need to be studied in detail, given that the staff and infrastructure needed to absorb increased traffic will not be available in the short term.
- 1.1.4. The Committee feels that the railways should play an important part in the Internal Market as a mode of transport generally acknowledged to be environment-friendly. Both commercially and technically the railways' intra-Community transport potential has until now remained unexploited. The Committee expressed its views on the subject in its Information Report on Stocktaking and Prospects for a Community Rail Policy of 18 September 1986 and in the related Opinion of 25 February 1987⁽²⁾ ⁽³⁾.
- 1.1.5. With regard to the future development of overall transport policy and in determining the role of the railways, it will in future be necessary increasingly to adopt an intermodal approach, rather than thinking in terms of transport categories. Increasing use will have to be made of intermodal techniques of freight transport, with the Commission rightly recommends in its proposal for the development of combined transport.
- 1.1.6. The development of a high-speed network is very important if the railway companies are to be able to offer customers an efficient, high-quality service. However the "conventional" railway network should at the same time be modernized, as this is essential not only as a structural back-up to the high-speed network, but also in order to improve existing services.

1.2. The railway companies' task

- 1.2.1. The railway companies must, via a common economic and commercial strategy, offer the customer attractive, reliable, profitable and safe passenger and freight services. Speed is not the only criterion; the railways must also offer their customers a complete service including high-quality terminals.

(2) ON No. C 105, 21 April 1987, p. 13.

(3) In the interests of simplicity hereafter referred to as "the Opinion and the Report on Railway Policy" (published by the Committee in brochure form).

1.2.2. The services required, except public services, must be offered to consumers at competitive prices. International fares are too often merely the sum of national fares, instead of being determined by the market. Moreover, fares must not be used for purposes other than remunerating the provision of transport services.

1.2.3. The same attention should be paid to the necessary development of conventional goods traffic as to the currently much-discussed passenger and combined goods traffic.

Here the railways themselves clearly have an essential part to play; but the Committee feels that the Commission should also contribute as the initiator and driving force, as it does with high speed and combined transport.

1.2.4. The railway companies must make much more headway on international cooperation than hitherto. The potential here, i.e. the synergy effects inherent in the railway companies, are far from having been exhausted. In this context the Committee is pleased to hear from the Community of European railways that the railway companies concerned have taken measures going some way towards this goal (e.g. the setting-up of communities of interest). This policy must be continued without interruption. More discernible progress has been made on cooperation in passenger transport than in freight transport. Efforts must therefore be redoubled in the latter area.

1.2.5. The railway's responsibilities will in future also include the provision of public services at the request of and for the account of the Member States and other public bodies. The Committee points out that the Commission proposal does not suggest how cross-border transport problems which may arise from the concept of Europe-wide public services can be tackled.

1.3. Role of the governments of the Member States

1.3.1. The governments of the Member States must use their transport policies and legislation harmonized with the common transport policy to create conditions conducive to the smooth operation of the railways so that they can effectively assume their proper role (see paragraph 1.1.3.).

1.3.2. To this end the provisions adopted by the Council, e.g. with regard to compensation for the provision of public services, must be applied uniformly and in their entirety, and national law must guarantee equal conditions of competition. Solving the problem of infrastructure costs is a matter of priority. The governments of the Member States are also required to do the necessary preparatory work for giving the railways' national activities a European dimension. The railways must be in a position to adopt the organizational structures appropriate to and necessary for effective international cooperation.

2. Specific comments on the Commission communication

The Committee commented in detail on the problems of the railways in the documents mentioned in point 1.1.4. above. These statements remain valid. The comments which follow are therefore limited to certain specific aspects of the question to which the Committee wished to draw attention.

2.1. Assessment of the Commission's analysis (Chapter 2 of the Communication)

Although there are points in the Commission's analysis which require comment or amplification, the analysis as a whole is correct.

2.2. Harmonizing terms of competition

The Council's proposal for a Directive on the development of railways in the Community is supposed to help eliminate distortions of competition between railways and other modes

of transport, particularly as regards infrastructure. But there are other distortions of competition which the Commission has observed and to which it refers on a number of occasions; different VAT regimes for international transport in some cases, different degrees of stringency in monitoring social conditions in the various modes of transport. The Committee regrets that the Commission Communication does not outline the measures needed to end these other distortions. It asks the Commission to prepare the necessary complementary proposals and that these will be submitted shortly.

