10.3 If the aim is to keep public spending down to sustainable levels, the EU Member States must pool their efforts to implement care, accident prevention, monitoring and information exchange programmes, in order to forge closer and more effective links between working life and health.

10.4 Not all jobs are the same. Workforce ageing is also tied in with the fact that some jobs are more strenuous, risky or repetitive than others: the effects of age vary according to occupation. An older worker cannot perform physically demanding manual functions, but can more easily carry out office-based or mental tasks.

10.5 A longer working life consequently entails greater health problems for workers in strenuous occupations. This factor must be taken into account. If future plans revolve around a later retirement age in those sectors where it is possible, then major efforts will have to be made in the field of health care and health and safety at work.

Brussels, 14 March 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud

COM(2006) 254 final — 2006/0076 (COD)

(2007/C 161/02)

On 31 May 2006 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 February 2007. The rapporteur was Mr Iozia.

At its 434th plenary session held on 14 and 15 March 2007 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 97 votes to two with one abstention.

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee regrets that the Commission's initiatives intended to combat fiscal fraud have not yet been adequately backed up by cooperation from the Member States. It supports future initiatives in this regard and urges the Commission to make use of all the powers presently invested in the European institutions by the treaties.

1.2 The EESC considers the Commission's communication to be well-structured, taking a balanced view of the problems involved in tackling fiscal fraud and singling out stronger administrative cooperation between the Member States as the main means of countering the spread of fraud.

1.3 The Communication's practical response to the issue of relations with third countries is to propose a Community approach. The EESC agrees with the proposal.

1.4 The EESC supports the proposal to reconsider VAT — something it has itself advocated on previous occasions — believing that a think-tank should be formed to envisage replacing VAT, with the proviso that any new tax should not lead to increased payments by businesses or citizens.

1.5 The EESC recommends that the Commission make full use of OLAF's current powers, under which the European anti-fraud body holds important functions. The Commission must assess whether OLAF has adequate means to perform its official tasks.

1.6 The EESC views the proposal to ensure increasingly efficient cooperation between national anti-fraud bodies as an absolute priority. This could be achieved by setting up a network of police forces and investigative bodies, allowing them to share available databases, and it recommends that the technical and legal issues involved be carefully examined.

1.7 The proposal for a high-level forum on administrative cooperation is a step in the right direction. There can be no possible justification for the apparent bureaucratic resistance and obstacles to this idea.

1.8 The EESC believes it would be helpful to incorporate the achievements of some Member States into Community law, introducing the 'normal market value' criterion for anti-fraud purposes.

1.9 The EESC recommends a cautious approach to introducing joint liability between vendors and purchasers, but reversing the burden of proof in the case of apparently unjustified transactions, in the light of judgments by the Court of Justice.

1.10 The EESC feels that the Commission's proposal to introduce simplified requirements for operators who cooperate with the authorities and, by the same token, stricter controls and procedures for parties judged to be a risk, merits further consideration.

1.11 The EESC calls upon the Commission to continue funding Community programmes to promote activities in the field of the protection of the Community's financial interests, such as Hercule II.

1.12 The EESC recommends harmonising the provisions of Directive 77/799/EEC with existing provisions concerning indirect taxation as well as standardising the various VAT systems.

2. **Gist of the Communication**

2.1 The Commission communication proposes developing 'a strategy to improve the fight against fiscal fraud', noting that although the Community legal framework has been improved and consolidated, it is not sufficiently used and administrative cooperation is not commensurate with the size of intra-Community trade.

2.2 The Commission thus takes up a theme that has often been addressed, namely the need for closer administrative cooperation between the tax authorities of the Member States — an instrument for combating fiscal fraud and evasion, which can produce fiscal losses and cause distortions of competition, impairing the functioning of the internal market.

2.3 When the communication was presented, László Kovács — the commissioner responsible for taxation and customs union — stated: 'I firmly believe that it is time to look at new ways of effectively combating tax fraud. The scale of this phenomenon has become very worrying.'

