

EUROPEAN COMMUNITIES

# BULLETIN

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ECONOMIC AND  
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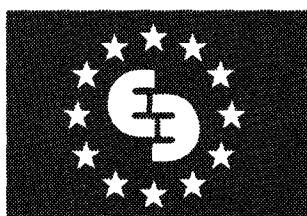
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ECONOMIC AND  
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## I. 317th PLENARY SESSION OF 6 JULY 1994

The 317th Plenary Session of the Economic and Social Committee of the European Communities was held in Brussels on 6 July 1994. Mrs Susanne Tiemann, Chairman, presided.

Mr Günter Rexrodt, German Federal Minister of Economic Affairs and current President of the Council, attended the session and set out the German Presidency's work programme.

The presentation by Mr Rexrodt was followed by a wide-ranging debate with the Members of the Committee. During this debate the President of the Council referred many times to the importance of the consultative functions exercised by the Committee in the Community decision-making process.

During this session, the Economic and Social Committee adopted the following Opinions:

### 1. FOODSTUFFS FOR SPECIAL DIETS

**Opinion of the Economic and Social Committee** on the *Proposal for a European Parliament and Council Directive amending Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses* (COM(94) 97 final)

(CES 847/94)

Rapporteur: Kenneth J. Gardner (United Kingdom - Employers); Co-rapporteurs: Johannes Jaschick (Germany - Various Interests) and Günther Lappas (Germany - Workers)

#### **Gist of the Commission proposal**

This proposal is to amend the list of dietetic foodstuffs listed in Annex I of the basic Directive 89/398, to take account of subsidiarity.

The revised list would now read as follows:

- foodstuffs already covered by a specific directive
  - 1) infant formulae and follow-on formulae
- foodstuffs for which specific directives have still to be issued
  - 1) cereal based foods and other baby foods
  - 2) foods for weight control diets
  - 3) dietary foods for medical purposes
- foodstuffs for which specific directives are not now considered necessary in accordance with the principle of subsidiarity
  - 1) low sodium foods

- 2) gluten free foods
- 3) foods for sportsmen
- 4) foods for diabetics.

### **Gist of the Opinion**

The Committee approves the Commission's proposal but suggests better harmonization of the national rules on residues in respect of infant formulae and follow-on formulae.

## **2. PUBLIC HEALTH ACTION FRAMEWORK**

**Opinion of the Economic and Social Committee** on the *Commission Communication on the framework for action in the field of public health*  
(COM(93) 559 final)

(CES 848/94)

Rapporteur: Mr Manuel Cabeçadas Ataíde Ferreira (Portugal - Various Interests)

### **Gist of the Commission Proposal**

This Communication sets out the Commission's proposals for taking forward the Community's work on public health to meet the objective introduced by the Treaty on European Union that "the Community shall contribute towards ensuring a high level of human health protection" (Article 129). It defines a framework for action by the Community, and describes the role of the Community Institutions and the Member States. It sets out a strategy for action, identifies the means available to the Community to accomplish its aims and establishes the procedures for evaluation, review and consultation. Finally, key areas of action are selected for the next five years.

Chapter I of the document provides an overview of the main health-related problems and challenges facing Member States today. These problems relate to:

- the ageing population of the Community;
- increasing population mobility into the Community and between Member States;
- changes in the environment and in the work setting;
- rising expectations about what health services can and should deliver; and
- the general socio-economic problems of the Community, notably social exclusion.

Chapter II presents a description of the major trends in health status in Member States based on available mortality and morbidity data. The figures show that in recent decades there has been a substantial improvement in overall health status, with people living longer, and that cancer and cardiovascular diseases, and for young people accidents, are the major causes of death in the Community.

Chapter II sets out the basis for Community action on public health. It describes the application of the principles of subsidiarity, transparency and proportionality to this area, emphasizing

that questions of the finance and delivery of care and treatment services are for each Member State to determine.

Chapter IV first sets out the scope of possible Community action in public health and the objectives of such Community action. It then describes the means of undertaking Community action in this field, including the establishment of common objectives and of networks, exchange of information and personnel, improvement of data systems, financial support to programmes and projects, production of an annual Community health report, and assistance to cost reduction efforts.

Chapter V on causation of diseases makes the point that for effective disease prevention, it is vital that their underlying causes are addressed by a mixture of measures. Important causal factors, such as smoking and alcohol, are set out together with data on their trends in the Community.

Chapter VI on the nature and extent of Community involvement explains the broad mechanisms that the Commission will use in taking forward the objectives of policy. It will give priority to large-scale, wide impact projects and will keep a "health watch" on other Community programmes and policies as they develop.

Chapter VII on future action in the field of public health sets out, on the basis of the arguments in the preceding chapters, the priority areas for Community action in public health and their global aims. The areas proposed cover "horizontal" activities and disease-specific ones. They are:

- health promotion, education, information and training;
- health data and indicators, and monitoring and surveillance of diseases;
- cancer;
- drugs;
- AIDS and other communicable diseases;
- accidents and injuries;
- pollution-related diseases;
- rare diseases;
- other health threats (if circumstances require).

### **Gist of the Opinion**

A public health policy which responds to the requirements and concerns of European citizens has to (a) provide a bold response to the desire for improvements in quality of life, including health promotion and (b) take on board a series of horizontal and vertical actions, which in some cases will be the Community's responsibility and, in others will be up to the Member States at national, regional or local level depending on the circumstances and each Member State's legal system within a specific framework for cooperation and coordination, depending on the case and circumstances involved.

The Communication as it stands is geared to and based on prevention and information, and thus does not constitute an adequate response to the Committee's expectations in this field.

The ESC therefore calls on the Council to adopt an overall coherent stance for public health policy, interpreting Article 129 of the Treaty in accordance with Article 2 of the same Treaty, since this is the fundamental, ordaining principle and thinking behind the establishment of the Community of States and Citizens.