2.3. Environment-related problems (Chapter 8 of the Communication)

- 2.3.1. Over the last few years the Committee has repeatedly drawn attention to the environmental advantages of railways, as the Commission does in chapter 8 of its Communication. Unfortunately these advantages have not been taken into account.
- 2.3.2. The implications for transport policy are more far-reaching than the initiatives advocated in point 98 of the Communication; it will also be necessary to calculate the external costs of transport and to take account of these in relation to all modes of transport when decisions are made on infrastructure and when calculating and imputing the costs of using infrastructure. The Commission expressed this view, which it reiterates in the Communication (page 8), in its 1987 report on the imputation of the infrastructure costs of land transport - global marginal costs as a basis for calculation.

2.4. Research and development (Chapters 5 and 9 of the Communication, points 114 et seq.)

- 2.4.1. For historical reasons the various Member States' railways have developed technically in different ways. The elimination of the resulting problems will be a long process.
- 2.4.2. The proposals drawn up by the Commission should offer the Community of European Railways an opportunity to step up - by agreement with the Commission - its discussion on the development of a Community R&D programme. This should be supported by the European Communities. The EURET programme submitted by the Commission does not fulfil these requirements⁽⁴⁾.
- 2.4.3. Encouragement should be given to technological programmes for the development of a European high-speed train network and to all the studies on rapid transshipment systems and an improved quality/cost ratio for combined transport (bi-modal systems for example). Priority should also be given to computerized reservation and data exchange systems.
- 2.4.4. In addition to the R&D needed for the more spectacular projects, research aimed at achieving the maximum possible harmonization of the conventional railway network should also not be neglected. Considerable progress has been made in many areas, but a large number of problems remain to be solved (see, for example, chapter 5 of the Communication).

2.5. Frontier problems

The fact that both passenger and freight trains are forced to stop all too frequently at frontiers for technical and administrative reasons is a barrier to the development of an intra-Community rail-transport system. The governments of the Member States and the railway companies should do all in their power to reduce the number of such stops and eliminate them altogether. A long-term programme is needed to reduce or eliminate the obstacles arising from the different technologies used by the various railways (different electricity supply systems, changes of locomotive, different gauges).

(4) See ESC Opinion on the EURET programme of 28 March 1990, OJ No. C 124, 21 May 1990, page 26.

2.6. Transit problems (Chapter 7, points 87 et seq., Chapter 6, points 7 et seq. of the Communication)

On the railways, as elsewhere, intra-Community trade can only function properly if problems, particularly infrastructure problems, arising from the need to cross transit countries like Switzerland, Austria and Yugoslavia, are solved. In this respect combined goods transport will take on particular importance.

On this point the Committee would refer to its Opinions on this subject of 23 March and 11 November 1988⁽⁵⁾.

3. Comments on the proposal for a Council Directive on the development of the Community railways

3.1. Infrastructure (Articles 4, 2(1)(c) and 8)

3.1.1. The Committee welcomes the Commission's latest effort to focus specific attention on railway infrastructure, and points out that this was something it recommended not only in its 1984 Opinion on the Commission Proposal⁽⁶⁾, but also in the Report and the Opinion on Railway Policy referred to in paragraph 1.1.4. (the financial responsibility of the governments of the Member States for railway infrastructure, payment of a user's fee by railway companies). The Committee entirely agrees with the Commission on the need to give special priority to the major problem of infrastructure.

3.1.2. On the railways, more than with any other mode of transport, infrastructure management and operation are closely linked. This interlinkage is clearly demonstrated by such everyday activities as running repairs and maintenance, snow clearance etc.; these tasks are further complicated by the growing congestion of lines, which in turn raises questions of safety.

Infrastructure covers not only the tracks but also all the signalling equipment and its increasing interaction with the electronics fitted into locomotives for the benefit of safety.

The Section thinks that the separation of infrastructure management and operational activities between different companies and public bodies will not be possible on all the Community rail networks.

3.1.3. The techniques developed in connection with the high-speed train network are likely to accentuate this tendency still further.