2.4 Economists say that tax fraud accounts for a total of 2-2.5 % of GDP, or EUR 200 to 250 billion. So-called VAT carousel fraud is one of the biggest problems, but smuggling and counterfeiting of alcohol and tobacco, and fraud involving direct taxation are equally serious issues. Since 1993, the free movement of goods, services, people and capital within the internal market has made it more difficult for the Member States to combat tax fraud effectively on their own.

2.5 In the sphere of indirect taxes, Community standards lay down direct common rules for the Member States (uniform procedures, identification of the competent authorities, information provision arrangements) to facilitate administrative cooperation and information exchange.

2.6 The Commission identifies three priority areas for action:

2.6.1 Improving the functioning of cooperation

2.6.1.1 The Commission believes that tax fraud can be combated more effectively through:

— more efficient cooperation mechanisms. The absence of a Community administrative culture is an obstacle to the fight against tax fraud, and this absence is often tied in with language problems, lack of human resources or limited knowledge of cooperation procedures among staff. At operational level, these problems are reflected in the failure to meet deadlines for meeting requests for cooperation in the tax field from other Member States;

— reinforcement of legislation relating to cooperation on direct taxes and assistance in the collection of taxes;

— faster investigation procedures and better risk management, which would enable the Member States to be promptly informed about potential risks of fraud to which they might be subject, especially involving new foreign companies planning to set up for the first time on their territory;

— the setting up of a permanent forum on administrative cooperation at Community level for all direct and indirect taxes.

2.6.2 Increased cooperation with third countries

2.6.2.1 '… tax evasion does not stop at the external borders of the European Union.' The Commission proposes a Community approach to cooperation with third countries which, as it is at present based on bilateral agreements between individual countries, generates a range of situations which fraudsters can easily take advantage of. The Commission also proposes that tax cooperation clauses should be included in the economic partnership agreements that the Community concludes with its economic partners.

2.6.3 Modifying the common VAT system

2.6.3.1 The Commission opens the debate on the possibility of strengthening the principle of joint and several liability for the payment of VAT, subject to the principles of proportionality and legal certainty.

2.6.3.2 The Commission is also considering the possibility of extending application of the reverse charge mechanism — currently mandatory only for certain transactions, whereas for others it can be imposed more or less at the Member State's discretion — for transactions within a Member State. The Commission considers that any change to the prevailing VAT rules must substantially reduce the risk of fraud, exclude new risks and above all not create disproportionate red tape for companies and for authorities, and it must in addition ensure tax neutrality and non-discriminatory treatment of operators.

2.7 *Other innovative approaches*

2.7.1 The Commission also proposes that other specific measures should be considered, including:

— reinforcing tax declaration obligations for parties considered to represent a risk;

— lightening tax declaration obligations for companies that obtain an authorisation by entering into a partnership with tax administrations;

— the use of standard computer formats of high quality for rapid exchange of information.

3. **Community legal framework**

3.1 The Committee believes that the legal instruments provided by the present legislative framework are up to the task of combating tax fraud. There is, on the other hand, an urgent need to press the Member States to make wider use of existing instruments for administrative cooperation and to comply with the deadlines and procedures laid down. In a present-day climate of economic globalisation in which fraud is also taking on a transnational dimension, it is essential that requests for information be met as investigations are taking place.

3.2 In order, however, to have a more uniform system between the direct and indirect tax aspects, the Commission could harmonise the provisions of Directive 77/799/EEC in line with existing provisions concerning indirect taxation, and introduce more efficient methods for exchanging information given the opportunities offered by computer technology. It is also important to standardise the various VAT systems, with particular regard to the obligations of liable parties.

3.3 The Community legislative framework can be broadly divided into five basic types:

— Mutual assistance

— VAT cooperation

— Cooperation on excise duties

— Recovery of claims

— Fiscalis programme.

3.4 References to Community legislation, together with a brief summary of the relevant provisions, are set out in Appendix A.