To this end, the ESC also calls on the Council to give the Commission a mandate to supplement this timely, important Communication by making a global, horizontal analysis of public health, thus overcoming the limitations which have created shortcomings in the present analysis of public health policy.

To this end, the document should, as mentioned above, take account of the following:

- a) specific circumstances of various categories, i.e. in addition to diseases and drug addiction: age groups vulnerable groups and specific environments;
- b) an analysis of which proposed actions and initiatives fall or can fall within the Community's responsibilities, independently of Article 129, in line with its own powers and in accordance with the Treaty, and which ones could likewise be dealt with through cooperation and coordination;
- c) such an analysis must take account of the vital link between public health policy and health care policy, particularly in terms of facilities, human resources, (management and technical work) and finance, without jeopardizing the specific nature, character and objectives of each of these policies;
- d) it is recommended that a suitable link be made between health policy, as already indicated in the present Communication, and the socio-economic dimension, in terms of solidarity, competitiveness and employment, in the framework of a "social Europe" and the "Citizens' Europe", particularly by stepping up the horizontal approach to the subject (work, employment<sup>1</sup>, urban living environment, housing, farming policy, consumption, environment, etc.)<sup>2</sup>;
- e) public health issues should be taken into consideration in the priorities for Structural Fund action, particularly Social Fund action, withdrawing all those which could jeopardize public health issues.

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<sup>1</sup> Cf. Opinion CES 55/94, page 10.

<sup>2</sup> Cf. "Investing in Health", page 7 and page 14.  
World Development Report 1993 - World Bank - Oxford University Press 1993.



### 3. THE COMMUNITY DESIGN

**Opinion of the Economic and Social Committee on the *Proposal for a Council Regulation (EEC) on the Community Design***

(COM(93) 342 final - SYN 463)

and

***Proposal for a Council Directive on the Approximation of the Legislations of the Member States on the Legal Protection of Design***

(COM(93) 344 final - SYN 464)

(CES 849/94)

Rapporteur: Mr Jean Pardon (Belgium - Employers)

#### **Gist of the Commission proposal**

##### ***Regulation on the Community Design***

In respect of industrial designs and the goods incorporating industrial designs, the proposed Regulation aims to secure free movement of design products, undistorted competition and due protection of this form of industrial and commercial property.

Designs are deemed to be features of appearance which can be perceived by the human senses. No aesthetic criteria are applied.

Product design has gained in importance over the past decade. Many goods are sought after by consumers not only on the basis of their function but also, increasingly, because of their design.

The aim of the Regulation is to replace the various national protection systems which apply only to the individual countries concerned and which impose on users the burden of multiple registrations, payment of different fees in different Member States and monitoring the laws in different Member States, with one single law valid throughout the Community.

Superior design is one of the main assets of Community-based industries in competing with industries in third countries, which often have lower labour costs.

Designs are often easily reproduced; in many cases no special know-how is needed to reproduce design products. The Regulation therefore aims to comply with economic operators' demands and set up legislation which provides at least a degree of protection against misappropriation of designs.

The Commission's view is that these aims can only be achieved via a regulation.

The Community design protection system is a two-tier system comprising 1) protection based on registration and 2) automatic protection which operates by making the design available to the public.

The basic requirements for protection are that the design is a new one and has an individual character, which means that, in the eyes of an informed user, the design is different from other designs on the market.

The Unregistered Community Design entitles the holder to protection against reproduction, whereas the Registered Community Design gives the legal holder a genuinely exclusive right to use the design.

The protection is scheduled to last for three years for the Unregistered Community Design and five years for the Registered Community Design, renewable for a maximum period of twenty-five years.

In the case of costly, durable, complex products such as motor vehicles, where protection for the design of individual parts which go to make up a complex product could create a concomitant market in spare parts, a "repair clause" has been introduced allowing designs to be reproduced for the purpose of producing spare parts, three years after the product was first placed on the market. The manufacturer will have an exclusive right for three years, enabling him to recover the costs of developing the designs without the user being bound to a single manufacturer for an indefinite period.

### ***Regulation on the legal protection of design***

The proposed Directive aims to ensure effective legal protection for industrial designs. It seeks to reduce legal obstacles to freedom of movement for design goods and to the establishment of a system of undistorted competition in the internal market.

This proposal is therefore an essential accompaniment to the Regulation on the Community Design<sup>3</sup>.

In accordance with the principle of subsidiarity, the alignment does not extend to all aspects of the specific national protection laws. It is those features which are necessary for the co-existence of specific national and Community design protection which are to be brought into line. These concern the definition of "design", the requirement for obtaining protection including the grounds for exclusion, non-prejudicial disclosures as to the requirements on individual character and novelty, the scope and term of protection, the grounds for refusal or invalidity, the definition of the rights conferred by the design including their limitations and exhaustion of rights.

### **Gist of the Opinion**

The Committee takes the view that a single market in intellectual property is a necessity for the European Union. There is therefore a need for a Community-wide system for the legal protection of industrial designs. Intellectual rights are designed to foster innovation and thereby contribute to economic progress and improve the situation of consumers. The Commission's initiative, in the form of a draft Regulation, is therefore to be welcomed in principle.

Given the scale and importance of the subject, the Committee decided to draw up immediately a first, partial but definitive, Opinion, restricted to the most significant and controversial issues. The Committee intends to draw up a Supplementary Opinion at a later stage, covering all the other questions raised by the Commission's proposals.

The most significant and controversial issues concern on the one hand the conditions for obtaining protection, and on the other the "repair clause".

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<sup>3</sup> COM(93) 342 final

The primary requirement for obtaining protection is that the design must be completely new anywhere in the world. However, this provision would be difficult to apply in many fields, and particularly in the textiles industry. Sellers of counterfeit products often obtain false certification stating that the disputed design had already been created in a third country. In these circumstances, the aim should be dissemination to interested parties within the European Community before the date of reference.