3.1.4. The Committee entirely agrees, however, that it is necessary to draw a strict accounting distinction between infrastructure and operation, with financial responsibility for infrastructure being assumed by the Member States. Article 4 should make this explicit. This separation should also be done in such a way as to exclude the possibility of cross subsidies (see Article 8).

3.1.5. The wording of Article 4 can be interpreted in various ways.

"The development of national railway infrastructure" could be taken to mean improvements to the existing network. The Commission comments on this in Chapters 4 and 7 of the Communication. The domestic orientation of railways in the past means that there is considerable work to be done here (see points 1.1.6. and 2.4.4. of this Opinion). It should be made clear that this is what the point means. In addition, the Committee calls on the Commission to submit proposals in respect of the financing of the programmes concerned. Furthermore any investment decisions should be preceded by a cost-effectiveness analysis.

(5) See Opinion of 23 March 1988, OJ No. C 134 of 24 May 1988, p. 19; Opinion of 24 November 1988, OJ No. C 23 of 30 January 1989, p. 43.

(6) See Opinion of 30 January 1985, OJ No. C 87 of 29 April 1985, page 1.

3.1.6. The second sentence of Article 4 is not clear. It could be taken to mean the setting-up of infrastructure rather than improvements to it. This point is dealt with in Article 8. The need for national measures is clear from Article 13. The second sentence of Article 4 adds nothing therefore and can be deleted (without prejudice to the content of paragraph 3.1.5. above).

3.2. Cost of access to infrastructure (Article 6)

3.2.1. In order to harmonize conditions of competition between the various modes of transport, the railway companies will, in same way as the other modes of transport, have to pay a fee for access to infrastructure. This principle, already accepted by the Committee in its previous Opinions, should be made more explicit in the wording of Article 6(1) and made subject to the condition that the other modes of transport also be required to pay their share of infrastructure costs.

3.2.2. Neither paragraph 1 nor paragraph 3 of Article 6 makes it sufficiently clear how much the infrastructure access fee payable by the railway undertakings will be. Paragraph 1 refers in a very general way to the principles of non-discrimination and fair competition. Paragraph 3 enumerates a number of items to be taken into account in calculating the infrastructure user's fee and thus gives the impression that the price of access to a line is based on the calculation of total costs. Such a method would introduce a new distortion of competition and would exclude the railways from the market.

3.2.3. This Article must be reworded so as to express with greater precision the principle stated by the Commission on page 5 (paragraph 7 b) of the Communication, namely, that railways should pay the same amount as the other modes of transport for the use of infrastructure. This would mean that the items enumerated in paragraph 3 could not be included in the calculation of the infrastructure/user's fee.

3.2.4. The Committee reiterates the wish it expressed in point 2.3. above that external costs - be included in the calculation of infrastructure costs for all modes of transport. Even if there is disagreement on the details of the method of calculation, there is increasing agreement on the sums involved.

3.3. Authorization of new track users and access to the network (Articles 3, 2(1)(b) and 5)

3.3.1. Attaching particular importance to railway infrastructure means - as is the case for other modes of transport - envisaging the authorization of new companies to use railway infrastructure. These new companies could just as well be the railway companies of other Member States as international railway companies within the meaning of Article 2(1)(c).

3.3.2. Although the Commission's concerns open up a new dimension, the practical options for application will require very close scrutiny, given the highly complex nature of the subject.

3.3.3. Here safety is an essential factor. Come what may, the present level of safety must be maintained as a minimum standard.

3.3.4. Even assuming that safety problems are resolved, important questions remain to be answered. If two (or more) companies apply to use the same timetable slot, who will take the decision on allocation? On what criteria will the decision be based? Should the company which offers to pay most for the use of infrastructure for that service *alone* be chosen? Or, on the other hand should preference be given to the company offering the highest *overall* remuneration, taking into account all the services operated by the candidate companies? In considering services provided, should only purely commercial activities be looked at, or should account also be taken of public services? This list of questions of principle is clearly not exhaustive.