4. **General comments**

4.1 The EESC believes that the increasing frequency of tax fraud should be combated more vigorously and laments the fact that Member States' action and their cooperation is considered by the Commission to be insufficient, despite a complex, well-structured legal framework.

4.2 The distorting effect of tax evasion and avoidance on the smooth functioning of the economy and the internal market is a serious issue which has hitherto been underestimated, as has the relationship between tax fraud, money laundering and economic crime. Indeed, fraud aimed at wrongfully obtaining national or EU financial aid is often carried out by means of false tax documents and, vice versa, the money gained from tax fraud, including in cross-border transactions, is often used for subsequent illegal or criminal acts.

4.3 With regard to tax avoidance — which, unlike tax evasion, involves practices which are not unlawful per se, but which are designed solely to obtain an undue tax saving — the Committee points out that national legislation has not dealt with this issue uniformly. To avoid the proliferation of administrative and social costs linked to inconsistent legislation, the Committee would welcome moves to harmonise national legislation in this area; a general anti-avoidance provision could be introduced, a common list of cases in which tax administrations can exercise repudiation — for tax purposes — of the legal effects of transactions where tax avoidance is deemed to have occurred.

4.4 The EESC believes that the Commission's proposals take a too cautious approach to the issue, considering the power conferred on the Commission by the Treaties to take all the necessary measures to secure the financial stability of the European institutions. Indeed, Council Decision 1999/468/EC of 28 June 1999 confers on the Commission substantial implementing powers. The Committee also points to the principle of subsidiarity — laid down under Article 5 of the Treaty of Rome — which stipulates that the Community shall also take action in areas which do not fall within its exclusive competence, whenever the objectives of the proposed action cannot be achieved by the Member States or rather, can be better achieved by the Community. The EESC calls upon the Commission to make full use of these powers.

4.5 As early as June 2001, with the Communication on *Tax policy in the European Union — Priorities for the years ahead* (COM(2001) 260 final), the Commission stressed the need to make use of all other available instruments, in addition to legislation, to achieve priorities. In that context, it was highlighted that decisions on tax policy had, and still have, to be adopted unanimously ([1]).

4.6 Even then, the EESC upheld the need to change the transitional system and introduce without delay the definitive system based on the principle of taxation in the country of origin. With some irony, the EESC wondered at that time: *'how many more years of the ramshackle transitional system will have to be endured before this objective can be attained?'*, calling for simplification and modernisation of rules, more uniform application of the rules and closer administrative cooperation. It would appear that no progress has been made.

4.7 The EESC upholds the general approach of strengthening cooperation by moving beyond the current VAT information exchange system — VIES — and developing measures for automatic or spontaneous information exchange between Member States.

4.8 The EESC welcomes the opening of the debate on changing the VAT system, but stresses the need for an in-depth impact assessment to be carried out, based on the assumption that any changes to the system should make it more effective and simpler and not serve to increase the tax burden on people and businesses. In this regard, the Committee would point to a proposal it made in a previous opinion ([2]) to consider an alternative to the VAT system, that would ensure a level of revenue at least equal to the current one but would be less costly to society and more efficient from the point of view of collection.

5. **Specific comments**

5.1 *Value added tax*

The current VAT system for intra-Community trade is based on the principle of applying tax in the receiving country, in order to ensure equal treatment of national products and products from other EU countries, by means of the mechanism whereby goods move between countries untaxed and are subsequently taxed in the receiving country at the same rate as for internal transactions.

Rather than applying the principle of taxation in the county of origin, this transitional system was introduced — on a temporary basis, however — because of the time needed to adopt a suitable structure to allow the correct redistribution between the Member States of the revenue collected, in proportion to consumption. Such a system cannot therefore be adopted until VAT rates have been harmonised, in order to avoid distorting competition.

5.1.1 VAT *carousel* fraud

The transitional system for intra-Community trade, while greatly freeing up the movement of goods, exposes individual Member States to losses deriving from tax evasion and fraud.