The second condition for obtaining protection is individual character. A design should be considered to have an individual character insofar as it produces an overall visual impression on the public concerned dissimilar to any other design known, in the normal course of their affairs, to specialist circles in the sector in question, operating within the Community.

In the Committee's view the repair clause contained in Article 23 of the draft Regulation runs counter to the basic principles of the protection of intellectual property, and contradicts Article 26(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Under that Agreement, and in view of the case-law of the European Court of Justice, the duration of protection must amount to at least ten years.

#### **4. FINANCIAL PROBLEMS OF SMEs**

**Opinion of the Economic and Social Committee** on the *Communication from the Commission on the financial problems experienced by small and medium-sized companies* (COM(93) 528 final)

(CES 850/94)

Rapporteur: Mr C.W.M. Lustenhouwer (The Netherlands - Various Interests)

#### **Background**

Too many small businesses face financial problems, and these problems are tending to worsen. The problems within the Member States are broadly similar, although they differ in magnitude, and they could impede the optimum economic development of the Community.

One recurring difficulty is how to ensure that the legitimate requirements of SMEs are met without upsetting the balance of market forces or distorting competition.

The Commission's aim must be to avoid duplication of national and regional measures, and instead help to fill gaps in the provision of capital, explore new possibilities, and promote good practice. The focus should be on stimulation of provision of seed capital and venture capital, encouragement of networking among investors, better use of the results of Community research and development programmes, and further efforts to alleviate the disadvantages suffered by outlying and less developed regions.

The Commission Communication seeks to:

- examine the financial needs of SMEs at different stages of development;

- look at the various sources of finance available and examine the extent to which they meet the needs identified;
- review the main initiatives for helping SMEs gain access to finance, both inside and outside the Community;
- quantify the gaps that remain and consider how best to rectify them, at both national and Community level.

The Communication has chapters on:

- the problems of gaining access to finance faced by different categories of SME;
- sources of finance - their strengths and weaknesses;
- examples of schemes providing finance for SMEs;
- identifiable gaps in provision and possible new initiatives;
- increasing the effectiveness of existing Commission actions.

Annex A gives examples of schemes providing finance for SMEs within the European Community.

Annex B describes venture and seed capital funding mechanisms in the USA.

Annex C considers the financing of SMEs in Japan.

Annex D outlines the results of a study into the attitude of smaller firms towards financing and financial institutions in Europe.

## **Gist of the Opinion**

### ***The increasing internationalization of SMEs***

As Europe progresses towards a single market, European SMEs will be increasingly encouraged to increase their interests in companies in other Member States.

This will thus create a need for an EU policy on the financing of SMEs.

### ***Transparency of EU and national financial infrastructures***

It is often particularly difficult for small companies lacking specialized staff to find their way through the maze of regulations in order to identify the most suitable financial instruments and the bodies (public authorities, banks, financial markets) which manage them.

### ***Healthy competition between Member States***

The Commission may increasingly need to coordinate and even initiate financial facilities in the interests of healthy competition. This will necessitate a real EU policy vision on the financing of SMEs.

## ***Basis for EU Policy***

### ***SMEs' lack of knowledge***

The ESC stresses that the EU should encourage the Member States to do more to raise the level of financial and management skills in SMEs. This can be done by making EU resources available to national authorities, and thus indirectly to SMEs. The Member States would be able to use these resources to develop counselling and training programmes for entrepreneurs. Investing in the improvement of management skills often makes a greater structural impact than one-off financial assistance.

### ***Lack of security which can be offered by SMEs***

The ESC strongly recommends the use of guarantee arrangements by the Member States as a policy instrument for the financing of companies unable to provide sufficient security.

### ***Financial independence of SMEs***

The heads of many SMEs attach great importance to their independence.

The entrepreneur sometimes fails to appreciate that the loss of financial independence can have compensating benefits (financing of expansion, stronger balance sheet, improved image, greater share liquidity).

The ESC feels that more needs to be done to convince SME entrepreneurs of the advantages of attracting external risk capital. Banks and investors unrelated to firms should be encouraged to take more equity stakes.

### ***Start-ups***

In most Member States start-ups have difficulty obtaining finance, especially during recessions.

The ESC urges the banks to pay more attention to the financing of start-ups, even in periods of recession.

The ESC advocates financial support to offset the high cost of supervising and assisting SMEs.

In particular, the ESC asks that attention be paid to the supervision and assistance of restarts. The problems of this specific group of companies have not been sufficiently studied. Assistance should be made available from Community (e.g. the new Community SME initiative) and national resources to offset the cost of advice and information.

### ***Cross-border transfers of small amounts***

The ESC urges the EU, in consultation with the banks, to tackle in the near future the technical problems of cross-border payments, in particular the cost of small transfers and to bring down the concomitant costs.

In this connection, the ESC draws attention to the problem of late payment of bills. Small supplier companies suffer particularly from this practice. The Committee awaits with interest the Commission's reaction to its Opinion on this point.

### ***Capital market***

The lack of an official capital market for SMEs is particularly alarming.

The ESC urges the EU to carry out a feasibility study on the establishment of an official European capital market.

### ***The accessibility of EU funds***

The ESC calls for simplification of EU financial facilities for SMEs and better information.

### ***European Investment Fund (EIF)***

The ESC notes with satisfaction that following the Commission's proposal to boost economic development in the EU, which was submitted to the Edinburgh Summit in December 1992, a new ECU 1 bn loan facility, the EIF, has been launched for SMEs. It has also been decided to set up an interest-rate subsidy instrument for SMEs. The Committee is, however, surprised that it has taken so long to make such an instrument available.

The ESC urges all those involved in implementation, the EIF, the EIB and the national intermediaries, to make the facilities as accessible as possible to all SMEs.

### ***Financial infrastructure for SMEs***

In tackling the financing of SMEs, it is important to aim for optimum diversity of supply on the capital market (in the broadest sense), combined with greater opportunities for internal financing. However, the supply of risk capital in many cases lacks transparency.