- 3.3.5. An essential part of the application of the principle of admitting new track users is the requirement that "old" railway companies and newly admitted companies be treated equally. Thus, the admission of new track users can only be considered if they and the existing railway companies are treated equally. This would require the existing companies to be relieved of inherited financial burdens and of their financial responsibility for infrastructure. Otherwise there is a danger that the new companies would monopolize the profitable activities to the detriment of the existing companies whose employees would then be disadvantaged.
- 3.3.6. As stated above, the Committee is not convinced that the railway companies have exploited synergy effects to the full. Examples such as the MEPs' train to Brussels and Strasbourg could be further developed and intensified.
- 3.3.7. The Committee is pleased to have received information on a project which would make it possible in future for trains belonging to one railway company to use the network of another company under the commercial responsibility of one company only. The Committee sees this development as an additional starting point for the application of the Regulation advocated by the Commission. The Committee calls on the railway companies concerned to accelerate the implementation of this project so that lessons can be learnt as soon as possible.
- 3.3.8. To sum up, the Committee calls on the Commission, the governments of the Member States and the railway companies to carry out a more detailed and comprehensive analysis of the problems raised by the admission of new track users and for example on the basis of the experience gained from the projects referred to in paragraphs 3.3.6. and 3.3.7. to seek possible solutions whilst having users' interests in mind. To prevent distortions of competition uniform rules governing international transport should be adopted at Community level.

3.4. Independent management of railway undertakings (Article 7)

- 3.4.1. The Committee welcomes the principle of legal autonomy and independent management established in Article 7, as this is essential if the Commission's objectives are to be achieved. In applying this principle, account should be taken of the following:
- commercial management of the railway company;
 - reimbursement of costs of providing public services;
 - freedom to close down services.
- 3.4.2. The following comments arise in connection with Article 7(2):
- add a new indent dealing with the drawing up of a budget;
 - the Committee supports the opportunity given to railway companies to conclude contracts with "public bodies". "Public bodies" include governments of Member States as well as regional or transfrontier and local authorities. This clarification of a very important point is needed in the light of the various Member States' different points of departure;
 - unprofitable lines, in respect of which the procedure established by Regulation (EEC) No. 1191/69, its application having been found necessary, has not produced results, should be closed down.

3.5. Financial situation (Article 9)

- 3.5.1. The Committee approves the proposed rules in principle.
- 3.5.2. The Committee sees however the danger of a contradiction between the wording of paragraphs 1 and 4 of this Article. If the Member States want railway companies to have

a sound financial structure by 1 January 1993, they *must* carry out exceptional restructuring measures; however paragraph 4 states that "Member States MAY make arrangements". The need for Member States to take such action should be made clear. Otherwise the impression would be given that rules had been adopted, but in fact this would not be the case.

3.6. Uniform application

As already stated in point 1.1.2. above, the Committee feels that the setting-up of an advisory committee is not sufficient to ensure uniform application of the Directive in the Member States. The Committee suggests that a conciliation body be set up which would meet as required and be chaired by the Commission if necessary, bringing in experts and independent bodies, whose task will be to reach binding decisions in the event of disputes over the implementation of the Directive's provisions. At all events, the railways should at the very least be able to take disputes to the European Court of Justice.

3.7. Relationship with national law

To facilitate adoption of the proposals by the Council of Ministers a sentence should be added to Article 13 requiring that the governments of the Member States repeal any laws which contradict the new arrangements.

3.8. Social problems

- 3.8.1. In its Report on Railway Policy the Committee expressed its views on the social aspects of the Common Transport Policy as applied to the railways (see point 4.3. of the Report). Implementation of the Commission's proposals, which will mean structural changes exceeding those so far brought about by rationalization, will awaken renewed fears among workers. When such structural changes would have a significant impact on workers the railways should study them in consultation with staff representatives and draw up appropriate social programmes.

If new track users are admitted, it must be ensured that employees' working conditions and social provisions are no less favourable than those offered by the existing railway companies.

- 3.8.2. Some of the restructuring measures which are likely to occur will require workers to acquire new skills. Appropriate training and retraining programmes should be drawn up (in this connection see also Chapter 8, paragraph 96 of the Commission's Communication).

