

Official Journal

of the European Union

C 133



English edition

Information and Notices

Volume 56

9 May 2013

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Price:
EUR 4

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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

487TH PLENARY SESSION HELD ON 13 AND 14 FEBRUARY 2013

Opinion of the European Economic and Social Committee on ‘Nautical industries: restructuring accelerated by the crisis’ (own-initiative opinion)

(2013/C 133/01)

Rapporteur: **Edgardo Maria IOZIA**Co-rapporteur: **Patrizio PESCI**

On 12 July 2012 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Nautical industries: restructuring accelerated by the crisis.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), the European Economic and Social Committee adopted the following opinion by 70 votes with 2 abstentions.

1. Conclusions and recommendations

1.1 Recreational water activities, i.e. the use for leisure of watercraft (sailing boats, motor boats, canoes, kayaks, or similar craft), or the many nautical activities (windsurfing and kite surfing, diving, recreational fishing, etc.), have been practiced in Europe by all social categories for decades. This is why boating in Europe is not seen just as a summer pastime, but also contributes to sporting, cultural, environmental and social values. In this sense, mass recreational boating activities in Europe have an important social function and support the values of the European Union.

1.2 Recreational boating teaches respect for nature, the value of team work, and responsibility, especially to the younger generations. It is an opportunity to socialise, practice an

enjoyable sport at a moderate cost, get to know new regions through nautical tourism, and access marine environments of high value. Boating has recently acquired a therapeutic function for people with disabilities who have lost their self-confidence, by helping them to reintegrate and regain faith in their abilities.

1.3 This opinion is based on the EESC's observation that, for the purposes of the nautical industry, the European single market is still imperfect. The public hearing held in October 2012 during the international boat show in Genoa (Italy), which was attended by representatives of the Commission, the European Parliament, the industry, its workers, consumers, universities and environmental associations, highlighted the many difficulties that still exist in the European market for

this sector. The EESC therefore calls on the Commission to consider the measures advocated in this opinion, which are needed in order to complete the single market and combat enduring national and international barriers and restrictions.

1.4 The European nautical industry's production has plummeted by some 40-60 %, depending on the country, during the crisis, leading to over 46 thousand job losses and a contraction of EUR 3 to 4,5 billion in the sector's total manufacturing turnover. Nevertheless, it remains the largest nautical industry at the international level, where US competition is weakening and emerging countries like Brazil, China and Turkey are gaining ground.

1.5 The EESC believes that it is vital not to lose this heritage of innovative skills capacity which has enabled businesses to hold their ground and increase their export orientation, but almost exclusively in the top-of-the-range segment.

1.6 The Mediterranean Sea accounts for over 70 % of the world's nautical tourism, which creates very significant spillover benefits for its coastal countries. This form of tourism is hampered by differing national laws in areas such as the registration of recreational craft, navigation licences and safety and tax measures, to mention the most important.

1.7 The EESC, while aware of the various sensitivities of the traditional maritime countries, advises the Commission to find shared solutions and argues that it is very much in the sector's interest to begin to see the direct and indirect non-discrimination principle, which governs the internal market, applied to the free movement of services and people.

1.8 Whereas safety and environmental requirements for the construction of recreational craft have been harmonised across Europe, the regulatory framework in Europe concerning the conditions for their recreational use (navigation licences, registration, safety rules and equipment, taxation, etc.) varies significantly from country to country. These national differences fragment the European single market creating confusion for economic operators and users, not to mention a certain form of unfair competition. The most flagrant example is undoubtedly the Mediterranean Sea, where nautical activities are regulated differently in each country, from Spain to Greece, via France, Italy, Slovenia and Croatia. Such differences in treatment do not exist for other forms of transport such as road, rail and air.

1.9 At the interesting hearing held during the Genoa international boat show, representatives of the industry's various

components, representatives of the industry's workers, and environmental associations were unanimous and forceful in their calls for appropriate EU initiatives to support the activities of the nautical industry.

1.10 In addition to representing a sector whose very survival depends on innovation and development, the nautical industry, unlike many other sectors, is not asking for extraordinary measures or financial assistance, but simply for initiatives and actions that will make a European single market a reality in this sector.

1.11 The EESC shares the nautical industry's concerns and calls on the Commission to combine the revision of Directive 94/25/EC on recreational craft of a maximum length of 24 metres with additional initiatives to be incorporated in a specific action plan. It would be very useful to draw up a Green Paper on the measures to be adopted for the nautical industry, involving all the parties concerned, so that an action plan could then be defined, which was consistent with the general principles of a new European industrial policy ⁽¹⁾ and a European policy for sustainable tourism ⁽²⁾.

1.12 More specifically, the EESC points to some issues that must be addressed and resolved.

- New rules on the **reciprocated** market access of EU products to their markets need to be negotiated with third countries, especially the United States, China and Brazil.
- Market surveillance should be stepped up to prevent recreational craft that do not comply with EU rules on noise and emissions from entering the EU market from third countries and creating unfair competition.
- Harmonised continuing vocational training needs to be promoted to ensure that acquired professional qualifications are recognised, thereby promoting labour mobility. The social stakeholders want a European skills passport for the industry.

⁽¹⁾ Communication from the Commission - A Stronger European Industry for Growth and Economic Recovery Industrial Policy Communication Update (COM(2012) 582 final).

⁽²⁾ Communication from the Commission - Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe (COM(2010) 352 final).

- A European databank needs to be set up on boating and nautical accidents to facilitate understanding of the risks associated with these activities and to adopt the appropriate safety regulations and standards.
- Harmonised safety regulations applicable throughout the EU should be adopted, especially for marine basins such as the Mediterranean Sea, the Baltic Sea and other European seas.
- A technical study should be commissioned to review the current system of boat design categories, as also requested by the European Parliament in connection with the revision of Directive 94/25/EC.
- It should be made easier for the nautical industries to access European research, development and innovation funds, just as it is for other transport modes.
- The adoption of international standards that are actually respected needs to be promoted. The United States, for instance, participates in developing ISO standards, but does not recognise them or use them at the national level, preferring US standards.
- Tax treatment in the area of nautical tourism needs to be harmonised within the internal market. Some Member States apply the reduced VAT rate for the hospitality industry to port tariffs and chartering whereas others apply standard VAT rates, with obvious unjustified disadvantages for national operators.
- The nautical sector needs to be made more attractive to the younger generations as an employment prospect, as well as for leisure and sport.

2. The European nautical industry

2.1 The European nautical industry currently comprises over 37 thousand businesses with 234 thousand direct employees, and generated an annual turnover of EUR 20 billion in 2011. Ninety-seven percent of these businesses are small and medium-sized enterprises; there are about ten - more structured - large groups. The economic and financial crisis of 2008/2009 caused sales and industrial production to plummet by an average of

about 40-60 % and all product segments were affected. Since 2009, the economic crisis has led to over 46 thousand job losses and a contraction of EUR 3 to 4,5 billion in the sector's total manufacturing turnover. In percentage terms, job losses in large firms and SMEs were on the same scale. The job losses and reduction in turnover have mainly occurred in the industrial section of the sector (i.e. boatyards and production of accessories and components). The services section (lease/charter of recreational craft, repair and maintenance, marinas and recreational ports), which had largely held out, began to feel the crisis this year. Although the crisis has profoundly changed the international context, Europe continues to lead the world market, whereas US competition has weakened and emerging countries such as Brazil, China and Turkey are gaining ground ⁽³⁾.

2.2 The sector's industrial activity covers the entire area of boatyard production, ranging from small craft to superyachts of over 100 metres. However, the nautical industry focuses more typically on the production of craft of a maximum length of 24 metres (the construction of which is covered by Directive 94/25/EC). These craft have various uses and include recreational craft, small non-recreational craft used by coast guards, the maritime police and customs; small passenger craft used in tourist and island areas; and specialist vessels. The industry produces equipment and components (engines and propulsion systems, deck equipment, electronics and navigation systems, sails, paintwork and internal fixtures and fittings), nautical accessories (safety equipment, textile products, etc.) and equipment for nautical sports (diving, wind surfing, kite surfing, canoe/kayaking, etc.).

2.3 The service sector is extremely diverse insofar as it covers the management and development of 4 500 European recreational ports and marinas (offering 1,75 million berths for a European fleet of 6.3 million craft), as well as marketing, maintenance, chartering, maritime leasing and river boat hire (with or without crew), nautical schools, maritime experts, and nautical financial and insurance services, etc.

2.4 There are over 48 million people in Europe who practice one or more nautical activities and 36 million of them use boats (motor or sail powered) ⁽⁴⁾. The profile of recreational boat users effectively mirrors the different social categories of each country. Despite an often unjustified media-generated image of nautical sports as exclusively luxury activities, they are not the reserve of a social elite. It is appropriate to speak above all of "mass recreational boating".

⁽³⁾ Statistical data is based on the statistics published by the International Council of Marine Industry Associations in the Annual ICOMIA Boating Industry Statistics Book (2007-2012).

⁽⁴⁾ Source – European Boating Industry, European Boating Association, ICOMIA Boating Industry Statistics Book.

2.5 Moreover, ageing trends among recreational boat users over the last decade show an increase in the average age of boat users, in line with European demographic trends, raising concerns for the nautical industry's future.

2.6 Over the years, nautical enterprises and sports federations in various European countries have organised events through their associations to offer young people nautical experience. These initiatives are designed to raise awareness of boating as a sport and tourist activity, as well as a source of career opportunities, offering apprenticeships, student work placements and traineeships with companies. These national initiatives could be taken up at the European level by holding joint initiatives to promote the nautical sector on the sidelines of events such as European Maritime Day, which is held on 20 May ⁽⁵⁾.

2.7 With a coastline of 66 thousand kilometres, Europe is the first international destination for recreational navigation. Nautical, usually marine, activities are also practiced across the continent, and have a strong presence in some countries, both along the 27 thousand kilometres of inland waterways and on lakes (Europe has over 128 lakes of more than 100 km²). In particular, the Mediterranean Sea alone accounts for 70 % of the world's nautical charter activities for all categories of watercraft length.

2.8 Europe's industry is open and competitive. About two-thirds of its production is traded within the internal market and it exports to traditional markets including the USA, Canada and Australia/New Zealand. Since the collapse in demand from these countries, the European industry has experienced a steady increase in its exports to emerging Asian (mainly China) and Latin American (mainly Brazil) markets, where demand is strong but the local authorities are interested in safeguarding and developing their own national industries. In Asia, red tape and importation procedures are discouraging, especially for European SMEs. The CE mark on European products is not generally recognised and boatyards have to supply their own technical dossier to obtain local type-approval, which presents serious problems with regard to protecting intellectual property

rights for Europe's nautical industry, imposing excessive costs on SMEs and prompting large companies to relocate.

3. Impact of EU legislation of the nautical industry

3.1 In 1994, the Directive on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft (Directive 94/25/EC) was adopted. This directive allowed the EU-level harmonisation of safety requirements for recreational craft of a minimum length of 2.5 m and a maximum length of 24 m. It was amended in 2003 (Directive 2003/44/EC) by adding new environmental requirements (e.g. lower exhaust and noise emissions of marine engines) and including personal watercraft (jet skis) in the directive's scope of application.

3.2 Over a period of 15 years, the application of this directive on recreational craft has determined the development of over 60 EN-ISO standards at the international level to be applied to such craft and personal watercraft. These standards, which originated in Europe, are now used as an international technical benchmark. Directive 94/25/EC has also made it possible to create a European single market for recreational craft, thereby facilitating the conditions for trade, competition and intra-European exchange. The EESC calls on the Commission to put forward coherent proposals to enable a European single market to be created so that uniform conditions for use and navigation can be established in Europe.

3.3 Directive 94/25/EC is currently under review and discussion between the European Parliament and the Council (proposal for a directive COM(2011) 456 final). The most significant changes concern a further reduction in exhaust emissions for marine engines, the requirement to install holding tanks or foul water treatment systems on board and alignment with the requirements of the new EU legal framework harmonising the marketing of products (Decision No 768/2008/EC and Regulation (EC) No 765/2008). The EESC issued an opinion in support of the proposal for a review ⁽⁶⁾.

⁽⁵⁾ The European Maritime Day 2013 Conference will focus on sustainable coastal and maritime tourism and will be held in Malta on 21-22 May, with the support of the European Commission (Maritime Affairs DG).

⁽⁶⁾ Opinion of the European Economic and Social Committee on the *Proposal for a Directive of the European Parliament and of the Council on Recreational Craft and Personal Watercraft* (COM(2011) 456 final - 2011/0197 (COD)), OJ C 43, 15.2.2012, p. 30.

3.4 The EESC believes that the new directive is an opportunity to review the current system for categorising recreational craft. The directive sets out four boat design categories, depending on their capacity to withstand specified marine weather conditions (wind force and wave height). The European Parliament has asked the Commission to carry out a technical study on the suitability and possibility of reviewing the current system of design categories to make it reflect the wide variety of recreational craft on the market and to provide users with more precise indications about the craft's characteristics. The European nautical industry and the European federation of users have both expressed their support for the EP's initiative (7). The EESC urges the Commission to take steps to carry out this study.

3.5 In the area of maritime transport, the European Commission has undertaken a revision of Directive 2009/45/EC on safety rules and standards for passenger ships of 24 metres in length and above, constructed in steel or equivalent, when engaged on domestic voyages. However, nowadays, most of these ships are built in materials other than steel (mainly in glass fibre and other composite materials) and are therefore subject to national legislation. The EESC believes that the proposal for a simplification of the directive, currently being prepared by the Commission, could extend the directive's scope of application to passenger ships of less than 24 metres in length, and/or constructed in materials other than steel or equivalent. It is important to make sure that extending its scope of application does not harm European boatyards that make small passenger boats.

4. The demand problem facing the nautical industry

4.1 Faced with a deep financial crisis with drastic economic consequences, the European nautical industry reacted promptly by taking the necessary measures to add new markets to its traditional ones (Europe, North America, Australia/New Zealand), by investing in new models and technologies in order to provide innovative products, lower production costs and safeguard its position as world market leader. Furthermore, current prices for these craft are more competitive than they used to be for consumers.

4.2 The problem of financing industrial production and the acquisition of craft has to be addressed, bearing in mind the difficulties posed by the European banking system. One of the financial crisis's consequences for the nautical industry is delayed demand, which is normal for non-essential goods. Furthermore, the banking system no longer accepts the value of recreational craft as security for financing, in case their value plummets. Another consequence of the financial crisis is the stagnation of the second-hand market, with bank-held recreational craft being sold off at very low prices. Leasing, which is very popular in the nautical sector, has also gone into crisis. The nautical industry is facing the same type of situation as other sectors, such as real estate in Spain.

4.3 Before the crisis, the traditional markets accounted for about 80 % of sales for the European nautical industry, and the emerging markets for the other 20 %. The 40-60 % slump in sales in the traditional markets, aggravated by their current stagnation, was only slightly compensated by the growth in sales to emerging markets. Furthermore, many boatyards that provide "entry level" recreational craft (e.g. floating and inflatable craft) are not finding new outlets in emerging markets, where there is no demand for this type of product (either because of the price or because boating has not yet caught on with the low- and middle-income segments in these countries). This means that the problem the European nautical industry has to cope with in these countries concerns demand rather than its competitiveness.

4.4 The legislative framework for recreational craft in Europe is largely regulated at the national level. Although the construction of recreational craft is harmonised at the EU level, the conditions of use (e.g. navigation licences, registration, safety equipment, taxation on the industry, etc.), vary considerably from country to country. The EESC believes that in this case the subsidiarity principle is undermining the development of a European single market.

4.5 Current market surveillance at the EU level is far from satisfactory. Many recreational craft that breach EU exhaust and noise emission standards are imported and sold in Europe without the market surveillance authorities monitoring the relevant importers, which creates unfair competition.

(7) European Parliament, DG for internal policies, Policy Dpt A-Economic & Scientific Policy: *Design Categories of Watercrafts*, Briefing Note, IP/A/IMCO/NT2012-07, PE 475.122 (June 2012) <http://www.europarl.europa.eu/committees/en/imco/studiesdownload.html?languageDocument=EN&file=74331>

4.6 The Commission should pay particular attention in its work to how industry and services develop in the recreational sector. Such development should be compatible with environmental and conservation principles, particularly in relation to preserving natural resources and ecosystems, combating noise pollution on inland waterways and pollution of water basins due to municipal and industrial waste, the safety of persons participating in various forms of water-based/water-related recreational activities, etc.

5. What can Europe do?

5.1 The EESC held a public hearing at the international boat show in Genoa (October 2012), where the high level of participation and expertise enabled it to take note of the views, problems and expectations of the various European nautical industry stakeholders.

5.2 The European nautical industry currently leads the world market despite the ongoing economic crisis, thanks to the innovations that businesses have always developed. Current difficulties in accessing financing through the banking system are jeopardising the ability of European businesses to invest in research, development and innovation. Innovation is still the strongest tool for maintaining the European nautical industry's leading position. Nautical firms need easier access to European research, development and innovation funds currently available to other transport modes, but to which the nautical industry has limited access. At the national level, tax exemptions for investments in research, development and innovation should be promoted. Innovation in the nautical sector is not just about technological innovation; it is also about innovative use, maintenance, servicing, and services such as chartering and nautical financing.

5.3 The situation in Europe regarding State concessions granted to nautical businesses is extremely varied. In some countries, investment in tourist ports is restricted by the conditions under which the concessions are granted (either for excessively limited periods, or with no guarantee of renewal). The EESC recommends drafting EU guidelines to facilitate investment in this sector by European businesses.

5.4 Under the Lisbon Treaty, tourism has become an EU competence and the EU can therefore propose initiatives. The Commission has announced that it will publish its coastal and maritime tourism strategy in 2013. This strategy should make it

possible to further extend the practice of recreational boating in Europe and to tackle a number of problems which this future document will identify, including differences in legislation on navigation licences, registration or even safety requirements, by introducing measures that align rules on recreational navigation in Europe.

5.5 The EESC is in favour of developing the growing number of protected marine areas in Europe, especially in the Mediterranean, but notes that this situation is causing uncertainty about navigation rules. The EESC advocates harmonising the rules for granting recreational craft access to these protected marine areas at the EU level so that users may know from the start whether or not their craft are equipped to navigate in these areas.

5.6 In order to improve safety, statistics on accidents could be collected in a common EU-level database to facilitate joint and comparative analysis and to improve our understanding of the risks associated with nautical activities, thereby enabling us to adopt rules that are more adapted to the risks identified. The EESC urges the Commission to provide a data collection model, agreed upon by the Member States, to obtain uniform and comparable statistics.

5.7 Furthermore, vocational training and recognition of relevant qualifications at the EU level is fundamental. Vocational training for the nautical occupations (especially in the industrial sector for apprentices and in services associated with repair and maintenance) is not available throughout Europe. There should be a debate on how to develop training plans recognised at the EU level, which would allow quality training and promote greater worker mobility in Europe, attracting young people to nautical careers. It would be advisable to adopt an EU training "passport", as in the case of mining engineers. The social partners should contribute to the development of a system for recognising qualifications at the EU level, for instance, through an ECVET pilot project (European Credit system for Vocational Education and Training)⁽⁸⁾. The training of crews and maritime expertise are another two areas that would also benefit from a European approach by opening up the labour market in the EU. In the past, the nautical industry has suffered from a low profile and lack of awareness in schools and universities of the jobs available in the sector, which means that little is known about possible career paths. In some European countries, the sector does not even have its own specific social agreements, which also makes it less attractive.

⁽⁸⁾ The European Credit system for Vocational Education and Training (ECVET) is the new European instrument to promote mutual trust and mobility in vocational education and training.

5.8 The nautical industry has been using ISO International Standards, harmonised under Directive 94/25/EC, for 15 years. It is essential for the use of international standards such as ISO to be promoted as the sole technical reference for recreational craft at the international level, in order to avoid the proliferation of national standards (Brazilian, Chinese, etc.), which could lead to the further fragmentation of technical requirements and constitute real barriers.

5.9 The EU can and should safeguard its nautical industry by improving and making direct and indirect market control and surveillance measures effective, and supporting access to non-EU markets for exports. Trade negotiations between the EU and Mercosur, for example, should be used as an opportunity to combat the protectionist measures and exorbitant customs duties imposed by some South American countries to limit access to their markets.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on ‘Sustainable growth business models, low-carbon economy and industrial change’ (own-initiative opinion)

(2013/C 133/02)

Rapporteur: **Mr van IERSEL**

Co-rapporteur: **Mr GIBELLIERI**

On 12 July 2012 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Sustainable growth business models, low-carbon economy and industrial change

(own-initiative opinion).

The Consultative Commission on Industrial Change (CCMI), which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), the European Economic and Social Committee adopted the following opinion by 57 votes to 4 with 3 abstentions.

1. Conclusions and recommendations

1.1 Times are hard for large parts of European industry. Nonetheless, an increasing number of companies in Europe and elsewhere in the world are preparing to meet the many challenges facing the world, including the impact of demographic developments, climate change and, in particular, sustainable low-carbon objectives.

1.2 The EESC wishes to highlight changes in mindsets that are paving the way to new or adjusted business models. Sustainability is a strategic issue in the World Business Council for Sustainable Development, in initiatives among companies at national level, and in the preparation of sectoral low-carbon roadmaps at EU level. Changes in the focus and structure of companies and in international value chains are bringing new business models into being.

1.3 One important element is a pro-active commitment by corporate leaders, which is also affecting downstream and upstream relations. A corresponding commitment and corresponding innovation are taking place at all levels, supported by interactive dialogue with works councils and specific programmes within companies, as well as by national and European sectoral social dialogue.

1.4 In the transition towards a low-carbon economy, up-to-date skills and the availability of highly-qualified jobs must be ensured so as to avoid, as far as possible, discontinuity or temporary unemployment. EU, national and regional

programmes should be put in place, as should tailor-made actions within companies.

1.5 New perspectives and new dynamics will improve the resilience of companies and value chains, ensuring investment and employment. A low-carbon economy requires continuous, finely tuned coordination between public and private parties, including financial arrangements. Public policies should take advantage of views and practices in the private sector and should incorporate targeted company-driven approaches, which are often ahead of government practices.

1.6 To support the growth initiative, the EESC calls on the EU and the Member States to consider using funding that is currently untapped, or even completely new, as a source for financing urgent measures. The Commission should stimulate R&D and innovation by giving priority to low-carbon initiatives in the forthcoming Horizon 2020 programme, which must absolutely not be cut. The Commission should also encourage the establishment of operational public-private partnerships (PPPs), in close cooperation with European Technology Platforms and industrial sectors that cover the whole innovation chain.

1.7 Consistency is crucial. The EESC underlines the need for a well-defined, coherent and long-term EU framework discussed with all stakeholders, the avoidance of overregulation, a strong link between R&D/innovation and energy/climate policy, and an effective energy infrastructure and storage capacities. Good practices and effective, jointly agreed schemes must be taken into consideration. Such an EU framework will also boost acceptance among the public and the people directly concerned.

1.8 The EU is responsible for roughly 10% of global greenhouse gas emissions. That percentage will fall to about 5% in 2040-2050. It is not disputed that the EU is taking the lead in global negotiations for a binding global climate change agreement. However, the EESC emphasises that distortions must be avoided. As long as there is no global level playing field in greenhouse gas reduction and CO₂ prices, imbalances between the EU and the rest of the world must be addressed by European measures for global sectors.

1.9 Latest developments are to be taken into consideration. The EESC advocates an up to date assessment of low carbon targets given a worrying shift in industrial activities towards third countries, notably the United States – based on their pragmatic and forward-looking energy policy, that turns out to be detrimental to European investments and jobs.

1.10 An open, learning society needs flexible forms of participation, rules and responsibilities. A new culture of innovation needs to be developed, based on the participation of the affected groups. It must aim for a basic consensus in society. It is important to have an in-depth understanding of the challenges and to recognise the fact that the complex problems that the world is facing can only be overcome through the interaction of industry, science, society and politics. All interested parties – companies and their staff, NGOs, social partners, suppliers and customers, and consumers – should be involved. Transparency should be ensured.

1.11 The EESC insists that the approaches highlighted in this opinion be integrated in the forthcoming industrial policy and in other relevant policies. Concerning climate policy and competitiveness the EU should closely cooperate with industry on solutions that take into account technical viability and economic feasibility of policies.

2. Introduction

2.1 Technology and innovation, globalised financial markets and trade, custom-made products, dynamic value chains, and recycling are key factors in today's economy.

2.2 In parallel, the growing world population, income spreads, and problems surrounding raw materials, water and food present additional challenges. Climate change, sustainable

development and energy – in terms of efficiency, low-carbon requirements, renewable energy and access to resources – are high on the international agenda. The new objectives have to be addressed in an uncertain climate, with low growth in Europe.

2.3 Multinational companies and their staff, as well as value chains downstream and upstream, are increasingly being confronted with the complexities of the current situation. European value chains are still among the world leaders. Their position must be secured.

2.4 This opinion discusses some current trends in mindsets and attitudes within sectors and companies that are paving the way for new business models. The huge challenges that we are facing can only be successfully met by both public and private approaches, involving jointly agreed analyses, fine-tuned coordination and initiatives to create growth and sustainable jobs. Public and private stakeholders need to work as partners on the way forward.

2.5 There is broad agreement that the increase in CO₂ emissions over many decades has caused significant greenhouse effects, including a rise in average temperatures, noticeable changes in weather patterns and additional unpredictable effects such as higher sea levels and changes in ecology and ecosystems that have a (negative) impact on agriculture, leading to disproportionate rises in food prices, hunger and poverty.

2.6 Climate change problems are intensifying ⁽¹⁾. However complicated it may be, the overall lesson is that worldwide targeting of CO₂ policies and low-carbon roadmaps is highly desirable.

2.7 Meanwhile, despite the lack of a stable long-term framework, many corporations are taking action to develop sustainable business strategies downstream and upstream and to produce more sustainable, low-carbon products and services. Major changes are also taking place due to restructuring, optimisation and redesign. A focus on low-carbon technology and innovation is crucial in order to find worldwide solutions.

⁽¹⁾ See the reports of the UN Intergovernmental Panel on Climate Change (IPCC). http://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml

2.8 Value chains remain a great socio-economic asset for Europe. Sustainable production can only be built on competitiveness, innovation, new skills and high-quality employment. Key enabling technologies, such as biotechnology, nanotechnology and new materials, are all the more necessary because rapidly falling communication and coordination costs are facilitating the geographical dispersion of different activities within value chains. Although this is not a linear process, it often entails the relocation of labour-intensive and digital-based activities.

2.9 The view is taking root in a growing number of companies that 'People, Planet, Profit' – a famous expression dating from the 1990s and now back in the spotlight – should be taken as a guideline, despite the often complicated dilemmas and conflicting choices. It should lead to a company-driven economic, social and environmental response to current global beliefs, developments and indicators.

2.10 A targeted company-driven approach, which is under way in a number of countries, will strengthen the position of companies based in Europe. It can be seen as a strategic approach for the future, committing CEOs and boards of directors, staff, suppliers and customers, trade unions and other social partners, and other stakeholders.

3. Analytical remarks

3.1 The one-time dominance of the Western world is being replaced by polycentrism, with a number of centres of gravity. Multinational companies are in many cases the link between the various centres. The situation in the world economy is constantly under pressure from varying (distorting) political and economic impulses.

3.2 The context is also affected by objectives in the field of climate change and energy. The United Nations, the OECD and the EU, as well as the private sector, draw up analyses and define desirable policies in response to these new challenges. It is up to the Commission and the Council to take the lead in setting the agenda, defining the rules of the game and creating the conditions for investment and innovation.

3.3 The Dow Jones Sustainability Index of 1999 and the Global Reporting Initiative are promoting 'sustainability' awareness, as are a broad range of other actors, including

leading companies and their staff, social partners and NGOs of all kinds. The World Business Council on Sustainable Development (WBCSD) in Geneva is an active business network that establishes the views of business in relation to worldwide negotiations on climate change. It is also taking the lead in developing new approaches for business and in bringing together multi-faceted projects among companies. Its major initiatives have included 'Vision 2050' in 2010, followed in 2012 by 'Changing Pace', which spells out the role of regulation in stimulating good business behaviour ⁽²⁾.

3.4 According to 'Changing Pace', governments have to make a clear choice between priorities and must set the rules that define those priorities in terms of objectives of growth and purchasing power and determine how to achieve the best results. The fundamental purpose for business is 'to provide continually improved goods and services for an increasing number of people, at prices they can afford, without unsustainable impacts, and in ways that create jobs and economic value' ⁽³⁾.

3.5 'Changing Pace' identifies medium- and long-term global megatrends and public policies and objectives, and then gives a business perspective on policy options. The chapter on 'People's values' also explicitly discusses responsible citizens and consumers.

3.6 There is a clear gap between the analyses that are generally accepted and the targets that governments actually achieve. The current crisis seems likely to overburden the European economy: many companies are having to adjust their production capacity to shrinking demand in the western world and, it appears, in China and India.

3.7 The EU is leading the way in tackling climate change and enhancing energy efficiency, by adopting the Kyoto protocol and implementing legal provisions. Meanwhile, other major actors in the world have not yet adopted comparable principles, let alone binding legislation. This unbalanced and unsatisfactory situation is continuing despite recent UN conferences. The lack of clarity for EU industry is feeding uncertainty and unrest among the workforce of the companies concerned. A well-coordinated and balanced approach, with coordination between public and private actors, is indispensable.

⁽²⁾ *Changing Pace, Public policy options to scale and accelerate business action towards Vision 2050*, 2012. <http://www.wbcd.org/changingpace.aspx>

⁽³⁾ Ibid. footnote 2.

3.8 Companies are currently rationalising. Although technology, innovation and strong value chains ensure good results, they are accompanied by damaging effects on companies and employment. Unemployment is at historic highs across Europe, with youth employment being a concern almost everywhere. There is an urgent need for new prospects.

3.9 The crisis in the European labour market is affecting the prospects for ambitious climate change policies. Extensive redundancies in industry and little or no access to the labour market for young people undermine the transfer of knowledge and expertise which are indispensable for the transition to a low-carbon economy.

3.10 On the other hand, widespread awareness of climate change and other challenges is creating new opportunities. European companies are progressively integrating this agenda into their strategies and trying to obtain competitive advantages. A similar development is also noticeable among leading companies in the US, Japan and even in emerging countries such as China. In many European companies there is a belief, from management to shop floor, that such adjustments will bear fruit, creating win-win situations. The most interesting results have been obtained with 'cradle-to-cradle' processes and with the development of a circular economy using scarce resources and materials.

3.11 In conclusion, the EESC insists on effective coordination of analyses, views and agenda-setting among public and private stakeholders. That is crucial at many levels – global, European, national and regional – to ensure that the European economy remains competitive, while at the same time ensuring sustainability and social innovation. The key lies in technology and fostering innovation, as well as in ensuring up-to-date competences, skills and management.

4. Business initiatives and practices

4.1 Sustainability targets are increasingly being incorporated by and within companies as part of company culture, CSR policies and risk-management processes. In the same way that, at global level, a number of leading companies have subscribed to the principles of 'Changing pace' ⁽⁴⁾, similar initiatives are being taken in Europe at sectoral and company level.

4.2 That trend is moving at various speeds within sectors and individual companies. It takes time and a great deal of

effort to introduce a new mindset that favours redefined targets, especially in a period of slow growth. Broader societal trends, as expressed by NGOs and critical consumers, also promote new approaches and methods.

4.3 That development is demonstrated in studies by the Commission and experts. Last year a report concluded that: 'The overall picture from the EU industrial eco-performance is one of a significant progress towards decoupling of economic growth and environmental impact over the last two decades, with greater sustainability and resource efficiency in industry playing an important role within this' ⁽⁵⁾.

4.4 With a view to building up companies' future resilience, CEOs and boards often commit themselves to such processes by taking direct responsibility, which ensures more structure and focus within companies. In the WBCSD network, personal commitment is current practice. That example is being followed by companies in individual countries. The link between business and sustainability is becoming more visible and tangible.

4.5 Many initiatives are being taken by European businesses to link environmental objectives to economic resilience. The process, which started in northern Europe, is intensifying and gradually spreading across the continent. Individual companies' aims are expressed in mission statements, projects and cooperation with academics, NGOs, social partners and others. National organisations include:

— The *Unternehmensnetzwerk: der Ulmer Initiativkreis Nachhaltige Wirtschaftsentwicklung* in Germany, established in 1992.

— *Entreprises pour l'Environnement* in France, the French partner in the WBCSD, consisting of 40 large companies; another initiative, in the framework of the *Mouvement des Entreprises de France* (MEDEF), concerns 250 companies undertaking commitments concerning Rio+20.

— A group of British companies is working in a similar vein as part of the Prince of Wales's *Accounting for Sustainability* project.

⁽⁴⁾ See footnotes 1, 2 and 3. The WBCSD has 200 members, of which roughly 100 are European companies.

⁽⁵⁾ See the Commission's brochure 'Sustainable Industry: Going for Growth & Resource Efficiency', July 2011. See also 'Study on the Competitiveness of European Companies and Resource Efficiency', July 2011, and 'Study on the Competitiveness of the EU eco-industry', September 2009.

- The *Dutch Sustainable Growth Coalition*, established in 2012, involves seven leading companies in various business sectors, within the framework of the employers' association VNO-NCW. The coalition develops goals, practices and methods to work on long-term sustainable growth, including the downstream and upstream chain.
- The *UK Sustainable Investment and Finance Association* launched a recent initiative calling for long-term investment by companies and asset owners. The *Banking Environment Initiative Forum 2012*, the first annual conference for global banks and corporations working in sustainable investment, was held in London in November 2012.

4.6 There are still substantial differences in approach, which have to do with the stage of economic development and the degree to which national economies and R&D are linked to developments beyond the national and European context. In the foreseeable future, however, businesses across Europe will operate in the same worldwide framework, which will require similar attitudes and responses. Management, as well as education and training, will have to prepare for that reality.