### ***Private individuals***

Private individuals have traditionally played a major part in financing SMEs. However, government policy in some Member States does not reflect this.

The ESC stresses the importance of this group of investors in financing SMEs.

### ***Professional investors and the provision of risk capital to SMEs***

The ESC stresses the need for professionalism in managing the financial affairs of SMEs. Where financial knowledge appears insufficient, the problem needs to be tackled by means of information and courses. More emphasis should be placed on finance in the training of self-employed entrepreneurs.

### ***Institutional investors and the provision of risk capital***

The institutions could be encouraged to invest a greater part of their funds in SMEs.

### ***Fiscal instruments***

Apart from the direct financing instruments listed above, the Member States' tax systems are clearly also relevant to the financing of small firms. Although these tax instruments fall within the sphere of direct taxation, and thus to a great extent outside the European Union's field of responsibility, the ESC nonetheless feels that attention should be paid at European level to the tax aspect of the financing issue.

## **5. MULTI-ANNUAL PROGRAMME COOPERATIVES, MUTUAL SOCIETIES, ASSOCIATIONS AND FOUNDATIONS**

**Opinion of the Economic and Social Committee on the *Proposal for a Council Decision relating to a multi-annual programme (1994-96) of work for cooperatives, mutual societies, associations and foundations in the Community***  
(COM(93) 650 final)

(CES 851/94)

Rapporteur: Mr Roger Ramaekers (Belgium - Various Interests)

### **Gist of the Commission document**

On 28 July 1989 the Council adopted Decision 89/490/EEC on the improvement of the business environment and the promotion of the development of enterprises, and in particular small and medium-sized enterprises, in the Community, as last revised by Council Decision 93/379/EEC of 14 June 1993.

The present work programme sets out to provide backing for cooperatives and mutual societies, associations and foundations in formulating a response to the dual challenge now facing the Community: economic development and social progress.

The measures embraced by this programme must give the players easier access to Community resources.

Leaving aside any indirect actions resulting from the application of certain Community policies, this action plan has the following objectives:

- I. To promote, coordinate and strengthen measures adopted for cooperatives, mutuals, associations and foundations by:
  - A. strengthening the horizontal approach, more specifically by:
    - conducting studies on the development of the sector in the Community;
    - creating a favourable environment and evaluating the impact of Community policies;
    - making arrangements for consultation;
  - B. providing support for specific action with a view to:

- encouraging opportunities for transnational cooperation, especially SMEs in the cooperatives, mutuals and associations sector, and the quest for new fields of activity by groups of partners;
- improving information;
- disseminating social innovation;
- strengthening the role of cooperatives, mutuals, associations and foundations as vehicles for Community policies;

II. To strengthen activities to assist cooperatives, mutuals, associations and foundations within other policies by:

- developing Community statistics and compiling data on the basis of surveys conducted within the sector;
- providing training back-up;
- encouraging R&D.

This programme, scheduled to run for three years (from 1 January 1994 to 31 December 1996), extends and enlarges earlier measures taken either in the context of various policies or by the Commission under its enterprise policy, whereby the Community had already demonstrated its intention to make a contribution, subject to its powers and resources, to the development and integration of cooperatives, mutuals and associations in a unified market. The estimated budget is MECU 5.6 over 3 years.

A committee of national representatives must be set up to assist the Commission in implementing the programme.

The Commission is to submit to the European Parliament, the Council and the Economic and Social Committee, not later than the middle of 1996, an evaluation report on the implementation of this Decision, including a cost-effectiveness evaluation, and any proposals which it deems necessary in the light of the evaluations effected. The Commission shall also submit to the European Parliament, the Council and the Economic and Social Committee a report on coordination between the different programmes not covered by this Decision, but which are manifestly in the interests of cooperatives, mutuals and associations along with a report on the initiatives taken in the pursuance of this Decision.

### **Gist of the Opinion**

The Committee notes that "foundations" are mentioned in the title of the programme, alongside cooperatives, mutual societies and associations. The aim, activities and organization of foundations are extremely varied. The Committee cannot allow this fact, which tends towards the recognition of foundations as a fourth category, to pass without comment. It questions the justification and advisability of this usage.

The Committee reiterates that an appropriate legal instrument is essential if the transfrontier experiments contained in the programme are to be conducted.



The Committee considers that priority should be given to the following in the proposed programmes of work:

- the introduction of training and information programmes;
- the provision of resources and the introduction of instruments for financing cooperatives, mutual societies and associations;
- the establishment of a consultative committee for the purpose of ensuring comprehensive and timely consultation of the economic and social interest groups concerned;
- the implementation of innovative pilot measures.

## 6. CABLEWAY INSTALLATIONS DESIGNED TO CARRY PASSENGERS

**Opinion of the Economic and Social Committee on the *Proposal for a European Parliament and Council Directive relating to cableway installations designed to carry passengers* (COM(93) 646 final)**

(CES 852/94)

Rapporteur: Michael Mobbs (United Kingdom - Employers)

### Gist of the Commission proposal

The purpose of the proposal is to harmonize legislation in Member States on cableway installations designed to carry passengers.

The installations in question can be divided into five categories as follows:

- funicular railways;
- cable cars;
- gondolas;
- chair lifts;
- drag lifts.

This is a very complex field, as national legislation is intended to ensure safety during putting into service and operation, environmental protection and regional planning. There are also strict approval procedures.

The Commission proposal, insofar as it relates to components, is based on the so-called "new approach"<sup>4</sup> and "global or modular approach"<sup>5</sup>, whereby the essential requirements for health, safety and environment are laid down in the Directive while, in addition, reference is made to uniform European technical specifications.

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<sup>4</sup> OJ No. C 10, 16.01.1990, page 1.

<sup>5</sup> OJ No. L 380, 31.12.1990, page 13  
ESC Opinion, OJ No. C 112, 07.05.1990, page 4.