5.1.1.1 One type of VAT fraud with particularly serious consequences, in terms of amounts of tax evaded, and which is highly difficult to detect, is known as *carousel* fraud. It involves VAT avoidance systems, in which companies are created ad hoc to operate internationally. The aim is to avoid paying VAT due in order to allow the other links in the fraud chain to deduct fictitious tax payments and thus obtain a refund of the VAT or reduce the VAT due. To achieve this unlawful objective, the defaulting party generally does not operate or trade as a real business, and often its headquarters are nothing more than a post-office box. Such companies then disappear, after several months of *'trading'*, without producing the required tax return and paying the tax due, thus making detection very difficult for the tax authorities.

([1]) EESC opinion on *Tax policy in the European Union — Priorities for the years ahead* — OJ C 48, 21.2.2002, pp. 73–79.

([2]) EESC opinion on the *Proposal for a Council Directive amending Directive 77/388/EEC as regards the place of supply of services* — OJ C 117 of 30.4.2004, pp. 15-20.

5.1.1.2 The EESC believes that carousel fraud might have been made possible in particular by inadequate cooperation between Member States, as well as by differentiated rate systems. The EESC therefore suggests that all necessary forms of cooperation and intelligence exchange should be activated to combat the phenomenon effectively.

5.1.2 Administrative cooperation on VAT

5.1.2.1 VAT evasion has led Member State financial administrations to refine their investigative techniques more and more, with the aim of combating the phenomenon more effectively.

Administrative cooperation has a key role to play in combating VAT fraud, given that such fraud is committed by a chain of companies across the Member States.

By means of relevant treaty instruments, the Member States have established a system of information exchange which has proved useful for determining the status of taxpayers and for combating and curbing transnational tax fraud.

As regards cooperation, the EESC pointed out long ago the need for the Commission to play a more active role, and it therefore welcomes the creation of a monitoring system to verify the quantity and quality of assistance provided.

5.1.2.2 Information exchange is currently far from being standard practice, due to cultural differences, varying levels of computerisation and a lack of legislation to curb Member States' inertia. An EU-wide culture therefore needs to be created whereby it is accepted that cross-border information requests must not be considered an exceptional occurrence but rather standard practice within the investigative process, whenever relevant.

To this end, we must overcome the obstacles to an EU administrative culture, incentivising full use of the existing cooperation instruments, and compliance with deadlines and procedures laid down, so that investigative bodies can have the requested information in a timeframe conducive to their investigative work.

5.1.2.3 Furthermore, in line with the Commission's call for the use of standard computer formats for the exchange of information, the Committee would propose considering the case for creating a network for Member State police forces and investigative bodies involved in the fight against fraud. This could facilitate direct information exchange by means of a certified electronic mail system. Opening up access to Member States' tax return databases — as has happened with level 1 and 2 VIES data — should also be considered.

Such an initiative, which would, however, require prior agreement on the specific data to be included in such archives as well as its compatibility with national legislation on privacy, would be a real step forward in improving the fight against tax fraud, in that it would provide investigative bodies with the information they need directly, in real time and without excessive bureaucracy.

5.1.2.4 Also, although legislation on Member State information exchange is well-structured and generally satisfactory, the greatest obstacle to curbing tax evasion within the EU lies in the inconsistency of legislation across the Member States with regard to powers of inquiry, as well as the varying degrees of deterrence.

This means that fraud is particularly prevalent in countries where investigators' powers of inquiry are less pervasive or where penalties are insufficient to act as a deterrent.

5.1.2.5 Therefore, while respecting Member States' sovereignty, the Committee would advocate harmonising the penalties for fraud cases of comparable gravity, at EU level, as already envisaged, for example, in the fight against money laundering. This would prevent less stringent legislation or less efficient audit systems from effectively creating *safe havens* for the proceeds of criminal activity and for operating carousel fraud.

5.1.3 *Normal market value* as a criterion for determining the taxable amount for anti-fraud purposes

5.1.3.1 Measures to counter tax evasion must be in line with EU principles, including non-discrimination and proportionality, as the Court of Justice has often stressed. One of the areas in which the various systems vary greatly is in the use of criteria to determine the taxable amount which differ from the consideration agreed between the parties, not only in the case of goods for private consumption or for purposes other than those of the business, but also in all cases where there is considered to be a risk of fraud or tax evasion.

