

6874/03 (Presse 59)

PROVISIONAL VERSION

2490th Council meeting

- COMPETITIVENESS -

(Internal Market, Industry and Research)

Brussels, 3 March 2003

President : **Mr Apostolos TSOCHATZOPOULOS**
Minister for Minister for Development of the
Hellenic Republic

Internet: <http://ue.eu.int/>
E-mail: press.office@consilium.eu.int

For further information call 32 2 285 67 00 – 32 2 285 81 11

6874/03 (Presse 59)

CONTENTS¹

PARTICIPANTS..... 3

ITEMS DEBATED

PREPARATION OF THE SPRING EUROPEAN COUNCIL ON 21 MARCH 2003 5

COMPETITIVENESS AND ENTREPRENEURSHIP - PUBLIC DEBATE - Council

Conclusions..... 11

UPDATING AND SIMPLIFYING THE COMMUNITY ACQUIS 20

GREEN PAPER : EUROPEAN SPACE POLICY..... 21

ITER (INTERNATIONAL THERMONUCLEAR EXPERIMENTAL REACTOR)..... 22

CHEMICALS LEGISLATION PACKAGE 23

COMMUNITY PATENT 15

TAKE-OVER BIDS 19

INTELLECTUAL PROPERTY RIGHTS 24

OTHER BUSINESS 25

– Third Eureka-Asia meeting 25

– Transposition of Community legislation 25

ITEMS APPROVED WITHOUT DEBATE

TRADE POLICY

– China - Rules on imports from third countries I

¹

- *Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.*
- *The documents whose references are given in the text are available on the Council's Internet site <http://ue.eu.int>.*
- *Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the above mentioned Council Internet site or may be obtained from the Press Office.*

PARTICIPANTS

The Governments of the Member States and the European Commission were represented as follows:

Belgium :

Mr Charles PICQUE

Minister for Economic Affairs and Scientific Research, with responsibility for the Policy on Large Towns and Cities
Minister of the Brussels Capital Regional Government, with responsibility for Employment, Economic Affairs, Energy and Housing

Mr Eric TOMAS

Denmark :

Mr Bendt BENDTSEN

Minister for Economic Affairs, Trade and Industry
Minister for Science, Technology and Innovation

Mr Helge SANDER

Germany :

Ms Wolfgang CLEMENT

Federal Minister for Economic Affairs and Labour
State Secretary, Federal Ministry of Justice

Mr Hansjörg GEIGER

Greece :

Mr Apostolos TSOCHATZOPOULOS

Minister for Development

Spain :

Mr Ramón de MIGUEL Y EGEA

State Secretary for European Affairs

Mr Pedro MORENÉS EULATE

State Secretary for Science and Technology Policy

France :

Ms Nicole FONTAINE

Minister attached to the Minister for Economic Affairs, Finance and Industry, with responsibility for Industry

Ms Claudie HAIGNERE

Minister attached to the Minister for Youth, Education and Research, with responsibility for Research and New Technology
State Secretary to the Minister for Economic Affairs, Finance and Industry, with responsibility for Small and Medium-Sized Enterprises, Trade, Craft Industries, Liberal Professions and Consumer Affairs

Mr Renaud DUTREIL

Ireland :

Ms Mary HARNEY

Tánaiste (Deputy Prime Minister) and Minister for Enterprise, Trade and Employment

Italy :

Mr Antonio MARZANO

Minister for Production Activities

Mr Rocco BUTTIGLIONE

Minister without portfolio, Minister for Community policies

Mr Guido POSSA

Deputy Minister for Education, the Universities and Research

Luxembourg :

Mr Henri GRETHEN

Minister for Economic Affairs

Netherlands :

Mr Atzo NICOLAÏ

State Secretary for European Affairs

Austria :

Mr Martin BARTENSTEIN

Federal Minister of Economic Affairs and Labour

Portugal :

Mr Carlos TAVARES

Minister for Economic Affairs

Finland :

Mr Kare HALONEN

Deputy Permanent Representative

Sweden :

Mr Sven-Eric SÖDER

State Secretary at the Ministry of Foreign Affairs, with responsibility for Nordic Cooperation

United Kingdom :

Ms Patricia HEWITT

Secretary of State for Trade and Industry, Minister for Women

* * *

Commission :

Mr Erkki LIIKANEN
Mr Frits BOLKESTEIN
Mr Philippe BUSQUIN

Member
Member
Member

ITEMS DEBATED

PREPARATION OF THE SPRING EUROPEAN COUNCIL ON 21 MARCH 2003

The Council welcomed the report of the Commission to the Spring European Council and held an exchange of views on the state of play of the Lisbon process.