In addition to the proposed provisions of the Directive, cableway installations remain subject to an environmental impact assessment in accordance with Directive 85/337/EEC<sup>6</sup>, if the projects are likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location.

Cableway installations also fall within the scope of Directive 90/531/EEC<sup>7</sup> on procurement procedures in the water, energy, transport and telecommunications sectors.

### **Gist of the Opinion**

The Commission proposal, which is supported by manufacturers and operators, is welcomed in principle by the Committee, subject to the following comments:

With regard to Article 14 the Committee understands from the Commission that only work which has been subject to major repairs or alterations is meant to be covered by this part of the proposed directive. The Commission should make this absolutely clear since, in accordance with Annex II of the proposal, virtually every single part of an installation is considered an essential requirement. Also a clear definition of "major" (in the context of this Article) is considered necessary. If the intention of this Article is not completely clear and it can be understood to mean the whole installation comes under the proposed directive, then there may be an unacceptable risk that some desirable repairs will not be undertaken by cableway operators. This risk must be obviated in future.

On Articles 20 and 21, the Commission has explained that the wording here is a new legal approach and is designed to avoid abuse by any Member State which does not promptly enact agreed legislation. However, problems may arise regarding work in progress (that is, installations being considered but not yet in operation), and the Committee considers that this should be clarified. Some installations can take many years from inception to operation. The Committee has been told by the Commission that, when a directive such as this is adopted, it is not normal practice for it to be retroactive. However, the Commission would expect new installations to be reviewed especially from the viewpoint of meeting the essential requirements, and particularly safety. Any action then considered necessary would be on a case-by-case basis. The Committee therefore asks the Commission to review carefully these specific problems and ensure that solutions are found.

## **7. TELEMATICS**

**Opinion of the Economic and Social Committee on the *Proposal for a Council Decision on a specific programme of research and technological development and demonstration in the area of telematics applications of common interest (1994-1998)***  
(COM(94) 68 final - 94/0079 (CNS))

(CES 853/94)

Rapporteur-General: Juan Tesoro Oliver (Spain - Employers)

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<sup>6</sup> OJ No. L 175, 5.07.1985, page 40  
ESC Opinion, OJ No. C 185, 27.07.1981, page 8; amended by Directive 93/38/EEC: ESC Opinion, OJ No. C 332, 15.12.1992, page 72.

<sup>7</sup> OJ No. L 297, 29.10.1990, page 1  
ESC Opinion, OJ No. C 139, 05.06.1989, pages 23 and 31.

### Gist of the Commission proposal

The proposed programme comes under the first of the four activities scheduled in the fourth European Community framework programme for research, technological development and demonstration activities (1994-1998), adopted by the European Parliament and the Council under the co-decision procedure on 26 April 1994<sup>8</sup>. This first activity covers the bulk of Community research initiatives.

This programme is designed to take over from the programme adopted by the Council on 7 June 1991 for the period 1990-1994<sup>9</sup>. The Committee gave its views on this proposal on 20 November 1990<sup>10</sup>. Total funding allocated to that programme came to ECU 430 million.

The programme now proposed will pursue two objectives:

- firstly, a traditional objective, namely to "promote the competitiveness of European industry" and "to stimulate job creation through the development of new telematics systems and services in such areas as telework and teleservices";
- secondly, a new objective introduced in the EU Treaty, namely "to promote research activities necessary for other common policies".

The proposed research activities, for which the Commission has earmarked ECU 843 million from the Community budget, will cover nine vertical application sectors grouped around three major areas. A fourth area groups horizontal RTD activities supporting and reinforcing the sectoral activities; these activities will be complemented by a series of accompanying measures on international cooperation, the dissemination of results and the training of researchers and users.

The proposed breakdown of funding between the various areas of activity (in million ECU) is as follows:

-	<b><i>Telematics for services of public interest</i></b>	<b>395</b>
-	Administrations	50
-	Health care	135
-	Transport	210
-	<b><i>Telematics for knowledge</i></b>	<b>146</b>
-	Research	50
-	Education and training	66
-	Libraries	30

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<sup>8</sup> O.J. L 126 of 18 May 1994, page 1

<sup>9</sup> O.J. L 192 of 16 July 1991, page 18

<sup>10</sup> O.J. C 41 of 18 February 1991, page 6

-	<b><i>Telematics for employment and improving the quality of life</i></b>	<b>125</b>
-	Urban and rural areas	40
-	Elderly and disabled people	65
-	Exploratory action (environment)	20
-	Other exploratory actions	pm
-	<b><i>Horizontal RTD activities</i></b>	<b>136</b>
-	Telematics engineering	15
-	Language engineering	81
-	Information engineering	40
-	<b><i>Horizontal actions</i></b>	<b>41</b>
	(of which ECU 19 million for the dissemination and exploitation of results).	

### **Gist of the Opinion**

The Committee is broadly in agreement with the Commission proposal and in particular the scientific and technical content of the specific programme in question.

Nevertheless, the Committee wants to put forward some amendments to the Commission's proposals so that the programme eventually adopted by the Council can contribute effectively to the attainment of the objectives of the fourth framework programme; these amendments also take greater account of the economic and social situation facing the European Union.

The Committee considers that, under the present circumstances, so as to boost economic recovery as quickly as possible in the EU countries and create jobs, it is vital to focus on and give absolute priority to RTD activities which can be carried out and their findings disseminated rapidly throughout the European Union and on activities which will raise the technological level of SMEs.

In this connection the development and progressive liberalization of telematics infrastructure networks is crucially important, as highlighted in the White Paper and Report of May 1994 on Europe and the Global Information Society, drawn up for the European Council Summit in Corfu.

Consequently the Committee puts forward several amendments aimed in particular at clarifying and supplementing the scientific and technical content of the proposed programme and at adjusting the indicative breakdown of appropriations between the various research areas covered.