4.7 Some common features can be identified:

- There are still few tangible results in international political negotiations, because of different political views, practices and socio-economic pressures. By contrast, new attitudes are taking hold in business circles, especially in the western world.
- There is a recent trend towards commitment at the top of companies and engaged leadership, leading to greater management focus. Sustainable solutions are becoming a higher priority in internal discussions and company procedures. This marks a new phase that entails adjustments in business models, training and career planning, and in the mindset of staff across companies.
- There is a shift towards more long-term approaches, without abandoning efficient short-term ones.
- Suppliers and customers are often part of the processes.
- Besides traditional stakeholders such as staff and social partners, discussions with NGOs are becoming more frequent, and customers are becoming a more critical factor.

- More attention is being given to vocational and life-long training as well as to learning in universities and business schools. Young employees are attracted by this new outlook, which also facilitates access to the labour market.
- These trends must be seen in the light of the public objectives that have been established for sustainability and European competitiveness.

5. Sustainable low-carbon strategies

5.1 Low-carbon strategies will play a central role in promoting sustainable growth. They are linked to EU industrial policy.

5.2 European industry currently has to respond to a broad and complex mix of policy targets and instruments at European, national and even local level, focusing on CO₂-emission reduction, renewable energy and energy efficiency. Targets and instruments are sometimes ambiguous, overlapping, and not properly integrated. In order to be effective and cost-efficient, industry needs more simple, predictable and integrated policies.

5.3 The transition towards a sustainable low-carbon economy has been moving forward mainly because of efforts to reduce costs, following the rise in oil and energy prices that occurred before the appearance of an environmental protection culture driven by the consequences (actual or expected) of climate change induced by greenhouse gas emissions.

5.4 In the EESC's view, a coherent and consistent EU framework for more secure, competitive and low-carbon energy supply, implemented consistently in the Member States, should consist of four main pillars:

- a coherent energy and climate policy for sectors covered by an emissions trading system (ETS) that is based on scientifically proven outcomes;
- taking advantage of the potential contribution of non-ETS sectors;
- a stronger link between R&D and innovation on the one hand and energy/climate policy on the other; and

- energy infrastructure and regulations that enable efficient transportation of energy and intelligent use of energy grids, together with up-to-date storage capacities and flexible demand control.

5.5 The EU ETS will be the central EU policy instrument to achieve greenhouse gas emission reduction targets in a harmonised and cost-effective manner. It should be implemented in a market-based way. The EESC notes that there are three crucial issues that have yet to be dealt with:

- the ETS should provide long-term investment stability for companies, which is not the case at present;
- costly and damaging overregulation in Europe must be avoided in favour of fine-tuned coordination between public and private actors; and
- the ETS should take into account variations in the competitive positions of companies and sectors. This issue will become even more critical once more challenging targets are put in place and if other world players prove unwilling or unable to develop or implement sustainable low-carbon objectives. Isolated European approaches that are counterproductive for investments and employment in global sectors must be avoided.

5.6 In addition, there is broad agreement that substantial upfront investment is needed in public infrastructure, i.e. in the European energy grid. A commitment by public actors to provide the initial investment and boost confidence among private investors will be crucial. This should be discussed in the Council and be part of the EU growth initiative.

5.7 That should also mitigate a noticeable trend towards the relocation of certain European industrial activities to other regions of the world, despite the fact that the Europe 2020 strategy and its implementation take the risk of carbon leakage into account.

5.8 Any proposal for structural improvement of the ETS should address the issues mentioned in points 5.4 and 5.5.

The current debate on the adjustment of the ETS is insufficiently focused on solving those issues or on changing the design of the ETS. From 2020 onwards, adjusted orientations should result in a stable CO₂ price, on the basis of which market participants should be able to plan long-term investment decisions for low-carbon solutions. Improving the design of the ETS would avoid the need for short-term political intervention.

5.9 Improvement of the design of the ETS is also needed to increase its acceptance by the public and workers. While some 'traditional' workplaces are expected to disappear quickly, new 'green' low-carbon workplaces are not yet properly in place. Excessively abrupt changes mean that the transition to a low-carbon economy is often experienced as a threat in traditional production areas. Social dialogue at various levels is needed in order to promote transparency and acceptance by the people concerned, and to initiate education and retraining programmes for all workers to bring their skills into line with changing demands on the labour market.

5.10 The most important need is for a new R&D and innovation policy focused on value creation in complex (international) value chains that aim towards a low-carbon economy. The current technological orientation has to be broadened. Climate change, an emerging shortage of strategic resources and consequent price increases are enforcing a change of thinking in the energy and raw materials sector. Catch-up processes in emerging and developing countries, including technology transfer, must also be taken into account. The demand for resources is rising, while restructuring energy systems and increasing resource efficiency are risky and very costly. Success will also depend on different, closely interlocking industries and fields of competence. All these factors urgently require a coherent technological pathway in the EU ⁽⁶⁾, supported by consistent political decision-making.

5.11 Integrated approaches go beyond the production phase and aim to improve environmental performance at each stage of the life cycle, i.e. design, raw materials, assembly, distribution, and disposal. Integrated product policies must be discussed between public and private actors. They must be precisely defined in order to avoid overregulation. Among the tools available, where appropriate, are agreements between producers and governments or the EU concerning eco-labels, energy labelling, eco-design, substance bans and ecological footprint labels. To be effective, labels should contain adequate and reliable consumer information, including under the Unfair Commercial Practices Directive, which should be properly implemented.

⁽⁶⁾ First and foremost Framework Programme 8.

5.12 Significant expenditure on basic and applied R&D is also a necessary condition for achieving the goal of a secure, globally competitive, reasonably priced and efficient energy supply for Europe, guaranteed by an efficient energy infrastructure and corresponding regulations ⁽⁷⁾.

5.13 Systems innovation across sectoral boundaries and integrated value-creating chains affect companies, given that fossil-based world energy systems must be decarbonised in the long run and shortages of raw materials will require a resource-saving economy. Step by step, sustainability is asserting itself in all markets, a development that blurs traditional boundaries between sectors and gives rise to new value creation chains.

5.14 The current debate is also encouraging an increasing number of bottom-up initiatives within companies. Large companies and SMEs alike are developing low-carbon business strategies and models for the whole value chain. Anticipating future energy requirements will also yield competitive advantages. That requires appropriate legislation. Internal generation of innovative ideas and innovation processes for production and organisation, from top management to the shop floor, are becoming standard practice in many companies.

5.15 Examples include the following:

5.15.1 Given that the built environment accounts for a significant proportion of final energy demand, consumption of fossil energy sources can be substantially reduced in a cost-effective way by improving the energy performance of existing and new buildings, including by means of insulation and improved heating techniques. Other examples are projects by companies and municipalities to produce transport infrastructure and the transport of locally produced sustainable energy. These aspects and their specific context will be covered in a separate EESC opinion ⁽⁸⁾.

5.15.2 The Euracoal association proposes a three-step clean coal strategy that reflects the findings of the Energy Roadmap 2050 and involves: the introduction of state-of-the-art technology in the coal-fired generation sector, thus reducing emissions; the development of next generation, high-efficiency, flexible technologies; and the demonstration and deployment of CO₂ capture and storage (CCS) and transport, together with

CCS for other fuels and sectors. There is scope to improve the opportunities to export clean coal technologies from the EU.

5.15.3 Forest-based industries, which are based on renewable raw materials and which use inherently renewable energy, are very pro-active. To be successful, a sector-specific policy package, including R&D, is essential to bring breakthrough technologies and new products to market. The right balance between raw materials and energy use of raw materials must be established. Policies must be consistent with global developments, other policy areas and industry investment cycles.

5.15.4 Cross-cutting initiatives are under way. Public-private partnerships (PPPs) such as Sustainable Process Industry through Resource and Energy Efficiency (SPIRE) and Energy Materials Industrial Research Initiative (EMIRI), to name but two, should be guaranteed high priority and adequate funding under Horizon 2020.

5.16 At this very moment, at EU level, a number of other sectors are developing long-term low-carbon roadmaps.

5.17 A transition to a bio-economy for Europe will also be part of the solution and will represent an important development in building a low-carbon economy. Companies are coming up with new bio-based products and solutions that meet rising expectations and specifications.

6. EU, governments, stakeholders

6.1 Processes such as those described above must be effectively accompanied by, and embedded in, technological, economic and social frameworks and conditions. Those include targeted research and investment programmes in companies and fine-tuned dialogue, at both sector and company level, with public authorities – EU and national – and a range of stakeholders.

6.2 To support the growth initiative, the EU and the Member States should consider using funding that is currently untapped, or even completely new, as a source for financing urgent measures. FP7 and 8 should promote breakthrough technologies and innovative projects. The EIB should also play a supporting role. In addition, the EESC recommends discussing tax breaks as a possible instrument in this respect.

⁽⁷⁾ See above, point 5.4, fourth bullet point.

⁽⁸⁾ CCMI/106 on the Commission Communication on the sustainable competitiveness of the construction industry.

6.3 EU technological platforms, most of which are industry-driven, bring together companies, research institutes and academics as well as public views on prospective developments⁽⁹⁾. They have a crucial role in analysing world trends and expectations and in jointly setting goals and time-scales.

6.4 Setting market objectives implies discussion and testing with suppliers and customers as well as with stakeholders such as social partners, NGOs, regional authorities and consumers. The EU and governments are responsible for legislation and regulation, but this should never be a one-way street. Instead, it should be linked to feasible roadmaps and ongoing processes and planning in leading companies⁽¹⁰⁾. That requires a continuous exchange of analyses and testing of views between the public and the private sector.

6.5 The political discussion often focuses primarily on top-down initiatives by the EU (or governments) related to climate change, demographic development, health, food, water, etc. without acknowledging the current situation in business. The EESC calls for the inclusion of analyses and solutions from private industries that share the same concerns. It is private investment, supported by a qualified workforce, that will be particularly necessary to address the main problems.

6.6 Social objectives within companies and the need to maintain employee commitment must be integrated into the

modernisation processes. The EU and Member States should, via the sectoral and cross-sectoral social dialogue committees, promote and implement measures to support socially acceptable management of the transition to a low-carbon economy. Besides emphasis on the skills needed by workers and employees⁽¹¹⁾, the quantitative aspects and timescales must also be taken into consideration.

6.7 Updated curricula, education and training programmes and apprenticeships can reflect the shared commitment in this respect of governments/administrations, companies, staff and workers' representatives to overcome historically high levels of unemployment.

6.8 A major, if not decisive, aspect is a worldwide level playing field, for instance via global standards and certification, transparent legislation, symmetric market access, protection of intellectual property and similar levels of consumer protection. Basic labour rights should also be respected. Those aspects should be an integral part of European trade policy⁽¹²⁾.

6.9 The EESC believes that all actors should take note of the process by which companies and groups of companies are introducing self-imposed requirements and procedures, since achieving the desired goals in a timely fashion can involve a very heavy burden.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁹⁾ See *inter alia* EESC opinion on 'European Technology Platforms and industrial change', OJ C 299/12, 4.10.2012, p. 12.

⁽¹⁰⁾ See *inter alia* EESC opinion on *Industrial change to build sustainable Energy Intensive Industries (EIIs) facing the resource efficiency objective of the Europe 2020 strategy*, OJ C 43, 15.2.2012, p. 1; EESC opinion on *Promoting sustainable green jobs for the EU energy and climate package* OJ C 44, 11.2.2011, p. 110; EESC opinion on *Energy Efficiency Plan 2011* OJ C 318, 29.10.2011, p. 155.

⁽¹¹⁾ EESC opinion on the Commission flagship initiative: *An agenda for new skills and jobs: A European contribution towards full employment* COM(2010) 682 final, OJ C 318, 29.10.2011, p. 142.

⁽¹²⁾ EESC opinion on *The external dimension of European industrial policy – is the EU's trade policy really taking the interests of European industry into account?*, OJ C 218, 23.7.2011, p. 25.

Opinion of the European Economic and Social Committee on ‘The current state of commercial relations between food suppliers and the large retail sector’ (own-initiative opinion)

(2013/C 133/03)

Rapporteur: **Mr ŠARMÍR**

On 12 July 2012, the European Economic and Social Committee, acting under Rule 29A of the Implementing Provisions of its Rules of Procedure, decided to draw up an own-initiative opinion on

The current state of commercial relations between food suppliers and the large retail sector.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), the European Economic and Social Committee adopted the following opinion by 79 votes to 6 with 2 abstentions.

1. Conclusions and recommendations

1.1 The EESC notes that large retailers constitute an oligopoly in every country. According to statistics on market share, a handful of retailers control most of the market everywhere. The EESC believes that this oligopolistic position gives its member companies an enormous amount of bargaining power over their suppliers. As a result, they are able to impose trading terms on their suppliers which are far from balanced.

1.2 The EESC points out that the companies that form this oligopoly are only in competition with one another in relation to their customers. They compete with one another to win over new customers yet competition with regard to their suppliers is scarcely apparent. Competition between large retailers over customers, however, focuses primarily on retail prices and does not take sufficient account of the various social and environmental aspects comprised by all-round quality ⁽¹⁾.

1.3 The EESC notes that there is much obscurity regarding price formation and the profit margins of the various market players. The supplier rebates used by the large retail sector mean that the purchase price paid to suppliers does not reflect the actual revenues they receive for their products.

1.4 The EESC is convinced that if a contractual party can impose its own terms on its business partners there is no contractual freedom. The abusive and anti-competition practices which large retailers apply towards their food suppliers demonstrate a lack of any real contractual freedom. Abusive practices inflict damage not only on producers but on consumers too (especially over the long term). The extent of

abusive practice is currently such that it is damaging to the public interest in general and to the economic interests of the Member States in particular.

1.5 According to the EESC, particularly worrying abusive practices only occur in relations between large retailers and their food suppliers. They are not applied by the food industry towards farmers or by the large retail sector towards suppliers of non-food products.

1.6 The EESC notes that the efforts of farmers and processing companies in certain Member States to set up groups of producers have been penalised by national competition authorities who have assessed the importance of these groups based on national production alone.

1.7 The EESC notes the failure of the market as the situation continues to deteriorate in a system that is insufficiently regulated.

1.8 In the EESC's opinion, self-regulation does not provide a sufficient antidote to the distortions observed. 'Codes of practice' will not re-introduce any balance into the commercial relations in question. The very nature of such abusive practices both requires and justifies a law to prohibit them.

1.9 The EESC calls on the European Commission to begin addressing the issue of oligopolies, to examine their real power and influence, identify to what extent their impact is comparable to that of monopolies and, consequently, modify the principles underlying the rules on competition appropriately.

⁽¹⁾ EESC opinion: *The Community agricultural model: production quality and communication with consumers as factors of competitiveness*. OJ C 18, 19.1.2011, pp. 5–10.

1.10 The EESC calls on the European Commission to join in recognising the lack of contractual freedom in relations between the large retail sector and food suppliers.

1.11 The EESC calls on the European Commission to put forward solutions to make the system more transparent. Ideally, this would involve placing the 'supplier rebates' applied by the large retail sector 'upstream' – i.e. forcing large retailers to include the cost of the various services invoiced to suppliers in the final price of the product. This would make it possible to see how much suppliers actually receive for their products.

1.12 The EESC calls on the European Commission to provide national competition authorities with clear instructions to ensure that they take full account of the relevant market when assessing the negotiating power of groups of producers. This should cover all food products from the same category which are available on the market of the country in question not only those food products that are manufactured in the given Member State.

1.13 The EESC urges the European Commission to abandon the principle of self-regulation and to propose a binding legal text to improve the situation in the agro-food chain by encouraging undistorted competition. The concept of regulation should not be based on the protection of competition but should allow the State whose economic interest is at stake to intervene as a plaintiff during administrative and legal proceedings.

1.14 Lastly, the EESC believes that there is a need to legislate towards a societal choice that looks beyond market forces, in order to curb the tendency for concentration within an increasingly powerful large retail sector and promote other forms of commerce such as small independent shops, local markets and direct sales from producer to consumer. In this context, the EESC calls on the Commission to place a particular emphasis on shorter supply chains in the documents under preparation on the fight against food waste.

2. Background

2.1 *Changing perceptions of the large retail sector*

The commercial relations between large retailers and the suppliers of food products is a subject that is generating an increasing amount of interest not to mention concern. However, 10 years ago, it was a taboo not only for the EU authorities and institutions but for most journalists as well ⁽²⁾.

⁽²⁾ One of the few experts at the time who dared to decry the abuses of the large retail sector was Christian Jacquiau, author of the book *Les coulisses de la grande distribution* and an article, published in *Le Monde diplomatique* (December 2002), under the headline '*Racket dans la grande distribution à la française*'.

This was the case despite the fact that the first attempts at legislation in this field in France date back to 1992 and that, as long ago as 1999 and 2000, the United Kingdom's Competition Commission carried out an investigation into the abuses of large retailers towards their food suppliers, which concluded that supermarkets were guilty of abusing their buyer power (this term essentially refers to the ability of a buyer to secure more favourable buying terms than would be possible in a fully competitive market ⁽³⁾). In general, the large retail sector was considered to provide a useful public service that benefited everybody and whose development was a measure of a country's economic health. The authorities and the media drew attention mainly to its unquestionable advantages, especially the fact that it allowed consumers to buy practically everything under one roof – and at competitive prices to boot – and to the facilities available (e.g. a sufficient number of parking spaces) and the services on offer. The situation has changed dramatically over the last five years or so and the European institutions have published numerous documents criticising this state of affairs.

2.2 *The oligopolistic position of the large retail sector*

2.2.1 The large retail sector began rapidly developing some 30 years ago and this evolution has been closely linked to the globalisation process. Indeed, the vast majority of the large retailers that currently control the retail market are multinational corporations. They are much better placed than SMEs to reap the benefits of the conditions afforded by globalisation.

2.2.2 The rapid growth of multinationals (including large retailers) often takes place at the expense of SMEs. In many sectors, the lion's share of any given market is controlled by just a handful of large multinational firms. Along with the large retail chains, this also applies to the pharmaceutical and food industries, seed companies ⁽⁴⁾, oil refining companies, the banking sector and so on. These multinational corporations are not monopolies; in most cases, they face competition from other multinationals, or even SMEs, on the same market and are not therefore considered to have a dominant position ⁽⁵⁾.

2.2.3 Europe's large retail companies are actively involved in conquering the global market. The British company Tesco, French retailers Auchan and Carrefour, German and Austrian multinationals such as Kaufland, Lidl, Metro or Billa, and the Dutch company Ahold, have all gained a foothold in numerous countries.

⁽³⁾ Consumers International, 'The relationship between supermarkets and suppliers: What are the implications for consumers?', 2012, p. 2.

⁽⁴⁾ In 2009, 80 % of the world's seed market was controlled by just 10 or so companies while 25 years previously, hundreds of companies were involved in selecting and selling seeds. The same is true for agro-chemical companies.

⁽⁵⁾ British Institute of International and Comparative Law, 'Models of Enforcement in Europe for Relations in the Food Supply Chain', 23 April 2012, p. 4.

2.2.4 The result of all this is that a handful of large retail companies have firm control over the retail food markets in a variety of countries. In Germany, for example, four companies control 85 % of the market; similarly, four large retailers control 76 % of the UK market. In Austria, three retailers control 82 % of the market, while in both France and the Netherlands 65 % of the market is controlled by five companies and so on ⁽⁶⁾. This reflects the fact that while no single retailer may officially be defined as having a dominant position, the lion's share of the market is controlled by three to five companies that represent an oligopoly.

2.2.5 There is no doubt that the members of these oligopolies compete with one another but only over their customers. Competition with regard to suppliers is scarcely apparent, especially where SMEs are concerned. Unlike their suppliers, who are far greater in number, the buyers (retailers) are spoiled for choice. In other words, the suppliers must make a huge effort and accept many concessions if they wish to deliver their products; the buyers, meanwhile select those suppliers who are the most 'flexible' about their terms and conditions.

2.2.5.1 Nonetheless, while producers are right to expect a faire share of the sales margin as part of a loyal and healthy commercial relationship with their distributors they must also be attentive to the signals they receive from them about the requirements of consumers. Producers who are able to innovate and adapt the preparation and presentation of their products to meet demand will have greater bargaining power.

2.3 Abusive practices

2.3.1 Thanks to their buyer power, large retailers are therefore able to impose their own terms, which are such that they often represent an abuse of buyer power. These contractual terms are also referred to as 'abusive practices' or 'unfair practices' and non-exhaustive lists of such practices have been drawn up on numerous occasions. As well as generating constant (downward) pressure on retail prices, late payments or excessively long payment deadlines, the use of such abusive practices by large multiples has completely changed the classic model of cooperation between suppliers and buyers. In simple terms, traditionally, the parties involved agreed on the volume and price of the goods to be delivered, and on other necessary terms and conditions, after which the supplier delivered the goods which were then paid for by the buyer. This model has been turned completely upside down with the advent of the large retailers. Today, suppliers – who receive less and less money for their products – are forced to pay more and more or to agree to other forms of compensation in return for access to the buyer's services. This means that those who should be receiving money are actually receiving invoices instead. It is

worth noting that the large retailers have successfully managed to impose this new model; it is now generally accepted and something that surprises nobody, least of all the competent authorities.

2.3.2 In general, the most common forms of abusive practice involve two aspects of buyer-supplier relations ⁽⁷⁾. The first involves the transfer – from the buyer to the supplier – of commercial costs, namely: promotional and marketing costs, store equipment costs, distribution and the management of individual stores. Retailers achieve this by imposing a variety of different payments on their suppliers such as listing fees or by charging for promotional leaflets. The second form of abusive practice involves large retailers passing on the cost of their business risk to their suppliers, which in practice means making retrospective changes to the agreed price based on how well the product in question sold to the customer. In this way, any differences compared with sales forecasts are borne by the supplier. This second objective is achieved thanks to a complicated system for establishing the final net price (various types of return bonus). These two mechanisms distort the simple business formula by which production costs are borne by the producer while the commercial costs are borne by the seller.

2.3.3 This new model for retailer-supplier relations was introduced on the pretext that there was a need for closer commercial cooperation in view of the increasingly tough competition in the retail sector. The large multiples' reasoning is as follows: it should be in the suppliers' interest to increase sales of their products and, for this very reason, it is absolutely right that they should participate financially in the commercial costs. Although this is by no means a vision that is shared by everybody, the suppliers are forced to accept these terms. However, the large retailers do not stop there and this form of wider commercial cooperation is subject to even more shocking forms of abuses. Either suppliers are overtly overcharged for services actually provided or the buyers invoice their suppliers for services that are purely fictitious. This last practice is referred to as 'unjustified invoicing or billing' as there is nothing in return. To take but a few examples, such invoices simply mention 'payment for stable cooperation', 'payment for issuing invoice', 'payment for settling invoice', or even 'contribution to the costs of the company party'. Incredible though it may sound, retailing multiples are known to have issued their food suppliers with invoices containing all of these headings and more.

2.3.3.1 Members of France's National Assembly have identified more than 500 reasons used by central purchasing departments to extract such additional benefits from their suppliers ⁽⁸⁾.

⁽⁶⁾ Consumers International, 'The relationship between supermarkets and suppliers: What are the implications for consumers?', 2012, p. 5.

⁽⁷⁾ British Institute of International and Comparative Law, 'Models of Enforcement in Europe for Relations in the Food Supply Chain', 23 April 2012, p. 4.

⁽⁸⁾ Christian Jacquiau, *Racket dans la grande distribution à la française* in *Le Monde diplomatique*, December 2002, pp. 4 and 5.

2.3.3.2 According to the Confederation of the Food and Drink Industries of the EU (FoodDrinkEurope) and the European Brands Association (AIM), 84 % of European suppliers to the large retail sector were victims of breach of contract in 2009; 77 % were threatened with product delisting unless they gave the supermarkets unjustified benefits; 63 % saw a reduction in their invoice price for no valid commercial reason; 60 % were forced to make payments for which there was nothing in return.

2.3.4 The 'supplier rebates' for which the large retail sector invoices its suppliers have made the pricing system completely unfathomable. Neither suppliers nor external observers are capable of identifying the actual purchase price. Business practices based on the 'double profit margin' technique are causing serious problems for both consumers and suppliers⁽⁹⁾. A more transparent system should be imposed.

2.4 Absence of genuine contractual freedom

2.4.1 The suppliers accept this particularly harmful system because they have no other choice. They cannot bypass the large retail sector if they wish to sell their products and, for this very reason, they continue to sign sales contracts so long as such cooperation provides at least a minimal profit margin. In reality, the abusive practices employed by the various large multiple retailers are practically identical; it is therefore impossible to determine whether it is more profitable to cooperate with one supermarket chain over another. A climate of fear – the fear of product delisting – pervades commercial relations, a fact that has even been recognised in official documents⁽¹⁰⁾.

2.4.2 The use of abusive contractual conditions is generally considered to be unethical. However, in the light of the practices outlined above, this term is clearly inadequate. In cases where the terms of business are dictated by one party that is strong and another that is unable to refuse them in practice, it is more appropriate to use the terms blackmail or extortion instead. Furthermore, given these circumstances it is also inappropriate to talk about contractual freedom, a concept that the retailers and competent authorities refer to so readily. Just as contractual freedom cannot be assumed to exist in relations between natural monopolies (electricity or gas suppliers) and the final customers, it would be equally misleading to describe the relations between the large retail sector and food suppliers in this manner.

⁽⁹⁾ EESC opinion *A better functioning food supply chain in Europe*, OJ C 48, 15.2.2011, pp. 145–149.

⁽¹⁰⁾ For example, the Commission report COM(2010) 355 final, *Towards more efficient and fairer retail services in the internal market for 2020*, p. 8; British Institute of International and Comparative Law, 'Models of Enforcement in Europe for Relations in the Food Supply Chain', 23 April 2012, p. 3.

2.5 Impact of abusive practices and victim identification

2.5.1 The use of abusive practices by large retailers is not only damaging for suppliers but for consumers as well. It can often put suppliers, especially small and medium-sized producers, in very difficult situations financially, which can lead to companies closing, something which occurs from time to time. The large food companies usually cope much better with this situation as they can offset the lower revenue on their products by delivering in huge volumes. Furthermore, these multinational food companies also enjoy substantial negotiating power: large retailers cannot survive without their products and, consequently, they cannot treat them in the same way as they treat SMEs. As a result, in France, for example, a group of 20 or so multinationals accounts for between 70 and 80 % of the turnover of large retailers⁽¹¹⁾.

2.5.2 For consumers – the main beneficiaries of the system according to the authorities – the reality is much less rosy than we are made to believe. Several factors suggest that the use of abusive practices towards suppliers can also have a negative impact on consumers. On the one hand, consumers do not always benefit from the low purchase price⁽¹²⁾ and, on the other, choice is becoming increasingly limited, there are fewer innovations, the quality of a large number of food products is falling due to the constant downward pressure on purchase prices and, last, retail prices are also on the rise⁽¹³⁾.

2.5.2.1 Large retailers have also had quite an important social impact, as the way in which they operate has shattered a number of taboos. For example, Sundays are no longer as sacred as they once were, as hypermarkets and supermarkets are now open seven days a week or even 24 hours a day, with all the effects on working conditions that this entails.

2.5.3 The phenomenon of large retailers affects many other suppliers outside the food sector. Nonetheless, it is primarily food producers who are the victims of abusive practices.

⁽¹¹⁾ Sgheri Marie-Sandrine, *La machine à broyer des PME* in *Le Point*, Paris, No 1957 of 18 March 2010, pp. 88–89.

⁽¹²⁾ For example, during the milk crisis in 2009, supermarkets continued to sell milk to their customers at the same price as before the crisis despite the significant fall in the purchase price paid to producers.

⁽¹³⁾ Consumers International, *The relationship between supermarkets and suppliers: What are the implications for consumers?*, 2012, p. 12, but also EESC opinion, OJ C 225 of 14.10.2005, p. 48.

There are undoubtedly many reasons for this. One is certainly the fact that there is a wider range of outlets for manufacturers of non-food products. Alongside large retail stores, producers of clothing, household appliances, books or sports equipment are all catered to by chains of specialist shops. There is therefore good reason to focus specifically on relations between large multiple retailers and food suppliers.

2.5.4 These abusive practices are also much less evident in relations between farmers and the food industry even though companies from this sector also have major 'buyer power'. While price negotiations can often be very tough, food companies do not usually ask their suppliers to contribute for instance to the purchase of a new bottling line, unlike large retailers, who systematically demand that their suppliers make payments relating to the modernisation of their stores or the opening of new ones.

2.5.5 In short, most of the above abusive practices exist only in relations between supermarkets and food suppliers. However, given the impact of these practices and the extent to which they are being applied, they are also creating a third victim: the economic interest of the State. The inability of certain suppliers to meet the requirements of large retailers and the resulting economic difficulties are contributing to the decline of the agro-food sector in several countries. Certain Member States, which were once self-sufficient in terms of foodstuffs, have lost their food security in this manner, which represents a particularly dangerous situation today.

2.6 Possible solutions

2.6.1 For some time now, the abusive practices employed by large retailers towards their suppliers have received an increasing amount of criticism from the authorities of both individual Member States and the EU institutions. The first such highly critical document was adopted by the European Economic and Social Committee in 2005⁽¹⁴⁾. Yet it was above all a Written Declaration from the Members of the European Parliament⁽¹⁵⁾, signed by a majority of MEPs in January 2008, that launched a real debate on this matter. The declaration was followed up by numerous documents and studies published by the Commission, the Parliament and the EESC⁽¹⁶⁾.

⁽¹⁴⁾ EESC opinion *The large retail sector – trends and impacts on farmers and consumers*, OJ C 255, 14.10.2005, pp. 44–49.

⁽¹⁵⁾ Written Declaration No 0088/2007 on investigating and remedying the abuse of power by large supermarkets operating in the European Union.

⁽¹⁶⁾ EESC opinion *A better functioning food supply chain in Europe*, OJ C 48, 15.2.2011, pp. 145–149.

2.6.1.1 The European Competition Network (ECN), which groups together the European Commission and the national competition authorities of the 27 Member States, published a report which follows up the Commission's Communication on *A better functioning food supply chain in Europe*. The communication called for a common approach among competition authorities within the European Competition Network to improve the detection of endemic problems specific to food markets and to swiftly coordinate future action. The Commission has set up the High Level Forum for a Better Functioning Food Supply Chain, which relies on the work of several platforms of experts, including one on business to business contractual practices, which is tasked with identifying the most appropriate method of avoiding disloyal practices. Once all the stakeholders in the agri-food chain had agreed on the basic principles, the platform was given a mandate to find a consensus on their implementation. The stakeholders have not yet managed to reach a satisfactory compromise in the form of a voluntary code.

2.6.2 The situation has become politically sensitive and the authorities are being urged to respond. Regulation by market forces alone, however, has failed and is today rarely seen as an ideal solution as, over recent decades, marked by a system of non-regulated commercial relations, the problems has continued to get worse. Among the possible solutions, calls are being made for regulation, self-regulation or the formation of groups of producers and processing companies whose combined strength can counterbalance the buyer power of large retail networks.

2.6.3 Codes of practice are a so-called 'soft' solution. They involve a voluntary commitment to refrain from using the practices in question. Self-regulation has been adopted in the UK, Spain and Belgium and the results have been neither satisfying nor particularly convincing. Not only are self-regulation success stories lacking, codes of practice also raise a number of philosophical questions e.g. what 'ethics' are at play in the case of a multinational company – those of the managers, the shareholders or perhaps those of society itself? The real masters of the multinationals are the shareholders, who are often anonymous, and for whom the ownership of shares is often a purely financial investment. They can hardly be said to bear any personal responsibility for the behaviour of a business or the use of abusive practices. It is therefore difficult to consider ethics as an apt reference point for large retailers.

2.6.4 Along with other authorities, the European Commission strongly recommends that farmers and small and medium-sized enterprises group together to increase their negotiating power during business meetings with buyers from large retail networks. However, these types of initiatives have been penalised by the national competition authorities of

a number of Member States where businesses have joined forces in this way on the pretext that such groupings constitute 'cartel agreements'. According to the local authorities, the market share controlled by these groups of producers was too large; nonetheless, they took only national production into account in their calculations to the exclusion of products sourced from other countries. For reasons that are hard to understand, the authorities in question do not usually take into account all products available on the national market when establishing the share of the market dominated by a given operator.

2.6.5 A number of Member States have made attempts at regulation, some bolder than others. Certain countries have prohibited the use of set practices (e.g. half of all EU Member States ban below-cost selling (dumping); others have adopted sector-specific legislation, as in the case of Hungary, Italy, the Czech Republic, Romania, Slovakia and Poland, or have adapted their standards, as in Latvia and France. In recent years, several countries have adopted laws suppressing the use of abusive practices by the large retail sector, in particular the former communist countries of Central and Eastern Europe. This is most probably due to the fact that the situation in this region is particularly worrying. Unlike Western Europe, the large retail sector of these countries is largely in the hands of foreign companies who have special contacts with suppliers in their own countries or in countries where they have been in business for longer. The result is the decline of the agro-food sectors of the countries in question.

2.6.6 It is true that it is far from simple to enforce these laws, especially as those suppliers who are victims of such abuse fear for their very existence if they do complain. In spite of this, such laws provide a more appropriate response than codes of practice. First, this is because such abusive practices are not only unethical but are also completely at odds with the fundamental principles of justice. Leaving aside the problem of enforcement, this argument alone is sufficient for prohibiting them by law. Second, this is because the legislative system has already yielded positive results in France ⁽¹⁷⁾.

2.6.7 The Commission recognises the existence of these problems but for the time being prefers self-regulation and criticises the fragmented nature of the European Judicial Area.