Delegations stressed the importance of further progress as regards market reforms and ensuring favourable framework conditions for innovation and entrepreneurship in the Union. They emphasised particularly the need for an integrated approach which also takes into account competitiveness issues in all policy initiatives put forward to the Council in whatever formation. Underlining the role of the new Competitiveness Council, not least in view of the present uncertain economic outlook and the challenges and opportunities which the Union's enlargement offers, the Council adopted the following contribution for the Spring European Council :

"I. INTRODUCTION: LISBON STRATEGY - STATE OF PLAY

As stated in the Commission's Spring report², while progress has been made in almost all areas of the Lisbon strategy, it has not been fast enough nor sufficiently focussed and coordinated to produce the necessary results.

Implementation of the Lisbon agenda requires acceleration and new impetus, and a closing of the delivery gap, particularly in the light of the uncertain economic outlook and the continued high unemployment.

Globalisation and enlargement of the European Union offer challenges and opportunities in terms of growth, competitiveness and cohesion that should be maximised.

II. ROLE OF COMPETITIVENESS COUNCIL

It is essential that the new Competitiveness Council actively assumes its horizontal role of ensuring an integrated approach to the enhancement of competitiveness and growth, both in driving forward the Lisbon agenda and in the wider context of the global economy. It will review on a regular basis both horizontal and sectoral competitiveness issues on the basis of analyses provided by the Commission. It will also examine and give its views on how competitiveness issues can be properly taken into account in all policy initiatives which have an impact on enterprises, particularly SMEs, and ensure coherence and balance between the three pillars of sustainable development - economic, social and environmental.

² Doc. 5454/03 - COM(2003) 5.

To this end, the Competitiveness Council will focus, in the framework of an integrated strategy for competitiveness to be developed by the Commission, on key competitiveness issues, notably **a well-functioning internal market, better regulation, industrial competitiveness, promoting entrepreneurship and small firms, harnessing innovation and promoting research.**

Ensuring delivery of the agenda depends not only on the Community but also requires action at national, local and regional level. The open method of coordination, applied effectively in appropriate areas, with the minimum of administrative burden and on a voluntary basis, in full respect of the subsidiarity principle, can be a valuable tool in fostering progress and supporting Community action.

The Competitiveness Council will set priorities for action and ensure their effective implementation and follow-up.

III. PRIORITY AREAS FOR ACTION

a) Competitive and efficient European enterprises

Dynamic, competitive industry and services are essential for sustaining growth and prosperity in an enlarged Europe. There is a need to improve the overall business environment for all sectors, including tourism, and to foster a society that values innovation and entrepreneurship. Small firms are the backbone of the EU economy and, therefore, have a key role to play in this context.

- Improvement and simplification of legislation affecting enterprise competitiveness should be pursued actively at both Community and national level, integrating the concept “think small first”. In this context, rapid implementation of the Action Plan "Simplifying and improving the regulatory environment” and, in particular, rapid conclusion of the Interinstitutional Agreement on better regulation are a high priority.
- Systematic and comprehensive impact assessment of proposed Community legislation, as well as consultation of business and all other interested parties, must be carried out by the Commission and, subsequently, taken into account at the decision-making level, to ensure that a balanced approach is maintained in the EU framework and that European enterprises remain competitive and operate on a level playing field in the global economy. A test case should be to achieve a chemicals strategy that safeguards both public health and the environment and boosts the productivity of the chemicals industry.
- A coordinated approach to entrepreneurship policy, providing a comprehensive response to the needs of entrepreneurs, such as eliminating barriers to business creation, development and growth and balancing the risks and rewards, is required. The Council urges Member States to participate actively in the consultation process following the recent presentation of the Commission's Green Paper on "Entrepreneurship in Europe" and invites the Commission to propose as a follow-up an appropriate Action Plan on entrepreneurship by the end of 2003.

- Effective involvement and consultation of small businesses in the policy-making process must be ensured. The implementation of the European Charter for Small Enterprises in an innovative way must be speeded up, its activities better focussed, and efforts made to close the performance gaps between the different Member States. Particular emphasis should also be given to promotion of education and training in entrepreneurial skills, stimulation of innovation and technology transfer, and measures to encourage investment and risk-taking, including improved access to venture capital.
- Industrial policy, although horizontal in nature addressing general framework conditions, needs to take into account the specific needs and characteristics of individual sectors. Particular attention should be paid to developing the industry-related service sector. Exploiting the full potential of the ICT sector, which plays a key role in the realisation of the Lisbon objectives, and efficient implementation of the eEurope 2005 Action Plan should be assured.
- Member States should continue their efforts to reduce the overall level of State aid. Aid should be redirected towards horizontal objectives of common interest, including cohesion objectives and research and development. Effective application and enforcement of competition law as well as adoption before the end of the year of the revised Merger Regulation, are a high priority.
- EU needs to improve the environment for innovation in order to close the gap with major trading partners. In order to encourage enterprises to innovate, Member States and the Commission need to intensify cooperation and create a framework of common objectives for the strengthening of innovation in the EU, including an assessment mechanism for taking stock of the progress achieved. Emphasis should be placed on converting knowledge into innovative products and services, management and organisational techniques.

b) Building the European Knowledge-based Economy

Increasing investment in research and innovation, including in education, training and skills, is a key factor in creating opportunities for growth, enterprise and new jobs. Equally important is enhancing the payback on investment in R&D by building and strengthening bridges between knowledge and the marketplace. More effective, focussed and coordinated efforts in Community and national research, as provided in Article 165 of the Treaty, will contribute to avoiding fragmentation of European research and to creating a really dynamic and effective European Research and Innovation Area.