### **8. CROSS-BORDER PAYMENTS (Own-initiative Opinion)**

**Own-initiative Opinion of the Economic and Social Committee on *Transparency and performance of cross-border payments***  
(SEC(93) 1968)

(CES 854/94)

Rapporteur: Mr Klaus Meyer-Horn (Allemagne - Employers)

## **Objectives and timetable of work**

The pressure exerted by the Commission in March 1992 led to the European credit sector associations (ECSAs) preparing guidelines for customer information on cross-border payments. These guidelines were supposed to be effective by the end of 1992. During the first half of 1993 the Commission carried out a study to monitor the implementation of the guidelines and assess the general efficiency of cross-border payment systems. The study's findings were discussed in September and October 1993 in two Commission advisory groups and then summarized, together with the advisory groups' views on them, in a Commission Communication by Mr Vanni d'Archirafi and Mrs Scrivener.

In the Communication the two Commissioners proposed giving the banking industry a further "period of grace", examining the progress made before August 1994 by conducting a second study and, as a precaution, preparing a proposal for a Council Directive.

## **Gist of the Opinion**

The ESC welcomes the Commission's intention to encourage useful forms of cooperation between banks aimed at improving cross-border payment systems, though it regrets these efforts were not undertaken earlier. The ESC recommends that the second study on the performance of cross-border payments be given a wider remit than the 1993 one. It calls on the Commission to examine what conditions under the EEC anti-trust rules would be applicable.

It also supports furthermore the call for a ruling on liability in the event of improper execution of mass cross-border payments.

The ESC prefers a Code of Best Practice to a Directive. The guidelines of the Payment Systems Users Liaison Group, as at end 1992, could be further developed into a code or a charter in which are laid down conditions that are clear for the customers and make it possible to compare the offers of competing banks.

If a Directive is proposed at all, it should:

- a) be limited to setting out a very general framework: it can be feared that if the Directive imposes detailed binding rules, many banks would simply refuse transfers because they would be unable to comply with the detailed obligations;
- b) be made clear that it does not apply to cross-border transfers in non-EU countries;
- c) be inadvisable to apply a binding deadline.

## **9. MERGER CONTROL (Additional Opinion)**

**Opinion of the Economic and Social Committee** on the *Report from the Commission to the Council on the implementation of the merger Regulation*  
(COM(93) 385 final)

(CES 855/94)

Rapporteur: Mr Jens-Peter Petersen (Germany - Employers)

## **Background**

Community competition policy is currently confronting two major challenges: completion of the internal market and global economic trends. Faced with worldwide recession combined with increasingly internationalized markets, significant efforts are required of Europe. Businesses bear the responsibility for carrying them through. Creating the framework of prerequisites for this is a task first and foremost for Community competition policy.

It is a sad fact that the Community internal market is still not a "fait accompli" in many sectors. Structural and political obstacles are impeding the achievement of a Community-wide area where internal frontiers have been abolished, and are making it difficult for businesses to put competitive strategies speedily into practice. The situation is further complicated by the persistent discrepancies between the Member States' approaches to competition. Consequently the Community's endeavours continue to be vulnerable on many different fronts to political pressures opposed to the free play of competition.

With this in mind, in the light of economic and competition policy consideration, it seems urgent for the Community to align national and European competition policies effectively, thereby providing every possible guarantee that the principle of competition will become entrenched in the Community. As the ESC has advocated in its Opinions on the subject, this also implies that the scope of Community merger control is constantly reviewed and expanded. From the integration angle, the fact that mergers of Community significance are examined by several different national authorities on the basis of differing legal systems and parameters could constitute an anachronism. Until mergers with cross-border implications are assessed uniformly by one and the same authority, there will be a risk of diverging decisions, legal uncertainty and endless red tape. In particular, the scope of the regulation, determined on the basis of an exceptionally high turnover threshold - while justified at most during the initial phase - has very probably since ceased to have any validity. It was the product of a political compromise and from the start only intended to be provisional. The Commission rightly stated in its last (XXIIInd) Competition Report that major developments would be necessary in the area of merger control in 1993 in anticipation of the first review of the regulation.

At the end of July the Commission sent a Report to the Council on Community merger control legislation, suggesting a large number of improvements which necessitated adjustments to the regulation. On account of the opposition of some Member States, the Council postponed the required review and delayed its decision until 1996. Yet the European economy cannot wait that long. It is therefore particularly important that the Committee waste no time in drawing up an additional Opinion on the Commission Report and make approaches to convince the Member States.

## **Gist of the Opinion**

The great advantage of European merger control lies in the fact that the Commission has sole responsibility. In terms of integration policy it is illogical to have cross-border mergers assessed by different authorities, using different legal systems and standards.

The focus of European merger control is the establishment or strengthening of a market-dominating position. However, prohibition, as provided for in Article 2(3) of the Regulation, requires that effective competition in the common market, or a substantial part of it, be significantly impeded by the creation or strengthening of a dominant position.

The Committee feels that the Commission's existing administrative practices have generally proved their worth.

However, the Commission has a tendency to demarcate the market too narrowly, both in business and geographical terms. Before taking a decision on a planned merger, the Commission should carry out a detailed analysis of the relevant international market and consider the relative positions of the firms concerned in this worldwide market. At the same time the Commission should take greater account than hitherto of the fact that the reference markets are constantly changing and expanding.

Not all the multifarious economic and social problems created by mergers can be solved by a merger control Regulation based on competition policy. Particularly in the field of company law, the Committee considers the European Company Statute a suitable instrument for improving cross-border cooperation between enterprises and promoting economic integration in the European Union.

The Commission should at the earliest opportunity submit proposals for the revision of turnover thresholds to the Council and urge the Member States to ensure that these thresholds can still be reduced before the follow-up conference on the Treaty on European Union.

The aim should be a reduction of the main threshold (worldwide turnover) from ECU 5 bn to ECU 2 bn. A phased reduction of the main threshold could be envisaged.

At the same time the threshold for Community turnover should be reduced from ECU 250 m. to ECU 100 m. The Regulation's two-thirds criterion (Article 1(2)) should be dropped.