In this regard, the EESC points out that in all Member State systems the criterion for determining the taxable amount is largely based on the parties' willingness to negotiate and aims to ensure that the actual consideration is taxed given that the taxable amount is generally the contractual consideration agreed on for the goods or service rendered. Alongside this 'basic' *taxable amount* criterion, another factor used is *normal market value*, as a means of adjusting or re-establishing the taxable amount, under certain conditions.

5.1.3.2 The concept of normal market value for VAT purposes is practically the same in all Member States and is broadly in line with Directive 77/388/EEC of 17 May 1977 (Sixth Directive) which defines it as the average sum paid for the same kind of goods and services, in conditions of free competition and at the same stage of marketing, at the time and in the place that the goods or services were acquired or provided, or, if this is not possible, the time and place nearest thereto.

5.1.3.3 In all Member State systems, normal value represents an alternative method of determining the taxable amount:

— in cases where a monetary consideration is totally or partially lacking. Here, the normal value criterion allows the taxable amount to be quantified in monetary terms, while also having an anti-evasion function;

— in cases where the legislative authorities presume that there is a risk ([3]) of tax fraud.

5.1.3.4 In addition to these cases, there is also a derogation from the principle of determining the taxable amount based on the consideration in cases where:

— there is provision for regulatory or administrative authorities to fix minimum taxable amounts or amounts not lower than normal value with regard to certain goods or commercial sectors, particularly property sales;

— there are provisions that consider the normal value of goods and services as the taxable amount, when a unit price is paid for different goods and services;

— regulations which, despite the existence of a monetary consideration, consider the taxable amount as the normal value, import value or purchase cost, when there is interdependency between the parties;

— there is transfer or establishment of real or customary rights in property transactions.

5.1.3.5 In this regard, the Court of Justice ([4]) has ruled that national measures designed to prevent tax evasion or avoidance may not in principle derogate from the basis for charging VAT in accordance with the consideration agreed on, as laid down in Article 11, except within the limits strictly necessary for achieving that aim.

5.1.3.6 In other words, normal value is the reference point for detecting fraud. The taxable amount, based on the agreed consideration, if lower than the normal value, must not be substituted by the latter, but tax authorities may infer the existence of fraud by reversing the burden of proof.

5.1.4 Joint and several liability for the payment of VAT

5.1.4.1 With a view to curbing carousel fraud, provision has been made in some national legislation for the purchaser to be held jointly and severally liable for the payment of VAT which the supplier has failed to pay in the case of certain categories of goods, where the sale price is lower than the normal value.

5.1.4.1.1 These provisions derive from Article 21 of the Sixth Directive, which permits Member States to hold a person jointly and severally liable for paying VAT, other than the person directly liable, in accordance with the proportionality principle.

5.1.4.2 The motivation for doing this is based on the assumption that transactions for prices which are different from the market value may well be a front for a different, underlying situation involving fraud. Essentially, under the conditions laid down by the legislation, the purchaser is presumed to have acted in bad faith, when, given the price paid, the latter could not fail to be aware that fraud was taking place ([5]). The purchaser can be released from this presumption on production of documents proving that the below-normal-value price was determined by objectively demonstrable events or situations, or in accordance with legislation, and did not entail a failure to pay VAT, thus decreasing the joint and several liability arising from the supplier's failure to pay VAT.

([3]) The risk must be *real* and the fraud *proven* for the rule of law within the Community context to be upheld.

([4]) Judgments 324/82 and 131/91, on the sale of new and second-hand cars, and, more recently, judgment C-412/03 of 20 January 2005.

([5]) In this regard, the EESC would highlight Commission Communication 2004/260/EC of 16 April 2004, which, while welcoming the deterrent effect created in several Member States by the introduction of joint and several liability, referred to a system that would require complicity between supplier and purchaser to be proven.