- The Commission and the Member States are invited to utilise fully the potential of the 6th Framework Programme and of national programmes in support of the European Research and Innovation area. The open method of co-ordination can also be a valuable instrument for achieving this aim. Member States and the Commission should in the first instance apply it in working towards the 3% GDP aim, as well as in the fields of optimising human resources and researchers' mobility, improving the dialogue between science and society, networking and mutual opening-up of national and joint RTD programmes, and voluntary co-operation on RTD infrastructures of European interest. Particular attention should be paid to activities to enhance participation of SMEs in research and innovation, especially those designed to foster dissemination and commercialisation of RTD results, facilitate collaboration with universities, and create new technology based firms. Cooperation with European intergovernmental research organisations should be stepped up and the Commission is invited to present a report on this as soon as possible.
- Investment in RTD must be increased considerably if the growing gap with our main global competitors is to be closed. The Commission is invited to present before the next Competitiveness Council an Action Plan for achieving the Barcelona 3% GDP aim, two thirds of which should come from the private sector. This requires that the appropriate mix of policies and incentives, corresponding to each Member State's structural characteristics, are given to encourage enterprises to invest more in RTD. Member States should therefore devise and implement strategies and measures so as to work towards the Barcelona 3% objective. Support for research and innovation is also important in the context of the implementation of the Stability and Growth Pact and the Broad Economic Policy Guidelines.
- A common agenda for frontier and leading-edge technologies and technologies of a strategic nature should be developed. European technology platforms and clusters at national, regional and local levels should be promoted. The Commission and the Member States should actively pursue the implementation of the Action Plan on biotechnology in accordance with the road map adopted by the Council in November 2002; a framework for a joint EC/ESA space strategy should be adopted by the end of 2003; the Galileo project should be implemented rapidly. High priority should be given to the Information society and to increasing the capacity of scientific broadband communication networks (GEANT and GRID- the eInfrastructure concept).

c) Strengthened competitiveness and growth through improved market performance

The internal market continues to take a crucial place in the reform strategy and even more so in an enlarged Union. The full completion of the Internal Market according to the Treaty remains a fundamental issue. A well functioning internal market, offering accessibility to safe and high quality goods and services and guaranteeing the full application of the four freedoms, is essential to strengthen competitiveness, growth and employment, in a context of sustainable development, to the benefit of consumers and enterprises alike. Urgent action is needed to close the delivery gap between already agreed reform measures and their actual implementation.

- In view of the great, largely unexploited potential of the services sector for growth and employment and its particular importance for SMEs, urgent action must be taken to create a real internal market for services. The Commission should accelerate work to complete its Services Strategy and the actions requested by the Council in its Conclusions of 14 November 2002 to remove obstacles to the cross-border provision of services, taking into account the requirements of consumer protection. In parallel, the Member States should increase their own efforts to dismantle such barriers in areas of national competence. An effective application of the principle of mutual recognition as well as, where appropriate, harmonisation of legislation are essential tools for achieving integrated markets for services.
- Completion of work in the Financial Services sector is particularly important as a means to strengthen competitiveness. Progress already made on the Financial Services Action Plan should be consolidated by reaching agreement on still outstanding elements and speeding up implementation of what has already been adopted.
- Member States should be requested to speed up the transposition as well as the full implementation of adopted Community legislation and to fully comply with the Barcelona Conclusions towards continued reduction of transposition deficits without any further delays.
- The Community legislators should accelerate ongoing work on key legislative proposals, in particular those which already are behind schedule. No efforts should be spared to enable the adoption of the public procurement legislative package by the end of the year. High priority should be given to the various legislative initiatives in the area of intellectual property rights, in particular the Community patent. Intensive efforts are required by all parties concerned to arrive at a balanced agreement on the Takeover bids directive at the earliest possible opportunity.
- Still existing barriers to trade in the internal market should be abolished and the creation of new barriers avoided. In this context the importance of making full use of the considerable economic potential of procurement markets is underlined. To this end procedures for on-line electronic procurement should be applied by all Member States as soon as possible.
- Following the report of the High level expert group the Commission should be encouraged to present, as soon as possible, its Action Plan on Company Law, with particular emphasis on corporate governance.
- A well developed infrastructure and integrated energy, transport and telecommunications networks are essential for the good functioning of the internal market, not least in view of the enlargement. In this respect the targets set by the Barcelona European Council must be fully met, taking due account of services of general interest. In this context the Council awaits with great interest the Commission's Green Paper in response to the request of the Barcelona European Council regarding a framework directive.