The Commission's own figures indicate that only 20% of mergers with a Community dimension are at present referred to it. This means that 80% of cross-border mergers are assessed - if at all - according to divergent criteria and, still worse, divergent procedures. The resulting problems for the functioning of the internal market are many and serious.

The discussion about setting up a European cartel office raises very complex questions. The Committee therefore feels that when the merger control Regulation is revised, the question of setting up a European cartel office should be kept strictly separate from that of a reduction of the referral thresholds.

### ***Suggested improvements***

#### ***Referral under Article 9(2) of the Regulation***

The Commission suggests that a more flexible referral procedure could be considered when the thresholds are reviewed. The Committee notes that the provision under Article 9 of the Regulation constitutes an exception to exclusive Community competence. It calls on the Commission not to relax this provision in the future.

#### ***Commitments in the first phase of the procedure***

The Committee supports the Commission's intention of specifically stipulating that Article 8(2) will also apply during the first phase. However it does not consider an extension of the first phase by one month necessary.

### ***Improved transparency of commitments in the second phase***

The Commission suggests that the four-month time limit of the second phase also be extended by a maximum of a further month. The Committee has strong reservations about this proposal.

The Committee nevertheless supports the Commission's general quest for greater transparency. The parties should enjoy improved access to the case files and should receive copies of the preliminary draft decision submitted to the advisory committee on merger control. This would enable them to put their arguments to the advisory committee, as the right to legal hearing requires. The Commission press releases should also be more comprehensive and contain the views of interested parties.

The Commission should draw up, in cooperation with the Member States, a proposal ensuring that the legally-recognized representatives of the workers of companies participating in mergers can submit their applications for a hearing to the Commission on time and state their views on the planned merger in the context of a formal hearing.

### ***Changes with respect to banking and credit institutions***

In its Report the Commission argues that the "turnover" criterion, estimated on the basis of balance-sheet assets, should be replaced by "banking income" as defined in Directive 86/635. The Committee feels that this proposal has some merits. The technicalities of calculating banking income require further detailed study however. Under the second paragraph of Article 5(1) of the Regulation, turnover is calculated by reference to the place of residence of the party acquiring the product or service. The Committee feels that it would be far better to calculate the turnover of banking and credit institutions by reference to the place of establishment of that part of the institution in question (branch, subsidiary) which carried out the transaction and received the income.

### ***Appraisal criteria***

The Committee endorses the Commission's view that it would be wrong to allow dominant positions to be created which could hinder effective competition on the Community market. Such a policy would primarily harm consumers, cause the disintegration of the markets and ultimately not only act to the detriment of European firms themselves but also endanger jobs.

### ***Joint ventures***

The Committee concurs with the Commission's view that the distinction between concentrative and cooperative joint ventures is at present unsatisfactory. Cooperative joint ventures have the major disadvantage that they do not fully benefit from the Commission's exclusive competence. They are assessed in accordance with the principles of Articles 85 and 86 of the EC Treaty and the provisions of Regulation 17/62. As in most cases the Commission takes its decision in the form of a comfort letter, there is considerable legal uncertainty for firms, given that the comfort letters are recognized neither by the national courts nor the national competition authorities. The Committee therefore suggests that the Commission either upgrade its comfort letter and/or amend Regulation 17/62. The merger control Regulation (Article 6(1)(b)) should be matched by a corresponding provision in Regulation 17/62.



### ***De minimis joint ventures***

The Committee welcomes the Commission's plans to introduce a simplified notification and assessment procedure for small "de minimis" joint ventures, assuming however that third parties will continue to be heard. It also feels that a general simplification of all notification procedures is needed.

## **II. FUTURE WORK**

### **Environment Section**

- Effects of certain public and private projects on the environment  
(COM(93) 575 final - 94/0078)  
September Session
- Quality of bathing water  
(COM(94) 36 final - 94/0006)  
September Session
- Ambient air quality assessment and management  
(COM(94) 1209 final)  
Session to be decided

### **Transport Section**

- Community guidelines for the development of the trans-European transport network  
(COM(94) 106 final - 94/0008)  
November Session
- Interoperability of the European high speed train network  
(COM(94) 107 final - 94/0112)  
November Session
- Statistical report on transport of goods and passengers by sea  
(COM(94) 275 final)  
October/November Session
- Way forward for civil aviation in Europe  
(COM(94) 218 final)  
December Session

### **Industry Section**

- Improvement of the fiscal environment of small and medium-sized enterprises  
(COM(94) 206 final - 04/0008)  
Session to be decided

### **Section for Economic Questions**

- Harmonization of excise duty structures and alignment of excise duties on mineral oils  
(COM(94) 179 final)  
September Session

### **Social Section**

- Communication on 1996 - European Education Year  
(COM(94) 264 final)  
October/November Session

### **External Relations Section**

- Generalized Scheme of Preferences  
September Session

### **OWN-INITIATIVE WORK**

#### **Section for External Relations**

- EU/United States relations  
September Session
- Assessment of the PHARE programme  
Session in first half of 1995

### **ANTICIPATED REFERRALS TO BE CANCELLED**

#### **Transport Section**

- Satellite communications - space segment capacity  
(COM(94) 210 final)

#### **Social Section**

- Action plan to combat drugs  
(COM(94) 234 final)

### **III. EXTERNAL IMPACT OF THE ECONOMIC AND SOCIAL COMMITTEE**

#### **The President's official visit to the Czech Republic**

On 23 June 1994, President Susanne Tiemann paid an official visit to Prague. She had talks with the following: **Mr Pavel Bratinka**, Deputy Minister for Foreign Affairs, **Mr Zdenek Dostal**, Deputy Minister for Social Affairs and Labour, and **Mr Jiri Stadnik**, President of the Coordination Council of the Association of Employers' Organizations. Mrs Tiemann also met economic lawyers and Mr Richard Falbr, President of the Chamber of Trade Unions of Bohemia and Moravia.