4. Comments on the Proposal for a Council Regulation (EEC) amending Regulation (EEC) No.1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway

- 4.1. The Committee agrees in principle that the Member States or regional authorities should take on the entire financial responsibility for the provision of public services and that they should to this end conclude contracts with railway undertakings, taking account of the various relevant Directives.
- 4.1.1. In its Opinion of 30 January 1985 on the Commission's proposals of January 1984⁽⁷⁾ and in the Report on railway policy referred to in point 1.1.4. above (see point 1.4.1. of the Opinion in question) the Committee stated that putting the provision of a public service by railway undertakings on a contractual basis would be a good way of clarifying the relationship between government and railway undertakings. It would also make it possible to gear the services provided more closely to transport needs and at the same time to make a clearer distinction between commercial services and public services.

(7) OJ No. C 87 of 9 April 1985, page 1, point 1.4.1.

- 4.1.2. In this context the Committee would reiterate the statement made in its Opinion of 30 January 1985 that these arrangements should not however call into question the railways' public-service obligations.
- 4.1.3. It is essential that the provisions of Regulation (EEC) No. 1191/69 be strictly observed, regardless of the nature of the public bodies with which the contracts are concluded.

4.2. Definition of contracting partner

The use of the expression "public bodies" (see point 3.4. above) should be harmonized in Articles 1 and 2 of the proposal amending Regulation (EEC) No. 1191/69 and thus brought into line with Article 7 of the draft Directive discussed in chapter 3 of this document. The public bodies in question can be either Member States or regional authorities.

4.3. Guarantee of uniform application of the Regulation in all the Member States

- 4.3.1. Regulation 1191/69 has not been implemented fully and uniformly by all the Member States. The introduction of a system of contracts must on no account be allowed to perpetuate this state of affairs. Guarantees are therefore needed that Regulation 1191/69 will be applied fully and uniformly.
- 4.3.2. In this connection the arbitration panel proposed in Article 1.4. of the Proposal for an amendment (see Article 14(5) of the Regulation amending Regulation 1191/69) will not be a sufficient guarantee.
- 4.3.3. The draft Regulation provides absolutely no information as to the membership and chairmanship of such a panel, and omits to spell out the panel's specific tasks.
- 4.3.4. The Committee feels that this panel should be organized in line with the suggestion contained in point 3.6. above. At all events the railways should at the very least be able to take disputes to the European Court of Justice.
- 4.3.5. The Commission should ensure the setting-up of arbitration bodies of this kind.

4.4. Public service obligation in transfrontier relations

The Committee recommends that the Commission study and draw up measures extending the concept of public service (whether contractual or imposed) in transfrontier relations, in particular to include transfrontier services in urban areas or neighbouring regions separated by an internal Community frontier. The progress of the Internal Market will make needs of this kind felt more frequently than in the past.

Thought should also be given to the possibility of harmonizing within the Community certain fares which are subsidized for social reasons.

5. Comments on the proposal for a Council Decision concerning the establishing of a European network of high-speed trains

- 5.1. In accordance with the position adopted in its Opinion and Report on Railway Policy, the Committee approves the Commission's proposal in principle and welcomes the initiative. In the light of the challenge of the Internal Market, Europe's railway infrastructure needs urgently to be prepared for the needs of the next century, without however neglecting the progressive modernization of conventional infrastructure. Moreover, the construction of high speed routes must not be allowed to compromise the ecological advantages of rail transport; thus, local residents must not be inconvenienced by additional noise, and extensive interference with the natural landscape should be avoided. It should also be borne in mind

that, in both passenger and goods transport, it is not the duration of the main journey which determines the choice of mode of transport so much as total travelling time. Thus, unsuitable spacing of stops could increase total rail journey time despite higher speeds. These considerations also apply to the planning of connecting services and timetables.

5.2. European dimension and coordination

- 5.2.1. The establishment of a high-speed train network raises numerous problems.
- 5.2.2. Such a network needs a European dimension. It must however be ensured that the high-speed train network is linked to the existing railway network and that frontier and peripheral regions (see Chapter 7 of the Commission's Communication) be able to participate in this development.
- 5.2.3. Moreover the setting up of this network will require traffic forecasts to be drawn up for the Community and rapid transport technologies to be completely compatible (the R&D programmes referred to in points 2.4.2. and 2.4.3. should play an important part here).
- 5.2.4. It would appear that the committee provided for by Article 3 of the draft Decision will be unable to discharge its coordinating role fully. In the Report referred to in point 1.1.4. the Committee suggested the establishment of a pool consisting of the railway undertakings, industrial firms and credit institutions concerned, which would be responsible for implementing the necessary measures (see point 4.7.1. of the Report). Consideration could also be given to establishing a European agency which would coordinate national responsibilities and concentrate efforts on the resolution of the various problems.