IV CONCLUSIONS

The Competitiveness Council will regularly review progress in all areas within its remit, with emphasis on key competitiveness issues impacting on enterprise performance in the EU and will take appropriate action to overcome any undue delays or difficulties hindering progress.

It will present, on the basis of input from the Commission, an integrated annual progress report, including priority areas for action, to the Spring European Council from 2004 onwards. In advance of this, the Council will establish an overall framework for addressing key competitiveness issues.

This contribution is submitted to the Spring European Council."

COMPETITIVENESS AND ENTREPRENEURSHIP - PUBLIC DEBATE - Council

Conclusions

The Council held a wide-ranging public debate on the key issues of competitiveness and entrepreneurship. The debate, based on a series of communications and background information submitted by the Commission, concentrated on a number of important questions relating in particular to fostering entrepreneurship in a business friendly environment, the implementation of the European Charter for Small enterprises, and the development of industrial policy for an enlarged Union, while ensuring that the three pillars of sustainability - economic, social and environmental aspects - are developed in a balanced way.

Following the debate, the Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION,

1. RECALLING

- the Conclusions of the Lisbon European Council on the strategy for making the EU the world's most competitive and dynamic knowledge-based economy, capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010 and the further elaboration of this strategy by the Stockholm, Gothenburg and Barcelona European Councils;
- the European Charter for Small Enterprises, which calls for the creation of the best possible environment for small enterprises;
- the Maribor Declaration, which commits the candidate countries to implementing the European Charter for Small Enterprises;
- the Conclusions of the Barcelona European Council, inviting Member States to speed up the implementation of the European Charter for Small Enterprises and to learn from best practice, stating that the Council will meet before every Spring European Council to assess progress in creating a more favourable environment for entrepreneurship and the competitiveness of small enterprises;
- the conclusions of the Seville European Council which welcomed the communications from the Commission on better lawmaking and, in particular, the Action Plan for simplifying and improving the regulatory environment; and the Council Conclusions of 30 September 2002 on simpler legislation³;
- the Council Decision on a Multiannual Programme for Enterprise and Entrepreneurship, and in particular for small and medium-sized enterprises (SMEs) (2001-2005)⁴
- the Council Conclusions of 26 November 2002 on a more competitive environment for enterprises⁵.

³ Doc. 12293/02 (Press 283).

⁴ O.J. L 333 of 29.12.2000, p.84.

⁵ Doc. 14815/02.

2. WELCOMES

- the Green Paper “Entrepreneurship in Europe”⁶;
- the 2003 Report from the Commission on the implementation of the European Charter for Small Enterprises⁷;
- the Communication from the Commission “Thinking small in an enlarging Europe” and related Staff Working Papers⁸, which point to the need for providing a constantly improving environment for small businesses and exploiting the entrepreneurial potential in an enlarging Europe.

3. EMPHASISES

- that the Green Paper on "Entrepreneurship in Europe" is the starting point for an important, wide-ranging debate on the future of entrepreneurship policy;
- the need for the European Union, in order to preserve its job creating potential, its competitive position and its economic future, to promote entrepreneurship, thus creating more new firms, making them grow and become more innovative and competitive. Particular attention should be paid to fostering women entrepreneurs and potential entrepreneurs in disadvantaged areas and socially excluded groups;
- the need for a co-ordinated approach to entrepreneurship policy, that involves all relevant policy-makers at European, national and regional level, to provide a coherent and consistent response to the needs of entrepreneurs and that concentrates on three pillars for action:
 - bringing down barriers to business development and growth;
 - balancing the risks and rewards of entrepreneurship;
 - fostering a society that values entrepreneurship;
- that learning from good practices can effectively improve Member States and candidate countries’ small business policies;
- the need to improve opportunities for small firms to express their concerns in policy and law making;
- that education, in particular for the young, training and life-long learning can play a determinant role in fulfilling the Lisbon strategy, by promoting entrepreneurial culture, thus providing Europe with more successful entrepreneurs;
- that reducing administrative burdens for small firms, improving legislation and facilitating access to finance, information and knowledge is of utmost importance to foster a favourable business environment;
- that facilitating the transfer of business to new owners is essential, since one third of European enterprises will need successors in the next ten years.

⁶ Doc. 5765/03 - COM(2003) 27 final.

⁷ Doc. 5650/03 - COM(2003) 21 final.

⁸ Doc. 5748/03 - COM(2003) 26 final.+ ADD1 + ADD2 + ADD3.