5.1.4.3 The EESC shares the concerns expressed by many operators regarding the principle of joint and several liability and, in view of the Court of Justice judgment ([6]), believes that any measures taken should be limited to seeking guarantees of payment by those parties which are clearly identified as required to pay taxes. Provision could therefore be made for a purchaser to be jointly and severally liable with a supplier to pay tax where the sale price is lower than the normal value of the goods sold. It seems quite clear that, given such a strong provision, where the purchaser is penalised by being exposed to paying a tax which others are evading, the practical application of the rule needs to be limited to specific conditions:

— the transaction must be between taxable persons for the purposes of VAT, with the explicit exception of end consumers;

— the supplier has failed to make all or part of the VAT payments due;

— the goods being supplied must belong to one of the categories explicitly identified in the legislation;

— the goods must be supplied for a price which is lower than their normal value;

— the difference between the consideration agreed on and the normal value must not be justifiable by objectively demonstrable events or situations.

5.1.5 The EESC supports the possibility of extending the reverse charge mechanism to domestic transactions in Member States. In a recent opinion, the EESC stated this mechanism 'to be a tool that could be needed for preventing tax avoidance and evasion. It is particularly apt where the vendor is in financial difficulties' ([7]). The Commission itself extended optional application of the reverse charge mechanism after a successful experiment with construction materials and buildings services. Measures must not, however, jeopardise intra-Community trade in goods and services, where different invoicing requirements might compromise the effectiveness of the internal market.

5.2 *Direct taxation*

5.2.1 Fraud must also be combated from the more general angle of harmonisation of Member States' laws on direct taxation and investigation procedures.

5.2.1.1 Following the enlargement of the European Union to include more countries, the disparities between tax systems look set to influence, more and more, decisions on capital allocation in the various Member States and their respective arrangements for managing entrepreneurial activities. Indeed, a considerable degree of coordination of economic policy will enable Member States to use their respective tax regulations to influence decisions regarding localisation of investments and resources within the European Union. Nonetheless, the persisting significant disparities between Member States' direct taxation systems could, in some cases, create barriers to the market integration process ([8]), to the detriment of the competitiveness of the European economy.

5.2.2 The approximation of Member States' tax laws was discussed by the Commission in Communication COM(2003) 726 of 24.11.2003. However, as regards company tax, particularly the 'comprehensive' approaches facilitating the setting-up of a European company tax based on a common consolidated tax base ([9]), there are considerable difficulties in implementation due to the continuing disparities between the different Member States as regards tax base criteria. Moreover, the adoption of a common tax requires, in addition to a high level of convergence of economic policies, a proper legal framework. As things stand, Article 94 of the EC Treaty provides for the Council, acting unanimously on a proposal from the Commission, to issue directives for the approximation of such laws, regulations and administrative provisions of the Member States as directly affect the establishment of functioning of the common market.

5.2.3 This provision and Member States' continued sovereignty in taxation matters, which do not seem to further initiatives to create a common consolidated tax base for companies operating in the European Union, are still a substantial barrier to the approximation of company tax systems because of both enlargement to include more Member States, which makes it particularly difficult to achieve unanimity, and the fact that the final text of the Constitution for Europe fails to prescribe qualified majority voting for the adoption of laws or framework laws establishing measures in the field of company tax.

5.2.4 With a view to overcoming the unanimity rule, Commission Communication SEC(2005) 1785 of 23.12.2005 entitled *Tackling the corporation tax obstacles of small and medium-sized enterprises in the Internal Market. Outline of a possible Home State Taxation pilot scheme* is a tangible step towards actual harmonisation of company tax bases, providing an analysis of the pilot scheme Home State Taxation for small and medium-sized businesses ([10]). This study revealed that the 23 million small and medium-sized businesses in EU-25 account for most of the European economy — making up 99.8 % of all European