In reality, there is little compatibility between the laws adopted by individual Member States. Yet the only way of overcoming this fragmentation and this incompatibility is to adopt binding European rules. The EESC strongly recommends that the European Commission take the necessary steps in this direction. For practical reasons, it would seem appropriate not to base any possible European rules on the principle of protecting competition, as suppliers would consequently be required – in their capacity as victims – to confront large retailers in the courts. Following the French example, it is the State, whose economic interest is also at stake, which should act as plaintiff. This would make it possible to avoid the well-known problem whereby suppliers are afraid to press charges.

2.6.7.1 These rules should make it compulsory to draw up written contracts which stipulate the duration, quantity and nature of the product sold along with the price and terms and conditions for delivery and payment, failing which they will be considered null and void. Payment should be made within a legal deadline of 30 days for perishable goods and 60 days for all other goods, failing which a fine will be imposed. Most importantly, the following should be prohibited:

- the direct or indirect imposition of terms of purchase, sale or any other form of binding contractual terms, as well as extra-contractual and retroactive terms or conditions;
- the application of different conditions for equivalent services;
- situations where the conclusion or performance of contracts as well as the continuity and regular nature of business relations is subject to the performance of obligations that have no connection with the subject of the contract or the business relation in question;
- undue extraction of unilateral benefits that are unjustified in relation to the nature or scope of the business relations;
- any other form of unfair conduct with respect to the business relationship as a whole.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁷⁾ According to France's General Directorate for Competition Policy, Consumer Affairs and Fraud Control, the off-invoice discounts used by large retailers have fallen to a reasonable level.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

487TH PLENARY SESSION HELD ON 13 AND 14 FEBRUARY 2013

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: promoting the shared use of radio spectrum resources in the internal market’

COM(2012) 478 final

(2013/C 133/04)

Rapporteur: **Bernardo HERNÁNDEZ BATALLER**

On 3 December 2012 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Promoting the shared use of radio spectrum resources in the internal market

COM(2012) 478 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 89 votes with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's approach to promoting the shared use of radio spectrum resources in the internal market, since wireless connections are an increasingly important part of the economy.

1.2 The EESC hopes that European consumers will effectively prove to be the final beneficiaries of the entire strategy, reaping the advantages of all the progress made. It must be ensured that the use of allocated spectrum is maximised, with personal data being fully secured and private.

1.3 Any legislation adopted must guarantee a high level of protection for consumers, as well as economic, social and

territorial cohesion, in order to prevent the digital divide growing wider, with a two-speed information society.

1.4 Shared use of spectrum must be managed in order to generate to a high level of employment and enhanced competitiveness for the European economy, within a framework where there is no distortion of free competition. The opportunity should be taken to press ahead with research and innovative technologies. The Committee calls on the Commission, rather than promoting liberalisation of the spectrum, to ensure that greater competition among spectrum operators leads to net job creation. Consequently, in line with the EU 2020 Strategy, special attention should be paid to the situation facing States affected by the economic and fiscal crisis.

1.5 The EESC hopes that the Commission will adopt a recommendation on a common format for shared spectrum access rights and a common terminology for documenting sharing conditions and sharing rules.

2. Introduction

2.1 Spectrum is a key public resource for essential sectors and services, including mobile, wireless broadband and satellite communications, television and radio broadcasting, transport, radiolocation, and applications such as alarms, remote controls, hearing aids, microphones, and medical equipment.

2.2 It supports the smooth operation of public services such as security and safety services, including civil protection, and scientific activities, such as meteorology, Earth observation, radio astronomy and space research.

2.3 Easy spectrum access also plays a role in supplying electronic communications, especially for users and businesses located in less-populated or remote areas, such as rural areas or islands.

2.4 All regulatory measures on spectrum may therefore have economic, safety, health, public interest, cultural, scientific, social, environmental and technical implications.

2.5 In 2002 the Radio Spectrum Decision laid down a basic legislative framework for radio spectrum policy and was complemented in 2012 by the Decision establishing the multi-annual programme on this policy in the EU, on which the EESC previously issued an opinion.

2.6 The EU regulatory framework seeks to facilitate access to spectrum, based on the least onerous authorisation system possible. It favours the use of general authorisations, except where individual licences are clearly necessary. The framework is based on the principles of efficient use, effective management of spectrum, and technology and service neutrality. There is an adequate legal basis for the Commission to address spectrum management: the framework for electronic communications and the rules governing the internal market, transport, and against distortion of free competition.

2.7 As spectrum management is an essential pre-requisite for the digital single market, this initiative contributes directly to meeting the objectives of the Europe 2020 strategy. The

Commission seeks broad consensus on the proposed steps, in line with the Radio Spectrum Policy Programme, to foster the development of wireless innovations in the EU in order to ensure that the currently allocated spectrum is exploited to the fullest extent possible.

3. The communication from the Commission

3.1 The communication examines the drivers and enablers for the shared use of spectrum, such as wireless broadband, the wireless-connected society, and research and innovative technologies, highlighting that:

- Shared use of licensed or licence-exempt wireless broadband frequencies enables cost savings for mobile network operators, affordable internet connectivity and infrastructure sharing possibilities.
- The trend towards a connected society demonstrates the added value of low spectrum access barriers in licence-exempt shared bands as the breeding ground for wireless innovation that stimulates the development and deployment of more resilient wireless technologies.
- Research has enabled access to spectrum to be opened up on a shared basis while ensuring that primary services are protected. Cognitive radio technologies are developing today with the support of mandates for harmonised standards and trials in European research projects. More progress can be expected in the area of sensing and use of small cell base stations.

3.2 The communication addresses the challenges on the path to more shared use of spectrum, discussing the management of harmful interference in order to remove uncertainty, the creation of sufficient incentives and safeguards for all interested parties, and the capacity of licence-exempt bands.

3.2.1 Fostering more shared use of spectrum requires:

- engaging mutual responsibility of users over acceptable limits of interference and appropriate mitigation strategies;

- providing legal certainty on applicable rules and conditions, enforcement procedures as well as transparency about compatibility assumptions and protection rights;
- incentivising investments in improved technologies beneficial for incumbents and additional users, while safeguarding and fostering competition;
- identifying broad frequency channels for RLAN development as well as providing congestion forecasts to increase the predictability and reliability of the most important shared bands;
- ensuring that any transition from exclusive rights of use to shared use enhances competition from additional users and in particular does not create undue competitive advantages for current or future right-holders.

3.3 The Commission proposes to develop two tools to provide more, and more efficient, use of existing spectrum resources:

- an EU approach to identify beneficial sharing opportunities in harmonised or non-harmonised bands, and
- shared spectrum access rights as regulatory tools to authorise licensed sharing opportunities with guaranteed levels of protection against interference.

3.4 To the extent that technological advances enable more beneficial sharing opportunities (BSO) in the internal market, the Commission considers it necessary to promote investment and encourage spectrum users to make better use of their spectrum assets by defining, in close cooperation with the Member States, a process and key criteria at EU level to identify BSOs (e.g. in a recommendation).

3.5 According to the Commission, spectrum sharing contracts can provide users with greater legal certainty while creating market-based incentives, including financial compensation, to identify more BSOs in the internal market, if national regulatory authorities (NRAs) grant shared spectrum access rights to additional users of a frequency band.

3.6 The Commission proposes the following as the next steps:

- 1) identify BSOs in both licensed and licence-exempt frequency bands;
- 2) consider making sufficient licence-exempt spectrum, harmonised at EU level, available for wireless innovations;
- 3) define, in cooperation with Member States, a common path towards enabling more sharing possibilities, based on contractual agreements between users;
- 4) conclude contractual agreements between stakeholders, which would provide greater legal certainty for potential spectrum users.

4. General comments

4.1 The Committee welcomes the content of the communication from the Commission in that it entails commencing the process of discussion that is needed for the EU's regulatory framework to be brought into line in the future with the objectives of the multiannual Radio Spectrum Policy Programme (RSPP).

4.1.1 In this regard, the Commission looks at ways of alleviating the lack of spectrum and the high price of re-allocating spectrum to new uses that involve severe restrictions on the use of wireless connections, advocating substantial changes in spectrum management.

4.2 To remove current regulatory obstacles to deploying innovative radio access technologies and facilitate shared spectrum use, the Commission takes an all-embracing approach under which the NRAs, and arrangements between incumbent and new spectrum users, are to actively facilitate collective and shared use.

4.3 It also sets out to act on the basis of the existing EU regulatory framework for electronic communications, developing and implementing the principles of efficient use and effective management of spectrum as well as technology and service neutrality: the EESC considers this to be highly appropriate. In consequence, the Commission plans to make full use of its powers in this field, with the aim of improving and extending the use of radio spectrum as far as possible. This would be done by harnessing free competition and the alignment of the NRAs' criteria for authorising use, with a particular emphasis on access by means of shared licences.

4.4 The Committee would however underline a number of aspects concerning the content of the communication with a view to facilitating, as far as possible, the implementation of the future regulatory steps on radio spectrum so that they are based on solid principles and, in particular, the principles of democracy, transparency, respect for fundamental rights and the rights of consumers and users of electronic communications. In particular, consumers' and users' rights must be clearly protected against fraud, by setting criteria that facilitate a proper price, general access to spectrum and efficient complaint and compensation mechanisms. It must also be ensured that independent supervisors have the ability to settle transnational disputes over use of spectrum, avoiding harmful interference. The Commission should report periodically on the measures taken and targets achieved in relation to these rights and obligations.

4.5 The Committee calls on the Commission, with regard to the future implementation of the relevant regulatory framework, to draw up the most exhaustive possible list of 'regulatory barriers' to innovative radio spectrum access technologies.

4.6 The purpose is to avoid situations whereby, under cover of pretexts arising from false over-protection of users, the real aim – for reasons of nationality or other similar protectionist motives – is to prevent spectrum being opened up to the maximum. The integration of other users and innovative technologies should be facilitated. The European Economic and Social Committee considers that application of the Communication needs to result in a guarantee of greater access to the new technologies for people with disabilities.

4.7 This would also have the effect of boosting income from spectrum use fees, the benefits of which are obvious. It must however be emphasised that since spectrum is a finite physical space and the planned measures will increase user traffic, careful consideration will have to be given to a number of issues such as compensation for current licence holders, how to avoid spectrum paralysis or contraction due to overuse, how to ensure that innovative technologies are introduced, etc. Although the purpose of this opinion does not fully match a number of previous Committee opinions on the application of EU measures relating to technological change, such as the so-called digital dividend, for example, consideration should be given to the real impact of such measures, in order to rationalise the expectations created by the progress made on EU radio spectrum policy.

4.8 The Committee would however like the issue of individual licences by NRAs to be kept to a minimum, preferring far more open access provided that actual availability and

compliance with the established rights of spectrum users so permit. It therefore calls on NRAs to grant individual licences for use on a limited basis, and only on very solid grounds, in order to facilitate far wider access.

4.9 Among other important objectives, the communication also points to the need to narrow the technological gap between European and third-country manufacturers of electronic communication equipment, which is caused in part by the fragmentation of the current regulatory framework. The Committee calls on the European Commission to provide an impact assessment of the potential benefits of opening up the spectrum in terms of narrowing the digital divide between EU Member States. Consequently, the Committee favours an urgent adjustment of this framework, and has confidence in the Commission's regulatory capacity for this purpose by means of comitology procedures.

4.9.1 Furthermore, the Committee underlines the EU's firm commitment to fundamental rights, and urges that the Commission, when framing the relevant adjustment rules, exercise the utmost caution in order to safeguard these fundamental rights such as privacy, professional secrecy and the processing of data that may be stored by e-communication service providers.

4.9.2 It would also be advisable to establish an effective form of supervision over licence-free access by new users to bands, where such bands come to the fore on account of the added value generated by their technological innovations. This applies in particular if they interfere with the trouble-free use of spectrum by third parties whose entitlement to protection is not guaranteed by an NRA. The European Economic and Social Committee is concerned at the impact that this process of liberalisation could have on the implementation of the principle of access to services of general interest (police, ambulance and rescue services, etc.).

4.9.3 Similarly, the situation of users seeking access to spectrum and who provide a service of general interest must be examined in careful detail. If a supranational provision was made and possibly appropriate legislation adopted, they could be exempted from payment of financial compensation, or a purely symbolic amount set.

4.9.3.1 None of the above detracts from the obligation to promote general interest objectives, in keeping with EU law, particularly regarding the rules on content, audiovisual policy, and the right of the Member States to organise and use their radio spectrum for the purposes of public policy and public safety.

4.10 Concern for independence and legal certainty also prompts the EESC to suggest that the responsibility for supervising and reporting on shared use agreements between users and the compliance of such agreements with the rules of competition should lie with the NRAs and, where appropriate, with the Body of European Regulators for Electronic Communications (BEREC). This should apply when there is a need for strategic planning, coordination and harmonisation, particularly concerning the procedures for granting general authorisations or individual rights for the use of radio frequencies, when this is necessary to overcome barriers to the completion of the internal market.

4.11 The Commission, in cooperation with representatives of consumer associations and companies, should draw up a code of practice on supplying information at EU level on BSO applications and their outcomes. This would help spread transparent procedures and optimal management of existing resources in the 'spectrum inventory'.

4.12 Lastly, the Committee calls on the Commission to use the work carried out by the Radio Spectrum Policy Group

(RSPG) as a basis for drawing up an implementing act as set out in Article 291 of the Treaty on the Functioning of the European Union. This would help achieve the objectives in areas such as a common concept for shared access licences and the terms of the recommendations encouraging the use of common criteria for granting these licences in the EU, to facilitate their application in all Member States.

4.12.1 Among other significant aspects, this decision should include protection of the principles of free competition and protection of electronic communications users' safety and rights, with particular emphasis on bringing down the cost of payment for the services provided by the suppliers of such communications.

4.13 The Committee is convinced that any technological innovation potentially resulting from a greater number of spectrum operators should be able to benefit from financing under EU Funds, in order to help boost the use of technology in the EU's least developed States.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: making the internal energy market work'

COM(2012) 663 final

(2013/C 133/05)

Rapporteur: **Mr COULON**

On 15 November 2012, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Making the internal energy market work

COM(2012) 663 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 94 votes to 2 with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC views the internal energy market as an opportunity to make good use of the various energy choices made in Europe and to ensure that the system as a whole works as efficiently as possible (via interconnected infrastructure) in the interests of industrial and domestic consumers.

1.2 The EESC supports the Commission's approach in so far as it aims to eliminate measures that keep the end consumer from enjoying the benefits of various energy choices.

1.3 The entire system must be organised around consumers, and all the new functionalities linked to smart grids and smart meters must be designed with their interests in mind.

1.4 There is a definite information gap regarding the aims and methods of the internal energy market that can only be bridged by a major EU information campaign developed in cooperation with all civil society representatives.

1.5 Policies carried out in the EU must give priority to combating energy poverty/vulnerability. The EESC urges the Council and the Commission to place this subject at the top of the agenda for the May 2013 European energy summit.

2. The internal energy market: not yet complete

2.1 The European Commission communication rightly calls for an efficient internal energy market in order to reach the 2014 goal set in February 2011 by the EU Heads of State and Government; they stipulated that the internal energy market should be completed by then, giving all European consumers total freedom to choose their electricity or gas supplier.

2.2 Since 1996, a two-pronged principle has formed the basis for the construction of the internal electricity and gas market: all European consumers should be able to use the supplier of their choice (irrespective of the supplier's nationality) via an energy infrastructure no longer controlled by producers, and the sheer efficiency of this single market would have a beneficial effect on energy prices and send dynamic, relevant signals regarding the investments needed.

2.3 This ambition has not yet been achieved. In some countries, the internal energy market has led to more flexible choices for consumers and more competitive prices, softening the impact of price rises caused by the growing cost of primary energy. It has also helped roll out more fluid and transparent wholesale markets, thereby boosting security of supply in the EU. In most Member States, a key feature of developments in energy markets has been the shift from monopolies (national or regional) to oligopolies (still national or regional), with very low levels of interaction or competition.

2.4 The new tools (power exchanges, market coupling, etc.) account for a small percentage of total volume and the lion's share of exchanges is still organised mostly at national level. As regards electricity, competition in production is hypothetical in some countries: in eight out of 27 countries, 80 % of electricity production is in the hands of historical providers and given the dominant position (or even the exclusive position in certain countries) of national gas suppliers, the internal gas market is also still largely hypothetical.

2.5 The internal energy market therefore currently operates more as a hotchpotch of national practices, markets and providers, applying the various European regulations adopted over the past twenty years under the oversight of each country's regulatory authorities and the ACER, than as a single economic area that, through genuine competition, benefits European industry and consumers. However, national energy choices have an impact on energy prices in neighbouring countries and decisions in this field cannot be adopted unilaterally.

2.6 Prices are distorted by the addition of local or national taxes that are opaque, uneven and often excessive – in some cases they have shot up by 1 000 % in 15 years, heavily penalising domestic consumers and electricity-intensive industries. National policies promoting the development of renewable energy are not coordinated between countries and (insofar as these energy sources are unavoidable and have priority on the network) make a swift redesign of the European market imperative in order to avoid undermining the management of the European electricity system. For every type of energy, complete transparency regarding policies on subsidies (or exemptions) implemented in the Member States is essential to ensure that all market players behave fairly and that the EU's competition rules are complied with in the field of energy.

2.7 The widespread practice of national regulated prices does not provide the dynamic price signals that can encourage consumers to cut back on consumption and take control of their bills; nor does it guarantee that the real costs of energy supply and production will be covered, undermining energy companies' balance sheets and the investments (in production and networks) that will be needed over the coming decades.

2.8 Lastly, owing to a lack of teaching, information and transparency, the aims and methods of the internal energy market are still largely misunderstood by Europeans/European consumers. Although the domestic consumer market has in theory been open since 1 July 2007, the low percentage of changes in supplier in some EU countries is simply the result

of a chronic lack of information and communication by States, regulatory authorities and providers.

3. Priorities for the completion of the internal energy market

3.1 In view of the major challenges facing Europe (global economic crisis, climate change, securing energy supply, etc.), there is a need for more transparency, flexibility, energy exchange and interconnections between the Member States, in order to generate the obvious gains that are to be made in terms of efficiency and solidarity, and maximise the benefits of investments.

3.2 The EESC strongly supports the European Commission's initiatives and considers that completing a genuine common energy area for 500 million consumers is a crucial factor in renewed growth in Europe, above and beyond the establishment of a European energy community. The EESC considers that plentiful, shared and competitive energy is key to the development of the European economy and job creation therein. European industry needs competitive energy prices both to survive and to carry on growing.

3.3 With this goal in mind, it is important to check that in addition to the formal implementation of the regulations and directives adopted since December 1996, the spirit of the texts relating to the internal energy market is upheld and that the Member States encourage genuine competition at regional, national and European levels. The EESC supports the initiatives to remove obstacles to the use and efficiency of energy transport networks by speeding up standardisation, which is imperative for the large-scale development of renewable energy sources. It also endorses the development of energy interconnections and market coupling, as well as multilateral cooperation such as the establishment of Coreso (coordination of the electricity network in Western Europe), the first step towards a European electricity control centre.

3.4 The existence of administered prices, owing largely to national policy considerations, is part of a protectionist approach that goes against the EU's interests; it prevents the real cost of energy being factored into consumer behaviour and can be accepted only as a temporary measure for Member States wanting to use it. Price signals reflecting real cost developments (including CO₂) must be sent to consumers and investors so that they can make informed decisions on future choices. Energy prices linked to real costs are one factor in controlling consumption and driving the development of consumers who will need to be more active in the new model that is taking shape.

3.5 Steps must also be taken to clarify and rethink local and national energy taxation which varies widely across the EU. The burden of fees and VAT for electricity ranges from 4.7 % in the United Kingdom to 54.6 % in Denmark, without taking into account the energy content of the electricity generated. The EESC therefore endorses the Commission's initiatives promoting uniform, smarter energy taxation in Europe. If the 20/20/20 goals are to be met and CO₂ emissions cut by 80 % to 95 % by 2050, a common tax framework will need to be adopted, so as to organise the tax burden on renewable and fossil energies on an objective basis, factoring in the energy content and CO₂ emissions for each product.

3.6 Energy poverty/vulnerability affects 13 % of European households (i.e. 65 million Europeans) and cannot be separated from the development of the internal energy market. Competition, which is among its prime objectives, must always serve the interests of all the EU's consumers. This means that the market must be organised around consumers and a European definition of energy poverty developed with all speed; as in the case of European policy on regional aid, this definition should trigger national support policies. The EU must make a clear distinction between policies to combat energy poverty, which are both imperative and urgent, and protectionist pricing practices which go against the spirit of the internal market. The EESC suggests that the next European summit on energy, to be held in May 2013, should focus on this topic and lay the groundwork for a European public service for energy.

3.7 The EESC considers that education, information and transparency with regard to energy must be given priority⁽¹⁾ to enable consumers to make the best choices (in terms of value for money and energy efficiency) and to select the cheapest

providers. The EU should launch a major communication campaign on common issues, providing European consumers with straightforward, practical information.

3.8 The EESC considers that consumer engagement is a necessary prerequisite for the successful roll-out of smart meters, a system that could improve energy efficiency. However, there are still many unresolved issues such as whether the potential benefits outweigh the costs for consumers, as well as interoperability and data protection issues. It is in the interests of all energy users that these problems be solved as soon as possible.

3.9 Tomorrow's European energy market must no longer be steered solely by supply; it must also encourage a decrease in industrial and household consumption, capitalising on the new functionalities of smart grids and smart meters. The EESC is thus in favour of developing coordinated capacity mechanisms at European level, which will be able to smooth out peaks in consumption, to secure the functioning of European electricity systems (particularly during consumption peaks) and spur on a reduction in electricity consumption.

3.10 The EESC calls for a real European debate on the energy shift, the issues at stake, the associated costs and the way it will be organised between the Member States. Europe cannot be the sum of 27 self-interested energy policies. The EU must be able to gauge how choices made by one country will affect other countries. The involvement of civil society is crucial here, and the existence of the various forums is an advantage. A genuine European dialogue on energy must be established, bringing together all those concerned, particularly in the Member States, in tune with the European dimension.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ OJ C 191, 29.6.2012, p. 11-17.

Opinion of the European Economic and Social Committee on the ‘Proposal for a decision derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community’

COM(2012) 697 final — 2012/328 (COD)

(2013/C 133/06)

Rapporteur: **Mr PEZZINI**

On 5 December 2012, the Council decided to consult the European Economic and Social Committee, under Article 192(1) of the Treaty on the Functioning of the European Union, on the

Proposal for a Decision derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community

COM(2012) 697 final - 2012/328 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, appointed Mr Pezzini as rapporteur and adopted its opinion on 29 January 2013.

At its 487th plenary session, held on 13 and 14 February (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 136 votes with 3 abstentions.

1. Conclusions and recommendations

1.1 The Committee strongly reiterates the view it has put forward in other opinions: a global solution for emissions trading, accompanied by an operational Single European Sky and a set of rules in line with the goals set, is imperative for the fight against global climate change and the competitiveness of European aviation.

1.2 The Committee accordingly welcomes initiative, which provides for a moratorium on the application of the Emissions Trading Scheme (ETS) to airlines operating flights into and out of the European Economic Area, pending the completion of the global negotiations.

1.3 However, the Committee believes it is important that all regions of the world agree to limit emissions of CO₂ in intraregional flights.

1.4 The Committee highlights the risks for the competitiveness of European transport. During this moratorium, which will apply to the European Economic Area, passengers on flights within the EU will be taxed, while the remaining passengers will not.

1.5 The Committee therefore urges the Council and the Parliament, backed by the Commission, to push hard for a

rapid agreement based on a global approach; unfair penalisation or distortion of competition, resulting in lost competitiveness and jobs, must be avoided as this would be in complete contradiction with the universally-approved Europe 2020 strategy.

2. Introduction

2.1 European Directive 2008/101/EC, which brings aviation (including non-EU carriers) into the Emissions Trading Scheme (ETS) from 2012, was upheld by a recent Court of Justice ruling on an appeal by several North American airlines arguing that the EU rules violated various international agreements ⁽¹⁾.

2.2 The Court stated that ‘application of the emissions trading scheme to aviation infringes neither the principles of customary international law at issue nor the Open Skies Agreement’. European legislation is therefore in line with the objectives of the Kyoto Protocol, which included an agreement on greenhouse gases emitted by aircraft, within the UN’s **International Civil Aviation Organization** (ICAO).

2.3 In response to progress made in international negotiations and to generate support for them, the Commission intends as a *temporary measure* to exempt non-European flights from the **Emissions Trading Scheme**.

⁽¹⁾ EU Court of Justice, C-366/10 - Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change - Luxembourg, 21 December 2011.

2.4 The Emissions Trading Scheme currently **stipulates** that companies required to reduce their emissions are given **credits equivalent to the tons of CO₂** that they can emit, with the **allocation decreasing each year**. Companies which have exceeded their obligations in terms of cutting emissions are given credits which they can then sell on to companies which have not been as careful and so need extra credits. From 2012, the ETS directive was extended to include aviation and all flights to and from a European airport; emissions accounting and participation in the ETS became mandatory, with the deadline for the first surrender of allowances set for April 2013.

2.5 In order to smooth the way to a global agreement in the ICAO, it was necessary to approve a temporary derogation from the EU ETS directive, ensuring that action is not taken against aircraft operators which do not meet the directive's reporting and compliance obligations arising before 1 January 2014 in respect of flights to and from the EU, for activities whose point of destination or departure is a non-EU airport.

2.6 The proposed approach could however make European aviation less competitive than international aviation at a time of economic recession; freezing the ETS directive for a year pending an international agreement on air transport emissions (a global Market Based Mechanism - MBM) would not concern air transport within the EU.

2.7 In order to avoid such penalisation and distortion of competition, the Committee considers that this derogation should be strictly temporary and apply solely to aircraft operators that have either not received or have returned all free allowances which have been allocated in respect of such activities in 2012. For the same reason, these allowances should not be taken into account for the purposes of calculating entitlements.

3. The Commission proposal

3.1 The proposal for a decision aims to:

- 'stop the clock,' by temporarily deferring enforcement of the ETS obligations of aircraft operators in respect of flights into and out of the European Economic Area;

- ensure that action is not taken against aircraft operators which run flights into and out of the European Economic Area and which do not meet the reporting and compliance obligations arising before 1 January 2014 laid down by Directive 2008/101/EC;

- continue to apply ETS rules in full in respect of flights between airports in the European Economic Area as part of the shared commitment to tackle climate change.

3.2 The proposal also aims to avoid distortion of competition, applying this derogation solely to aircraft operators that have either not received or have returned all free allowances which have been allocated in respect of such activities in 2012.

4. Comments

4.1 The Committee has already stressed in a previous opinion that European aviation needs:

- a global solution for emissions trading,
- a Single European Sky which operates efficiently, and
- appropriate regulation.

'The creation of a Single European Sky is also essential to ensuring the competitiveness of the EU's aviation industry in the global market place' ⁽²⁾, taking into account the fact that the aviation industry is a key player in Europe's economy, carrying 748 million passengers each year, transporting over 11 million tons of goods, contributing 359 billion to GDP and employing over 5 million people.

4.2 The Committee therefore supports the decision to introduce a moratorium on the application of the ETS to airlines operating flights into and out of the European Economic Area until the global negotiations have been completed, but believes that all regions around the world have to agree to implement the ETS system even in their intraregional flights.

⁽²⁾ CES1391-2011, OJ C 376, 22.12.2011, p. 38.

4.3 The Committee underscores the potential risks to the competitiveness of European transport. While the moratorium on the ETS is in effect, passengers on flights within the EU will be taxed, in accordance with fair environmental requirements, unlike passengers from other countries.

4.4 In light of these considerations, the Committee calls for a rapid agreement based on a global approach, avoiding unfair penalisation and distortion of competition; failure to agree on a global solution for emissions trading would certainly handicap the European market, which would be the only one to apply such rules.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment’

COM(2012) 628 final — 2012/0297 (NLE)

(2013/C 133/07)

Rapporteur: **Mr ZBOŘIL**

On 19 November 2012 the European Parliament and on 16 November 2012 the Council decided to consult the European Economic and Social Committee, under Article 192(1) of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

COM(2012) 628 final – 2012/0297 (NLE).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 116 votes to 11 with 7 abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the contribution made by the EIA concept to improving the state of the environment in the Member States and the EU as a whole.

1.2 The efficacy of the process of making valid decisions on the environmental impact of a project depends to a large extent on the quality and independence of the EIA documentation and of the information used in it. When assessing that quality, the proportionality principle must be applied and quality must also be required of authorising bodies, following a constructive dialogue with civil society.

1.3 In the Committee's opinion, it is essential to point out that the costs involved – in terms of both money and, above all, time – could impede the projects of SMEs, especially when the proportionality principle is not respected in connection with the requirement for alternatives.

1.4 The EIA directive should be implemented flexibly and proportionately so that environmental authorisation and planning permission procedures can be combined for those projects where the environmental impacts are known or established beforehand as insignificant. The EESC welcomes and supports the steps taken by the Commission to improve legal certainty for those involved in the EIA process.

1.5 The EESC very much welcomes the proposal to specify the time-frames for the main stages required by the directive (public consultation, screening decision, and final EIA decision) and to introduce a mechanism to ensure harmonisation and coordination of EIA processes throughout the EU.

1.6 In the view of the Committee, monitoring should be imposed in the EIA decision only where justified and only to the extent absolutely required.

1.7 Regarding the proposal to include a provision on ‘adaptation of the EIA to new challenges’, the EESC takes the view that such an extension of the directive's scope must apply to any projects with an expected impact on the aspects of environmental protection that are under evaluation, with the proportionality principle playing an important role and the various preparation and implementation stages of the project being clearly distinguished.

1.8 The EESC supports the right of citizens to access information and to participate in the EIA process. At the same time, however, it calls for the procedural rules on the environmental impact assessment of projects to be framed in such a way as to avoid the provisions of the EIA directive being abused for corrupt ends and to draw out time-frames unduly. The EESC would like objections to be investigated reasonably quickly in the interests of all concerned.

2. The Commission document

2.1 Directive 2011/92/EU, which harmonised the principles for the environmental impact assessment of projects by introducing minimum requirements, contributes to a high level of protection of the environment and human health.

2.2 It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental assessment procedure, streamline the various steps of the procedure and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.

2.3 The measures taken to avoid, reduce and, if possible, offset significant adverse effects on the environment should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the Union's commitments in the context of the Convention and the objectives and actions of the Union Biodiversity Strategy up to 2020.

2.4 Climate change will continue to cause damage to the environment and compromise economic development. Accordingly, the environmental, social and economic resilience of the Union should be promoted so as to deal with climate change throughout the Union's territory in an efficient manner. Climate change adaptation and mitigation responses need to be addressed across many of the sectors of Union legislation.

2.5 When applying Directive 2011/92/EU, it is necessary to ensure a competitive business environment, especially for small and medium enterprises, in order to generate smart, sustainable and inclusive growth, in line with the objectives set out in the Commission's Communication entitled 'Europe 2020 – A strategy for smart, sustainable and inclusive growth'.

2.6 The environmental report of a project to be provided by the developer should include an assessment of reasonable alternatives relevant to the proposed project, including the likely evolution of the existing state of the environment without

implementation of the project (baseline scenario), as a means to improve quality of the assessment process and to allow integrating environmental considerations at an early stage in the project's design.

2.7 With a view to ensuring transparency and accountability, the competent authority should be required to substantiate its decision to grant development consent in respect of a project, indicating that it has taken into consideration the results of the consultations carried out and the relevant information gathered.

2.8 Time-frames for the various steps of the impact assessment of projects should be introduced to encourage more efficient decision-making and increase legal certainty, while taking into account the nature, complexity, location and size of the proposed project. Such time-frames should under no circumstances compromise high standards for the protection of the environment – particularly those resulting from other Union environmental legislation – effective public participation or access to justice.

3. General remarks

3.1 The Committee welcomes the contribution made by the EIA concept to improving the state of the environment in the Member States and the EU as a whole. This concept is a cross-cutting instrument of the environmental policy and legal system of the EU and the Member States and is the practical embodiment of the regulatory framework of that policy.

3.2 The Commission's proposal for further improvements to the environmental impact assessment system for projects draws on extensive experience with the use of EIA in the 27 years since the adoption of the first directive ⁽¹⁾. A public consultation exercise was also carried out, the results of which contributed to the formulation of the proposed changes and the adjustment of the provisions of the codified EIA directive 2011/92/EU ⁽²⁾, with a view to correcting shortcomings, reflecting ongoing environmental and socio-economic changes and challenges and aligning it with the principles of smart regulation.

⁽¹⁾ OJ L 175, 5.7.1985, p. 40-48.

⁽²⁾ OJ L 26, 28.1.2012, p. 1.

3.3 The efficacy of the process of making valid decisions on the environmental impact of a project depends to a large extent on the quality of the information used in the EIA documentation and the quality of the EIA process. Quality should be objectively defined and the requirements for quality should be determined in line with the proportionality principle – i.e., the quality and extent of information available at the stage of the zoning permit. In addition to the quality and independence of information, those managing the procedure – especially in the authorising bodies – should be required to have and to constantly improve the necessary competence. The EESC stresses that it would appear desirable to define the circumstances in which the public can call for a second opinion.

3.4 While there is no blanket approach that can be used, since it depends on the specific interaction between each proposed development and its environment, basic principles ensuring better quality data for establishing the baseline information, assessing potential impacts, alternatives and data quality more generally need to be strengthened. Flexibility in terms of the proportionality of requirements must play the deciding role in effective EIA procedures. This principle is also the fundamental prerequisite for improving its coherence with other EU legal instruments and for streamlining management so as to reduce unnecessary red tape.

3.5 Strengthening implementation needs to be a priority and should be governed by a common European framework. This should, however, provide the necessary flexibility and should be adapted, in particular, to the specific local and regional needs in terms of health and environmental protection. At the same time, when it comes to assessing cross-border impacts of projects, this framework must be well-defined and comprehensible enough to prevent non-legitimate interests coming into play.