4. INVITES THE MEMBER STATES TO:

- actively consider the Green Paper “Entrepreneurship in Europe” and formulate their responses as a positive contribution to furthering the entrepreneurship agenda in Europe;
- speed up implementation of the European Charter for Small Enterprises and give strong consideration to good practices, in particular those identified in the course of the Best Procedure and the annual report on the Charter implementation; close performance gaps between different Member States; and include information in Member States' contribution to this report on the practical measures taken and envisaged as a consequence, in particular to:
 - = improve opportunities for small enterprises to express their concerns and opinions at all levels by developing consultation mechanisms, for example advisory/consultative groups to the government;
 - = promote education in entrepreneurial skills at all stages of the educational cycle taking inspiration from good practices identified;
 - = improve the quality of legislation, through the introduction of systematic regulatory impact assessment, taking into account national practices and legal systems;
 - = further simplify and reduce the cost and time of company registration for start-up, in particular through on-line registration and building on other good practices;
 - = improve access to risk and seed capital finance for small firms, such as guarantee schemes, venture capital funds and bank sector micro loans, in areas with financial market failures by increasingly focussing on incentives and risk-sharing;
 - = stimulate innovation and technology transfer, through promoting co-operation between universities, research and development centres and institutes and small firms, also through the use of intermediaries;
 - = remove barriers to the Internal Market by addressing the fragmentation of the internal market for services and complying with the targets set for transposing Directives and ensure that new barriers are not created by legal and administrative measures;
- further develop quantitative and qualitative targets on a voluntary basis in Charter areas where Member States consider it relevant and with due consideration to structural differences.

5. INVITES THE COMMISSION TO:

- as a follow-up to the public debate on entrepreneurship policy propose an appropriate Action Plan on entrepreneurship by the end of 2003, taking full account of the reactions received and of existing instruments and programmes;
- establish projects, monitor developments and stimulate policy implementation, by applying the Best Procedure and other instruments, to help Member States improve their performance, in particular in the fields of:
 - better involvement and consultation of small businesses in policy and law making;
 - education and training for entrepreneurship;
 - improved access to risk and seed capital finance for small firms, such as guarantee schemes, venture capital funds and bank sector micro loans, to address financial market failures by increasingly focussing on incentives and risk-sharing;

- innovation and technology transfer to small businesses;
 - small firms' access to the internal market, in particular with regard to services, as well as to international markets;
 - transfer of business;
- provide the means for a continuous dialogue with small businesses, inter alia through the activities of the SME Envoy, and to keep small and also medium-sized enterprises at the forefront of relevant Community policies;
 - continue progress on the effective implementation of the Action Plan for simplifying and improving the regulatory environment.

6. INVITES THE MEMBER STATES AND THE COMMISSION TO:

- continue the work on a voluntary basis on quantitative and qualitative targets with the aim of further integrating their use in the implementation of the European Charter for Small Enterprises;
- continue to involve candidate countries in the Charter process and to encourage them to exploit good practices and voluntary quantitative and qualitative targets as instruments to build up an enterprise culture;
- strengthen the review of national developments by prioritising a selected number of Charter areas each year and, in the framework of the European Charter requirements, report on progress made in creating a more favourable environment for entrepreneurship and the competitiveness of small enterprises, using, inter alia, appropriate and effective indicators, in order to allow the Council, meeting before the Spring European Council, to assess progress over time and discuss future strategy on entrepreneurship and small firms policy;
- continue and reinforce their work on identifying, benchmarking and exchanging best practices on entrepreneurship and in all areas of the Charter in a more co-ordinated and consistent approach, establishing synergies with other relevant Community and related international policies;
- intensify diffusion of and discussions on small business policies in all areas of the Charter developed in the Member States by organising, from 2003 onwards, annual exchanges of experiences among Member States and by also giving consideration to the possibilities of organising, on a voluntary basis, peer reviews as a process of learning together."

COMMUNITY PATENT

The Council reached agreement on a common political approach regarding the Community Patent. Discussions went along the suggestions of the Presidency compromise proposal taking into account elements from previous debates. The compromise text setting out the main features for the jurisdictional system for the Community Patent, the language regimes, costs, the role of national patent offices and the distribution of fees, seeks to find a balanced solution for all elements as mentioned below:

1. THE JURISDICTIONAL SYSTEM

- 1.1 The jurisdictional system of the Community Patent will be based on the principles of a unitary Court for the Community Patent, securing uniformity of the jurisprudence, high quality of working, proximity to the users and potential users and low operating cost.
- 1.2 The Court of Justice shall have exclusive jurisdiction in actions and claims of invalidity or infringement proceedings, of actions of a declaration of non-infringement, of proceedings relating to the use of the patent or to the right based on prior use of the patent, or requests for limitation, counterclaims for invalidity or applications for declaration of lapse, including requests for provisional measures. The Community patent may also be the subject of proceedings or claims for damages.
- 1.3 The litigation of Community Patents shall at first instance take place before a judicial panel established by a Council decision according to Article 225a of the EC Treaty. The appeal shall lie with the Court of First Instance of the European Communities (CFI). This judicial panel, called Community Patent Court (CPC), shall be attached to the CFI. Its seat shall be at the CFI. The judges shall be appointed on the basis of their expertise and taking into account their linguistic skills. The Community Patent Court may hold hearings in Member States other than that in which its seat is located.
- 1.4 The chambers of the CPC shall sit in sections of three judges.
- 1.5 The judges shall be appointed by a unanimous decision of the Council for a fixed term. The candidates for appointment must have an established high level of legal expertise in patent law.
- 1.6 Technical experts will assist the judges throughout the handling of the case.

1.7 The CPC will conduct the proceedings in the official language of the Member State where the defendant is domiciled, or in one of them to be chosen by the defendant, where in a Member State there are two or more official languages. At the request of the parties and with the consent of the CPC, any official EU language can be chosen as language of proceedings. The CPC may, in accordance with the rules of procedure, hear parties in person and witnesses in an EU official language other than the language of proceedings. In that case translations and interpretation into the language of the proceedings from another official EU language should be provided.

1.8 An appeal against a final decision of the CPC may be brought before the Court of First Instance.

1.9 The Community Patent Court shall be established at the latest by 2010. Each Member State shall designate a limited number of national courts to have jurisdiction in the actions and claims mentioned in paragraph 1.2 above until that time.

2. LANGUAGES AND COSTS

2.1 The language regime must meet the objectives of affordability, cost-efficiency, legal certainty and non-discrimination.

2.2 The language regime for the Community Patent will, up to grant, be the same as the one provided for in the European Patent Convention. This means that the applicant has to present a complete application document in one of the three official languages of the EPO as well as, at the time of grant of the patent, a translation of the claims into the two other EPO languages. However, where the applicant files the application in a non-EPO language and provides a translation into one of the EPO languages, the cost of that translation will be borne by the system ("mutualisation of costs").

2.3 For reasons of legal certainty - in particular in connection with actions or claims for damages - non-discrimination and dissemination of patented technology, the applicant must, upon the grant of the patent, file a translation of all claims into all official Community languages except if a Member State renounces the translation into its official language. The translations will be filed with the EPO and the costs borne by the applicant, who decides on the number and the length of claims to be included in the patent application, thereby having an influence on the cost of translation.

2.4 The renewal fee for a Community Patent must not exceed the level of the corresponding renewal fees for an average European Patent and will be progressive throughout the life of the Community Patent. The level of procedural fees for processing an application for a Community Patent will be the same regardless of where the application is filed and where the novelty search is carried out (EPO or national patent office). The level of fees will be related to costs for handling the Community Patent and must not lead to any indirect subsidy of national patent offices.

2.5 The Commission is invited to carry out a study into the possibility of further savings in costs, for example in respect of services rendered by patent agents.

3. ROLE OF NATIONAL PATENT OFFICES (NPO)

- 3.1 The European Patent Office (EPO) will play a central role in the administration of Community Patents and will alone be responsible for examination of applications and the grant of Community Patents.
- 3.2 All national patent offices will have an important role to play, as set out in the Common approach of 31 May 2001, *inter alia* advising potential applicants for Community Patents, receiving applications and forwarding them to the EPO, disseminating patent information and advising SMEs.
- 3.3 Applications for Community Patents can be filed with the National Patent Office of a Member State in its working language(s). Applicants will remain free to present their patent applications directly to the EPO. They may also request that their applications be fully processed by the EPO.
- 3.4 On behalf of the EPO and at the request of the applicant, National Patent Offices of Member States having an official language other than the three official languages of the EPO may carry out any task up to and including novelty searches in their respective language(s).
- 3.5 National Patent Offices of Member States having as their official language one of the three EPO languages, which have experience of cooperation with the EPO and which need to maintain a critical mass may, if they so wish, carry out search work on behalf of the EPO.
- 3.6 The relationship between NPOs carrying out tasks referred to in paragraphs 3.4 and 3.5 above and the EPO will be based on partnership agreements, containing *inter alia* common criteria for quality assurance. These criteria (covering documentation, staff training and qualifications and working tools) would aim to guarantee a comparable quality and uniformity of the Community Patent. The implementation of these partnership agreements, i.e. the compliance with these objective quality standards, will be subject to independent periodic review.
- 3.7 The Community Patent system will include a safeguard clause according to which the Council, acting on a proposal from the Commission after consultation with the EPO, can agree to extend the involvement of any NPOs in search activities to meet any severe problems of capacity in delivering Community Patents. Such arrangements must not lead to any reduction of quality of the Community Patent.