5.3. Financing

- 5.3.1. Experience shows that establishment of a European network is likely to raise major financing problems. Not all Member States and railway undertakings will be equally interested in the realization of a given project. Obviously the national interest involved in the establishment of a new line will determine a Member State's attitude on the question of finance. This clearly applies particularly to the construction of lines in frontier and peripheral regions.
- 5.3.2. The Committee regrets that the project has not been more fully thought out. It therefore calls on the Council and the Commission to take full, prompt action on paragraph 4(f) of the Commission's communication which says that it is intended to seek ways of using the Community's various financial instruments to enable these projects to be carried out. The Committee therefore suggests that the funds made available by the Community for this purpose be increased considerably.

6. Comments on the proposal for a Council Directive amending Directive 75/130 EEC on the establishment of common rules for certain types of combined carriage of goods between Member States

6.1. General comments

- 6.1.1. The Committee has repeatedly drawn attention to the importance of combined goods transport and stressed the case for greater use of this mode of transport, most recently in its Opinion on the proposal for a Council Regulation amending Regulation (EEC) 1107/70 on aid granted to rail, road and inland waterway transport⁽⁸⁾. The Committee considers the latter form of transport to be particularly promising.

(8) OJ No. C 318 of 12 December 1988, page 15.

6.1.2. The Committee therefore approves the Commission's proposal and welcomes it as a further step towards the development of combined goods transport and the facilitation of access to the market, to which Directive 75/130 has already made a major contribution.

6.2. Future development of transit

6.2.1. The Committee again stresses the need to improve railway infrastructure catering for combined goods transport, and to set up terminals able to handle the growing volume of international transport within the Internal Market.

6.2.2. The same applies to a very great extent to combined transport in alpine transit.

Given the problems posed by the management of this kind of transit, particularly rapid action is needed. In the interests of the economic development of this form of transport, terminals should not be located too close to the ends of tunnels, but should rather be built as far as possible inside the respective countries.

6.3. Financing

Quite independently of other obstacles, financing poses major problems. Investment in combined transport benefits the rail, road and inland waterway transport sectors. It also helps make transport more environment-friendly. The Committee therefore suggested in the Report referred to in point 1.1.4. of this Opinion that the financing of transshipment installations be entrusted to government. It feels that this would be a positive step in transport policy towards an intermodal approach.

Done at Brussels, 4 July 1990

The Chairman
of the Economic and
Social Committee

Alberto MASPRONE

The Secretary-General
of the Economic and
Social Committee

Jacques MOREAU

**OPINION
of the
Economic and Social Committee
on the
Proposal for a Council Directive fixing certain rates
and target rates of excise duty on mineral oils
(COM(91) 43 final)**

On 11 March 1991 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the:

*Proposal for a Council Directive fixing certain rates and target rates of excise duty on mineral oils
(COM(91) 43 final).*

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 12 April 1991. The Rapporteur was Mr PETERSEN.

At its 286th Plenary Session (meeting of 24 April 1991) the Economic and Social Committee unanimously adopted the following Opinion:

* * *

1. Introduction

In December 1989 the Commission submitted a proposal for the rates of excise duty to be applied to mineral oil from 1 January 1993⁽¹⁾. In this proposal minimum rates were proposed for all mineral oil products. Rate bands (i.e. maximum and minimum rates) were laid down for road diesel, heating oil and heavy oil. A further proposal was announced which would establish the target (i.e. guideline) rates on which the tax rates of the Member States must in the long term converge. Target rates for the other types of excise duty have already been proposed in draft Directives.

2. The Commission proposal

- 2.1. To complement its December 1989 proposal the Commission is proposing target rates for *petrol* (leaded and unleaded) and *kerosene* used as a propellant.