3.6 Local, regional and national level assessments need to have access to good quality data at a strategic level so as to provide context for project specific assessments. Responsibility to collate such data and make it accessible to the assessment process for all sectors needs to be taken by state administration.

3.7 The EESC is glad that the Commission considered various alternatives for necessary changes to the EIA directive at the preparatory phase and that the proposal that was produced following comprehensive analyses was based on an alternative whose economic costs and environmental benefits were both proportionate, according to the impact assessment. Nevertheless, we think it essential to point out that the costs

involved for SMEs – in terms of both money and, above all, time – could prove to be a hindrance, especially the requirement for alternatives, the impact of which could even be fatal to the project.

3.8 The EIA directive should be implemented flexibly and proportionately so that environmental authorisation and planning permission procedures can be combined for those projects where the environmental impacts that are known or established beforehand are insignificant, to avoid introducing excessive and unnecessary delays throughout the whole chain of approval processes. This recommendation is all the more pressing now that trans-European networks that are essential for integration of the electricity and gas markets and for the development of transport infrastructure are being approved.

4. Specific comments

4.1 The EESC wholeheartedly welcomes the Commission's intention, by means of the proposed revision of the EIA directive, to improve the coherence of EU legislation by, among other things, tightening the definitions of key concepts where this is necessary. However, for any particular project the developer and the competent authority should assess and agree upon a list of appropriate information and selection criteria required for the EIA, on the basis of the proportionality principle.

4.2 We also welcome the proposal to specify the timeframes for the main stages required by the directive (public consultation, screening decision, and final EIA decision) and to introduce a mechanism, a kind of EIA one-stop shop to ensure coordination or joint operation of the EIA with the environmental assessments. It is counterproductive, however, to permit the competent authority to extend the 'basic' three-month deadline for carrying out the obligatory screening by a further three months. It is quite simply essential to harmonise the process throughout the EU and the time limit of at most three months plus one month for the competent authority to issue its findings is sufficient.

4.3 The EESC supports the proposal that in emergencies, Member States should be permitted not to use the EIA where this is necessary and justified. The Committee also welcomes the steps taken by the Commission to improve transparency and accountability, as well as the requirement for the competent authority to give a proper justification of its decision (whether positive or negative) on a particular project.

4.4 The EESC welcomes and supports the steps taken by the Commission to improve legal certainty for those involved in the EIA process. However, the Committee is convinced that, if this is to be achieved, binding time limits must be adopted not only for each individual step in the EIA process, but also for the completion of the entire process and the adoption of a decision on the proposed development. It is particularly vital to limit the risk of abuse in the constituent parts of the EIA process, which unduly delays decisions, reducing legal certainty for those involved in the process.

4.5 The EESC recommends a very cautious approach when it comes to the use of alternatives, a subject that has been repeatedly discussed in many places. There is clearly a justification and logic to the 'baseline scenario', particularly for investment in redevelopment. The number of alternatives and the detail in which they are conceived should match the scale and nature of the project and be agreed in advance with the competent authority.

4.6 Specific areas requiring attention for strengthening implementation include:

- ensuring biodiversity impacts do not fall through the screening process. Often biodiversity impacts are cumulative and missed on account of scale, though the impact may be significant;
- ensure public participation which happens early in the EIA process;
- clarify processes for incorporation of views and expertise of third parties;
- ensure independence and quality of environmental statements and assessments;
- assessment and clarified process for cases where proposed mitigation does not work and there were significant adverse environmental impacts occur;
- ensure that proposed mitigation measures are actually carried out.

4.7 A further problem is the monitoring requirement: the EESC believes that monitoring should be imposed in the EIA decision only in justified cases and only to the extent absolutely necessary to track key influencing factors during the construction phase of a project in line with Article 8(2) of the proposed amendment. This is because the current IPPC legislation lays down monitoring requirements once the project or installation is operational and these provisions remain in force in, for example, the industrial emissions directive.

4.8 Regarding the proposal to include a provision on 'adaptation of the EIA to new challenges', the EESC takes the view that such an extension of the directive's scope must apply to any projects with an expected impact on the aspects of environmental protection that are under evaluation. The EESC recommends that the following aspects be considered:

4.8.1 The impact of the development in terms of biodiversity protection should be assessed both where the impact will occur on a regional scale and where an impact will occur on a local scale. While other legal instruments protect aspects of the environment (such as national parks, nature reserves, NATURA 2000 sites, and so on) there is a clear need for a more encompassing assessment process such as provided by the EIA that is governed by both national and European level provisions.

4.8.2 Climate change is a global phenomenon that has local level consequences and requires local level actions. Assessing developments in terms of the global impact on climate change and dealing with climate change is a significant challenge. The proportionality principle must be applied in this case and guidance provided at national and local level. For this reason, assessment in the area of climate protection should focus on the real direct impacts of the project on the local climate (land use, water resources, etc.) and its impacts at regional level. The EESC also attaches importance to the question of evaluating the potential for mitigating the expected impacts (local, regional and global) of climate change.

4.8.3 In this respect, the EESC points out that the criterion proposed for assessing the impact of a particular development on global climate change, namely greenhouse gas emissions, is inadequate. For this reason, it calls for guidance on implementing this aspect, and for climate change impact assessment to also be included in the SEA stage of plans and programmes.

4.8.4 Disaster risk assessment should not focus on totally hypothetical cases or hypothetical combinations of these. An assessment of this kind, respecting the proportionality principle, is not in essence a new requirement, to the extent that it will continue to relate to potentially foreseeable natural disasters (floods, large-scale fires, earthquakes and so on).

4.8.5 The EESC considers that an assessment of the consumption of (natural) resources in the EIA is needed within the chain of consent procedures. Economical use of resources is without doubt an inherent economic principle for every project if it is to have any chance of being implemented, however declines in biodiversity identify that proactive measures are nonetheless required beyond this. There is however insufficient information for such an assessment at the EIA phase. Guidance and collation of information to assess this aspect of

the EIA is required. While assessment of the consumption of raw materials, natural resources and energy in productive investment is covered in the integrated authorisation procedure under the industrial emissions directive, this has not addressed biodiversity degradation.

4.9 The EESC supports the right of citizens to access information and to participate in the EIA process. At the same time, however, it calls for the procedural rules on the environmental impact assessment of projects to be framed in such a way as to avoid the provisions of the EIA directive being abused for corrupt ends and to draw out time-frames unduly. A period of 27 months to issue a decision is quite simply unacceptable and disqualifies the EU as a suitable economic area for new investment.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX I

to the Committee opinion

The following paragraphs of the section opinion were altered to reflect amendments adopted by the Assembly but received more than one quarter of the votes cast (Rule 54(4) of the Rules of Procedure):

Point 1.1 and 3.1 (voted together)

The Committee welcomes the major contribution made by the EIA concept to a gradual but significant improvement in the state of the environment in the Member States and the EU as a whole. This concept is a cross-cutting instrument of the environmental policy and legal system of the EU and the Member States and is the practical embodiment of the regulatory framework of that policy.

Result of the vote on the amendment

For: 55

Against: 41

Abstentions: 19

Point 1.2 and 3.3 (voted together)

The efficacy of the process of making valid decisions on the environmental impact of a project depends to a large extent on the quality of the information used in the EIA documentation and the quality of the EIA process. The problem, however, lies in how the participants in the process understand quality. Quality should be objectively defined and the requirements for quality should be determined in line with the proportionality principle – i.e., the quality and extent of information available at the stage of the territorial procedure. In addition to the quality of information, those managing the procedure – especially in the authorising bodies – should be required to have and to constantly improve the necessary competence.

Result of the vote on the amendment

For: 65

Against: 44

Abstentions: 13

Point 3.4

In other words, there is no blanket approach that can be used, since it depends on the specific interaction between each proposed development and its environment. Flexibility in terms of the proportionality of requirements must play the deciding role in effective EIA procedures. This principle is also the fundamental prerequisite for improving its coherence with other EU legal instruments and for streamlining management so as to reduce unnecessary red tape.

Result of the vote on the amendment

For: 68

Against: 51

Abstentions: 11

Point 4.6

The following paragraph did not feature in the section opinion:

4.6 Specific areas requiring attention for strengthening implementation include:

- Ensuring biodiversity impacts do not fall through the screening process. Often biodiversity impacts are cumulative and missed on account of scale, though the impact may be significant.

- Ensure public participation which happens early in the EIA process.
- Clarify processes for incorporation of views and expertise of third parties.
- Ensure independence and quality of environmental statements and assessments.
- Assessment and clarified process for cases where proposed mitigation does not work and there were significant adverse environmental impacts occur.
- Ensure that proposed mitigation measures are actually carried out.

Result of the vote on the amendment

For: 70

Against: 54

Abstentions: 8

Point 4.7 (becomes 4.8)

Regarding the proposal to include a provision on 'adaptation of the EIA to new challenges', the EESC takes the view that such an extension of the directive's scope must apply exclusively to projects with a high and quantifiable expected impact on the aspects of environmental protection that are under evaluation. The EESC recommends that the following aspects be considered:

Result of the vote on the amendment

For: 69

Against: 52

Abstentions: 11

Point 4.7.1 (becomes 4.8.1)

The impact of the development in terms of biodiversity protection should be assessed only where the impact will occur on at least a regional scale or where an impact on a local scale will affect areas that are protected by special legislation (such as national parks, nature reserves, NATURA 2000 sites, and so on).

Result of the vote on the amendment

For: 71

Against: 56

Abstentions: 5

Point 4.7.2 (becomes 4.8.2)

Climate change is a global phenomenon, while only very few developers can knowledgeably assess their developments in terms of the global impact on climate change. The proportionality principle must therefore be applied in this case. For this reason, assessment in the area of climate protection should focus on the real direct impacts of the project on the local climate (land use, water resources, etc.) and its impacts at regional level. The EESC also attaches importance to the question of evaluating the potential for mitigating the expected impacts (local, regional and global) of climate change.

Result of the vote on the amendment

For: 84

Against: 53

Abstentions: 6

Point 4.7.3 (becomes 4.8.3)

In this respect, the EESC points out that the criterion proposed for assessing the impact of a particular development on global climate change, namely greenhouse gas emissions, is inadequate. For this reason, it calls for a climate change impact assessment to be included in the SEA stage of plans and programmes – in compliance with the proportionality principle – and for any extension of the EIA directive's scope to cover global climate change to be abandoned.

Result of the vote on the amendment

For: 74

Against: 51

Abstentions: 7

Point 4.7.5 (becomes 4.8.5)

The EESC considers that an assessment of the consumption of (natural) resources in the EIA is premature within the chain of consent procedures. Economical use of resources is without doubt an inherent economic principle for every project if it is to have any chance of being implemented. Furthermore, there is insufficient information for such an assessment at the EIA phase. Assessment of the consumption of raw materials, natural resources and energy in productive investment is covered in the integrated authorisation procedure under the industrial emissions directive.

Result of the vote on the amendment

For: 78

Against: 53

Abstentions: 6

Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council establishing specific conditions to fishing for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic and repealing Regulation (EC) No 2347/2002'

COM(2012) 371 final — 2012/0179 (COD)

(2013/C 133/08)

Rapporteur **Mário SOARES**

On 3 and 11 September 2012 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council establishing specific conditions to fishing for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic and repealing Regulation (EC) No 2347/2002

COM(2012) 371 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 89 votes to 3 with 1 abstention.

1. Conclusions and recommendations

1.1 The EESC believes that it is appropriate and urgent to ensure the sustainability of deep-sea species and the protection of the sea bottom. This is complex problem and its solution must be based on comprehensive data and thorough scientific analysis. A precautionary approach should be adopted to avoid fishing gears whose impacts are not fully understood and could cause long term damage.

1.2 Furthermore, the EESC believes that any changes concerning these fisheries must give consideration to socio-economic as well as environmental sustainability since a large number of on-board and shore-based jobs and, ultimately, the viability of coastal communities, depend on them. All interested parties should be involved in consultations and negotiations in the development of appropriate control regimes for fishing operations and in implementing and enforcing them in a cooperative way.

1.3 The EESC believes that moving the article on the withdrawal of fishing authorisations (currently in the chapter on control) to the chapter on fishing authorisations would improve the proposal's coherence and clear up any confusion about the role of the scientific observers mentioned in this article, who should not under any circumstance be perceived as controllers.

1.4 The EESC reiterates the need for all measures adopted in this area to be based on the findings of scientific research, which has so far delivered excellent results.

2. Background

2.1 The reform of the Common Fisheries Policy (CFP) launched by the European Commission⁽¹⁾ with its Green Paper in 2009⁽²⁾ includes other amendments to the regulations that govern the CFP's application to specific areas and/or species. The proposal under consideration in this opinion can be interpreted in this light, and to a certain extent, could entail amendments of a general character established by the CFP being applied to North-East Atlantic deep-sea fishing, especially the principles of sustainability and scientific research as a basis for fishing activities.

2.2 The revision of Council Regulation (EC) No 2371/2002 of 20 December contained in the new proposal is designed to implement United Nations General Assembly Resolutions 61/105 and 64/72, which call on States and regional fisheries management organisations to ensure the protection of vulnerable deep-sea marine ecosystems from damage caused by fishing activities, thereby making the responsible exploitation of resources the general rule for all activities. In addition, the Commission recognises the need to correct some of the shortcomings identified in the application of the current regulation during its period of enforcement.

⁽¹⁾ OJ C 181, 21.6.2012 p. 183-195.

⁽²⁾ OJ C 18, 19.1.2011, p. 53-58.

2.3 In the interim, and in view of the problems detected in the practical application of Regulation (EC) No 2371/2002, the Commission has published rules that have adapted its content to a certain extent.

2.4 In this respect, it is worth mentioning the Communication of 29 January 2007, which refers to deep-sea fish stocks and the discrepancies between the established TACs and the actual catches, pointing out that this is partly due to the lack of a sound scientific knowledge base for both the species listed in the regulation and the real capacity of fleets operating in the North-East Atlantic, whose quotas were fixed before this regulation. It also considered it necessary to monitor and control these fisheries with the help of satellite Vessel Monitoring Systems (VMS).

2.5 To a certain extent, Council Regulation (EC) No 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector took up the Commission's proposals for establishing an EU programme which would give effect to the value of science-based fisheries management and control.

2.6 Finally, Council Regulation (EU) No 1262/2012, which fixed the fishing opportunities for deep-sea fish species for 2013 and 2014, fulfils the requirement to set two-year fisheries plans since it establishes TACs and, more importantly, their allocations.

3. Analysis of the proposal

3.1 The proposal begins by acknowledging that the outcomes are unsatisfactory when compared with the goals of Regulation (EC) No 2347/2002, especially with regard to:

- the vulnerability of many deep-sea stocks,
- the negative impact of fishing with bottom trawls on vulnerable deep-sea marine ecosystems,
- the high levels of undesired catch, and
- difficulties in determining the sustainable level of fishing pressure due to insufficient scientific data.

3.2 The EESC believes that the sheer number of guidelines which have evolved around this issue since the regulation came into force in 2003 may have been environmentally and economically damaging to fishing vessels. As a result, and as a general principle, the debate on this new proposal must seek

simplification, regulatory stability and legal certainty for the Member States and the economic and social actors involved.

3.3 Deep-sea stocks may constitute target species as well as by-catches in other fisheries. The general objective of the proposal is to ensure as much as possible the sustainable exploitation of deep-sea stocks while reducing the environmental impact of these fisheries, and to improve the information base for scientific assessment. In order to achieve this goal, a set of measures, listed below, are to be established.

3.4 *The sustainable exploitation of deep-sea species*

3.4.1 As a general rule, fishing opportunities are to be fixed at exploitation rates for deep-sea species that are consistent with maximum sustainable yield. Various measures are put forward to ensure this sustainability. Firstly, a system of fishing authorisations is to be established whereby each operator will have to identify one or more species as their target catch from among the species on the established lists. The EESC notes that the lists in this proposal, which come from agreements under the North East Atlantic Fisheries Commission (NEAFC), are much longer than the current lists, and include fisheries not previously mentioned in the regulation on deep-sea fishing. Secondly, it emphasises the importance of scientific data, although it should be noted that most Member States have scientific bodies and organisations that have carried out exemplary work which is used for sustainable fishing.

3.4.2 Fishing authorisations are a requirement for deep-sea fishing, with a ban on the use of fishing gears (bottom trawls and bottom-set gillnets) set to come into force after a two-year transitional period. Vessels that target other species can enter these zones with fishing authorisations that mention deep-sea species as by-catches, below a certain threshold.

3.4.3 At present, bottom trawling is the only viable way to fish for certain species (e.g. megrim and the Norway lobster). If it is banned at short notice and without previously negotiating with the interested parties, revenues and jobs could be lost in this sector. The EESC believes that better scientific knowledge and controlled fishing of these species, combined with other technical and support measures, would allow the sustainable exploitation of fisheries resources from an environmental, social and economic perspective. As a result, the dissemination of new trawl designs that offer technical solutions should be supported so that the bottom trawls currently used can be replaced by other deep-sea fishing methods.

3.5 Science base

3.5.1 This objective cuts permanently across the entire CFP. Without scientific knowledge of the marine environment and its habitats it is impossible to identify exploitation rates that are consistent with their sustainable use. Fishing has to be managed on the basis of exploitation rates identified for maximum sustainable yield.

3.5.2 In its opinion on the Green Paper, as well as previous opinions, the EESC argued in favour of improving our scientific knowledge of the marine environment and the state of stocks, suggesting that it is the regional fisheries management organisations which should be responsible for coordinating research and data collection.

3.5.3 Furthermore, the EESC stands by the proposal it made in its opinion on the funding of the CFP ⁽³⁾, to the effect that this activity should be carried out by independent scientific bodies alongside fishing operators or their organisations. In the same spirit, we reiterate the need for lifelong learning to promote human capital, in particular by attracting young scientists to marine research.

3.6 Technical measures on fisheries management

3.6.1 According to the proposal, fishing opportunities that are currently established in terms of both fishing effort limits and catch limits will be established by means of fishing effort limits only. In this regard, the EESC reiterates its opinion that all limits must be science-based.

3.6.2 Member States are to establish measures to avoid an increase in the catching capacity and by-catches of vulnerable species, as well as to prevent discards.

3.6.3 In order to prevent discrimination against EU fishing operators, who are subject to catch and effort limitations while their non-EU competitors can fish without restrictions, the EESC expects a sustained effort from the Commission to conclude regional agreements on resource conservation that are binding upon all parties.

4. Specific comments

4.1 The EESC agrees with the Commission's proposal on the following points:

- Deep-sea ecosystems and species are particularly vulnerable to human activity.
- Fishing operators already cooperate in scientific research activities on deep-sea ecosystems and species. In fact, it is already common for scientists to be regularly included in fishing fleets.
- The proposal's main objective must be to ensure the sustainable exploitation of deep-sea stocks while reducing the environmental impact of these fisheries, which means improving the information base for scientific assessment and the legislative provisions to be adopted on the use of these waters.
- A licensing regime for deep-sea fishing is the appropriate instrument for controlling access to these fisheries.

4.2 The EESC also recognises that bottom trawls may not just be a threat to deep-sea species but also to the sea bottom in vulnerable areas. However, this type of gear cannot be demonised because when properly used it is the only way to exploit other fisheries without compromising their sustainability. The EESC advocates establishing scientific criteria for deciding the restrictions on its use.

4.3 Finally, the EESC believes that the Communication is on the right track but needs to strike the right balance between the protection of vulnerable habitats and species and the economically, socially and environmentally sustainable exploitation of resources. This is why it thinks that banning bottom gears (bottom trawls and bottom-set gillnets) could prove disproportionate unless due consideration is given to scientific assessments.

4.4 As an alternative to a ban, the EESC advocates the application of the FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas, which has been assessed positively by the UN at the international level, and especially throughout the EU. At the same time, it welcomes the Commission's recognition of the need to provide financial support for vessels that have to change fishing gears and for training crews. This assistance should be adapted to the circumstances of the economic and social crisis facing Europe.

Brussels, 13 February 2013.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

⁽³⁾ OJ C 299, 4.10.2012, p. 133-140.

Opinion of the European Economic and Social Committee on the 'Council Recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro'

COM(2012) 301 final

(2013/C 133/09)

Rapporteur: **Thomas DELAPINA**

On 14 August 2012, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Recommendation for a Council Recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro

COM(2012) 301 final.

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 21 January 2013.

At its 487th plenary session held on 13 and 14 February 2013 (meeting of 13 February 2013) the European Economic and Social Committee adopted the following opinion by 161 votes to 3 with 9 abstentions:

1. Conclusions and recommendations

1.1 The EESC welcomes the establishment of general economic policy guidelines for the countries of the euro area which will provide a coherent framework for the necessary moves towards deeper integration and for better and more effective coordination.

1.2 In addition, the Committee supports the formulation of recommendations tailored to each country as well as measures to assess their implementation. This will make it possible to take account of differences in economic performance and the different causes of the crisis which vary from country to country.

1.3 However, the EESC would like to use the recommendation as an opportunity to highlight the need for reform of the approach to economic policy, especially in connection with the renewal of the guidelines expected in 2014. The Committee regards the current macroeconomic policy mix as unbalanced, since it overlooks the significance of demand and distributive justice. Several reform measures are showing signs of stabilising financial markets which should enable the current approach to economic policy to put more emphasis on growth policies and job creation. Nevertheless the operational capacity of the banking sector and of financial markets is not yet fully restored. At the same time, the policy of austerity has not provided for a credible expansionary programme to reduce government debt and unemployment. On the contrary, the crisis has worsened – instead of growing its way out of the crisis, the euro area has cut its way into a double-dip recession, with far-reaching consequences, not only economic but also and

above all social. In the long term, ignoring these social consequences poses an even greater threat to the growth of the European economy.

1.4 The stabilisation measures of national policies are doomed to failure if they are undermined by developments on the financial markets and by speculation. The Committee therefore calls for stricter regulation of financial markets taking account of the shadow banking systems and coordinated at G-20 level, as well as a scaling back of the financial system, which must be brought back into line with the needs of the real economy. The EESC calls for a 'real economy renewal' in Europe, in which entrepreneurial activity, as opposed to speculative motives, takes centre stage once again.

1.5 A credible solidarity-based safety net including a strong building on earned trust could ensure that any speculation against countries in difficulty is futile and thus reduce their financing costs. Common European bonds as well as reduced dependency on ratings agencies could also help lower the financing costs of countries in crisis.

1.6 Measures to consolidate public finances, which are required for a variety of reasons such as the costs of supporting banks, economic stimulus measures and in some countries the collapse of housing and construction bubbles, have varying degrees of urgency and therefore need a broader and more flexible range of timeframes. Furthermore they have to take account of demand effects and they must be coordinated with the social and employment objectives of the Europe 2020 strategy. Growth and jobs are the key factors underpinning successful consolidation. A low budget deficit is primarily the result of favourable overall economic development and of sound governance and not the condition for it.

1.7 Sustainable budgetary consolidation must be based on a balanced approach, taking account of the balance between supply and demand effects, on the one hand, and expenditure and revenue, on the other. The Committee emphatically points out that an integrated budgetary policy framework (fiscal union) not only concerns public expenditure, it also covers public revenue. The Committee calls for a general re-think not only of expenditure but also of tax systems, with due regard for distributive justice. It points to a series of possible measures to strengthen tax revenues to safeguard the financing of the desired level of the social systems and forward-looking public-sector investment. A harmonisation of the tax bases and systems on the basis of in-depth analyses of the various economic systems within the EU would be worthwhile. This would prevent distortions of competition within the Union, instead of continuing to erode public revenues by competitive tax-cutting.

1.8 The Committee urges a re-evaluation of fiscal multipliers in the light of considerable international research, which suggests that in a recession fiscal multipliers differ from country to country and have a significantly more adverse impact on economic growth and employment than was hitherto realised. Policies should capitalise more on the fact that the negative income and employment multipliers of revenue-related measures are generally more limited than those of spending cuts, especially if these revenue-related measures affect population groups with a lower propensity to consume. This could generate possibilities to create jobs and demand, through budget-neutral restructuring, by freeing up resources for expansionary measures, for example in education and employment programmes, and for investment in industry, research and in social services. This in turn helps meet the urgent need to boost confidence among businesses and consumers.

1.9 In surplus countries in particular, such expansionary measures would also promote imports. EU-wide coordination of such measures would be considerably more effective, since the rate of imports for the euro area as a whole (i.e. from third countries) is significantly lower than it is for each individual national economy by itself.

1.10 With a view to achieving the requisite symmetry, when breaking down external economic imbalances surplus countries are called upon to translate their export profits into prosperity gains for broad sections of the population. Such an increase in domestic demand would help reduce their 'import deficits'.

1.11 Alongside calls for a fresh approach to the macro-economic policy mix, socially acceptable structural reforms may also strengthen demand and improve the economy's productive capacity.

1.12 In general, focussing on price competitiveness as a way of reducing external economic imbalances, which in many cases is associated with demands for wage restraint, is not useful. Holding down wages in order to promote exports in all euro area countries at the same time not only has serious redistributive consequences, it also reduces overall demand and leads to a downward spiral, in which all countries lose.

1.13 The Committee reiterates its call for a wage policy that makes full use of the scope for productivity, and rejects any requirements imposed by the state and state interference in the autonomous collective bargaining policy as completely unacceptable.

1.14 Other cost factors, which are often more important than wages, are for the most part overlooked. Even the importance for competitiveness of non-price factors is overlooked. Europe will only be successful in the global race if it pursues a 'high road' strategy of high-quality added value. A 'low road' strategy of competitive undercutting involving other world regions would be doomed to failure.

1.15 Overall, the European social model – through the automatic stabilisers of the social security system – has helped deal with the crisis by supporting demand and confidence. Scaling back this system runs the risk of causing a descent into a deep depression, as in the 1930s.

1.16 In general, the Committee calls for a stronger role for the social partners at national and European level and for closer Europe-wide coordination of wage policy, for example by enhancing the value of macroeconomic dialogue, which should also be introduced in the euro area. The revision of the guidelines should take account of the fact that countries with functioning social partnerships have been better able to cushion the impact of the crisis than other countries.

1.17 Furthermore, the Committee reiterates its appeal for the social partners and other organisations representing civil society to become involved in policymaking as early and as comprehensively as possible. The requisite changes and reforms hold promise and will be accepted only if the distribution of burdens is felt to be fair.

1.18 In short, Europe needs a new model for growth, characterised by measures to tackle unacceptable levels of unemployment and by sufficient scope for future-related investments as well as social and environmental investments, which generate growth and demand. On the basis of budget-policy restructuring and measures to ensure an adequate revenue base with due consideration for distributive justice, social systems must be strengthened with a view to increasing productivity and stabilising demand and confidence. A growth model of this kind will also facilitate sustainable consolidation of public finances.

2. Background

2.1 The Council recommendation of 13 July 2010 on the broad guidelines for the economic policies of the Member States of the Union set the following guidelines, which will remain unchanged until 2014 so that the main emphasis can be put on implementation:

- Guideline 1: Ensuring the quality and the sustainability of public finances
- Guideline 2: Addressing macroeconomic imbalances
- Guideline 3: Reducing imbalances within the euro area
- Guideline 4: Optimising support for R&D and innovation, strengthening the knowledge triangle and unleashing the potential of the digital economy
- Guideline 5: Improving resource efficiency and reducing greenhouse gases
- Guideline 6: Improving the business and consumer environment, and modernising and developing the industrial base in order to ensure the full functioning of the internal market.

2.2 In this connection, on 30 May 2012 the Commission presented its latest 'Recommendation for a Council Recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro', which updates the recommendations on the general direction of economic policies in the euro area. In addition, individual country-specific recommendations have been drawn up for all 27 EU Member States. On 6 July 2012, the Council of the European Union adopted the relevant documents.

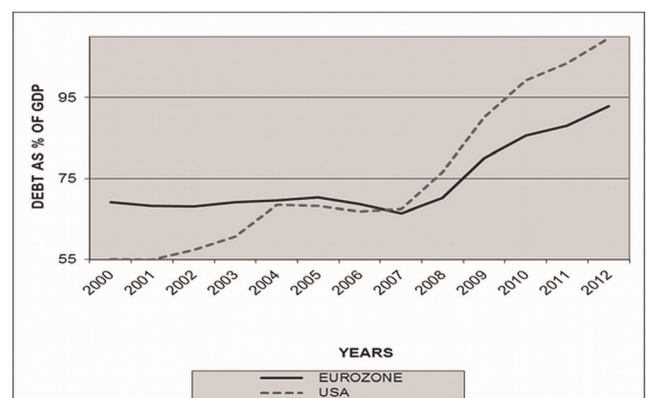
3. General remarks

3.1 **The EESC welcomes the Commission's efforts to establish a coherent framework for better coordination of European economic policies - something which is urgently needed.** This is absolutely vital if we are to return to a sustainable path towards growth and jobs. There is a risk that measures which may be useful in reducing imbalances in an individual country could be counterproductive for the euro area as a whole.

3.2 A Europe-wide approach, European thinking and a pro-European mentality are therefore needed. The Committee thus shares the Commission's view that genuine cooperation on economic policy, at least in the Eurogroup, requires deeper integration as well as better and more efficient coordination. In this connection, consideration must be given to differences in Member States' economic output (level and growth of GDP, unemployment rates and trends, size and structure of budget deficit and debt, R&D expenditure, welfare expenditure, current account balance, energy provision, etc.).

3.3 The crisis, which has been ongoing since 2008, started in the USA and has developed into a global crisis. As a result of the crisis, it has become clear that the architecture of monetary union placed too much faith in market forces and fails to properly deal with the risk of imbalances. As the pre-2008 trends in public budgets across the euro area show, lack of budgetary discipline was generally speaking not the cause of the crisis.

Debt to GDP ratio in % (source: AMECO 2012/11)



3.4 On average in the euro area, the increase in deficits or debt levels occurred only after the massive use of public funds to rescue the financial system and prop up demand and the labour market, which had collapsed because of the financial crisis ⁽¹⁾, and because of falling government revenues, mainly due to the decline in employment. This point is of particular importance for the development of economic policy strategies, since the wrong diagnosis will lead to the wrong treatment. **The EESC therefore welcomes in principle the distinction made between individual countries in assessing implementation of the guidelines.** One size does not fit all, since the causes of the crisis also vary considerably from country to country.

3.5 However, the EESC would like to use this opportunity to highlight the **need for reform of the approach to economic policy**. This concerns not only the annual reviews. It is also of special relevance for the next version of the economic policy guidelines in 2014.

3.6 In 2012 Europe was in its fifth year of crisis. Shortly after the current guidelines were set, in its 2010 autumn forecast the European Commission was still predicting that in 2012 GDP would grow by 1.6 % in the euro area and its unemployment rate would be 9.6 %. In actual fact, the euro area has been in recession this year and the unemployment rate has risen to more than 11 %; in some countries it has even gone up to around 25 %.

3.7 In contrast, the US economy is growing – moderately but steadily – at a rate of around 2 %, supported by the continuation of strongly expansionary monetary policy as well as the government's social and fiscal policy strategy. There has been strong growth in consumption, investment and industrial production, with the effect that the unemployment rate is significantly below the peak it reached in October 2009 ⁽²⁾.

3.8 Whereas the 2008 European Economic Recovery Programme, which was heavily influenced by the rapid economic crash following the collapse of Lehman Brothers, acknowledged the need for active steps to strengthen internal demand and regulate markets, economic policy swiftly returned to its traditional focus. The repeated warnings, not least from the EESC, that Europe must grow its way out of the crisis and should not cut its way into the next crisis, went unheeded – and the feared double-dip recession therefore became a reality.

3.9 First of all, the failure of European economic policy relates to the unsuccessful attempts to stabilise financial markets. Significant volatility, high spreads as well as excessive long-term interest rates and high levels of liquidity held by banks show that despite important initial steps towards a banking union, the financial system has yet to return to full operational capacity. The business and consumer uncertainty associated with this continues to limit the chances for growth.

3.10 Second, economic policy has failed to tackle the lack of internal and external demand. The significantly stricter requirements for Member States' budget policies as well as a switch to a restrictive fiscal policy that came much too early, was too radical and occurred in all countries at the same time put downward pressure on all key components of internal demand. Given that the most important trading partners – i.e. the other Member States – are also trying to make savings, it is clear that impetus for growth from external demand will be strictly limited too. This means that in addition to downward pressure on internal demand, there are fewer reciprocal opportunities for exports.

3.11 The current **macroeconomic policy** is unbalanced, as it neglects issues of demand and distribution. It represents more of the same policy which led to the failure of the Lisbon Strategy, since it overlooked the lack of internal demand in key large Member States and growing distribution inequality. It is one-sided in its focus on policy consolidation and a strategy of lowering costs in order to increase price competitiveness. The Committee welcomes the Commission's request for growth-friendly fiscal consolidation measures, which is also emphasised in subsequent Commission documents as well as in the 2013 annual growth survey ⁽³⁾. However, they appear to exist only on paper, since the empirical data does not yet offer any evidence of their implementation.

3.12 Economic policy at European level has not succeeded in introducing measures which help reduce government debt and unemployment simultaneously within the framework of a credible expansionary programme. Deep public spending cuts, especially to welfare, as well as increases in large-scale taxes are having devastating consequences in economies which in any case are already shrinking. Disposable income is being reduced and thus also consumer demand, production and

⁽¹⁾ For a detailed and nuanced account of how the financial and economic crisis came about, see OJ C 182, 4.8.2009, p. 71, point 2,

⁽²⁾ See the European Commission's 2012 autumn forecast.

⁽³⁾ COM(2012) 750 final.

employment. This means that the policy of austerity is acting as a brake on tax revenues much more strongly than originally thought, as the IMF had to admit in its latest forecast ⁽⁴⁾. It is making the recession even worse, which is ultimately leading to even higher budget deficits – a vicious circle with still no end in sight. The high economic and social costs are reflected in the sharp rises in unemployment.