4. DISTRIBUTION OF FEES

- 4.1 NPOs will be compensated for the activities in respect of Community Patents referred to in paragraphs 3.2, 3.4 and 3.5.

4.2 Renewal fees for Community Patents will be payable to the EPO, which will keep 50 percent to cover its costs, including the costs of searches carried out by NPOs. The remaining 50 percent will be distributed among the NPOs of the Community Member States in accordance with a distribution key, which will be decided by the Council.

4.3 The distribution key will be based on a basket of fair, equitable and relevant criteria. Such criteria should reflect patent activities and the size of the market. In addition, considering the role to be played by NPOs as described in paragraph 3 above, a balancing factor should also be applied where Member States have a disproportionately low level of patent activities. On the basis of these criteria the Member States' share shall be adjusted periodically to current figures.

5 REVIEW CLAUSE

Five years after the grant of the first Community Patent, the Commission will present a report to the Council on the functioning of all aspects of the Community Patent and, where necessary, make appropriate proposals. The assessment will cover the issues of quality, coherence and time required for decisions and cost to the inventors. The Commission may propose recommendations for further changes of the jurisdictional system. Further reviews should be made periodically.

It is recalled, that the purpose of the Community Patent is to provide for the creation of a single industrial property right for the whole Community, to be granted by the European Patent Office (EPO) in Munich. It aims at eliminating the distortions of competition created by the territorial nature of national protection rights and ensuring the free movement of goods protected by patents.

The European Council has emphasised on several occasions that the Community Patent must be an efficient and flexible instrument – obtainable by businesses at an affordable cost – which complies with the principles of legal certainty and non-discrimination between the Member States.

In the EU, patent protection for innovation is currently provided by two systems – the national patent systems and the European patent system – of which neither is based on a Community legal instrument. The 1973 Munich Convention established a European Patent Organisation, of which the EPO is part, laying down a single procedure for the granting of patents, which once granted become national patents subject to the national rules of the contracting states. All of the EU's Member States are members of the Convention, which is governed by international law.

Companies would remain free to choose the type of protection best suited to their needs. Given that the EPO would be responsible for examining patent applications and granting Community patents, the new system would require the Community's accession to the Munich Convention as well as a revision of that Convention.

TAKE-OVER BIDS

The Council took note of the Presidency's report on the progress made so far on the proposal for a Directive on take-over bids as well as of Delegations' concerns on individual aspects of a Presidency compromise proposal, in particular with regard to the balancing of Article 9 and 11, notably the question of multiple voting rights.

The Council instructed the Permanent Representative Committee to pursue work on this file as a matter of priority.

It is recalled that the new proposal, transmitted by the Commission on 7 October 2002, pursues the same objectives as the previous one. Besides the general objectives of integrating European markets and facilitating corporate restructuring, it aims at strengthening the legal certainty of cross-border take-over bids and ensuring the protection of minority shareholders in the course of such transactions. It lays down principles and a number of general requirements whilst allowing Member States to define detailed implementing rules in this field.

Following the European Parliament's rejection of the outcome of the Conciliation Procedure in July 2001 on a previous proposal, the new text makes a fresh attempt at establishing a level playing field for take-over bids in the Community. However, broad agreement exists within the Council preparatory bodies not to re-open the debate on those Articles which appeared already in the text agreed upon by the Conciliation Committee and which have not changed substantially.

Taking account of delegations' comments and building upon a previous compromise proposal put forward by the Danish Presidency, the Presidency has tabled on 14 February 2003 a compromise proposal on most of the Articles under discussion. No formal agreement has yet been reached on any of the Articles under examination. However, considerable progress has been achieved in building substantial consensus around a number of issues.

The core outstanding issue in the search of a global compromise is the appropriate balance to strike between, on the one hand, Article 9 which aims at ensuring that it is for the shareholders to decide on defensive measures once a take-over bid has been made public, and, on the other hand, Article 11 which provides for the neutralisation, both during and following a successful take-over bid, of measures that could be seen as pre-bid preferences (restrictions on transfer of securities, restrictions on voting rights).

UPDATING AND SIMPLIFYING THE COMMUNITY ACQUIS

The Council took note of an oral presentation provided by Commissioner Bolkestein on the Communication "*Updating and Simplifying the Community acquis*".

It is recalled that the Commission adopted in June 2002 the Action Plan "Simplifying and improving the regulatory environment" along with three other Communications. The Competitiveness Council adopted conclusions in September 2002 welcoming and responding to these Communications, in particular the Action Plan. The present Communication adopted by the Commission on 11 February 2003 fulfils the commitment which it made in its Action Plan to launch initiatives for a policy to update and simplify the existing body of Community law.

The Commission's Communication sets out a framework for action, defining six objectives, associated to each of which are a number of specific actions. The objectives are: simplifying the acquis; completing the consolidation of the acquis and keeping it up to date; codification; reviewing and presentation of the acquis; ensuring transparency and effective monitoring at political and technical level; establishing an effective implementation strategy.

GREEN PAPER : EUROPEAN SPACE POLICY

The Council, following a brief presentation of the Commission's Green Paper on Space Policy by Commissioner Busquin, welcomed the document as an important step forward in discussions on the future of the European space strategy. It was noted that further discussion is foreseen during the coming months with the Council coming back to the issue in more depth at its session in May.

The Green Paper published on 22 January 2003 has been prepared in co-operation with the European Space Agency (ESA). The contents reflect the concerns of the Commission, often shared by ESA.

The aim of this Green Paper is to initiate a debate on the medium- and long-term future use of space for the benefit of Europe and on policy options available. It first of all reviews the fundamental issues which underpin the European space activity (Chapter I); afterwards, it illustrates the considerable potential afforded to the benefit of the citizens and the policies of the Union (Chapter II); it also examines certain institutional and regulatory aspects, as well as the organisational consequences to be drawn (Chapter III).

A wide-ranging public consultation on all aspects of European space policy will end on 30 May 2003. The response of interested parties to the questions raised will subsequently make it possible to draw up an action plan ("White Paper").

ITER (INTERNATIONAL THERMONUCLEAR EXPERIMENTAL REACTOR)

The Council took note of an oral report presented by Commissioner Busquin on the state of play concerning the international negotiations on a joint initiative on the International Thermonuclear Experimental Reactor (ITER). Looking forward to more detailed discussions at one of its future sessions the Council underlined the importance of determining a suitable site for the construction of ITER.

It is recalled that the aim of ITER is to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes. The Commission indicated that it would submit a comprehensive report for the May Competitiveness Council on the progress made in negotiations. It should be noted that by a decision taken in November 2000, the Council of the European Union provided directives to the Commission to conduct negotiations on the establishment of an international framework allowing ITER EDA (Engineering Design Activities) Parties and qualified third countries to prepare jointly for the future establishment of an ITER Legal Entity (ILE) for ITER construction and operation, if and when decided.

CHEMICALS LEGISLATION PACKAGE

The Council took note of an oral report provided by Commissioner Liikanen on the state of play of the future legislative package on chemicals policy. The Council underlined it would give high priority to discussing this package as soon as it becomes available.

It is recalled that the legislative package, which has yet to be adopted by the Commission, will replace a number of Directives in the chemical field, including the Dangerous Substance Directives and the Regulation on the risk evaluation procedures.

On 27 February 2001, the Commission submitted the White Paper on a strategy for the future chemicals policy. It proposes in particular to set up the harmonised system REACH (Registration, Evaluation and Authorisation of Chemicals) which should be managed by Member States and the European Chemicals Bureau (ECB). The industry would be required to submit information and testing strategies to national authorities.

INTELLECTUAL PROPERTY RIGHTS

The Council took note of the oral presentation by Commissioner Bolkestein of the proposal for a Directive on measures and procedures to ensure compliance with intellectual property rights. The Council welcomed this proposal as an important initiative in the fight against counterfeiting and piracy and instructed the competent Council bodies to begin examining the proposal as soon as possible.

It is recalled that the proposal submitted to the Council at the end of February 2003 aims at harmonising Member States' legislation concerning the enforcement of the various intellectual property rights across the EU with a view to enhancing the efficacy of the fight against counterfeiting and piracy. It also aims at establishing a general framework for the exchange of information between the responsible national authorities.

OTHER BUSINESS

– *Third Eureka-Asia meeting*

The Council took note of information given by the Portuguese delegation on the forthcoming 3rd Eureka-Asia meeting which will take place on 26-30 May 2003 in Macao. The meeting aims at stimulating the development of scientific, technological and business co-operation activities between R&D enterprises and institutes in European and Asian countries.

– *Transposition of Community legislation*

The Council took note of the concerns expressed by the German Delegation with regard to notification procedures in the framework of transposition of Community legislation and of the explanations given by Commissioner Bolkestein in this respect.

ITEMS APPROVED WITHOUT DEBATE

TRADE POLICY

China - Rules on imports from third countries

The Council adopted by qualified majority a Regulation aimed at modifying common rules on imports into the Community from third countries in the light of China's accession to the World Trade Organisation (WTO) (*doc. 5619/03*). The Netherlands delegation voted against.

The Regulation provides for a product-specific safeguard mechanism for cases where Chinese products are imported in increased quantities under conditions that threaten market disruption, whilst abolishing the surveillance system which is currently applied to some Chinese products. In addition, it modifies Regulation 519/94 so as to phase out import quotas on certain Chinese non-textile products (footwear, ceramics and tableware) by 2005.

The Regulation also delegates to the Commission the responsibility of removing countries from the list of third countries covered by Regulation 519/94 when they become members of the WTO.