### **The Presidency's activities**

On 7 June 1994, speech in Frankfurt (Germany) on "Responsibility for the future of Europe" to the annual general meeting of the Chamber of Trade and Industry.

On 14 June 1994, Brussels, talks with Algerian Ambassador Abdelkader Taffar.

On 20/21 June 1994, Helsinki (Finland), attendance at the preparatory meeting and the second meeting of the Consultative Committee on the European Economic Area.

On 29/30 June 1994, Nogent-sur-Marne (France), attendance at the seminar on the "Elderly in Society", organized by the Economic and Social Committee in conjunction with "Sécurité Confort France".

On 30 June 1994, attendance at a meeting in Paris of the "Centre Technique des Institutions de Prévoyance Françaises" (Technical Centre for French Providential Institutions).

On 30 June 1994, meeting in Paris with Mr Jean Matteoli, President of the French Economic and Social Council.

On 5 July 1994, meeting in Brussels with Mr Hans-Joachim Günther, Director of the Liaison Bureau for Rhineland-Palatinate.

On 6 July 1994, meeting in Brussels with a group of visitors led by the Bishop of Hildesheim, Monsignor Rohmeyr.

### **Other activities of the Committee and its constituent bodies**

On 8 June 1994, Commissioner João de Deus Pinheiro addressed a meeting of the Section for Industry, Commerce, Crafts and Services about the Green Paper on the EU's Audiovisual Policy.

On 13 June 1994, in Dublin, the Committee took oral evidence from a Deputy GATT Director at the meeting of the Section for External Relations.

On 21 June 1994, Helsinki (Finland), second meeting of the Consultative Committee on the European Economic Area.

On 21 June 1994, Brussels, the Section for Energy, Nuclear Questions and Research took oral evidence from external experts on the topic "technology and employment".

On 22 June 1994, in Brussels, a Committee delegation attended the eco-label forum.

On 30 June 1994, meeting of the ACP/EU follow-up Committee in Brussels.

On 30 June 1994, the Committee took oral evidence about the operation of the Internal Market from the representatives of European and national interest groups and a wide range of trade union and professional organizations.

From 30 June to 2 July 1994, the Committee was represented at the European Audiovisual Conference organized by the Commission on the topic "Measures to reinforce the programme industry".

On 29 and 30 August 1994, Magdeburg (Germany), Conference on the "Citizens' Europe - participation and involvement", organized by the ESC in conjunction with the Association for Political Education of Sachsen-Anhalt and the Magdeburg Euro-Info centre.

#### IV. FACT-FINDING VISITS

During the reference period, the following groups visited the ESC:

- 3 June 1994 Männerarbeit der Evangelischen Kirche von Westfalen, Bezirk Münsterland, Dülmen (Germany)
- 3 June 1994 Fachhochschule des Bundes für öffentliche Verwaltung, Cologne (Germany)
- 3 June 1994 University of Reading (The Centre for International Studies in Education, Management and Training (United Kingdom)
- 6 June 1994 AGEE - Asociación Gallega de Estudios Europeos, Santiago (Spain)
- 6 June 1994 University of Groningen, The Netherlands
- 6 June 1994 Fédération de la Communication de la CFE/CGC (Confédération française de l'encadrement), Paris (France)
- 7 June 1994 Institut international de formation de techniciens et cadres, Lamentin (France)
- 7 June 1994 Chambre d'Agriculture de Seine-et-Marne (France)
- 8 June 1994 Österreichischer Gewerkschaftsbund - Landesexekutive Tirol (Austrian Trade Union Federation), Innsbruck (Austria)
- 8 June 1994 Kamer voor Handel en Nijverheid van Limburg, Hasselt (Belgium)
- 9 June 1994 St. Mac Dara's Community College, Dublin (Ireland)
- 9 June 1994 European Journalism Centre (Finnish Journalists), Maastricht, The Netherlands
- 10 June 1994 AGEE - Asociación Gallega de Estudios Europeos, Santiago (Spain)
- 14 June 1994 University of Southern Florida, Tampa (USA)
- 14 June 1994 Swedish LO (TUC)
- 15 June 1994 Gewerkschaftsschule Wien (Vienna Trade Union College, Austria)
- 16 June 1994 Swedish LO (TUC)

- 16 June 1994 Centre de Formation et de Perfectionnement des Chambres d'Agriculture, Trie-Chateau (France)
- 17 June 1994 Ministerie van de Vlaamse Gemeenschap (Hungarian Civil Servants), Brussels, Belgium
- 20 June 1994 Staffordshire University (UK)
- 20 June 1994 Svenska Arbetsgivareföreningen -Industriförbundet (Brussels office)
- 21 June 1994 Worcester College of Technology (UK)
- 21 June 1994 The Scottish Office, Edinburgh (UK)
- 21 June 1994 Hogeschool De Horst, Driebergen (The Netherlands)
- 22 June 1994 Gewerkschaftsschule Burgenland (Austria)
- 22 June 1994 Bundesakademie für öffentliche Verwaltung im Bundesministerium des Innern, Bonn (Germany)
- 27 June 1994 Quaker Council for European Affairs, Brussels
- 6 July 1994 Group led by the Bishop of Hildesheim (Germany)
- 8 July 1994 Studentenhaus Birkbrunn, Vienna (Austria)
- 8 July 1994 Comité de Liaison de l'IRU du Transport professionnel routier de marchandises, Brussels
- 11 July 1994 Law Faculty of the University of Valencia (Spain)
- 11 July 1994 Chambre de Commerce et d'Industrie de Strasbourg et du Bas-Rhin (France)
- 11 July 1994 Consejería de Trabajo de la Junta de Andalucía y la Universidad de Málaga (Spain)
- 12 July 1994 Groupe ESC Nantes Atlantique (France)
- 15 July 1994 MONDIMPRESA - Agenzia per la mondializzazione dell'impresa, Rome (Italy).