([6]) Cases C-354/03, C-355/03, C-484/03 and C-384/04.
([7]) OJ C 65 of 17 March 2006, pp. 0103-0104.
([8]) Cf. L. KOVÀCS, *The future of Europe and the role of taxation and customs policy*, in www.europa.eu.int/comm/commission_barroso/kovacs/speeches/speach_amcham.pdf.
([9]) EESC opinion on the *Creation of a common consolidated corporate tax base in the EU* — OJ C 88 of 11.4.2006, p. 48.
([10]) EESC opinion on *Tackling the corporation tax obstacles of small and medium-sized enterprises in the Internal Market — outline of a possible Home State Taxation pilot scheme* — OJ C 195 of 18.6.2006, p. 58.

businesses — and provide around 66 % of private employment ([11]). The actual adoption of this scheme would allow greater internationalisation of these businesses' activity, in that the compliance costs ([12]) borne by these businesses, which are much higher than those borne by larger businesses ([13]), would be lower, and the possibility of loss carry-over, which is the main obstacle to developing cross-border economic activities, would be greater, encouraging the approximation of Member States' laws on company taxation at Community level.

5.3 *Electronic commerce*

5.3.1 Growth and technological developments in electronic commerce are providing economic operators with new opportunities, but new trading methods require tax systems to adapt, particularly as regards aspects connected with the implementation of consumption taxes. Indeed, tax systems, which were previously governed by conventional trade rules, must take into account these changes and adapt to cater for the new forms of trade which are developing.

5.3.2 The main problem with taxation of electronic transactions concerns the possibility of discrimination arising from transactions being treated differently according to the medium of delivery of the goods being transacted.

5.3.2.1 When weighing up the possibilities of applying conventional principles of tax law to cases belonging to the electronic age, respect for the principle of neutral taxation must be ensured, preventing discriminatory treatment of similar transactions, which differ in the case in point only in the delivery method (on line or off line).

5.3.3 In particular, the greatest difficulties are related to the direct and indirect taxation of intangible (or digitised) goods, in that all stages of the commercial transaction (transfer and delivery) are carried out electronically (on-line trading) by means of the on-line supply of virtual products. Indeed, the services and goods are rendered intangible at the start by the supplier and rendered tangible by the recipient when they arrive. In this case, there is no physically tangible product which can be subject to a physical check, even for inspection purposes.

([11]) Source: European Commission, *SMEs in Europe 2003*, Observatory of European SMEs 2003/No 7, DG Enterprise Publications and European Commission (2003): *The impact of EU enlargement on European SMEs*, Observatory of European SMEs 2003/No 6, DG Enterprise Publications, in cooperation with Eurostat. Regarding the economic importance of small and medium-sized businesses in the European Union cf. European Commission Communication SEC(2005) 1785 of 23.12.2005, pp. 15-17.

([12]) The above-mentioned Communication SEC(2005) 1785 mentions compliance costs in legal and tax consultancy services, translation of documents, travel expenses and business and financial risks.

([13]) According to a European Association of Craft, Small and Medium-sized Enterprises press release published on 11.6.2004, referred to in the above-mentioned Communication SEC(2005) 1785, compliance costs for small and medium-sized businesses are up to 100 times higher than for large companies. Regarding methods of determining compliance costs cf. Commission Staff Working Paper SEC(2004) 1128 of 10.9.2004, European Tax Survey.

5.4 *OLAF's competences*

5.4.1 The EESC believes that the current Community legislation, which is the legal basis for the creation of OLAF, already assigns to this body major responsibilities, as specified by Article 2 of Commission Decision 1999/352/EC, ECSC, Euratom. The Commission is therefore asked to make every endeavour to ensure that its current powers are used in practice, if necessary giving OLAF further resources necessary for it to discharge its institutional role, for example, by using the model of Articles 81 and 86 of the EC Treaty, which regulate competition.

5.4.2 In this context, OLAF could serve as a body with analysis and coordination responsibilities at EU level in the area of combating tax and other fraud, with responsibilities and competences in the field of administrative cooperation related to taxation (direct and indirect taxation and excise duties), to facilitate the exchange of information between bodies required by individual national laws to actively combat tax fraud.