The proposed target rates are:

Leaded petrol	495 ECU per 1,000 litres
Unleaded petrol	445 ECU per 1,000 litres
Kerosene used as a propellant ⁽²⁾	495 ECU per 1,000 litres

- 2.2. The rate band to be applied to *road diesel* as from 1 January 1993 is raised and widened. The Commission justifies this step by pointing out that the 1989 proposal made provision for a two-yearly adjustment of rates in the light, in particular, of environmental and transport considerations.

The rate band for road diesel is fixed at: 245 - 270 ECU per 1,000 litres.

- 2.3. The Commission states that the target rates and the higher road diesel band include a CO₂ supplement of 45 ECU per 1,000 litres.
- 2.4. The Commission has not set any target rates for the other mineral oil products in view of their insignificant contribution to total revenue from mineral-oil excise duty (10% only).

(1) COM(89) 527 finals.

(2) Except in commercial air transport

3. Comments

- 3.1 The Commission proposal can generally be approved. The consideration given to ecological requirements is to be especially welcomed.
- 3.2 The establishment of *target rates* is a necessary step towards greater convergence of national excise duties on mineral oils. The levels of the proposed target rates are considered a priori to be appropriate. However, the Committee would point to the serious shifts in taxation patterns, especially in Greece and Luxembourg. In Greece's case, special rules should be adopted to make these shifts less marked; since Greece does not have a common frontier with any other Member State, competition will not be distorted.
- 3.3 The consideration given to the *problem of CO₂* in the proposal deserves recognition. Experience shows however that at most, tax instruments have a one-off and short term *guiding effect*. It is the *revenue aspect* that tends to predominate. The attempt to alter consumer habits for environmental reasons will of course not succeed in those Member States (Ireland, Italy and Portugal) where current excise rates are higher than the Commission's proposed target rates or rate bands and so would have to come down. In terms of environment policy, however, the proposal does give some sort of a signal.
- 3.4 The retention of the *rate differential* between leaded and unleaded petrol is particularly welcomed. In a number of Member States unleaded petrol has already significantly increased its share of the petrol market, partly because of tax incentives.
- 3.5. The widening of the rate band for *road diesel* can be expected to facilitate the process of convergence. It does however also increase the risk of distortions of competition in this area. Even small divergences in the rates of duty levied on road diesel provide incentives for tax evasion.
- 3.6 In some Member States, particularly the Benelux countries and Greece, the increase in the rate band for road diesel will lead to a considerable increase in taxation from 1 January 1993 at the latest, thereby noticeably pushing up the cost of road diesel in these countries. The rise will hit road haulage particularly and will mean increased transport and freight charges. Because of this, there could be substitution effects (a switch to other modes of transport) in some Member States.
- 3.7 As the Committee made clear in point 3.1. of its Opinion CES 833/90 of 5 July 1990, the taxation of fuels cannot be treated in isolation. It has to be taken together with road tolls, road tax and any other charges arising from the ownership and use of motor vehicles, and overall harmonization has to be achieved in this area. The Commission has already submitted a draft Directive⁽³⁾ to this effect.
- 3.8. The Committee doubts the Commission statement that an increase in excise duty on road diesel is also needed to help offset infrastructure investment. At least in some individual Member States revenue from mineral oil duty far exceeds funds invested in road construction and maintenance. Moreover, since revenue from excise duties is not earmarked for any specific purpose, there is no guarantee whatsoever that it would in fact be used for financing infrastructure projects.

(3) COM(90) 540 finals

4. Final comment

The Committee would welcome a consistent Commission policy in other areas -such as research and development and road tax incentives for diesel engine passenger vehicles with lower exhaust emissions - which would ensure that the more rapid development of environment-friendly technologies is not impeded by restrictive harmonization measures.

Done at Brussels, 24 April 1991.

**The Chairman
of the
Economic and Social Committee**

**The Secretary-General
of the
Economic and Social Committee**

François STADELIN

Jacques MOREAU

European Communities - Economic and Social Committee

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ECONOMIC AND SOCIAL COMMITTEE
Division for Information, Publications
and Relations with Socio-economic Groupings

Rue Ravenstein 2
B - 1000 Brussels

Tel. 519 90 11
Fax 513 48 93

Telegrams ECOSEUR
Telex 25 983 CESEUR

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