3.13 It is clear that - primarily on account of the costs of supporting banks, economic stimulus measures and in some countries the collapse of housing and construction bubbles - country-specific consolidation strategies are required in order to put public finances on a sustainable footing. However, the EESC points out that debt reduction programmes must be coordinated with the objectives for economic recovery and the social and employment objectives set out in the Europe 2020 strategy. Growth and jobs are the key factors underpinning successful consolidation, whereas radical savings measures may even raise debt levels in addition to causing immense social problems.

3.14 Even if this Committee opinion focuses mainly on aspects of the macroeconomic policy mix, this should not detract from the importance of **structural reforms**. Socially acceptable structural reforms in areas such as the taxation system, energy supplies, administration, education, health, residential construction, transport and pensions must help strengthen demand and productive capacity, in which connection consideration must be given to differences in competitiveness between individual countries.

3.15 Regional and structural policy should also put emphasis on increasing productivity, with a view to modernising and developing a sustainable industry and services-based economy. In general, it is fair to say that countries whose national economies have a larger industrial component were affected less severely by the crisis, which suggests the need for appropriate industrialisation strategies.

3.16 However, the Committee would like to expand the predominant, usually rather narrow understanding of the concept of 'structural reform'. Calls for structural reform should also, for example, take account of the structure of

financial market regulation, the structure underpinning coordination of tax systems and the structure of public spending and revenue.

4. Specific comments

4.1 Financial system

4.1.1 The EESC shares the view of the Commission, which highlights the importance of stabilising the financial system and ensuring that it functions smoothly. The basic principle of any successful attempt to tackle and prevent crisis is that the room for manoeuvre in economic policy should not be undermined or jeopardised by financial market speculation. Hence the need for a clear and efficient system of supervision and tighter regulation of financial markets (including the shadow banking system), which pose a bigger risk to stability than any lack of competitiveness. In order to prevent such regulation from being circumvented, relevant steps should be coordinated within the G-20. The financial markets must be reduced to a sensible size. They must once again serve the real economy and should not compete with it ⁽⁵⁾.

4.1.2 In order to lower the artificially high financing costs of countries in crisis, which are caused by speculation, efforts should be made to reduce dependency on private ratings agencies. At the same time, a credible solidarity-based safety net including a strong building on earned trust could ensure that any speculation against countries in difficulty is futile and thus prevent such speculation. Some important steps in this direction were recently taken (the latest ECB programme to buy up government bonds, the ESM has finally come into effect and is fully operational, etc.). If used under the right conditions, common European bonds may also help ease budgetary pressure in countries beset by crisis ⁽⁶⁾.

4.1.3 The Committee points to the need to break the link between commercial banks and public debt. In addition, the fragmentation and renationalisation of financial markets must be reversed by stabilising the sector. Stepping up moves towards a banking union could also contribute to stabilisation at European and national level, together with effective tools for the recovery and resolution of credit institutions ⁽⁷⁾.

⁽⁴⁾ The IMF outlook published on 9 October states that fiscal multipliers in the crisis may have been between 0.9 and 1.7, whereas originally an estimation of around 0.5 had been taken as a basis (see IMF 2012, <http://www.imf.org/external/pubs/ft/weo/2012/02/pdf/text.pdf>).

⁽⁵⁾ OJ C 11, 15.1.2013, p. 34.

⁽⁶⁾ For the discussion on stability bonds, Eurobonds, project bonds etc. see OJ C 299, 4.10.2012, p. 60, and OJ C 143, 22.5.2012, p. 10.

⁽⁷⁾ OJ C 44, 15.2.2013, p. 68.

4.2 Public budgets

4.2.1 Sustainable budgetary consolidation must be geared not only to ensuring a balance between supply and demand effects. It must also create a balance between expenditure and revenue. Furthermore, in many countries a disproportionate burden has been placed on labour as a factor of production. A general re-think not only of expenditure but also of the entire tax system is therefore needed, with due regard for questions of distributive justice between different kinds of income and wealth. This also means demanding an appropriate contribution from those who benefited most from the mistakes made on the financial markets and the bank rescue packages paid for using taxpayers' money.

4.2.2 With regard to revenue, a number of approaches exist for producing the necessary increase in tax revenues: a financial transaction tax (repeatedly called for by the Committee ⁽⁸⁾), energy and environmental levies, closing tax havens ⁽⁹⁾, decisive action to combat tax evasion, taxation of large fortunes, property and inheritance, taxation of banks to internalise external costs ⁽¹⁰⁾, and harmonising tax bases and systems in order to eliminate distortions of competition within the Union, instead of continuing to erode public revenues by competitive tax-cutting. It is often overlooked that an integrated budgetary framework ('fiscal union') would also extend to revenue, and not only concern public expenditure.

4.2.3 In some Member States, a marked increase in the efficiency of the tax collection system is called for.

4.2.4 The traditional approach to budgetary consolidation has been to cut public spending. However, the idea that spending cuts are likely to be more successful than revenue increases remains an unproven dogma. The empirical evidence from countries in crisis such as Greece shows that the hopes of 'non-Keynesian effects' have been in vain. Against a backdrop of spending cuts, there can be no crowding-in of private investment based on increased confidence if internal demand is weak throughout the monetary union as a result of austerity policies. Furthermore, spending cuts, to welfare systems or public services for example, generally have a regressive impact, worsening distribution inequality and putting downward pressure on consumption. That being said, there is certainly scope for cuts to certain unproductive expenditure, such as in the area of armaments.

4.2.5 Instead, policies should capitalise on the considerable differences between the revenue and employment multipliers of various budgetary policy measures. According to nearly all empirical studies, the multipliers of tax measures are less than those of spending-related measures. A policy of targeted increases in government revenues could thus free up resources which are urgently needed, for jobs programmes for example, especially those for young people.

4.2.6 A redistribution of this kind with a neutral effect on the budget balance would immediately generate jobs and demand, without putting strain on public finances. In addition to the positive impact on the domestic economy, such measures would create expansionary impulses for the entire monetary union by boosting imports, especially if they were taken by surplus countries.

4.2.7 EU-wide coordination of such expansionary measures would be considerably more effective, since the rate of imports for the euro area as a whole (i.e. from third countries) is significantly lower than for each individual national economy by itself.

4.3 External economic imbalances

4.3.1 It is essential to monitor the performance of the current account and its components in the context of a Member State's productivity weaknesses and the ensuing private and public financing problems, in order to ensure that any (re)action is timely. However, in reducing imbalances in the trade balance, attention must be paid to symmetry: the exports of one country are the imports of another. Consequently, smaller imbalances cannot be achieved solely through a reduction in deficit countries. Surplus countries too are required to take action, by strengthening domestic demand to boost imports and thus reduce their 'import deficits'.

4.3.2 From a European perspective, the energy sector in particular is an exception, with all Member States effectively having large trade deficits ⁽¹¹⁾. A redevelopment of the European internal market from an environmental point of view should reduce dependency on fossil fuel imports through the internal use of Europe's own alternative energy sources. In addition, the solar energy sector in the southern periphery offers a further opportunity for improving trade balances within Europe.

⁽⁸⁾ Most recently in OJ C 181, 21.6.2012, p. 55.

⁽⁹⁾ OJ C 229, 31.7.2012, p. 7.

⁽¹⁰⁾ i.e. to make sure that future costs of banking crises do not have to be financed by the taxpayer.

⁽¹¹⁾ EU-27: 2.5 % of GDP (2010).

4.3.3 In efforts to tackle external economic deficits, too much emphasis is generally put on the role of price competitiveness. Focussing purely on price competitiveness would be risky. The German model (wage restraint to promote exports or suppress imports) as a simultaneous guide for all countries can only lead to a race to the bottom, given the high proportion of internal trade in the euro area.

4.3.4 The different trends in unit wage costs are generally seen as one of the central causes of the crisis, resulting in calls for lower wage costs. Regardless of the serious redistributive consequences of lowering the wages share, which suppresses demand, other relevant cost factors (such as energy, materials and financing costs) are being overlooked here ⁽¹²⁾.

4.3.5 For example, in the period before the crisis between 2000 and 2007 real unit wage costs were falling in Portugal, Spain and Greece ⁽¹³⁾. Excessive nominal profit increases have done as much to push up prices as nominal wage increases.

4.3.6 It is still the case that almost 90 % of overall demand in the EU comes from EU Member States. As far as wage trends are concerned, the EESC therefore stands by the view it expressed in its opinion on the 2011 annual growth survey: 'Appropriate wage policies have a key role to play in dealing with the crisis. Keeping wage rises in step with productivity growth and targeted in the national economy as a whole will, from a macroeconomic viewpoint, make sure a proper balance is struck between sufficient growth in demand and price competitiveness. The social partners must therefore work to avoid wage restraints along the lines of a beggar-thy-neighbour policy and gear wage policy instead towards productivity' ⁽¹⁴⁾.

4.3.7 Furthermore, the importance for competitiveness of non-price factors is usually underestimated ⁽¹⁵⁾. In this connection, reference is made to the European Commission's definition of 'competitiveness' as '... the ability of the economy to provide its population with high and rising standards of living and high rates of employment on a sustainable basis' ⁽¹⁶⁾.

4.3.8 Not least because of the sharp rise in national spreads, the income account in countries beset by crisis has become

more important. The analysis of the imbalances must not therefore be limited to the development of the trade balance.

4.4 *The European social model and social dialogue*

4.4.1 The European social model gives Europe a comparative advantage in global competition. The welfare state also contributes to economic success when economic output on the one hand and social balance on the other are not seen as opposites but are understood to support each other.

4.4.2 The automatic stabilisers of social security systems have helped deal with the crisis and supported demand in Europe and prevented it from falling into depression, as in the 1930s. The social security systems are also of great importance psychologically, since they reduce the risk of panic saving and thus stabilise consumption.

4.4.3 In some countries with a functioning social dialogue (such as Austria, Germany and Sweden) the social partners played an important part in reducing the risk of increased unemployment as a result of falls in production. In addition to support from economic and social policy measures, business and sector-based agreements among the social partners made a significant contribution to maintaining existing employment (e.g. through short-time working, reducing overtime accumulated, use of holiday entitlements, leave for training, etc.). These experiences should be taken into account in the development of the latest guidelines and in annual country reports.

4.4.4 European governments are called upon to strengthen the role of the social partners at European and national level. The partners should be supported in stepping up efforts to achieve Europe-wide coordination of wage policy. In addition, attempts should be made to enhance the value of macro-economic dialogue; such dialogue should also be established for the euro area.

4.4.5 In any case, free collective bargaining must also be safeguarded in the crisis: wage policy should be set within the framework of free collective bargaining by competent associations of employers and employees. National targets or even intervention such as government-prescribed wage cuts should be rejected and are unacceptable ⁽¹⁷⁾.

⁽¹²⁾ For example, in the Spanish export sector, wage costs amount to only 13 % of total costs. Source: Carlos Gutiérrez Calderón/Fernando Luengo Escalonilla, *Competitividad y costes laborales en España* (competitiveness and labour costs in Spain), studies from 1st May Foundation, 49 (2011, <http://www.1mayo.ccoo.es/nova/files/1018/Estudio49.pdf>).

⁽¹³⁾ See statistical annex of European Economy, autumn 2012.

⁽¹⁴⁾ OJ C 132, 3.5.2011, p. 26, point 2.3.

⁽¹⁵⁾ OJ C 132, 3.5.2011, p. 26, point 2.2.

⁽¹⁶⁾ COM(2002) 714 final.

⁽¹⁷⁾ OJ C 132, 3.5.2011, p. 26, point 2.4.

4.4.6 Alongside the role of the parties to collective bargaining, the significant role of other organisations representing civil society, such as consumer organisations, must also be acknowledged. Especially in times of crisis, these are indispensable as the mouthpiece of citizens and as partners in civil dialogue.

4.4.7 The requisite changes and reforms hold promise only if a balance is found between economic and social goals and the distribution of burdens is felt to be fair (between countries, income groups, capital and labour, sectors, different population groups, etc.). Fairness and social balance are key requirements for public acceptance of consolidation measures; otherwise social cohesion will be put at risk and there could be a dangerous upturn in populism and anti-EU sentiment. The Committee reiterates in this connection its urgent recommendation that the social partners and other organisations representing civil society should become involved in policymaking as early and as comprehensively as possible.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on medical devices and amending Directive 2001/83/EC and Regulations (EC) No 178/2002 and (EC) No 1223/2009’

COM(2012) 542 final — 2012/0266 (COD)

‘Proposal for a regulation of the European Parliament and of the Council on *in vitro* diagnostic medical devices’

COM(2012) 541 final — 2012/0267 (COD)

and

‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: safe, effective and innovative medical devices and *in vitro* diagnostic medical devices for the benefit of patients, consumers and healthcare professionals’

COM(2012) 540 final

(2013/C 133/10)

Rapporteur: **Mr STANTIČ**

On 15 October 2012 and on 22 October 2012 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 and 168(4)(c) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on medical devices and amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009

COM(2012) 542 final – 2012/0266 (COD).

On 15 October 2012 and on 22 October 2012 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 and 168(4)(c) of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council on *in vitro* diagnostic medical devices*

COM(2012) 541 final – 2012/0267 (COD).

On 26 September 2012 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Safe, effective and innovative medical devices and *in vitro* diagnostic medical devices for the benefit of patients, consumers and healthcare professionals*

COM(2012) 540 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 14 February 2013), the European Economic and Social Committee adopted the following opinion by 136 votes and 5 abstentions.

1. Conclusions and recommendations

1.1 The EESC highlights that health is a high priority for Europe's citizens and reaffirms that *medical devices* (hereafter MD) ⁽¹⁾ and *in vitro diagnostic medical devices* (hereafter

IVD) ⁽²⁾ play a crucial role in prevention, diagnosis and treatment of diseases. They are central to our health and to the quality of life of people suffering and managing their diseases and disabilities.

⁽¹⁾ Medical devices (MDs) include products such as sticking plasters, contact lenses, hearing aids, dental fillings, hip replacements, sophisticated devices like x-ray machines, pacemakers, etc.

⁽²⁾ In vitro diagnostic medical devices (IVDs) include products used to ensure the safety of blood tests, detect infectious diseases (e.g. HIV), monitor diseases (e.g. diabetes) and perform any kind of blood chemistry.

1.2 The EESC welcomes the recast of the current regulatory system by the Commission that goes beyond a mere simplification of the framework and puts in place more effective rules, strengthening the pre-market approval procedures and in particular the post-market surveillance. As regards the recent scandal on defective breast implants, which resulted in a European Parliament Resolution of June 2012, as well as other major problems with high-risk medical devices and implants, the EESC, like the European Parliament ⁽³⁾, advocates in addition a high quality procedure prior to their placement on the market. This responds to the needs of citizens for patient safety and efficacy.

1.3 High-risk MDs (class III and implantable products) and IVDs must be subject to an adequate, high quality, EU-wide uniform approval procedure before entering the market, in which safety, efficacy and positive risk-benefit balance must be proven by the results of high quality clinical investigations. The full results should be stored in a publicly accessible central database. For high-risk medical devices and IVDs already on the market, compliance with Article 45 of the proposed Regulation has to be ensured in order to demonstrate safety and efficacy of the device.

1.4 The EESC strongly supports the legal form of a **'Regulation'** instead of a **'Directive'** so as to reduce the room for diverging interpretation by individual Member States, providing more equality for European patients and a level playing field for suppliers.

1.5 Beside safety, **fast access to the latest medical technologies** also represents an important benefit for patients. Considerable delays in accessing the new devices would harm patients by reducing their treatment choices (possibly life-supporting) or at least prevent them from reducing their disabilities and improving their quality of life.

1.6 The EESC highlights that MD and IVD sectors, characterised by high innovation capacity and high-skilled jobs, represent an important part of the European economy and can substantially contribute to the implementation of the EU 2020 Strategy and its Flagship initiatives. Therefore appropriate legislation is fundamental, not just to ensure the highest

possible level of health protection, but also to provide an innovative and competitive environment for the industry in which 80 % of manufacturers are small to medium and micro enterprises.

1.7 The EESC supports high standard approval procedures for high-risk MDs and IVDs before entering the market, in which safety and efficacy must be proven by the results of adequate clinical tests and investigations. However, the EESC expresses concerns against introducing a centralised pre-market authorisation system in Europe which would cause further delays in approval times, preventing the patients to have fast access to the latest medical technologies and considerably increasing the costs for SMEs and endangering their innovative capacity.

1.8 If any approval requirements for MDs and IVDs are to be increased, it must be done in a transparent and predictable way that does not further jeopardise the efficiency of the regulatory process and reduce future innovations.

1.9 The EESC welcomes the introduction of a **Unique Device Identification (UDI)** to be assigned to each device, allowing faster identification and better traceability. The EESC would also welcome a fully workable **central registration tool (Eudamed)** which would eliminate multiple registrations and considerably decrease the costs for SMEs.

1.10 The EESC supports the **strengthening of the patients'** position. In order to secure appropriate financial security in the event of harm being caused, injured parties must have the right to levy direct claims and receive full compensation. When patients have to prove the harm of a faulty medical device, the manufacturer should make available to the patient (and/or the payer liable for the cost of treatment) all necessary documentation and information regarding safety and efficacy of the device in question. In addition the EESC calls on the Commission to ensure through appropriate mechanisms the payment of compensation that does not lead to a substantial increase in the prices of medical devices.

1.11 The EESC acknowledges a rather **weak involvement of civil society** in the proposed regulation framework. The observer status of civil society in the temporary sub-groups, established by the newly formed Medical Device Coordination Group (MDCG), is not sufficient. The EESC proposes the establishment of an **'Advisory Committee'** made up of representatives of legitimate stakeholders organised at the European level. Such committee should act in parallel and work with the Medical Device Coordination Group (MDCG), advising the Commission and Member States on various aspects of medical technology and implementation of the legislation.

⁽³⁾ Resolution 14 June 2012 (2012/2621(RSP)); P7_TA-PROV(2012)0262.

1.12 The EESC would reiterate the need for appropriate provisions related to the **education and training of the professional healthcare staff** to be added to proposed regulations, following the recommendations expressed in the EU Council's Conclusions on Innovations in the Medical Devices Sector ⁽⁴⁾.

1.13 **Relevant Linkage with other legal dossiers and bodies:** The EESC highlights the need to ensure that the new rules for clinical performance studies for IVDs – Companion Diagnostics interact well with those which will come out of the currently discussed new framework for clinical trials with medicinal products, according to the EESC's recent opinion ⁽⁵⁾.

1.14 **In-house tests for IVDs:** the EESC recommends that the principle of assessing the risks and benefits of a healthcare device should apply to all products regardless of whether they are commercialised or developed and used solely inside an institution (in-house test).

1.15 The functioning of the regulations should be formally reviewed three years after entry into force, jointly by authorities and stakeholders from civil society to ensure that the objectives of the regulations are being met.

2. Introduction and background

2.1 MDs and IVDs play a crucial role in prevention, diagnosis and treatment of diseases. They are central to our health and to the quality of life of people suffering from disabilities.

2.2 MD and IVD sectors represent an important and innovative part of European economy. They generate annual sales of around EUR 95 billion (EUR 85 billion for MDs and EUR 10 billion for IVDs), investing heavily in research and innovations (EUR 7.5 billion annually). They employ more than 500 000 people (mostly highly skilled professionals) in about 25 000 companies. More than 80 % of them are small to medium and micro enterprises.

2.3 Fast demographic and societal changes, an enormous scientific progress, as well as the recent scandal involving the faulty silicone breast implants ⁽⁶⁾, problems with metal-on-metal hip implants and some other products ⁽⁷⁾, have all brought about and accelerated the need for a revision of current regulatory framework.

2.4 As high-risk devices, implants are of considerable importance, e.g. 400 000 PIP silicone implants have been sold world-wide. Many women in the UK (40 000), France (30 000), Spain (10 000), Germany (7 500) and Portugal (2 000) have received PIP silicone breast implants with a rupture rate of 10-15 % within 10 years of implementation ⁽⁸⁾. In Germany alone in 2010, around 390 000 hip and knee prostheses were implanted, of which barely 37 000 were exchange operations where artificial joints had to be exchanged ⁽⁹⁾.

2.5 Summary of the main shortcomings of the existing system as acknowledged by the EESC:

- EU countries interpret and implement the rules in different ways, causing inequality among EU citizens and create obstacles to the Single Market;
- It is not always possible to trace medical devices back to the supplier;
- Patients and healthcare professionals do not have access to essential information on clinical investigations and evidence;
- Lack of coordination between national authorities and with the Commission;
- Regulatory gaps with regard to certain products ⁽¹⁰⁾.

3. Gist of the new package of the revised regulatory framework for MDs and IVDs

3.1 The package consists of the Communication ⁽¹¹⁾, a proposal for a Regulation on medical devices ⁽¹²⁾ (replacing Directive 90/385/EEC regarding active implantable MDs and Directive 93/42/EEC regarding MDs) and a proposal for a Regulation on *in vitro* diagnostic MDs ⁽¹³⁾ (replacing Directive 98/79/EC regarding *in vitro* diagnostic medical devices).

⁽⁴⁾ OJ C 202, 8.7.2011, p. 7.

⁽⁵⁾ EESC opinion 'Clinical trials on medicinal products for human use', OJ C 44, 15.2.2013.

⁽⁶⁾ French firm Poly Implant Prothèse (PIP) have violated the regulations by using unapproved industrial-grade silicone in some of its implantable products.

⁽⁷⁾ http://www.aok-bv.de/presse/medienservice/politik/index_06262.html

⁽⁸⁾ EP Resolution of 14 June 2012 (2012/2621(RSP)); P7_TA-PROV(2012)0262.

⁽⁹⁾ Information from the German AOK-federal board, 12.1.2012.

⁽¹⁰⁾ Products utilising non-viable human tissues or cells, genetic tests, implants for aesthetic purposes, etc.

⁽¹¹⁾ COM(2012) 540 final.

⁽¹²⁾ COM(2012) 542 final.

⁽¹³⁾ COM(2012) 541 final.

3.2 Main new elements of the proposed Regulations include:

- Wider and clearer scope of the legislation, extended to include implants for aesthetic purposes and genetic tests as well as medical software
- Stronger supervision of assessment (notified) bodies by national authorities in order to insure an efficient pre-market assessment of devices
- Clearer rights and responsibilities for manufacturers, importers and distributors
- Extended centralised European database on MDs and IVDs (EUDAMED), accessible to healthcare professionals, patients and partially to the public at large
- Better traceability of devices throughout the supply chain, including a Unique Device Identification system (UDI), enabling fast and effective response to any safety concerns
- Stricter requirements for clinical evidence and evaluation throughout the life of the device
- Stricter provisions for governing market surveillance and vigilance
- Better coordination between national authorities with scientific support by the Commission, in order to ensure a uniform implementation of the legislation
- Alignment to international guidelines in order to better adapt to the global market of MDs.

3.3 The MD and IVD sectors, characterised with the high degree of innovation and high-skilled job creation potential, can substantially contribute to the objectives of the **Europe 2020 Strategy**. Both sectors occupy a central place in several Flagship initiatives, in particular Digital Agenda for Europe ⁽¹⁴⁾ and Innovation Union ⁽¹⁵⁾.

4. General comments

4.1 The EESC strongly supports the form of Regulations, which are directly applicable and eliminate the risk of

divergent transposition and interpretation by individual Member States. It is a useful way to achieve more equality for patients across EU and a level playing field for suppliers.

4.2 Approval system and assessment procedures

4.2.1 High-risk MDs (class III and implantable products) and IVDs must be subject to an adequate high quality, EU-wide uniform approval procedure before entering the market, in which safety, efficacy and positive risk-benefit balance must be proven by the results of high quality clinical investigations. The full results should be stored in a publicly accessible central database. For high-risk medical devices and IVDs already on the market, compliance with Article 45 of the proposed Regulation has to be ensured in order to demonstrate safety and efficacy of the device.

4.2.2 In this context the EESC supports the strengthening of the existing regulatory framework for high-risk medical devices, based on the concept of conformity assessment and decentralised regulatory bodies, as provided for in proposed regulations. We support stricter requirements to obtain a conformity certificate as regard to documentation and other conditions, including pre-clinical and clinical data, clinical evaluations and investigations, risk/benefit analysis, etc. ⁽¹⁶⁾. They can considerably raise the existing approval standards in the EU, without scarifying too much a fast access to new products.

4.2.3 The EESC strongly supports strict and high level pre-market approval procedures but expresses concerns against introducing a centralised Pre-market Authorisation System (PMA) in Europe, as known in the USA. Such system would bring delays in approval times. For patients it would mean a time lag in accessing the latest lifesaving medical technologies. On the other hand a centralised PMA system would negatively impact most European SMEs in the MD sector, considerably increasing their costs and seriously endangering their innovative capacity. They would have difficulties to finance and survive lengthy market approvals.

4.2.4 *Newly proposed mechanism for scrutiny* – (Art. 44 / 42): The EESC notes that the Medical device Coordination Group (MDCG) can interfere with its opinion on the application file submitted by the Notified body. The EESC is well aware

⁽¹⁴⁾ COM(2010) 245 final/2 and OJ C 54, 19.2.2011, p. 58.

⁽¹⁵⁾ COM(2010) 546 final and OJ C 132, 3.5.2011, p. 39.

⁽¹⁶⁾ See Annexes II, III, V, IX, XII, XIV, specifying requirements to obtain EU certificate of conformity.

of the importance of patient safety. In order to avoid additional and unpredictable delays for manufacturers (and consequently for the patients) this must be done in a transparent and predictable way that does not jeopardise the efficiency of the regulatory process and reduce future innovation.

4.3 *Vigilance and market surveillance*

4.3.1 The EESC welcomes the proposed improvement and strengthening of the vigilance system, particularly the introduction of an **EU portal** where manufacturers should report serious incidents and corrective actions to reduce the risk of recurrence (Art. 61/59). The automatic availability to all national authorities concerned will allow better coordination among them.

4.3.2 To further guarantee safety of medical devices, and in particular with a view to picking up long-term safety issues related to implants, the legislation needs to be strengthened in the post-market provisions and, in particular, post-market clinical follow-up, vigilance and market surveillance.

4.4 *Transparency*

4.4.1 For the EESC one of the most significant issues in both recasts of regulations is the proposal for an increased transparency of the whole system.

4.4.2 In this respect the EESC supports the introduction of a **Unique Device Identification (UDI)** to be assigned to each device, allowing faster identification and better traceability to support the European Parliament Resolution of 14 June ⁽¹⁷⁾.

4.4.3 The EESC considers the establishment of a fully workable **Eudamed** as a very suitable tool for increased transparency. The establishment of such central registration tool (Eudamed) will eliminate multiple registrations throughout Member States and thus help reducing the administrative costs for applicants by up to EUR 157 million.

4.5 *Strengthening the position of patients harmed*

4.5.1 The current Product Liability Directive 85/374/EEC establishes medical device manufacturers' liability. However, the person harmed (or the payer liable for the cost of treatment) has to prove the harm and the faultiness of the MD. The patient often lacks the information required to prove such faultiness. Therefore, the manufacturer should be obliged to make all

necessary documents and information regarding safety and efficacy of a device available to the person harmed.

4.5.2 The EESC also recognises that a mechanism should be put in place to compensate patients harmed by faulty medical devices or IVDs. In order to secure appropriate financial security in the event of harm being caused, the injured parties must have the right to levy direct claims and receive full compensation. The burden of proof as to whether a defective medical device is the cause of harm to health or not must be shifted from the patient to the manufacturer. It should only still be incumbent upon the patient to provide proof of the objective possibility of cause of harm by the medical device. Accordingly, the EESC calls on the Commission to ensure through appropriate mechanisms the payment of compensation that does not lead to a substantial increase in the prices of medical devices.

4.6 *Notified bodies and competent authorities*

4.6.1 The EESC supports tightening up the **designation and monitoring of Notified Bodies** to ensure a uniform high level of competence throughout the Union. The central oversight of their designation by Member States is also welcomed.

4.6.2 The EESC supports all proposals to reinforce the rights and obligations of competent authorities (better coordination and clarification of procedures, on-site and unannounced inspections) on the one hand and the suppliers on the other hand (request for a 'qualified person').

4.6.3 The EESC appreciates the unification of high-quality standards and competences for Notified bodies across Europe but expresses concern that this goal cannot be achieved if the number of notified bodies remains as high as it is now (80). The EESC recommends high quality instead of quantity.

4.7 *Education and training*

4.7.1 The EESC notes that the Members States in its EU Council Conclusions on innovations in the Medical Devices Sector ⁽¹⁸⁾ invited the Commission to improve information and training for healthcare professionals, patients and patients' families regarding the proper use of devices. MDs work only if they are used correctly. Their effectiveness relies on the skills and experience of the physician and lab personnel using them.

4.7.2 Therefore the EESC invites Member States to include appropriate provisions related to the education and training of the professional staff in the proposed regulations.

⁽¹⁷⁾ See footnote 3.

⁽¹⁸⁾ See footnote 4.

4.8 *Involvement of civil society*

4.8.1 The EESC believes that the proposed Medical device coordination group (MDCG) does not provide enough involvement of all stakeholders. According to proposed regulations, MDCG may establish standing or temporary sub-groups, but the EESC considers it insufficient, if organisations representing the interests of consumers, health professionals and medical device industry at the Union level will be invited in such sub-groups only in the capacity of observers. Their active role as consultants must be assured.

4.8.2 Experience has shown that progress in the EU is only possible when the different players share a common vision and a common direction. The system benefits today from an active 'Advisory Committee' as part of Medical Device Expert Group (MDEG). This should be kept and given explicit reference in the legislation. Otherwise decisions and policy may lack an early and rightful input of patients, health professionals, industry and other parts of civil society.

4.9 *Review clause*

4.9.1 A review of the functioning of the Regulations would be necessary to ensure that its intent is truly being met. At some point, no longer than three years after the entry into force of the proposals, the functioning of the Regulation should be formally reviewed jointly by authorities and stakeholders from civil society to ensure that the objectives of the regulations are being met.

5. **Specific comments on IVD regulation related to Companion Diagnostics (CDx)**

5.1 **Definition:** The EESC is concerned that the definition of companion diagnostic as proposed in Article 2 (6) is too broad

and could lead to legal uncertainty. The EESC proposes the following definition: '*companion diagnostic means a device specifically intended to select patients with a previously diagnosed condition or predisposition as eligible for treatment with a specific medicinal product*' (instead of 'eligible for a targeted therapy').

5.2 **Clinical evidence:** The IVD Regulation proposal contains a comprehensive set of rules on performing clinical performance studies with IVDs and also introduces the possibility for 'sponsors' of interventional multi-national clinical performance studies to submit a single application through an electronic portal to be set up by the Commission.

5.2.1 However, the proposed Regulation should ensure that the new rules for clinical performance studies interact well with those which will come out of the currently discussed new framework for clinical trials with medicinal products, according to the previous opinion of the EESC ⁽¹⁹⁾. The EESC also holds the view that the databases for registering trials need to be interoperable.

5.3 **'In-house tests':** According to the IVD Regulation proposal, high-risk (class D) in-house tests are subject to the same requirements as commercial class D tests. But for in-house tests in other classes (including class C and CDx), the IVD Regulation does not apply fully. The EESC recommends that the principle of assessing the risks and benefits of a healthcare product should apply to all products regardless of whether they are commercialised or developed and used solely inside an institution (in-house test).

Brussels, 14 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁹⁾ EESC opinion 'Clinical trials on medicinal products for human use', OJ C 44, 15.2.2013.

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment'

COM(2012) 584 final — 2012/0283 (COD)

(2013/C 133/11)

Rapporteur: **Bernardo HERNÁNDEZ BATALLER**

On 26 October and 5 November 2012 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 26 and 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment

COM(2012) 584 final – 2012/0283 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 February 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 74 votes with 1 abstention.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's proposal insofar as it simplifies the legal framework, clarifies existing rules and improves the consistency of EU legislation on the placing of products on the market.

1.2 It should be emphasised that all economic operators should be responsible for the compliance of products, in relation to their respective roles in the supply chain, so as to ensure a high level of health and safety protection for consumers. The EESC calls on the Commission and the Member States to ensure, each within the remit of their responsibilities, that products entering the EU market from non-EU countries meet the directive's requirements.

1.3 With regard to rules on penalties, the EESC calls for further details regarding the nature of the penalties, the definition of offences, and the minimum threshold for the penalties at the supranational level, even if these are ensured by the Member States' legislation. To this end, it eagerly awaits the Commission's approval of the so-called 'market surveillance package', which includes detailed provisions for enhanced cooperation and harmonisation.

1.4 The Commission, producers and consumers should study the prospect of creating a new marking system that establishes the origin of products and ensures their traceability to improve consumer information.

2. Introduction

2.1 The current legal framework for the placing on the market, free movement and putting into service in the EU of radio equipment and telecommunications terminal equipment, which has been in force since 1999⁽¹⁾, has been crucial to achieving an internal market in this area.

2.2 At the time, the EESC welcomed⁽²⁾ this directive, which included essential requirements for the protection of health and safety, electromagnetic compatibility, and the avoidance of harmful interference. It followed the so-called 'New Approach' for legislation in that it established technical requirements as non-mandatory harmonised standards, restricting legislative requirements to those that were essential⁽³⁾.

2.2.1 The current legal framework has proved complex since under Directive 1999/5/EC only equipment complying with the requirements of the directive may be placed on the market. Moreover, Member States cannot introduce further restrictions addressing at national level the same requirements, namely the protection of health and safety, electromagnetic compatibility, and the avoidance of harmful interference.

2.2.2 Other EU legislation on environmental aspects also applies to these products, in particular the directives on hazardous substances, waste electrical and electronic equipment and batteries, as well as the implementing measures under the EcoDesign Directive.

2.2.3 At the same time, the putting into service and use of radio equipment is subject to national regulation. When exercising this competence, Member States must comply with applicable EU law, in particular:

— the general framework for spectrum policy set out in the Radio Spectrum Policy;

⁽²⁾ OJ C 73, 9.3.1998, p.10.

⁽³⁾ See Council Decision 90/683/EEC (OJ L 380, 31.12.1990, p.13) and Council 93/465/EEC (OJ L 220, 30. 8.1993, p. 23), now repealed.

⁽¹⁾ OJ L 91, 7.4.1999, p. 10.

- general criteria laid down in the Electronic Communications ‘Framework Directive’;
- conditions for authorisations for the use of spectrum laid down in the Authorisation Directive for electronic communications;
- implementing measures harmonising the technical conditions for the use of certain spectrum bands in the EU and that are binding on all Member States.

2.3 To this we must add the requirement for consistency with the other policies and objectives of the Union, and in particular with the new legislative framework package for the marketing of products adopted in 2008 ⁽⁴⁾, which was supported by the EESC ⁽⁵⁾, in that its objective and purpose was to provide:

- a common framework for the marketing of products; and
- a common framework of general principles and reference provisions intended to apply across the legislation harmonising the conditions for the marketing of products in order to provide a coherent basis for revision or recasts of that Decision.

2.4 The Commission sets out to address this complex legal framework through a proposal that aims to clarify the application of Directive 1999/5/EC, and replace it in order to eliminate unnecessary administrative burdens for businesses and administrations by increasing spectrum flexibility and easing administrative procedures for spectrum use.

3. The Commission proposal

The most significant elements of the proposal for a revision of the directive are the following:

3.1 Alignment with Decision No 768/2008/EC on a common framework for the marketing of products (including the definitions set out in chapter R1 of Decision No 768/2008/EC; the obligations of economic operators; three modules for conformity assessment; the obligations for the notification of conformity assessment bodies; and simplified safeguard procedures).

3.2 Decision No 768/2008/EC was adopted with Regulation (EC) No 765/2008 (on accreditation and market surveillance). Together they established guidelines for improving the functioning of the internal market and a more coherent policy approach to the technical harmonisation of product safety.

They also established a more effective surveillance system for all products entering the market from EU or non-EU countries and improved consumer protection in the single market.

3.3 A new definition has been established for ‘radio equipment’, which includes all and only equipment which intentionally transmits signals using radio spectrum, whether for the purpose of communication or other; hence the new directive’s title will only refer to the marketing of ‘radio equipment’. The directive will not apply to fixed-line terminal equipment.

3.4 The proposal makes it possible:

- to require radio equipment to interoperate with accessories such as chargers; and
- to require software-defined radio equipment to ensure that only compliant combinations of software and hardware come together. To this end, it makes it possible to adopt measures to avoid this regulatory requirement creating barriers to competition in the market for third-party software.

3.5 It introduces the possibility to require registration within a central system of products within categories showing low levels of compliance, on the basis of information on compliance provided by Member States.

3.6 The proposal clarifies the relation between Directive 1999/5/EC and EU and national legislation on the use of radio spectrum.

3.7 It simplifies and reduces the administrative obligations set out below.

- a) The new definition of radio equipment establishes a clear demarcation of scope with the electromagnetic compatibility (EMC) Directive.
- b) Pure receivers and fixed-line terminals cease to fall within the scope of the directive, falling instead within the scope of the EMC Directive or the Directive relating to electrical equipment designed for use within certain voltage limits or, depending on their voltage, within the scope of the EMC Directive and Directive on general product safety; this entails some reduction of administrative obligations.
- c) The requirement to notify the placing on the market of equipment using frequency bands which are not harmonised throughout the EU is removed.

⁽⁴⁾ OJ L 218, 13.8.2008, p. 30 and 82.

⁽⁵⁾ OJ C 120, 16.5.2008, p. 1.

d) The following requirements for producers are removed:

- the obligation to affix an equipment class identifier on the product; and
- the obligation to affix CE marking on user instructions.

e) Requirements supporting competition in the market for terminals (relating to interface specifications and technical grounds relating to connecting telecommunications terminal equipment to interfaces) are removed from the text of the directive since similar requirements are in force under the Directive on competition in the markets in telecommunications terminal equipment.

3.8 Finally, the proposal for a directive seeks alignment with the TFEU and Regulation (EU) 182/2011 on the Commission's exercise of implementing powers, the procedures for the exercise of implementing and delegated powers, and exercise of the delegation, more specifically:

- implementing powers are proposed for the determination of equipment classes and presentation of information on geographical area for use and on restrictions to use of radio equipment; and
- delegated powers are proposed for the adaptation to technical progress of Annex II listing some equipment falling or not within the definition of radio equipment; additional essential requirements; provision of information on the compliance of software-defined radio equipment and the requirement to register radio equipment within some categories.

4. General comments

4.1 The EESC supports the Commission's proposal as it improves the consistency of EU legislation, in line with Article 7 of the TFEU, by opting for the legislative technique of 'substitution' whereby legislation is recast by adopting a new legal act which integrates all the substantive amendments and unchanged provisions of an earlier act into a single act, since the new act replaces and repeals the earlier one, aligning terminology with Decision No 768/2008/EC and the Lisbon Treaty.

4.2 The free movement of goods is one of the four fundamental freedoms of the Treaties and the proposal for a directive promotes the movement of safe goods, thereby strengthening consumer protection, the competitiveness of businesses and creating conditions of fair competition for economic operators.

4.3 In order to ensure conditions that restore the competitiveness of European industry, the EESC believes that it is vital

for the internal market to ensure full interoperability in order to reduce the fragmentation of national markets and investment in research and innovation.

4.4 The EESC points to the need to develop a proactive industrial policy that better reflects the balance between the capacities of producers, a technical and regulatory framework for intellectual property rights and, above all, the types of products that can meet common standards, rules and harmonised procedures.

4.5 Technical and regulatory standards should be adopted in line with the principles of New Approach Standardisation, ensuring public information and transparency for the work, with the full participation of the social partners and civil society organisations.

5. Specific comments

5.1 Regarding its subject matter and scope, Article 1(3) excludes a whole range of radio equipment exclusively used for activities concerning 'public security', which in addition to defence or State security, includes other concepts such as 'the economic well-being of the State', which need to be defined or explained to improve the clarity of the provision.

5.1.1 Furthermore, although these types of equipment are excluded under Article 1(3), they are not mentioned in Annex I as 'equipment not covered by this directive'.

5.2 The EESC advocates promoting interworking via networks with other radio equipment and connection with interfaces of the appropriate type throughout the Union, which may simplify use of radio equipment by facilitating interoperability between radio equipment and accessories.

5.3 In order to better protect the personal data and privacy of radio equipment users, an ethical and social side to technological security applications needs to be developed as early as the design stage, in order to ensure its social acceptance. The protection of fundamental citizen rights must be guaranteed throughout all stages, from design to standardisation and technological application on the ground, by introducing it during the very first stages.

5.4 The requirements for placing both EU and non-EU products on the market need to be clarified. As a result, Article 6 should mention in what situations the directive's fundamental requirements may be deemed to have been met (EU harmonised standards, international standards published by the Commission), together with cases of additional national laws.

5.5 The EESC advises the Commission and the Member States to ensure that marketed products comply with the directive's requirements for the relevant spectrum band in order to avoid interference with the 800 MHz band as well as 'unnecessary contamination of the radio spectrum'. This recommendation is particularly necessary in cross-border regions, where it would be useful to harmonise the schedules and technology to be applied.

5.6 The EESC is in favour of providing access to emergency services, especially for people with disabilities, which is why equipment should be designed to support the required features.

5.7 It is very important for all economic operators to be responsible for the compliance of products, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of health and safety and to guarantee fair competition on the EU market.

5.8 The EESC calls on the Commission and the Member States to ensure, within the remit of their responsibilities, that products entering the EU market from non-EU countries meet the directive's requirements. They must ensure that all importers who place products on the market meet all the requirements and do not market non-compliant or hazardous products.

5.9 The traceability of radio equipment throughout the whole supply chain must be ensured as a market surveillance measure facilitating the consumer's right to information.

5.10 The EESC reiterates ⁽⁶⁾ that the current marking system does not ensure that products have undergone a quality and safety assurance process, thus failing to meet consumers' expectations.

5.11 With regard to the accreditation and conformity assessment system, the EESC advocates the same level of competence for the notified conformity assessment bodies, more stringent selection criteria, and harmonised conformity assessment procedures.

5.12 At the same time, the EESC believes that the conditions for ensuring the independence of the notified conformity assessment bodies need to be strengthened by extending the incompatibilities mentioned in Article 26(4) to cover activities carried out two or three years before the assessment.

5.13 The EESC has concerns about the 'delegated acts' set out in the proposal, which sometimes lack necessary practical details, as for instance in Article 5 on the registration of radio equipment within some categories, which empowers the Commission with respect to their ex-post identification, without specifying any criteria, which could result in a margin of discretion that is too broad.

5.14 With regard to rules on penalties, the proposal should define, at the supranational level, the nature of, and a minimum threshold for, penalties, which must be ensured by the Member States' legislation since the proposal for a directive only mentions the national authorities' obligation to establish 'effective, proportionate and dissuasive' measures, with the result that some operators might go 'forum shopping' for the jurisdiction that best suits their interests, or that the *ne bis in idem* (double jeopardy) principle might be breached in case of concurrent sanctions.

5.15 The EESC recommends that the five-year timeframe mentioned in Article 47(2) should be reduced due to the sector's rapid growth.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁶⁾ OJ C 181, 21.6.2012, p. 105.

Opinion of the European Economic and Social Committee on the 'Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived'

COM(2012) 617 final — 2012/295 (COD)

(2013/C 133/12)

Rapporteur: **Krzysztof BALON**

On 22 November 2012 the Council, and on 19 November 2012 the European Parliament, decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived
COM(2012) 617 final - 2012/295 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 14 February), the European Economic and Social Committee adopted the following opinion by 182 votes to 7 with 12 abstentions.

1. Conclusions and recommendations

1.1 The EESC endorses the underlying principles of the draft regulation. At the same time, the Committee notes that the financial resources allocated to the planned Fund for European Aid to the Most Deprived are not sufficient to achieve its aims.

1.2 Considering that 24,2 % of the EU's population is at risk of poverty or social exclusion, with this figure expected to grow further, the EESC calls for the new fund to be given a budget which is tailored to its needs. The budget of this new fund should be commensurate with the objective of the Europe 2020 Strategy to reduce the number of people living in or at risk of poverty and social exclusion by at least 20 million by 2020. The level of the budget should not differ from the amount of resources allocated to the existing material assistance programmes.

1.3 The EESC is concerned that co-financing by the Member States may lead to difficulties in carrying out financial transactions under the new fund and therefore favours fully financing the new fund from the EU budget, as was the case for material assistance programmes in previous years.

1.4 The EESC supports the simplified procedures and reduction in the Member States' administrative burden, and particularly for partner organisations, outlined in the draft regulation. In this context, the EESC cautions against the possible use by the Member States of the complex procedures of the European Social Fund.

1.5 The EESC welcomes the provisions providing partner organisations with a sufficient level of liquidity for the effective realisation of operations and the fact that the fund will also cover administrative, transport and storage costs and finance the capacity building of partner organisations.

1.6 The EESC supports the creation at Union level of a platform for the exchange of experience and best practice. The EESC also calls for the inclusion of civil society organisations in the process of monitoring and assessing the operational programmes of the new fund at Member State level.

1.7 Equally, in view of the diversity of situations in the Member States, the EESC calls on the national governments to define, in cooperation with civil society organisations, the position and role of the new fund to ensure that it becomes an instrument that effectively complements other action taken under national strategies and plans to combat poverty and social exclusion, including action supported by the European Social Fund.

1.8 The EESC emphasises that the EU and its Member States base their social policy on the European social model, social science standards and the Europe 2020 Strategy. This implies the legal entitlement to social benefits, compliance with the EU's distribution of powers, and the objectives of social integration and solidarity within the Member States and the EU. Reliable social welfare structures and in particular access to social services are required, inter alia in order to prevent extreme deprivation. All kinds of aid must avoid exacerbating poverty and stigmatising the people concerned.

1.9 Moreover, in view of the diversity of national policies for combating poverty and social exclusion in the Member States, and considering the seriously inadequate budget allocated to the fund, the EESC calls for the introduction of an optional system for the use of the fund by individual Member States. This should not, however, lead to any reduction in the resources available under the European Social Fund to those Member States which do not use the fund.

2. Background

2.1 This EESC opinion refers to the new EU support programme for the most deprived, the Fund for European Aid to the Most Deprived, which replaces the Food Distribution Programme for the Most Deprived People (MDP) as well as the support programme for the most deprived 2012-2013 which replaced the MDP.

2.2 The MDP dates back to 1987; it laid down the general rules for the supply of food from intervention stocks to designated organisations for distribution to the most deprived persons in the Community. The programme promotes social cohesion in the Union by reducing economic and social inequality.

2.3 Under the MDP programme, civil society organisations (accredited charitable organisations) provided food assistance to the most deprived persons in most EU Member States. In many cases, this assistance was of vital importance for further action towards ensuring the social integration of deprived groups, as well as being a clear and visible sign of European solidarity.

2.4 The programme's budget rose from EUR 97 million in 1988 to EUR 500 million in 2009 (mainly in connection with successive EU enlargements). Almost 19 million of the poorest Europeans have so far (as at 2011) benefited from the MDP⁽¹⁾.

2.5 A number of Member States did not, however, take part in the MDP programme, arguing that it was unnecessary or incompatible with their national policies to combat poverty

and social exclusion. Certain civil society organisations in these countries have highlighted the stigma attached to direct material assistance and consider that it is preferable for the state to provide the financial assistance needed to cover all basic needs. However, these countries are also home to people and groups who, for various reasons, remain beyond the reach of the financial assistance provided through state assistance programmes.

2.6 The MDP, independently of its social dimension, became an instrument of EU agricultural policy, helping to stabilise agricultural markets by the use of intervention stocks. Successive reforms of the CAP led to a significant decrease in intervention stocks, the level of which in recent years was insufficient to meet food aid needs. A proposal for a regulation was therefore drawn up, in consultation with representatives of civil society organisations, designed to make the system of aid for the most deprived permanent. Most of the related changes, including the phased introduction of co-financing, three-yearly distribution plans, the establishment of priority actions to be carried out by the Member States, and an increase in the available budget, did not obtain the necessary majority in the Council.

2.7 On 13 April 2011 the Court of Justice of the European Union ruled that purchases of foodstuffs on the markets could not be used regularly to replace diminished intervention stocks. The European Parliament then called on the Commission and the Council (Resolution of 7 July 2011) to draw up a transitional solution for the remaining years of the current multi-annual financial framework in order to prevent sharp restrictions on food aid. On 15 February 2012 the Regulation of the European Parliament and of the Council as regards the temporary distribution of food products to the most deprived persons in the Union was adopted for 2012 and 2013. This programme will expire on the termination of the annual programme for 2013⁽²⁾.

2.8 In 2011, 24,2 % of the EU's population – approximately 120 million people – were at risk of poverty or social exclusion (compared with 23,4 % in 2010 and 23,5 % in 2008)⁽³⁾. Given the current economic and financial crisis, we can expect a further increase in this area in nearly every Member State. Poverty and social exclusion are, moreover, highly complex phenomena. They do not only concern unemployed people but also affect people in employment whose incomes are not sufficient to cover their most basic existential needs.

⁽¹⁾ Main results of the distribution plan in the last years – AGRI C5, Stakeholders meeting – 5/7/2012, Brussels, http://ec.europa.eu/agriculture/most-deprived-persons/meetings/05-07-2012/dg-agri-1_en.pdf (pp. 9-10).

⁽²⁾ Regulation of the European Parliament and of the Council (EU) No 121/2012 of 15 February 2012.

⁽³⁾ Eurostat press release 171/2012 of 3 December 2012.

2.9 Within the framework of its Europe 2020 Strategy, the European Union has set itself the objective of reducing by at least 20 million the number of people in or at risk of poverty or social exclusion by 2020. 2010 was declared the European Year for Combating Poverty and Social Exclusion. The EESC points out that the economic crisis has further exacerbated poverty and social exclusion, casting serious doubt on the feasibility of certain Member States achieving this objective of the Europe 2020 Strategy, especially without adequate financial support from the European Union.

2.10 The question of aid for the most deprived has on numerous occasions been the subject of active interest and debate at the European Economic and Social Committee. In 2011 alone the EESC adopted two opinions pointing to the need for the continuation and further development of this aid ⁽⁴⁾. If we consider the social integration objectives outlined in the Europe 2020 Strategy as a whole, in 2012 alone the EESC adopted opinions covering various aspects of combating poverty and social exclusion, including the situation of older people, persons with disabilities, the dangers to mental health, as well as aspects relating to the development of social farming and social housing ⁽⁵⁾.

2.11 The United Nations' Universal Declaration of Human Rights enshrines the right of every person to 'a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services (...)' ⁽⁶⁾. These provisions are reflected by the provisions of the Treaty on European Union on respect for human dignity, including those of the Charter of Fundamental Rights of the European Union on ensuring a decent existence for all those who lack sufficient resources ⁽⁷⁾. One of the most fundamental principles of our European society, born out of our experiences throughout history, is the principle of solidarity ⁽⁸⁾, which should equally and above all apply to those citizens of the European Union who are experiencing abject poverty and social exclusion.

3. Key aspects of the draft regulation (Commission proposal)

3.1 In contrast to previous food aid programmes, the draft regulation, which is based on Article 175(3) of the Treaty on the Functioning of the European Union, with reference to Article 174 TFEU, places the new Fund for European Aid to

the Most Deprived under cohesion policy. The draft regulation also states that its objective, i.e. to improve social cohesion in the Union and contribute to the fight against poverty and social exclusion, cannot be sufficiently achieved by the Member States but can be better achieved at Union level. For this reason, in accordance with the principle of proportionality set out in Article 5 of the Treaty on European Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in that Article ⁽⁹⁾.

3.2 The objective of the new Fund for European Aid to the Most Deprived is to promote social cohesion in the Union by contributing to the achievement of the Europe 2020 Strategy's objectives for reducing poverty. By responding to basic needs the proposed instrument is intended to provide additional support in reducing the level of poverty and social exclusion in the Union. The new fund partly builds on the experience of the MDP, at the same time earmarking part of its resources for material assistance in the form of non-food consumer goods for homeless people and/or children and for accompanying measures contributing to social reintegration.

3.3 Fund support is aimed at people suffering from food deprivation, the homeless and children experiencing material deprivation. Specific activities for the target groups and the forms of support remain a matter for the Member States.

3.4 The partner organisations that directly deliver food or goods in the framework of operations supported by the fund will themselves have to undertake activities complementing the provision of material assistance, aiming at the social integration of the most deprived persons. The option of using the fund to support this kind of accompanying measure is left to the Member States.

3.5 The level of co-financing from the fund for the operational programmes of individual Member States has been set at a maximum of 85 % of eligible expenditure, with exemptions for Member States facing temporary budget difficulties.

4. Comments on the Commission proposal

4.1 Fund budget and scope of support

4.1.1 The EESC notes with regret that the financial resources allocated to the planned fund are far from adequate for achieving its objectives.

⁽⁴⁾ OJ C 84, 17.3.2011, pp 49-52 and OJ C 43, 15.2.2012, p. 94-97.

⁽⁵⁾ OJ C 11, 15.1.2013, p. 16-20 / OJ C 44, 15.2.2013, p. 28-35 / OJ C 44, 15.2.2013, p. 36-43 / OJ C 44, 15.2.2013, p. 44-48 / OJ C 44, 15.2.2013, p. 53-58.

⁽⁶⁾ Article 25(1) of the UN's Universal Declaration of Human Rights.

⁽⁷⁾ Compare, *inter alia*, Article 2 of the Treaty on the European Union and Article 34(3) of the Charter of Fundamental Rights of the European Union.

⁽⁸⁾ Compare Article 2 of the Treaty on European Union.

⁽⁹⁾ Compare recitals 3 and 42 of the Commission proposal.

4.1.2 When purchasing foodstuffs it must be ensured that no competition rules are broken and that sufficient consideration is given to SMEs and regional, environmentally sensitive and social inclusive suppliers. The organisations distributing the food must not be acting in pursuit of profit.

4.1.3 It is already known that, under the financial framework for 2014-2020, the European Commission has provided for a budget of EUR 2.5 billion for the activities of the new fund, i.e. EUR 360 million per annum. The discussions on the final shape of the European Union budget have given rise to fears, however, that this amount may be subject to further cuts. The amount allocated under the current programme for the period 2012-2013, EUR 500 million per annum, is however already insufficient to meet the needs of the Member States in full, which are estimated at around EUR 680 million per annum⁽¹⁰⁾. A possible increase in the number of Member States using the new fund (currently 20)⁽¹¹⁾ and the flexibility of the proposed support, i.e. the provision for the distribution of basic consumer goods, apart from food, for the personal use of the homeless or children, as well as the planned social reintegration activities, make it likely that needs will significantly exceed the current budget. The proposed fund budget is thus clearly inadequate to meet the needs it is supposed to satisfy. Moreover, assuming that the European Union budget remains at its current level in 2014-2020 or decreases only slightly, it is difficult to accept a reduction in the resources allocated to material assistance of at least 28 % (compared with the programme for 2012-2013).

4.1.4 The Commission estimates that 'in total the number of people helped directly by the Fund, by Member States co-funding and contributions in kind by the partner-organisations would be some four million'⁽¹²⁾. Even if it is assumed that this objective will be fully realised, a question arises as to the effectiveness of the fund in achieving the objectives of the Europe 2020 Strategy (reducing the number of people experiencing poverty in the European Union by at least 20 million). In this connection, the EESC calls for the new fund to be given an

appropriately high priority at European level, and for the allocation to the fund of a budget sufficient for existing needs.

4.1.5 The EESC would refer in this context to the opinion of the Committee of the Regions which, in connection with the assistance programme for 2012-2013, 'urges the Commission to continually assess whether the annual financial ceiling of EUR 500 million set for the programming period is sufficient given that the economic crisis may increase pressure to cut public expenditure and that economic uncertainty leads to higher unemployment in many countries'⁽¹³⁾.

4.1.6 The EESC also calls for the fund to be financed from the EU budget at the rate of 100 %, as was the case for food aid programmes carried out in past years. In the Committee's view, co-financing from Member State resources may lead to financial difficulties in implementing the programme, not only in Member States facing temporary budget difficulties (for which the possibility of increased payments is provided)⁽¹⁴⁾.

4.1.7 The EESC supports the provision of the regulation which allows for the use of intervention stocks for the provision of food aid, although their accumulation in significant amounts is not expected in the near future⁽¹⁵⁾. However, considering the seriously inadequate budget allocated to the fund, the Committee does not believe that the value of any intervention stocks used should be included in the budget.

4.1.8 Lastly, in view of the fund's lean budget and the position of certain Member States that the fund is unnecessary or incompatible with their national policies to combat poverty and social exclusion, the EESC calls for the introduction of an optional (voluntary) system for the use of the fund by individual Member States, which could also mean more resources being available under the fund to those Member States which do wish to use it.

⁽¹⁰⁾ European food aid programme for the most deprived persons in the EU, AGRI C.5, Stakeholders meeting 5/07/2012, Brussels, http://ec.europa.eu/agriculture/most-deprived-persons/meetings/05-07-2012/dg-agri-2_en.pdf, p. 12.

⁽¹¹⁾ Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain.

⁽¹²⁾ MEMO/12/800 24 October 2012, Poverty: Commission proposes new Fund for European Aid to the Most Deprived - frequently asked questions, http://europa.eu/rapid/press-release_MEMO-12-800_en.htm

⁽¹³⁾ OJ C 104, 2.4.2011, p. 44-46, point 22 of the opinion.

⁽¹⁴⁾ See Articles 18 and 19 of the Commission proposal.

⁽¹⁵⁾ Compare with Article 21(3) of the Commission proposal.

4.2 Target groups of the fund and type of aid provided

4.2.1 The EESC considers that when providing aid, it is necessary to cover all the three situations identified in the proposal - food deprivation, homelessness and the material deprivation of children, as well as groups and persons socially excluded for special, including historical, reasons. The basic priority for aid should be the provision of food. Access to food is the first step on the road to the social integration and reintegration of the excluded. Taking account, however, of the different situations in individual Member States, the EESC suggests leaving the determination of the kind of aid provided to individual target groups entirely up to the Member States.

4.2.2 The EESC also opposes requiring organisations providing direct food or other aid to engage in activities complementing the provision of material assistance, where these activities are not supported by the operational programme of the Member State in the framework of the fund ⁽¹⁶⁾.

4.3 Management of the fund

4.3.1 The EESC supports the Commission's position on simplifying procedures and reducing administrative burdens on Member States, and particularly partner organisations ⁽¹⁷⁾. Streamlined and simplified procedures for operations must be in line with the specific aims and target groups of the fund. In this context the EESC would like to caution against the use of

procedures from the European Social Fund ⁽¹⁸⁾. In certain Member States these procedures are complex and may prove unsuitable for the partner organisations.

4.3.2 The EESC welcomes the Commission's proposal for the establishment of a Union-level platform, the activities of which would be financed in the framework of technical assistance. The exchange of experience and best practice between EU institutions, Member States, the social partners and other civil society organisations will provide added value for the fund ⁽¹⁹⁾.

4.3.3 The EESC welcomes the requirement for the Member States to draw up operational programmes in cooperation with bodies representing civil society ⁽²⁰⁾. The EESC also proposes making it compulsory to set up monitoring committees or other bodies to monitor and assess operational programmes in the Member States involving civil society organisations, people directly experiencing poverty or their representatives.

4.3.4 The EESC welcomes the fact that the fund will cover the administrative, transport and storage costs of food and consumer goods and that it will be possible to finance the capacity building of partner organisations ⁽²¹⁾. This will make it possible to involve the partner organisations in the effective implementation of operations in the framework of the fund.

4.3.5 The EESC welcomes the fact that partner organisations will be provided with a sufficient level of liquidity for the effective realisation of operations ⁽²²⁾.

Brussels, 14 February 2013.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

⁽¹⁶⁾ Compare with Articles 4(2) and 7(1) of the Commission proposal.

⁽¹⁷⁾ Compare with Article 23 of the Commission proposal.

⁽¹⁸⁾ Compare with Article 32(4) of the Commission proposal.

⁽¹⁹⁾ Compare with Article 10 of the Commission proposal.

⁽²⁰⁾ Compare with Article 7(2) of the Commission proposal.

⁽²¹⁾ Compare with Articles 24 (1c) and 25(2) of the Commission proposal.

⁽²²⁾ Compare with Article 39 and Article 41 of the Commission proposal.

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

Point 4.1.3

Amend as follows

The Commission estimates that 'in total the number of people helped directly by the Fund, by Member States co-funding and contributions in kind by the partner-organisations would be some four million'. Even if it is assumed that this objective will be fully realised, a question arises as to the effectiveness of the fund in achieving the objectives of the Europe 2020 Strategy (reducing the number of people experiencing poverty in the European Union by at least 20 million). In this connection, the EESC calls for the new fund to be given an appropriately high priority at European level, and for the allocation to the fund of a budget sufficient for existing needs.

Result of the vote:

For: 55

Against: 102

Abstentions: 15

Point 4.2.1

Amend as follows

The EESC considers that when providing aid, it is necessary to cover all the three situations identified in the proposal - food deprivation, homelessness and the material deprivation of children, as well as groups and persons socially excluded for special, including historical, reasons. The basic priority for aid should be the provision of food. Access to food is ~~could be~~ the first step on the road to the social integration and reintegration of the excluded. Taking account, however, of the different situations in individual Member States, the EESC suggests leaving the determination of the kind of aid provided to individual target groups entirely up to the Member States.

Result of the vote:

For: 54

Against: 108

Abstentions: 21

Opinion of the European Economic and Social Committee on the ‘Proposal for a directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures’

COM(2012) 614 final — 2012/0299 (COD)

(2013/C 133/13)

Rapporteur: **Madi SHARMA**

On 22 November 2012 the European Parliament and on 10 December 2012 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures

COM(2012) 614 final – 2012/0299 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), the European Economic and Social Committee adopted the following opinion by 128 votes to 58 with 10 abstentions.

1. Conclusions and recommendations

1.1 In the text under consideration, the European Commission is proposing a directive for improving the gender balance among non-executive directors of companies listed on the stock exchange with a minimum objective of 40 % by 2020.

1.2 The EESC welcomes this proposal. While its preference is for voluntary measures, rather than quotas, it acknowledges that little will change as regards the gender balance in EU listed companies without legally endorsed objectives. Today, just 13.7 % of board members are women, which is evidence of clear discrimination.

1.3 The EESC and the Commission recognise the need to respect the freedom to conduct business. This directive is a minimum standard which seeks to improve the conditions for business prosperity and allows Member States to progress beyond the measures recommended. The EU social partners themselves drafted a plan in 2005, stating many of the arguments for gender equity and highlighting practical tools for Member States and companies ⁽¹⁾.

1.4 The drive for change is based on strong evidence that there is a supply of highly-skilled women across Member States

and therefore any argument for gender balance should be based on the ‘merit and preference rule’ rather than positive discrimination. Nevertheless, there are still factors that hinder women from taking the lead, such as a lack of reconciliation measures between business and family life, limited access to networks that are important for higher positions, lack of self-confidence, etc.

1.5 The EESC would hope that this minimum standard could be adopted by all public and private decision-making bodies in the spirit of self-regulation in order to avoid further legislation. This could include executive directors, boards of listed SMEs and all public-sector bodies to promote a more gender equitable environment, a condition of transparent application and appointment and a culture of inclusion and ‘choice’ in society as a whole.

1.6 The EESC would further recommend that policymakers and companies review the following issues to ensure the 40 % target is achieved and exceeded:

— better visibility of women in senior roles;

— greater transparency in headhunting talent;

⁽¹⁾ http://www.etuc.org/IMG/pdf/framework_of_actions_gender_equality_010305-2.pdf

- building and retaining a critical mass;
- challenging stereotypes around gendered roles;
- leadership succession planning;
- creation of a talent pipeline;
- disseminating examples of good practice;
- creating a European-wide coordinated database of qualified women for board positions.

1.7 The EESC congratulates Ms Reding and her supporters within the Commission, Parliament and other institutions on taking the first steps towards a more balanced Europe and challenging the perception of who should be in the boardroom, to ensure a more inclusive society. This is a substantial shift in mindset. The EESC recognises that extensive research, legal analysis and consultation with civil society have been conducted in order to present a practical directive with adequate flexibility in delivery and timeframes for both companies and Member States whilst still respecting the principles of subsidiarity and proportionality.

1.8 The barriers to achieving gender equality in decision-making are far deeper than well-rehearsed arguments on gender assumptions and supply challenges. Little will ever be achieved without the willingness of both men and women to take positive action now to move beyond words and respect each other's views. **Europe's strength is its 'unity in diversity', but diversity must first be harnessed.**

1.9 The EESC calls for this proposal for a directive to include specific provisions concerning the gender balance for members of the board of directors representing the company's employees, bearing in mind the particular terms of their appointment.

2. Context

86.3 % of board members are male

2.1 Gender equality is one of the EU's founding objectives, reflected in its Treaties (Article 3(3) TEU) and in the Charter of

Fundamental Rights (Article 23). Under Article 8 TFEU the Union must aim to eliminate inequalities and promote equality. The EU's right to act in issues of gender equality in employment and occupation stems from Article 157(3) TFEU.

2.2 There is a considerable disparity between EU Member States in the number of women on boards as a result of differing policies. The role of women on boards has been being scrutinised for decades, but especially over the last two years as the EU has renewed its commitment to the promotion of gender equality on boards of listed companies. The debate has ranged from introducing legally-binding quotas to self-imposed regulations without repercussions for non-compliance. Effective, voluntary approaches are still slow. **There was only a 0.6 % improvement in the number of women on boards in the last year**, with only 24 companies having signed the 2011 pledge.

2.3 Member States' measures lie along a continuum ranging from legally-binding quotas with sanctions to self-regulation in specific sectors, and, as expected, the representation of women on boards is equally varied. However **countries with binding quotas generally demonstrate a 20 % increase in women on boards**. Six countries that have not implemented any action have experienced a reduction in the number of women on boards. (See Appendix 1)

2.4 By the end of 2011, 11 Member States had adopted laws establishing quotas or targets for gender representation on company boards. France, Italy and Belgium have established quotas including sanctions for non-compliance; Spain and the Netherlands have adopted quota laws without sanctions; Denmark, Finland, Greece, Austria and Slovenia have implemented rules applicable only to boards of state-controlled companies; and in Germany the gender dimension is covered by regulations covering workers' representations on boards.

2.5 Inevitably, the variations between the different Member States have influenced the presence of women on boards. Countries with legislative quotas have experienced a 20 % increase, although Italy has only shown a 4 % increase. Where countries have implemented corporate governance codes the percentage increase ranges from 11 % to 2 %.

2.6 With current levels of attainment, **France is the only country on course to achieve the target of 40 % female representation on boards by 2020**. If current levels of female board representation are extrapolated further, the EU as a whole will not achieve 40 % female representation by 2040 ⁽²⁾.

2.7 Objectives will only be effective if they go hand in hand with penalties, and so there must be sufficient sanctions for non-compliance. The directive allows for proof of non-compliance in all cases, with the onus on the company to prove its due diligence in the recruitment process. Sanctions will work most effectively where they are specified, imposed and implemented by the country concerned, and hence the Commission has only made recommendations as guidelines for possible sanctions.

2.8 The Commission recognises the need to respect the fundamental freedom of businesses to operate without interference, but believes that this freedom should not override the rule of law or fundamental rights. This directive is a minimum standard which seeks to improve the conditions for business and the internal market by creating a level playing field for companies trading in several Member States.

2.9 The directive sets a timeframe for implementation of the quantitative objective of 40 % by 2020 to allow for the cycle of board appointments within individual companies. The directive also has a sunset clause of 2028, after which time it should no longer be required.

2.10 Only an EU-level measure that is flexible in order to take account of diversity across Member States whilst fully respecting the principle of subsidiarity can optimise the potential of female talent.

3. Gender equality is a fundamental right and a common value of the EU

3.1 The EESC believes that increasing the proportion of women in decision-making positions is a goal shared by all civil society players who actively promote gender equity. The EESC has issued many opinions on gender balance in society, and its report on 'The role of the ESCs and Similar Institutions in the new economic, social and environmental world governance' stressed that '(...) political parity, true democracy

and equality will not be established without legal mandates demanding equal representation'.

3.2 As well as being a precondition for true democracy and an equitable society, it is an essential condition for the achievement of the EU objectives of smart, sustainable and inclusive growth. World Bank and Transparency International research shows that transparency increases and corruption decreases where women are well represented in decision-making. Good governance in all walks of life is good for society.

3.3 Over 51 % of the EU's population is female, with women accounting for 45 % of employment and women providing the driving force behind more than 70 % of purchasing decisions. Hence the EESC would have liked to see the introduction of obligatory legal measures with sanctions at all levels of society, on all decision-making bodies, to improve gender balance. This would challenge the perception of who should be included in the decision making process and ensure an inclusive society.

'Today it is clear that women and men cannot be discriminated against on the grounds of gender' ⁽³⁾

BUT the fact is 96.8 % of chairmen are men

3.4 The expansion in global economies is a direct result of human capacity, spearheaded by women who are drivers for geopolitical change impacting on health, education, social welfare, the environment and economic productivity, and this creates a strong business case for women in the boardroom. Gender diversity is not only an asset for the corporate image but also because it tightens the links between the company, employees, shareholders and customers. Thus, diversity is recognised as a fundamental aspect of all private sector CSR policies because of its value, but it has yet to be actually put into practice in many companies.

3.5 Quotas, however uncomfortable, provide an effective means to promote women into board positions, as stressed by Laurence Parisot, President of MEDEF, during a speech at an EESC Plenary in 2012 **'Quotas should not be needed – but they are the only way to break men's prejudices towards women's incompetences'**.

⁽²⁾ Impact assessment document.

⁽³⁾ COM(2012) 615 final.

3.6 On the other hand, some women in leading positions have come out strongly against legally binding quota, as they feel these devalue their own achievements. There is a concrete fear that quotas stigmatise women taking on a leading position.

3.7 To promote women into board positions, it is important to put in place the necessary policies that will encourage women to take the lead, including measures to reconcile business and family life, to encourage networking and career progression at all levels and to raise awareness and change attitudes.

4. Drivers for smart, sustainable and inclusive growth

4.1 Economic potential

4.1.1 As Europe continues to struggle economically, its revival is dependent on the activity of a fully-functioning workforce, and this means the active participation of women. Even before the crisis the EU social partners, UNICE/UEAPME, CEEP and ETUC1 committed to enhancing gender equality on the labour market and in the workplace. In 2005 they identified promoting women in decision-making as one of their key priorities, and in their report recommended practical tools to promote the inclusion of women ⁽⁴⁾.

4.1.2 The competitiveness of European companies puts the focus on growth with innovation, research, training, skills, consumer protection and Corporate Social Responsibility (CSR) – key targets for Commission intervention to best promote increased business opportunities. All these require a balanced gender dimension to attain sustainable results.

4.1.3 51 % of the EU population are female. Many are highly educated and skilled, and thus are an important contributor to the workforce. Female students outnumber their male counterparts at tertiary education level, resulting in **50 % more highly qualified women than men available in the labour market**. The Davies report identified a gap in the UK workforce which could be compensated for by the recruitment of 2 million qualified workers over the next 10 years, most of which would need to be highly qualified women ⁽⁵⁾.

⁽⁴⁾ http://www.etuc.org/IMG/pdf/framework_of_actions_gender_equality_010305-2.pdf

⁽⁵⁾ Davies, Women on Boards, One Year On, March 2012 <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/12-p135-women-on-boards-2012.pdf>

4.1.4 Moreover, female economic participation has far-reaching financial and social benefits for countries. The Global Gender Gap Index for 2011 demonstrated that **countries with higher gender equality had a higher GDP per capita** ⁽⁶⁾.

4.1.5 According to Goldman Sachs, more women in the workforce could boost GDP by:

— 21 % in Italy;

— 19 % in Spain;

— 9 % in France and Germany; and

— 8 % in the UK.

4.1.6 A wide range of research on the economic rationale for women on boards presents a compelling argument supporting the advance of company performance. Research by Credit Suisse (2012) ⁽⁷⁾ McKinsey (2007) ⁽⁸⁾ and Catalyst (2004) ⁽⁹⁾ has all independently identified a correlation between the share of women on boards and the company's financial performance. For example:

— The McKinsey report identified a **41 % higher Return on Equity (ROE) for companies with the highest proportion of women on boards** compared to companies with no women on their boards.

— Catalyst found that **companies with 14.3 – 38.3 % women in top management had a ROE 34.1 % higher** than companies without similar levels of women in senior positions.

⁽⁶⁾ Global Gender Gap Index for 2011; World Economic Forum, <http://www.uis.unesco.org/>

⁽⁷⁾ Credit Suisse Research Institute August 2012; Gender diversity and corporate performance.

⁽⁸⁾ McKinsey, Women Matter: Gender Diversity: a corporate performance driver (2007).

⁽⁹⁾ The Bottom Line: Connecting Corporate Performance and Gender Diversity, January 2004, Catalyst.

— Credit Suisse **identified companies with women on boards as demonstrating a higher share price performance** compared to their counterparts without women on boards.

4.1.7 There are studies that demonstrate that gender diversity on boards has had little or no impact on financial performance, but the overwhelming trend is largely one showing a positive correlation between a female presence on boards and the financial performance of companies.

4.2 Business case

4.2.1 There are numerous reasons explaining the improved performance of companies that have diverse gender representation on their boards. One of the main arguments lies in the willingness to engage in diverse critical thinking around business decisions, creating a more proactive business model.

4.2.2 Understanding diversity in the marketplace has immense financial value and is a pre-requisite for corporations in an international market.

4.2.3 **Innovation and board performance** – The strength women bring to the board lies in their diversity, their experience, how they address problems, new markets and opportunities through their own consumer expertise. Diverse thinking underpins innovation and better business performance; it challenges assumptions and encourages a greater external focus on existing and new markets. The impact of cross-fertilisation of ideas is immense and this can be applied to cross-border opportunities for representation on boards. The challenge for boards is to adapt to truly diverse membership and recognise how to harness business challenges in a productive manner.

4.2.4 Diversity on boards means true diversity in the widest sense. The EESC is not advocating confining board positions to a small range of women who circulate around a number of boards. This practice, commonly called the 'golden skirts' argument, undermines the central pillar of diversity on

boards. Norwegian results showed that 62 % of men were holding only one board position while the figure was 79 % for women. The EESC is advocating the right for men and women to have choice and equal access to board positions based on merit.

5. Implementation

5.1 Achieving the quantitative targets of women on boards requires measures in place to ensure success. A combination of short and mid-term measures must be implemented to ensure that board diversity is maintained beyond 2028. The following should be considered:

5.1.1 **Greater visibility of women in senior roles** – profiling women across different Member States that have achieved board-level positions, raising awareness of these women in the wider business community and demonstrating the impact of board diversity on business success.

5.1.2 **Greater transparency in head hunting talent** – The process of recruitment onto boards is largely opaque, relying on personal networks. To attract the broadest range of talent, opportunities need to be promoted and presented in a manner that encourages applications from all talented individuals.

5.1.3 **Building and retaining a critical mass** – The value of diverse thinking on a board is only realised when there is enough of a critical mass to challenge assumptions; it is therefore imperative for women to make up 40 % of membership on a board. Increased transparency during the recruitment process will ensure the widest range of candidates are considered and remove the risk of the 'golden skirt' rule⁽¹⁰⁾.

5.1.4 **Challenging stereotypes around gendered roles** – A lot of progress has been made regarding domestic roles constituting barriers to female economic participation. The measures are a step in the right direction and will serve to help increase participation of women on boards.

⁽¹⁰⁾ 'Golden Skirts fill the board rooms' Article from BI Norwegian Business School, 31.10.2012. Edited from Morten Huse (2011): The 'Golden Skirts'. Changes in board composition following gender quotas on corporate boards.

5.1.5 **Creation of a pipeline** – The sustained benefit of diverse boards requires a steady stream of highly-qualified individuals who have both the aspiration and the aptitude to take on board positions. It is imperative to create an environment that enables women to navigate their way through the labyrinth ⁽¹⁾ during their careers and achieve board positions. A strong pipeline will emerge from the above points; the presence of female role models, more transparent recruitment processes and clear leadership succession planning provide the foundations for gender diversity on boards.

5.1.6 Creating a European-wide coordinated database – with details of women who are qualified for Board positions. This would address concerns regarding the invisibility of women who are eligible for board positions. The database would further reduce the risk of a small minority of women being recruited into multiple positions and create greater transparency in the recruitment process. A European-wide database would support the argument for cross-fertilisation of skills and experience across different Member States along with opportunities to work across different sectors.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ See 'Through the Labyrinth: The Truth About How Women Become Leaders' by Alice Eagly and Linda Carli.

APPENDIX 1

to the opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Point 1.2

Amend:

The EESC welcomes the fact that the share of women on company boards has risen from 13.7 % in January 2012 to 15.8 % in January 2013. Commitment within companies is the prerequisite for the continuation of this trend, which is why the EESC cannot support quotas in general although it acknowledges that the Commission's proposal has made a considerable contribution to raising awareness and thereby commitment to enhancing this trend proposal. While its preference is for voluntary measures, rather than quotas, it acknowledges that little will change as regards the gender balance in EU listed companies without legally endorsed objectives. Today, just 13.7 % of board members are women, which is evidence of clear discrimination.

Voting

For: 78

Against: 102

Abstentions: 5

Point 1.5

Amend:

The EESC ~~would hope~~ believes that the 40 % target can be achieved by all public and private decision-making bodies through voluntary measures, peer pressure and by raising the number of women (and men) available at senior levels in every sector concerned and that this minimum standard could be adopted by all public and private decision making bodies in the spirit of would prefer self-regulation and soft measures in order to avoid further legislation. This could include executive directors, boards of listed SMEs and all public-sector bodies to promote a more gender equitable environment, a condition of transparent application and appointment and a culture of inclusion and 'choice' in society as a whole. The EESC emphasises that a large number of Member States have already launched a wide range of initiatives to promote women on company boards; any EU initiative should respect such national initiatives.

Voting

For: 75

Against: 107

Abstentions: 3

Point 1.7

Delete text:

The EESC congratulates Ms Reding and her supporters within the Commission, Parliament and other institutions on taking the first steps towards a more balanced Europe and challenging the perception of who should be in the boardroom, to ensure a more inclusive society. This is a substantial shift in mindset. The EESC recognises that extensive research, legal analysis and consultation with civil society have been conducted in order to present a practical directive with adequate flexibility in delivery and timeframes for both companies and Member States whilst still respecting the principles of subsidiarity and proportionality.

Voting

For: 79

Against: 107

Abstentions: 5

Point 2.2

Add text:

There is a considerable disparity between EU Member States in the number of women on boards as a result of differing policies. The role of women on boards has been being scrutinised for decades, but especially over the last two years as the EU has renewed its commitment to the promotion of gender equality on boards of listed companies. The debate has ranged from introducing legally-binding quotas to self-imposed regulations without repercussions for non-compliance. Effective, voluntary approaches are still slow. **There was only a 0.6 % improvement in the number of women on boards in the last year**, with only 24 companies having signed the 2011 pledge. However, the EESC points out that the term of office of non-executive directors is usually between three and five years. It would have therefore preferred European companies to have been given more time to sign the 2011 Pledge in order to increase the number of women on boards.

Voting

For: 82

Against: 90

Abstentions: 8

Point 2.7

Amend:

~~Objectives will only be effective if they go hand in hand with penalties, and so there must be sufficient sanctions for non-compliance. The directive allows for proof of non-compliance in all cases, with the onus on the company to prove its due diligence in the recruitment process. Sanctions will work most effectively where they are specified, imposed and implemented by the country concerned, and hence the Commission has only made recommendations as guidelines for possible sanctions. The EESC, however, requests assurance that the sanction of nullity or annulment of the appointment or election of non-executive directors does not affect the decisions that have been taken by this board. Otherwise, the companies concerned would be seriously damaged.~~

Voting

For: 71

Against: 93

Abstentions: 7

Point 2.10

Add text:

Only an EU-level measure that is flexible in order to take account of diversity across Member States and the diversity of board structures whilst fully respecting the principle of subsidiarity and private ownership rights can optimise the potential of female talent. A company's needs vary with its product range and customers; they also vary over time, depending on the company's type, size, owner structure, operations, phase of development, etc.

Voting

For: 80

Against: 100

Abstentions: 8

New point 2.11

Therefore the EESC would have preferred self-regulation as the right way to improve the situation, as this would provide the necessary flexibility to manage equal opportunities at all levels and a proper and appropriate mix of both genders represented at board levels, according to their own cycle, renewal and long-term growth prospects. The EESC emphasises that a large number of Member States have already launched a wide range of initiatives to promote women on company boards; any EU initiative should respect such national initiatives.

Voting

For: 78

Against: 99

Abstentions: 9

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council decision on guidelines for the employment policies of the Member States’

COM(2012) 709 final — 2012/0335 (NLE)

(2013/C 133/14)

Rapporteur-General: **Wolfgang GREIF**

On 11 December 2012 the Council decided to consult the European Economic and Social Committee, under Article 148(2) and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Decision on guidelines for the employment policies of the Member States

COM(2012) 709 final – 2012/0335 (NLE).

On 11 December 2012 the Committee Bureau instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Wolfgang Greif as rapporteur-general at its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), and adopted the following opinion by 170 votes to 5 with 5 abstentions.

1. Conclusions and recommendations

1.1 Europe is failing to get to grips with the crisis, and is becoming increasingly divided as a result. In view of ongoing austerity measures being forced through by the EU in a bid to tackle the crisis, the Committee reiterates its deep concern that neither the employment nor the anti-poverty goals of the EU 2020 strategy can be met.

1.2 The Committee calls for a European stimulus package with a comprehensive impact on labour market policy, amounting to 2 % of GDP. Additional national investments must be implemented and European investment projects must be identified in a speedy, targeted and coordinated manner to boost employment.

1.3 Full involvement of social partners and civil society at every stage of shaping and implementing employment policy is a key condition for successful policy coordination. The Committee insists that all relevant stakeholders, including the Committee itself, be given sufficient time between the publishing of the next proposal and the deadline for adopting the decision to conduct a thorough debate on the proposal. This is particularly important as regards the new set of guidelines to be adopted in 2014.

1.4 In addition, the Committee has formulated proposals under the following headings:

- a specific Youth Solidarity Fund for countries in particular difficulties should be established, if ESF funds are not sufficient;
- quality standards for first work experience and on-the-job training should be promoted;
- the dual system of apprenticeships should be explored, with a view to broader application in which the social partners have to play an essential role;
- precarious work should be fought, for instance by expanding the flexicurity approach, giving more attention to internal flexicurity;
- recognition of the role of companies and especially SMEs in job creation should be improved;
- the role of labour market institutions in national reform programmes should be strengthened;
- countries with fraught labour market conditions should have easier access to EU funding;
- European funding must be sufficient, and this should be taken fully into consideration in the Multiannual Financial Framework.
- general European employment targets should be supplemented by targets for specific groups;
- the Youth Guarantee should take effect as early as possible, i.e. ideally when registering at a job centre;

2. Introduction

2.1 On 21 October 2010, the European Council decided to leave the new employment policy guidelines unchanged until 2014 in order to keep the focus on implementation⁽¹⁾. On 28 November 2012, the European Commission submitted its proposal for a Council Decision to maintain the validity of the guidelines for 2013.

2.2 Against the backdrop of the worsening employment situation in most EU Member States, and in particular the dramatic increase in youth unemployment and persistently high long-term unemployment, and with a view to the preparation of next year's update of the guidelines, the EESC is using the annual referral provided for under Article 148(2) TFEU as an opportunity to reiterate its main recommendation from last year concerning the guidelines and their implementation⁽²⁾.

3. General comments

3.1 EU 2020 employment goals might not be met

3.1.1 In the coming years, Europe will navigate an exceedingly fraught employment situation. Certain groups are harder hit than others: young people, the low-skilled, the long-term unemployed, disabled, migrants and single parents. In the fifth year of financial crisis, all forecasts, including the Commission's employment survey, suggest that labour market development across Europe will continue to be bleak, at least in 2013. Europe is failing to get to grips with the crisis, and is becoming increasingly divided as a result.

3.1.2 The employment recovery has come to a halt. Employment is decreasing. Job creation has remained subdued and has worsened despite unexploited potential in some job-rich sectors and throughout the single market. Labour market segmentation has continued to rise with an increase in temporary contracts and part-time work. Taxation on labour remains high and has further increased in a number of Member States. Unemployment is rising again and has reached unprecedented levels, with long term unemployment and not only youth unemployment reaching alarming highs, especially in Member States under strong fiscal consolidation.

⁽¹⁾ Council Decision 2010/707/EU.

⁽²⁾ See in particular EESC opinion of 27 May 2010 on the 'Employment policy guidelines', (OJ C 21, 21.1.2011, p. 66), EESC opinion of 22 February 2012 on the 'Employment guidelines', (OJ C 143, 22.5.2012, p.94), EESC opinion of 22 February 2012 on the 'Social impact of the new economic governance legislation', (OJ C 143, 22.5.2012, p. 23), EESC opinion of 25 April 2012 on 'Structural Funds – General Provisions', (OJ C 191, 29.6.2012, p. 30), EESC opinion of 12 July 2012 on the 'Youth Opportunities Initiative', (OJ C 299, 4.10.2012, p. 97), EESC opinion of 15 November 2012 on 'Towards a job-rich recovery', (OJ C 11, 15.1.2013, p. 65).

Average household incomes are declining in many Member States and recent data points to a trend of higher levels and deeper forms of poverty and social exclusion with in-work poverty and social polarisation on the rise in many Member States⁽³⁾.

3.1.3 Against this background, the EESC reiterates its deep concern that neither the employment nor the anti-poverty goals set out in the inclusive growth priority of the EU 2020 strategy can be met in view of the principles underlying austerity measures now being forced through by the EU in a bid to tackle the crisis.

3.2 Facilitate a job-rich recovery promoted by a European stimulus package

3.2.1 Austerity measures that dampen final demand in one Member State have significant knock-on effects in other countries, leading to a downward spiral. Embarking on a path of simultaneous austerity programmes in a number of countries will add to the bleak outlook for growth and could unleash a vicious circle of uncertainty for investment, including investment in education and training, research and innovation, employment and consumption.

3.2.2 Nevertheless, employment policy cannot compensate for a mismanaged macroeconomic policy. The EESC therefore considers it essential that employment policy be used to bolster development of European infrastructure and qualitative growth. What is needed is speedy and targeted European and national investment with high employment impact, which should be implemented in a coordinated manner in order to amplify its employment policy effects. Every effort must be made to mobilise both private and public investment and to carry out necessary reforms.

3.2.3 The Committee shares the Commission's analysis that the prospects for employment growth depend to a large extent on the EU's capacity to generate economic growth through appropriate macroeconomic, industrial and innovation policies and to complement this with an employment policy aimed at bringing about a job-rich recovery. The EESC is concerned that if the policy of cuts continues unabated in the EU, it will be impossible to implement many of the positive proposals in the Employment Package adopted in April 2012.

⁽³⁾ COM(2012) 750 final: Annual Growth Survey 2013, Annex: Draft Joint Employment Report.

3.2.4 The EESC is also concerned that the proposed measures alone will not be enough to achieve the objectives set out in the EU's employment strategy. That is why the Committee has repeatedly called for a European stimulus package with a comprehensive impact on labour market policy, amounting to 2 % of GDP. The 'Compact for Growth and Jobs' agreed at the European Council summit in June 2012 signalled the first important steps in this direction; these must now be fleshed out so as to create the urgently needed room for manoeuvre for sustainable growth and employment across Europe. The Committee has also called for a social investment pact to sustainably tackle the crisis and invest in the future and shall closely follow the Social Investment Package announced for adoption by the Commission in February.

3.3 Civil society and social partner involvement

3.3.1 The EESC has frequently endorsed the multiannual cycle of policy coordination within the Europe 2020 strategy while consistently pointing out that full involvement of national parliaments, the social partners and civil society at European and national level at every stage of shaping and implementing employment policy is a key condition for successful policy coordination.

3.3.2 Given that the guidelines are a framework for Member States in devising, implementing and monitoring national policies in the context of the overall EU strategy, the Committee insists that all relevant stakeholders, including the Committee itself, be given sufficient time between the publishing of the next proposal and the deadline for adopting the decision to conduct a thorough debate on the proposal. This is all the more important as European employment policy must make a bigger contribution in order to support Member States' efforts to deal with the crisis.

3.3.3 In accordance with the European Semester timetable, the European social partners should be consulted at an early stage in the preparation of the Annual Growth Survey when establishing the key strategic priorities for employment policy, and when drawing up, implementing and evaluating the employment policy guidelines. This is particularly important as regards the new set of guidelines to be adopted in 2014.

4. Specific comments and concrete proposals

4.1 **Supplement general employment targets by European targets for specific groups:** The target for EU-wide general employment should in future be supplemented with measurable EU targets for specific groups, such as the long-term unemployed, women, older workers, disabled and especially young people. The common approach of leaving formulation of concrete targets in employment policy at

Member State level has not proven successful. In this context, a specific indicator aimed at substantially reducing the number of young people who are not in education, employment or training (NEETs) is needed.

4.2 **The Youth Guarantee should take effect as early as possible:** The Committee very much welcomes the Commission's proposal for a Youth Guarantee with its aim of ensuring that all young people up to the age of 25 receive a good-quality offer of employment, continued education, an apprenticeship or a traineeship in good time⁽⁴⁾. However, the EESC considers intervention after four months to be too late. Ideally the Youth Guarantee should take effect as early as possible, i.e. when registering at a job centre, because a failed transition damages the economy and leaves lifelong scars. Concrete measures should be formulated to this end as part of the National Reform Plans.

4.3 **Establish a specific Youth Solidarity Fund for countries in particular difficulties, if ESF funds are not sufficient:** The EESC notes that particular attention should be paid to ensuring resources for young people under the European Social Fund when drawing up the financial perspective for the years 2014-2020. The EESC finds that the gravity of the situation calls for a specific Youth Solidarity Fund as a solidarity-based solutions similar to the Globalisation Fund (EGF). Countries in particular difficulty could receive temporary support when implementing the Youth Guarantee. If ESF funds are not enough to cover this, additional European funds (a Youth Solidarity Fund) should be deployed to meet the shortfall. Multi-billion euro bailouts were possible for the banks, so it must also be possible to mobilise these amounts.

4.4 **Promote quality standards, first work experience and on-the-job training:** The EESC supports the development of skills that are relevant to the labour market, through the active cooperation of the world of employment and institutes of education. The EESC believes it is appropriate to support first work experience and on-the-job training and therefore agrees that placements in enterprises and traineeships as well as voluntary service programmes are important means for young people to acquire skills and work experience. The EESC stresses the importance of quality standards for work placements and traineeships. In this respect, the EESC welcomes the aims of the Commission in proposing a quality framework supporting the provision and take-up of high-quality traineeships.

4.5 **Explore the dual system of apprenticeships with a view to its broader application:** It is important to bridge the gap between labour market needs, education and the expectations of young people. One way to achieve this is to provide incentives and support for the development of high-quality apprenticeship schemes. The Committee welcomes the

⁽⁴⁾ EESC opinion of 21 March 2013 on the Youth Employment Package (not yet published in the Official Journal).

Commission's guidelines in this area. The dual system of apprenticeships, with its mix of general education and training, should be studied with a view to its application elsewhere. Countries with a dual vocational training system have a significantly lower unemployment rate among younger people than countries without apprenticeship systems. In some of the worst affected countries there is also interest in introducing dual education systems. The EESC calls in this respect for improved pooling of experience and for ESF support for apprenticeship schemes. This exchange and start-up financing need to be encouraged and a quality framework for dual education needs to be developed. The Committee emphasises the role that involving the social partners plays in vocational training. It deems it therefore essential that the social partners in the Member States be closely involved in designing, implementing and monitoring the development of these schemes.

4.6 Fight precarious work: The Committee has already expressed its opinion on flexicurity on numerous occasions. It welcomes the fact that experience in handling the crisis has led to the flexicurity approach being expanded. Improving internal flexibility has hitherto not been given enough attention in the debate around flexicurity. Fixed-term contracts and temporary work can enable short-term transitions and can sometimes be needed to make it easier for particularly disadvantaged groups to enter the unsubsidised labour market. However, the job insecurity this entails should only ever be temporary, and should be mitigated by social security. With respect to youth employment the EESC also warns against impermanent solutions offering few long-term prospects when it comes to integration in the job market: instead of settling for precarious employment, measures should be taken to guarantee that fixed-term employment and poorly-paid positions with little social security do not become the norm for young people.

4.7 Improve recognition of the role of companies in job creation: Businesses in Europe are central to efforts to overcome the employment crisis. Small and medium-sized enterprises in particular have been a source of new jobs in recent years. Therefore it is essential to improve access by SMEs to capital and to cut start-up costs. According to the European Commission, this would have a significant

economic impact on the EU economy: increasing GDP by about 1.5 % or around EUR 150 billion, without diminishing the protection of employees. Social enterprises and civil society organisations can also contribute to job creation, as has been stressed by the EESC on several occasions. Moreover, a recent own-initiative opinion by the CCMI noted that cooperatives, especially employee cooperatives, are able to protect jobs even in times of crisis by reducing profits ⁽⁵⁾.

4.8 Strengthen the role of labour market institutions in the national reform programmes: Many countries need to substantially extend the targeted support offered by government agencies, giving special attention to disadvantaged groups. Eligibility conditions for income support for the young and long-term unemployed looking for a job or education should be reviewed and, where necessary, improved. It is recommended that corresponding targets be written into national reform programmes.

4.9 Easier access to EU funding for countries with fraught labour market conditions: Despite strained government budgets in Member States, provision of national and European funding for active labour market interventions, alongside other funding for education and employment of young people and the long-term unemployed must be maintained and, where necessary, increased. Countries with especially fraught labour market conditions and which must simultaneously meet restrictive budget targets should be given easier access to EU funding. What are needed are pragmatic and flexible procedures and simplified administration of fund use, up to and including temporary suspension of national co-financing arrangements by tapping funds such as the ESF and other European funds.

4.10 Additional European funding: The severity of the economic crisis highlights the fact that the amount currently proposed by the Commission for European Structural Funds 2014-2020 may not be enough to have the desired effect on economic and employment growth and bring about more economic, social and territorial cohesion in the EU. This should be taken fully into account in the Multiannual Financial Framework (MFF).

Brussels, 13 February 2013.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

⁽⁵⁾ EESC opinion of 25 April 2012 on 'Cooperatives and restructuring', (OJ C 191/24, 29.6.2012).

Opinion of the European Economic and Social Committee on the 'Communication from the Commission: Annual Growth Survey 2013'

COM(2012) 750 final

(2013/C 133/15)

Rapporteur-general: **Mr Xavier VERBOVEN**

On 19 December 2012 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission - Annual Growth Survey 2013

COM(2012) 750 final.

On 13 November 2012 the Committee Bureau instructed the Europe 2020 Steering Committee to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Xavier VERBOVEN as rapporteur-general at its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), and adopted the following opinion by 180 votes to 4 with 7 abstentions.

1. Conclusions and recommendations

1.1 The Committee draws attention to the fact that this year's AGS is issued in a context of **bleak economic and employment prospects** but also at a time of **new measures and commitments**, such as the Compact for Growth and Jobs or the major overhaul of the economic governance of the EU. The Committee urges that the Compact for Growth and Jobs and the measures to break the link between banks and sovereigns including a Banking Union and the ECB's new programme (Outright Monetary Transactions) are speedily and in a balanced way implemented as they will be an essential part of the path to recovery and restoring confidence.

1.2 While there are doubts about the EU's ability to reach the Europe 2020 goals on time, the EESC regrets that **the 2013 AGS fails to provide analysis of the causes of the lack of progress** towards these goals.

1.3 Considering the dire state of the economy, the negative consequences on social cohesion, the high and rising unemployment and the increase in poverty, **the Committee warns against the continuation of the current policy of austerity and of the severe consequences of a deep and prolonged recession**, which can structurally weaken the economy and jeopardise its transition towards an environmentally sustainable model. Similar concerns about the state of Europe and about the impact of austerity on economic growth are expressed by many other international policy actors.

1.4 Regarding the idea of **'growth-friendly' consolidation**, the Committee has already called in the past⁽¹⁾ for consolidating public finances over a period as flexible as possible in order not to break growth dynamics as well as for a 'smart'

equilibrium between revenue and expenditure, supply and demand. The Committee also reiterates its warning about the danger of undermining systems of public services and collective solidarity, in order not to weaken social insurance against the big risks in society (unemployment, sickness, ageing) and to avoid increasing of precautionary savings.

1.5 Regarding the concept of **'differentiated' consolidation**, and the proposal that Member States facing financial turmoil should even adopt 'a rapid pace of fiscal adjustment', while other Member States would be allowed to let their automatic stabilizers play, the Committee doubts this type of policy mix would work. This can still have an outspoken negative impact on the euro zone as a whole and, in particular on those Member States that are already going through a deep, austerity-induced recession. At the same time, it is clear that in emerging from this crisis, some economies have a much greater effort to make in restoring stability and growth than others.

1.6 The Committee is concerned about unbalanced economic policies and about the heavy weight that has been given to austerity. The Committee considers that fiscal consolidation to correct severe fiscal imbalances needs a **longer-term time frame** and urges to balance the time frame of fiscal consolidation against a **substantially strengthened and tangible Compact for Growth and Jobs**.

1.7 The 2013 AGS seems to justify fiscal consolidation by the need for confidence, in particular the confidence of financial markets. While the EESC recognises the importance of access to credit and of fixing the financial markets sector, the Committee wishes to draw attention to the fact that the confidence of households and businesses is equally important and that a

⁽¹⁾ OJ C 248, 25.8.2011, p. 8–15.

climate of confidence cannot exist if companies are worried about demand and people are worried about their jobs, wages or social security. **Financial markets confidence and consumer and producer confidence** must go hand in hand.

1.8 The Committee calls for **decisive action to restore growth, jobs and competitiveness** to the European economy and invites the current Presidency to lead a determined growth agenda. There is a need for ambitious growth and employment measures and an investment policy focusing on both a re-launch in the short run and a structural transformation of the European economy to respond to the fundamental challenges of sustainability, more and better jobs, upwards social convergence and innovation based competitiveness.

1.9 **Sequencing of policies** to re-launch the economy with policies tightening the fiscal reins is of the utmost importance ⁽²⁾.

The new policy approach for the future of Europe needs to be based on several principles. Rather than having Member States compete against each other, there needs to be a highly integrated European supranational and multiannual approach. Market forces, in particular financial markets, need to be checked and steered by democratically decided policy priorities. Finance needs to be robust but also fair and distributed equitably. Stronger regions need to support weaker regions, assisting the latter to catch up in terms of a more productive, innovative and strong economy. In return, Member States that find themselves in a position to generate additional tax revenue, need to use this to reduce debt loads.

1.10 The Committee welcomes **the Compact for Growth and Jobs** and invites the Commission and the European Council to rapidly implement it and to go further, transforming it into a vast European investment programme. The EESC therefore reiterates its calls for a **strengthened budget** in line with the ambitions of the EU and the challenges it is facing, a fast agreement on the next Multiannual Financial Framework and giving a strong role to the **EIB**, which works on high employment projects (e.g. projects for SMEs, key infrastructure, energy and climate).

1.11 The EESC also restates the importance of **cohesion policy** for the achievement of convergence across the EU.

1.12 In re-launching growth, the Committee reiterates the potential of **the single market** and the need for **innovation**

for the competitiveness of the European economy. It highlights **the important role of businesses**, in particular **the SMEs**, of **entrepreneurship** and **business creation**, of **social enterprises** and **cooperatives** in the process of recovery.

1.13 Given the link between the financial, economic, social and environmental aspects of the crisis, the EESC considers that the greening of the economy and of the European semester should receive more attention and calls for further involvement of civil society in those areas.

1.14 Regarding **employment** and upgrading of **skills**, the EESC restates the need for investing in education, training and life-long learning (including on-the-job training, the dual systems of apprenticeships), addressing the skills bottlenecks and mismatches.

The Committee reiterates its calls for facilitating labour market participation, improving public employment services, stepping up active labour market measures and supporting entrepreneurship and self-employment. Every effort must be made to mobilise investment with a high employment impact.

The EESC refers to its recent opinions on those topics and is currently preparing specific opinions on the Youth Employment Package ⁽³⁾ and on the future Guidelines for the employment policies of the Member States ⁽⁴⁾.

The Committee observes that the 2013 AGS promotes flexibility in the labour market without much or any consideration of the dimension of security. It recalls its past opinions referring to the idea that **a balance between flexibility and security needs to be struck** and that, regarding flexicurity, there is a need for **'a strong and vital social dialogue** where the social partners actively participate and are able to negotiate, influence and take responsibility' ⁽⁵⁾.

Regarding **wages**, the Committee is concerned about the danger of structural reforms triggering a downwards competition between Member States. It reiterates that reforms regarding wage setting require negotiations at the national level between the social partners and asks to the Commission to clarify its view on wages, inflation and productivity.

⁽²⁾ ETUC/CES, BUSINESSEUROPE, UEAPME, CEEP, *Joint statement on the Europe 2020 strategy*, 4 June 2010.

⁽³⁾ Opinion of the EESC on the Communication from the Commission *Moving Youth into Employment*, COM(2012)727 final, (not yet published in OJ).

⁽⁴⁾ OJ C 143, 22.5.2012, p. 94-101.

⁽⁵⁾ OJ C 211/48, 19.8.2008, p. 48-53.

1.15 The Committee considers that more attention should be paid to the question of **fairness and social justice**. The costs and benefits of reforms need to be fairly shared by all (workers, households, businesses).

1.16 The Committee calls for additional efforts to ensure **the effectiveness of social protection systems** in countering the effects of the crisis, to promote social inclusion and to implement an 'Active inclusion strategy' to ensure an inclusive labour market and to tackle poverty.

1.17 Finally, the EESC reiterates the need to improve **the democratic accountability and legitimacy of the various processes of the European Semester** and the coordination of national economic policies. Social and civil dialogue is essential to properly shaping and implementing policies and reforms. Therefore, **close collaboration and concertation is needed with social partners**. The Committee calls for a stronger role for the social partners and organised civil society at EU level and especially at national level. More involvement from the social partners should result in greater implementation.

2. Introduction

2.1 The Commission's Annual Growth Survey (AGS) 2013 communication, which opens the European Semester, sets out what the Commission believes should be the overall budgetary, economic and social priorities for 2013. The European semester process aims to improve the coordination of economic and social policies in Europe so that the core objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth can be effectively achieved.

2.2 The Annual Growth Survey should feed into national economic and budgetary decisions, which Member States will set out in Stability and Convergence Programmes and National Reform Programmes.

2.3 The Commission considered, given the need to sustain recovery and restore confidence that the five priorities identified in 2012 remain valid for 2013: pursuing differentiated, growth-friendly fiscal consolidation; restoring normal lending to the economy; promoting growth and competitiveness for today and tomorrow; tackling unemployment and the social consequences of the crisis; and modernising public administration.

2.4 The present draft opinion provides analysis, comments and proposals on the AGS 2013:

— Part 3 contains some general comments related to the context in which this year's AGS is published.

— Part 4 proposes specific comments and proposals: given that Europe does not seem to be on the right track to reach the Europe 2020 objectives, the opinion raises the issue of the choice of fiscal austerity policy and its consequences on the economy, jobs and social cohesion. The opinion considers then that priority should now be given to the real economy, to growth and employment measures. It calls upon European policy makers, in particular in view of the March 2013 European Council, to shift their policy approach and re-centre policies on a Europe-driven investment approach, focusing on a relaunch of the economy, jobs and the challenge of sustainable development. Finally, the opinion reiterates the importance of the implication of organised civil society and social partners at both EU and national level policy making.

3. General comments

3.1 This year's AGS was published in a difficult context, with bleak employment and growth forecasts. The Committee shares the AGS's concerns that the duration of the crisis has not helped Member States to press ahead with meeting their targets on employment, R&D, climate/energy, education and the fight against poverty and there is growing scepticism about the ability of the EU to achieve those goals.

The Committee also notes that the AGS 2013 is written against a background of unprecedented developments. On one side, a Compact for Growth and Jobs⁽⁶⁾ was adopted by the European Council of June 2012. On the other side, fundamental changes were brought to the architecture of governance of the Union (in particular enhanced mutual surveillance of fiscal policies), resulting from the inability of the existing structure to deal with the economic crisis and prevent contagion, which threatens the very existence of the euro and the European Union and has prolonged the recession causing high unemployment. The Committee urges that these measures are speedily and in a balanced way implemented as they will be an essential part of the path to recovery and restoring the confidence of investors, business and consumers.

3.2 The EESC notes the recent publication of two important documents: 'Towards a Genuine Economic and Monetary Union'⁽⁷⁾ and 'Blueprint for a deep and genuine economic and monetary union'⁽⁸⁾, on which the Committee is currently preparing an opinion.

⁽⁶⁾ EUCO 76/12, p. 7-15.

⁽⁷⁾ Report by President of the European Council Herman Van Rompuy, 5 December 2012.

⁽⁸⁾ COM(2012) 777 final/2, 30.11.2012.

The Committee welcomed the affirmation of the imperative to break the link between banks and sovereigns and the first moves taken towards a Banking Union⁽⁹⁾. There was a commitment to do 'what is necessary' to ensure financial stability and the ECB has committed itself to undertaking significant actions to calm Europe's distressed sovereign debt markets.

A Banking Union would contribute to an equal access to credit for households and business in all parts of the EU and would enable the single market to regain competitiveness in order to meet the Europe 2020 objectives.

4. Specific comments and proposals

4.1 *Europe is not on the right track to attain the Europe 2020 objectives and policy makers urgently need to recognise this*

4.1.1 The Committee observes with regret that, apart from a brief footnote reference to a Eurostat report⁽¹⁰⁾, the Commission's AGS is largely silent on the Europe 2020 strategy. The communication simply states that 'overall, Europe is lagging behind its objectives'. However, there is no adequate analysis in the AGS of the exact causes of the lack of progress in meeting the Europe 2020 goals and the document does not even raise the question whether current policy choices are responsible for moving the EU further away from the Europe 2020 strategy. The Committee calls for a radical review of the Europe 2020 process and reallocation of structural funds to meet these targets, thereby rebalancing competitiveness and austerity policies with growth, jobs and social policies.

4.1.2 The Committee expresses its concerns about the steady decline of the employment rate of the population aged between 20 and 64 years. This rate has been falling from 70.3 % in 2008 to 68.6 % in 2011, while according to the Europe 2020 target, 75 % of the population aged 20-64 should be employed. In absolute terms, Europe has lost 5 million jobs over this period⁽¹¹⁾. The effects of this are showing up in rising unemployment rates, now reaching 10.7 % in the EU 27 and even 11.8 % in the euro zone⁽¹²⁾.

The crisis has brought high unemployment and in combination with the austerity cuts in public social expenditure, has added from 2009 to 2011 an extra 5.9 million to the 113.8 million

people at risk of poverty and social exclusion in the EU (24.2 % of the population)⁽¹³⁾.

It is hard to see how the Europe 2020 goals relating to employment and to lifting 20 million people out of poverty can be reached if these trends were to continue.

4.1.3 The European economy, in stark contrast with other major economies of the world, has fallen back into recession in 2012, with economic forecasts predicting extremely weak growth in 2013 and an uncertain but equally weak recovery in 2014. This implies that, if the orientation of fiscal policy is unchanged and additional policies to boost growth and employment are not implemented, the unemployment and social situation is set to worsen further.

4.1.4 The Committee observes that similar concerns on the state of Europe are expressed by many other international policy actors. The ILO has warned that the eurozone could lose another 4.5 million jobs without a concerted shift away from the strategy of austerity⁽¹⁴⁾. The United Nations' global outlook on the 'World economic situation and prospects 2013'⁽¹⁵⁾ warns that the 2012 recession would continue and would intensify deep into 2015⁽¹⁶⁾ if Greece, Italy, Portugal and Spain were to take even deeper fiscal cuts in 2013. Together with the United States 'fiscal cliff' and the hard landing of China, the European strategy of fiscal consolidation is seen as a risk to global economic activity. Even the IMF, in its World Economic Outlook⁽¹⁷⁾ has deep doubts and has admitted that the impact of austerity on economic growth has been seriously underestimated and has called into question the magnitude of fiscal multipliers that have been used.

4.1.5 The Committee warns policy makers in Europe that a prolonged recession can structurally weaken the economy as well as compromise the transition to another environmental and energy model.

Long term unemployment can lead to loss of skills, disillusion, discrimination in new hiring and exit of the labour market, thus having a long lasting adverse structural impact on the productivity and the growth potential.

⁽⁹⁾ OJ C 11, 15.1.2013, p. 34–38.

⁽¹⁰⁾ Eurostat, Statistics in focus 39/2012, *Europe 2020 strategy – towards a smarter, greener and more inclusive EU economy?*

⁽¹¹⁾ COM(2012) 750 final.

⁽¹²⁾ Eurostat, News release 4/2013, 8 January 2013.

⁽¹³⁾ Eurostat table http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=t2020_50

⁽¹⁴⁾ ILO 2012, *Eurozone job crisis: trends and policy responses*, e.g. page 11.

⁽¹⁵⁾ United Nations, *World economic situation and prospects 2013 – global outlook*, issued in December 2012, page 28.

⁽¹⁶⁾ – 0.9 % in 2013, – 2.1 % in 2014 and – 3.3 % in 2015.

⁽¹⁷⁾ IMF 2012, *World Economic outlook, Coping with High Debt and Sluggish Growth*, October 2012, e.g. page 21 or box 1.1 at page 41.

Lack of public and private investment (firms having poor demand perspectives) can affect the economy's growth potential since the incorporation of technical progress and innovation is deficient. To counter this, it is then urgent to review macro-economic policy-making and promote reform measures such as active labour market policies, investment incentives and social inclusion policies.

Differentiated and growth friendly fiscal consolidation

4.1.6 Whereas the AGS 2013 does recognise that fiscal consolidation can have a short term adverse impact on the economy, it immediately puts forward two other arguments that minimise such an impact. The Committee wishes to address both arguments.

1) The AGS 2013 refers to the concept of 'growth friendly consolidation' by which it means that expenditure cuts are more 'supportive' to growth than further increases in taxation revenue in countries where the tax burden is already high. Besides observing that the Commission does not specify what would constitute a 'high' tax burden, the Committee recalls its 2011 opinion on smart ways to consolidate public finances⁽¹⁸⁾ where it has pleaded in favour of consolidating public finances over a period as flexible as possible in order not to break growth dynamics as well as for a 'smart' equilibrium between revenue and expenditure and between aggregate supply and demand. In the same opinion, the Committee also warned of the danger of undermining systems of public services and collective solidarity. Indeed, if, as is the case now in several Member States, social insurance against the big risks in society (unemployment, sickness, ageing) is seriously weakened, then it is logical for households to react to this generalisation of insecurity by increasing precautionary savings – which is the last thing an economy in recession needs.

2) The other argument is that Member States facing financial turmoil should continue with austerity and even adopt 'a rapid pace of fiscal adjustment', while other Member States would be allowed to let their automatic stabilizers come into play.

While it is clear that in emerging from this crisis, some economies have a much greater effort to make in restoring stability and growth than others, the Committee doubts this type of policy mix would work. The combination of severe restrictive fiscal policy in many Member States with a neutral fiscal policy stance in a few Member States will still have an outspoken negative impact for the euro zone as a whole and, in particular on those Member States who are already going through a deep, austerity induced recession.

⁽¹⁸⁾ OJ C 248, 25.8.2011, p. 8–15.

4.1.7 To summarise, the Committee is concerned about economic policies that are unbalanced. Too heavy a weight has been given to austerity and the fiscal consolidation to correct severe fiscal imbalances needs a longer timeframe. Recent figures from the IMF Fiscal Monitor⁽¹⁹⁾ confirm this. In a short period of time (2011–2012), 3 % GDP⁽²⁰⁾ has been taken out of the euro zone economy through cutting expenditure and raising taxes, thereby triggering a new recession. This is three times the pace of consolidation that European policy makers had set previously in the reformed Stability Pact (which mentions a reduction of the structural deficit by at least 0.5 % of GDP per year).

To avoid having the same causes produce the same consequences, the Committee urges to balance the time frame of fiscal consolidation with a substantially strengthened and tangible Compact for Growth and Jobs.

4.1.8 The 2013 AGS report is based on the idea that it is of the upmost importance to restore and maintain confidence, in particular the confidence of financial markets as these markets have the capacity to squeeze the provision of finance in Member States. It is on the basis of this idea that the AGS 2013 continues to pursue the course of austerity policy.

4.1.9 The Committee recognises that financial markets play a crucial role in the crisis and that fixing that sector is a crucial element in recovery. Indeed, access to credit is the lifeblood of any economy, as without it businesses cannot invest or trade and consumers cannot purchase goods or houses.

However, the Committee believes that the confidence of other economic actors (households and businesses) is equally important. Even if improved access to credit would allow companies to trade and grow, lower interest rates and abundance of credit do not have the same effect if people are worried about their job, their wage and/or their social security and if business has serious doubts about demand perspectives.

The Committee wishes to stress the fact that financial market confidence and consumer and producer confidence do not necessarily contradict each other. As more businesses, especially SMEs can resume normal trading because access to finance has been restored, confidence will gradually return to consumers.

⁽¹⁹⁾ IMF Fiscal Monitor, *Taking stock – a progress report on fiscal adjustment*, October 2012.

⁽²⁰⁾ The 3 % corresponds to the change in structural deficit between 2010 and 2012; the structural deficit is calculated by taking out the effect of the business cycle. This deficit needs correction.

Moreover, if markets are concerned about sovereign debt, they are even more worried when the economy is in danger of collapsing.

The Committee reiterates one key idea it put forward in its opinion on the 2012 AGS: 'Without a sufficient rate of growth, the sovereign debt crisis cannot be resolved⁽²¹⁾'. Low priority to growth would imply a high risk of driving the economy into recession, which in turn immediately weakens debt sustainability.

4.2 Crisis measures must give way and priority should now be given to the real economy, to growth and employment measures

Transforming the Compact for Growth and Jobs into a vast European investment programme for sustainable growth

4.2.1 The Committee calls for decisive action to restore growth, jobs and competitiveness to the European economy and invites the current Presidency to lead an ambitious growth agenda. Too often the European Council has backed minimalist actions to exit this crisis and has been driven only when market pressures have threatened to overthrow the Euro project. There is a need to be more genuinely persistent in pursuing sound and balanced economic governance together with reforms that will boost structural competitiveness across the Union and bring the implementation of the Europe 2020 agenda to the fore of the European Semester process. Any fiscal corrective action will bring contraction, but if it is achieved by maintaining expenditures that promote growth potential (education, training for the unemployed, R&D, support for SMEs) and is accompanied by tangible progress to eliminate the fragmentation of the financial sector, the medium and long term prospects for growth and employment could be preserved.

4.2.2 The Committee welcomes the Compact for Growth and Jobs, which is an important first step to recognise that growth is an essential element in exiting the crisis, and invites the Commission and the European Council to rapidly implement it and to go further, transforming it into a tangible and vast European investment programme.

4.2.3 Priority has to be given to 'growth-enhancing expenditure' such as education and skills, innovation - which is key for the competitiveness of the European economy, the greening of the economy - which must become a driving force for the next industrial revolution, large networks, e.g. high-speed internet, energy and transport interconnections. Tapping the potential of job-rich sectors is crucial: healthcare, green economy, silver economy, construction, business services, tourism, etc.

4.2.4 The single market still offers potential to deliver directly-felt benefits to businesses, consumers, citizens but further developments are needed, e.g. in the field of services, mobility, e-commerce, Digital Agenda, e-procurement, micro- and family businesses, measures to support the formation of new companies, alongside with measures for consumer protection and the social dimension of the single market. More transparency and civil society awareness, participation and ownership are needed⁽²²⁾.

4.2.5 The Committee stresses the important role of businesses, in particular the SMEs, of entrepreneurship and business creation in the process of recovery and in driving economic growth, innovation, skills and job creation. Harnessing the potential of SMEs includes various measures, such as facilitating their internationalisation, removing administrative burden, cutting start-up costs as well as facilitating their access to credit, capital markets, SME-targeted bond platforms, structural funds, loan guarantees.

4.2.6 The Committee also points out that social enterprises are key elements of the European social model and the single market. They deserve strong recognition and promotion, especially during the current harsh economic climate and their specificities need to be taken into account when designing European policies.

4.2.7 The role of cooperatives has also to be mentioned, since they contribute to social and territorial cohesion, develop new entrepreneurial initiatives and are more stable and resilient than other forms of enterprises, protecting jobs even in times of crisis⁽²³⁾.

4.2.8 The Committee welcomes the fact that the AGS 2013 underlines the importance of advancing towards sustainable development, renewable energy and energy efficiency, in order to reach the Europe 2020 climate change/energy goals⁽²⁴⁾. Promoting a resource-efficient and low-carbon 'green' economy is essential to maintaining economic competitiveness and boosting employment. Wide scale renovation of buildings in terms of energy efficiency is also necessary as are investments in environmental friendly transport services, in waste

⁽²²⁾ OJ C 76, 14.3.2013, p. 24–30.

⁽²³⁾ OJ C 191, 29.6.2012, p. 24–29.

⁽²⁴⁾ Europe 2020 targets: greenhouse gas emissions lower by 20 % than in the 1990s, 20 % of energy from renewables by 2020 and 20 % increase in resource efficiency by 2020.

⁽²¹⁾ OJ C 143, 22.5.2012, p. 51–68, point 16.

management and in water management. This is to be accompanied by enhanced energy transmission networks to facilitate large volume transportation and electricity exchange across Europe. To strengthen European competitiveness further, this should be topped up by investing in high performance Trans-European transport networks and expanding the infrastructure for broadband networks.

4.2.9 Industrial policy, efficient use of natural resources and innovation must work together to create sustainable growth.

4.2.10 Much investment is needed to promote structural change and to put the EU's economy on the path to smart, sustainable and inclusive growth.

The Committee takes note of the agreement reached by heads of state and government on the next Multiannual Financial Framework (MFF) and reiterates the importance of having a MFF that allows achieving the Europe 2020 goals.

The EESC refers to its recent opinions on the EU budget ⁽²⁵⁾ in which it has consistently argued that the EU needs a strengthened budget to tackle current challenges. The EU budget should not be seen as a burden but as a smart means to realise economies of scale, to reduce costs and leverage-up competitiveness, growth and employment.

Moreover, further resources could be mobilised through additional sources of funding. The EESC supports the action of the EIB, which makes long-term finance available for investment into the real economy and attracts additional private financing. The Committee welcomes the focus on projects with the greatest impact on sustainable growth and employment potential (such as projects for SMEs, the knowledge economy, human capital, energy efficiency and climate change) and urges that the increased funding given to the EIB be rapidly channelled to the SME sector. The Committee also welcomes the use of EIB guarantees for private investments in energy efficient building renovations.

The EESC also supports the introduction of project bonds to stimulate the financing of key infrastructure projects in the areas of transport, energy and ICT. This constitutes an important first step towards a much needed EU investment programme for the years to come.

⁽²⁵⁾ OJ C 229, 31.7.2012, p. 32–38 and OJ C 248, 25.8.2011, p. 75–80.

4.2.11 The EESC draws attention to the importance of cohesion policy for the achievement of economic, social and territorial convergence across the EU, in line with the Europe 2020 strategy. The EESC reiterates its calls for a single and unified cohesion policy actively involving civil society, more focused on real sustainable results and which can support the less developed EU Member States and the ones hit hardest by the crisis ⁽²⁶⁾.

4.2.12 The Committee welcomes the importance attached by the AGS to the modernisation of public administration. According to the Committee, this implies, amongst others, using public procurement to drive innovation forward, fighting corruption, enhancing the efficiency of tax collection, ensuring adequate financial resources and stepping up the capacity to absorb structural funds.

Creating jobs and upgrading skills

4.2.13 The 2013 AGS acknowledges that 'after several years of weak growth, the crisis is having severe social consequences' and that 'unemployment has increased substantially and hardship and poverty are on the rise'. Certain groups are hit harder than average: young people, the low-skilled, the long-term unemployed, single parents, the people with an immigrant background ⁽²⁷⁾.

Every effort must be made to mobilise both public and private investment to promote employment. The EESC has repeatedly called for a European stimulus package with a comprehensive impact on the labour market policy, amounting to 2 % GDP ⁽²⁸⁾. The EESC has also called for a 'social investment pact' to sustainably tackle the crisis and invest in the future ⁽²⁹⁾.

The Committee reiterates its calls for raising labour market participation, improving skill levels, facilitating mobility, improving public employment services, stepping up active labour market measures and supporting entrepreneurship and self-employment. For certain regions or sectors, the Committee agrees with the Commissions' description of the gap between high unemployment rates on the one hand and an evidence of skills bottlenecks and mismatches.

It further suggests measures to promote social dialogue at the appropriate level on the distribution of working time.

⁽²⁶⁾ OJ C 44, 15.2.2013, p. 76–82.

⁽²⁷⁾ OJ C 143, 22.5.2012, p. 94–101.

⁽²⁸⁾ OJ C 11, 15.1.2013, p. 65–70.

⁽²⁹⁾ OJ C 143, 22.5.2012, p. 23–28.

The Committee welcomes the Commission's recently published 'Youth Employment Package' ⁽³⁰⁾. Its proposals, amongst others the implementation of a Youth Guarantee, should be timely and binding and should be backed up by appropriate resources. All Member States should have the possibility to adopt these proposals.

4.2.14 The Committee continues to call for investment in education, training and life-long learning (including on-the-job training, the dual systems of apprenticeships), addressing the skills bottlenecks and mismatches ⁽³¹⁾.

4.2.15 The European Social Fund, complemented by the European Globalisation Adjustment Fund must focus on protecting disadvantaged categories of people from the effects of the crisis ⁽³²⁾ and a specific Youth solidarity fund should be created ⁽³³⁾.

Need for a balanced approach to labour market reforms

4.2.16 The Committee observes that the 2013 AGS promotes flexibility in the labour market without much or any consideration of the dimension of security.

The Committee takes note that avoiding segregation at the labour market by reducing the gaps in employment protection between different types of work contracts may contribute to higher employment levels. The Committee, however, recalls its past opinion ⁽³⁴⁾ referring to the idea that a balance between flexibility and security needs to be struck. 'The flexicurity concept does not mean unilateral and illegitimate reduction of workers' rights'. The Committee has on several occasions underlined the need for 'a strong and vital social dialogue where the social partners actively participate and are able to negotiate, influence and take responsibility for the definition and components of flexicurity and evaluation of its outcomes' ⁽³⁵⁾. The EESC also reiterates that in order to tackle segmented markets, 'adequate security for workers under all forms of contracts' needs to be provided ⁽³⁶⁾.

The Committee stresses that flexibility cannot correct the mistakes made in macroeconomic demand and can make matters worse if stable and quality jobs are replaced by insecure employment relationships; moreover, the removal of 'shock absorbers' (job protection, unemployment benefits) can

make the economy much more vulnerable to negative economic shocks.

Structural reform of the area of wages

4.2.17 The Committee recalls that reforms regarding wage setting require negotiations at the national level between the social partners. They need to strike the balance between achieving sufficient growth in demand, price stability, controlling for high and/or rising inequalities and retaining price competitiveness. The Committee is concerned that structural reforms in the area of wages trigger downwards competition between Member States, reducing internal demand in the EU and contributing, through an increasing euro area external surplus, to a more pronounced overvaluation of the euro. The ILO ⁽³⁷⁾ confirms this trend and warns of the wide ranging economic and social implications.

The AGS approach to minimum wages, stating that they 'should strike the right balance between employment creation and adequate income' reflects the general idea that there is a trade-off between job creation and various factors such as the quality of jobs and the willingness to accept a job-offer. The Committee wonders about the evidence on the existence of such a trade off, given that ILO research on the experiences with minimum wages in the EU found no evidence for the claim that minimum wages destroy jobs ⁽³⁸⁾. The Committee recalls the 'work must pay' principle, which - although established before the crisis - still needs to be applied.

The Committee urges the Commission to clarify its view on wages, inflation and productivity. Whereas the Commission's Employment Package communication ⁽³⁹⁾ clarified that real wages should be aligned with productivity developments, the AGS 2013 fails to identify whether it wants to align nominal or real wages with productivity. The difference in these two approaches is crucial since in the latter case the possibility exists that nominal wages only take productivity but no longer inflation into account. Such a 'rule' would bring with it the risk of zero inflation leading to deflation in case of negative economic shocks.

Promoting social justice

4.2.18 In general, the Committee is of the opinion that more attention should be paid to the question of fairness and social justice. To build trust and ensure effective policy implementation, the costs and benefits of economic policy and structural

⁽³⁰⁾ COM(2012) 727 final – on which the EESC is currently preparing an opinion (SOC/474 - CES2419-2012_00_00_TRA_APA).

⁽³¹⁾ The EESC is currently preparing an opinion (SOC/476 - CES658-2013_00_00_TRA_APA) on the Commission's communication *Rethinking Education: Investing in skills for better socio-economic outcomes*, COM(2012) 669 final.

⁽³²⁾ OJ C 143, 22.5.2012, p. 82–87.

⁽³³⁾ OJ C 11, 15.1.2013, p. 65–70.

⁽³⁴⁾ OJ C 211, 19.8.2008, p. 48–53.

⁽³⁵⁾ OJ C 256, 27.10.2007, p. 108–113, point 1.3.

⁽³⁶⁾ OJ C 211, 19.8.2008, p. 48–53, point 1.1.1.

⁽³⁷⁾ ILO 2012, *Global wage report 2012/2013 – Wages and equitable growth*.

⁽³⁸⁾ ILO 2010, *The minimum wage revisited in the enlarged EU*, page 26

⁽³⁹⁾ COM(2012) 173 final.

reforms need to be fairly shared by all (workers, households, businesses). The Committee acknowledges the importance placed on transparency and fairness in the AGS in terms of impact on society and calls on the Commission to monitor whether national governments' policies take this into account in their reform programmes.

Promoting social inclusion and tackling poverty

4.2.19 The Committee supports the AGS's call for additional efforts to ensure the effectiveness of social protection systems in countering the effects of the crisis, to promote social inclusion, implement an 'Active inclusion strategy' to ensure inclusive labour market and to tackle poverty.

Promoting gender equality

4.2.20 The EESC considers that the gender equality perspective, which was not addressed in any of the seven flagship initiatives of the Europe 2020 strategy, has now to be integrated into the European Semester process (e.g. in the national reform programmes), as it is crucial to achieving the Europe 2020 headline targets ⁽⁴⁰⁾.

4.3 Importance of the implication of organised civil society and social partners in the European Semester

4.3.1 The Committee reiterates the need to improve the democratic accountability and transparency of the various processes of the European Semester and the coordination of national economic policies. In the current context of loss of confidence in the ability of the European institutions to deliver results, it is crucial to give a stronger role to the institutions representing citizens, social partners and civil society, to improve legitimacy and ownership. The vertical and horizontal

dialogue are crucial ⁽⁴¹⁾ and the provisions on participatory democracy of the Article 11 TEU have to be rapidly implemented ⁽⁴²⁾.

The Committee finds the language used in the AGS referring to the role of social dialogue insufficient. Structural reforms, if necessary, should be undertaken in close collaboration and concertation with social partners, not just in consultation. Dialogue with social partners and organised civil society, such as consumer organisations, are essential to properly shaping and implementing policies and reforms. They can improve the credibility and social acceptability of reforms, as consensus and confidence can contribute to commitment of stakeholders and success of reforms. Social partners and civil society organisations can make evaluations of policies' impacts and give timely warnings if necessary. In many fields, it is social organisations and in particular the social partners, who have to translate policy proposals into practice ⁽⁴³⁾.

The Committee calls for a stronger role for the social partners and organised civil society, at both EU and national level. They should be effectively and timely involved in the framework of the European semester, in the preparation of the Annual Growth Surveys, the employment guidelines, the broad economic policy guidelines (forming together 'the EU 2020 integrated guidelines') and the country specific recommendations. At the national level, the social partners and organised civil society should be better involved in the drafting of National Reform Programmes and the EESC will continue to closely work with its network of national ESCs/ similar organisations in order to provide information to the European policy makers on the latter's involvement at the national level. More involvement from the social partners should result in greater implementation.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁴⁰⁾ OJ C 76, 14.3.2013, p. 8–14.

⁽⁴¹⁾ OJ C 299, 4.10.2012, p. 122–127.

⁽⁴²⁾ EESC Opinion on Principles, procedures and action for the implementation of Articles 11(1) and 11(2) of the Lisbon Treat, OJ C 11, 15.1.2013, p. 8.

⁽⁴³⁾ EESC Opinion on the Communication from the Commission Action for stability, growth and jobs, OJ C 44, 15.2.2013, p. 153.

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations’

COM(2012) 499 final — 2012/0237 (COD)

(2013/C 133/16)

Rapporteur: **Henri MALOSSE**

Co-rapporteurs: **Georgios DASSIS, Luca JAHIER**

On 10 October and 22 October 2012 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 304(1) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations

COM(2012) 499 final – 2012/0237 (COD).

Under Rule 19(1) of its Rules of Procedure, the Committee decided on 15 November 2012 to establish a subcommittee to prepare its work on the matter.

The subcommittee on the funding of European political parties, which was responsible for preparing the Committee's work on the subject, adopted its draft opinion on 30 January 2013. The rapporteur was Mr MALOSSE, and the co-rapporteurs were Mr DASSIS and Mr JAHIER.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), the European Economic and Social Committee adopted the following opinion by 155 votes to 1 with 6 abstentions.

1. The EESC joins the Commission and Parliament in stressing that improving the functioning of the European Union entails developing at this level political parties and foundations that are better known and recognised, and also more representative and closer to the citizens.

2. The EESC supports both the creation of a single European statute for European political parties and foundations and the review of how their operation is monitored, with a view to improving their effectiveness, visibility, transparency, accountability and internal party democracy.

3. As such, the EESC particularly stresses the need for parties and foundations covered by this statute to subscribe to the objectives of the European project and to the fundamental values underlying it, as laid down in the European treaties and the Charter of Fundamental Rights of the European Union.

3.1 In terms of the objectives of the European project, the EESC feels that a statute of this kind should entail a commitment to strengthening peace, to cooperation between States and peoples, to promoting economic and social progress and the well-being of citizens, and to the democratic exercise of freedom of expression and debate.

3.2 With regard to compliance with the fundamental values enshrined at European level, the EESC highlights the need to respect those set out in the European treaties, particularly in the preamble to the Treaty on European Union, and in the Charter of Fundamental Rights of the European Union, Article 21 of

which prohibits discrimination based on any ground. The principle of equality between women and men in all areas – which is also laid down in Article 23 of the Charter – should also find practical application in all the governing bodies of European political parties and foundations.

3.3 The EESC recommends that compliance with the basic principles described above should be confirmed by means of a statement to that effect by political parties and foundations wishing to take advantage of the European statute. It is up to the European Parliament, and in particular its Committee on Constitutional Affairs, to monitor and flag up any violations of the basic rights and principles set out in the EU treaties.

3.4 The EESC would also highlight the key role that the Court of Justice of the European Union needs to play in monitoring compliance with these principles, including by allowing for applications for the adoption of interim measures.

4. The EESC also stresses the need to support, alongside existing European political parties and foundations, the emergence and development of new parties and foundations at European level, provided they meet the required criteria in terms of operation, respect for values and representativeness.

4.1 With regard to the additional condition for eligibility for funding, the criterion of having one elected member of the European Parliament does not seem appropriate given that voting procedures – and thus the conditions for success – vary widely between Member States.

4.2 The EESC therefore suggests that representativeness should be referred to in a way that is less likely to create arbitrary discrimination. It suggests taking inspiration from the criteria established for European Citizens' Initiatives (ECIs) in this connection, and setting the requirement of having obtained at least one million votes across at least seven countries at the last European elections.

4.3 The funding and donations received by European parties and foundations, and their budgets, must be transparent and public. The public have the right and duty to be informed about the funding arrangements of and expenses incurred by parties and foundations. Any sanctions and/or suspensions of funding must be published in the press.

5. The EESC would also take the opportunity, as part of its examination of this proposed regulation, to strongly emphasise the ongoing – and worsening – inequality of treatment between European political parties and foundations, on the one hand, and European-level associations and foundations with more general objectives, on the other (e.g. economic, trade-union, social, humanitarian, cultural, environmental or sporting associations, etc.).

5.1 Article 11 of the Treaty on European Union (known as the Lisbon Treaty) enshrines the principle of participatory democracy and thus the importance of the associations and foundations that lead the debate in the EU's public arena. The EESC notes that these European associations have become more important – in some cases even of paramount importance – in these times of universal internet access. They already act as new conduits for participatory democracy, thus playing a vital and growing role in the provision of information, in public debate and in the European opinion forming process. In so doing, they provide a valuable adjunct and complement to the structures for representative political democracy. This added value is particularly evident at European level, inasmuch as the many ramifications of this participatory democracy naturally transcend national borders.

5.2 In view of the way in which the crisis is widening the gulf between the public and European political leaders and

decision makers, the EESC would draw the Commission's attention to the risk that an inappropriate approach, focusing solely on the specific, independent rights of European political 'associations' without recognising equivalent rights for these other European associations, could be counterproductive. The EESC is particularly keen to stress that the principle of a political Europe is inextricably linked to the principle of a Europe of citizens and civil society, supported by associations and organisations with appropriate, effective and uniform legal tools at every level.

5.3 The EESC once again laments the Commission's decision, several years ago, to withdraw the draft statute for a European association, supposedly due to difficulties in reaching political agreement in the Council. In the Committee's view, this is not in itself an acceptable reason on a subject like this; nor has there been any concrete evidence of such difficulties to date.

5.4 The EESC would also reiterate its concerns regarding the endless barriers to the registration of companies with European statutes, whether they come down to the unattractiveness of the existing statute, which is a real fiasco, or to persistent delays and obstacles in developing a simplified statute that is available to a significant number of businesses of all sizes.

6. The EESC would also reiterate its support – set out in its opinion of 18 September 2012 ⁽¹⁾ – for the draft statute for a European foundation, and stress the need to avoid any kind of discrimination between such foundations and European political foundations.

7. The EESC reaffirms its support for a single legal status for European political parties and foundations; in view of that support and the comments it has made, and in line with the principle of non-discrimination guaranteed by the European Union, it urges the Commission to present, in the near future, an equivalent European Regulation on the statute and funding of European non-political associations and to speed up efforts to adopt the Regulation on the statute for a European foundation.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ OJ C 351, 15.11.2012, p. 57.

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