5.5 The development of intra-Community trade requires closer cooperation in the exchange of information on risk management. However, the Commission does not put forward specific initiatives, merely calling on the Member States to use the guide on risk management for tax administrations. On this point, the EESC suggests that a central database be set up to serve as a channel for the information being exchanged by administrations, which is currently only standardised in the field of customs and on a bilateral basis.

5.5.1 In this connection, types of products could be identified which — on the basis of the results of surveys carried out by the relevant bodies in the individual Member States — are more liable to be used for the purposes of carousel fraud. Motor vehicles and high-tech products such as IT tools and telephony products are examples of this. Responsibility for carrying out these analyses could be given to OLAF, which could periodically pass the results on to the Member States, to help them plan the next monitoring exercise and allow subsequent targeted operations. Moreover, a similar communication flow from the Member States to OLAF should be provided for and regulated.

5.6 The EESC believes that the possibility of a Community approach to relations with third countries would certainly be better than bilateral agreements. To this end, specific provisions could be included as part of the plans to approve the Community system of agreements for double taxation referred to in Commission Communications SEC(2001) No 1681 on *Company Taxation in the Internal Market* and COM(2003) No 726 on *An Internal Market without company tax obstacles — achievements, ongoing initiatives and remaining challenges*, also discussed by the European Parliament in Communication (SEC A5-0048) 2003. Support should be given to the idea of drawing up specific cooperation clauses, to be included in economic partnership agreements. However, in the absence of clear, decisive commitment from the Member States, it is still essential to continue along the road of bilateral agreements, i.e. not to stop processes currently underway.

5.7 The EESC considers that reinforcing tax declaration obligations, as proposed by the Commission, should be strictly in line with the proportionality and simplification principles. The necessary fight against fraud must not result in unnecessary burdens for the many honest taxpayers and businesses. To this end, the EESC advocates a substantial lightening of obligations for honest businesses which cooperate actively with the tax administrations, and an appropriate reinforcement of the obligations for those which, according to objective criteria, are considered to be a risk.

5.8 The EESC does not agree with the Commission's point on tax on tobacco and alcohol, which are treated as 'normal' commodities. Some Member States see the management of excise duty on tobacco and alcohol products as a solution to the associated health problems, which clearly has priority over the functioning of the single market. The Commission proposes to eliminate these distortions, but this will still take a long time, given the widely diverging income levels in the individual Member States and the different revenue and health policy objectives and measures of the individual Member States. Awaiting a reasonable degree of harmonisation of the tax rates, other solutions should be found to guarantee that the individual Member States fully preserve their ability to pursue their own fiscal and health policy objectives. It should however be borne in mind that tobacco smuggling is only to a very small extent generated by Community countries, being controlled by crime multinationals. While it is aware of the high social and health costs associated with abuse of these kinds of substances, and hopes that the appropriate bodies will adopt suitable measures to contain them, the EESC believes that excise duty on tobacco and alcohol must remain strictly the responsibility of Member States.

5.9 The EESC invites the Commission to continue with the Hercule II programme, calling for Parliament and the Council to swiftly adopt COM/2006/0339 final, which calls for the Community action programme to promote activities in the field of the protection of the Community's financial interests to be extended. The programme has already borne considerable fruit, with 19 training activities in which 2 236 people took part from the various Member States, five third countries and other European institutions, in the light, in particular, of the need for closer cooperation, given the accession to the EU of Romania and Bulgaria, which should also be able to benefit from these activities.

5.10 The EESC considers that it would be appropriate to set up an ongoing high-level forum for discussion and/or consultation, to ensure a more comprehensive approach to aspects of fraud and cooperation between Member States. The current scattering of consultation among a variety of high-level committees, subdivided by area of competence, prevents a useful exchange of good practice which would improve cooperation and the performance of administrations. The Committee considers the bureaucratic objections raised and the lack of direction in ECOFIN to be both incomprehensible and reprehensible.

Brussels, 15 March 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS