

# Official Journal of the European Union

C 327



English edition

## Information and Notices

Volume 56

12 November 2013

Notice No	Contents	Page
I	<i>Resolutions, recommendations and opinions</i>	
	OPINIONS	
	<b>European Economic and Social Committee</b>	
	<b>491st plenary session held on 10 and 11 July 2013</b>	
2013/C 327/01	Opinion of the European Economic and Social Committee on 'The unexplored economic potential of EU competitiveness — reform of state-owned enterprises' (exploratory opinion) .....	1
2013/C 327/02	Opinion of the European Economic and Social Committee on 'The role of civil society in EU-Serbia relations' .....	5
III	<i>Preparatory acts</i>	
	EUROPEAN ECONOMIC AND SOCIAL COMMITTEE	
	<b>491st plenary session held on 10 and 11 July 2013</b>	
2013/C 327/03	Opinion of the European Economic and Social Committee on the 'Green Paper on long-term financing of the European economy' COM(2013) 150 final/2 .....	11

EN

Price:  
EUR 7

(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2013/C 327/04	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on customs risk management and security of the supply chain' COM(2012) 793 <i>final</i> ...	15
2013/C 327/05	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 — Setting up a European retail action plan' COM(2013) 36 <i>final</i> .....	20
2013/C 327/06	Opinion of the European Economic and Social Committee on the 'Green Paper on unfair trading practices in the business to business food and non-food supply chain in Europe' COM(2013) 37 <i>final</i>	26
2013/C 327/07	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 — Smart regulation — Responding to the needs of small and medium-sized enterprises' COM(2013) 122 <i>final</i> .....	33
2013/C 327/08	Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council establishing a space surveillance and tracking support programme' COM(2013) 107 <i>final</i> — 2013/0064 (COD) .....	38
2013/C 327/09	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks' COM(2013) 162 <i>final</i> — 2013/0089 (COD) .....	42
2013/C 327/10	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups' COM(2013) 207 <i>final</i> — 2013/0110 (COD) .....	47
2013/C 327/11	Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012' COM(2013) 228 <i>final</i> — 2013/119 (COD) .....	52
2013/C 327/12	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 — Rethinking Education: Investing in skills for better socio-economic outcomes' COM(2012) 669 <i>final</i> .....	58

## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

491ST PLENARY SESSION HELD ON 10 AND 11 JULY 2013

**Opinion of the European Economic and Social Committee on 'The unexplored economic potential of EU competitiveness — reform of state-owned enterprises' (exploratory opinion)**

(2013/C 327/01)

Rapporteur: **Mr HENCKS**

On 15 April 2013 Mr Leškevičius, the Lithuanian deputy minister for foreign affairs, asked the European Economic and Social Committee, on behalf of the forthcoming Lithuanian presidency of the Council, to draw up an exploratory opinion on

*The unexplored economic potential of EU competitiveness: reform of state-owned enterprises.*

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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 170 votes to 10, with 2 abstentions.

**1. Background**

1.1 The purpose of this EESC exploratory opinion is to shed light on the specific contribution that public undertakings can make to the EU's competitiveness. It aims to pinpoint the specific challenges that exist in this area for EU policy and the European institutions.

1.2 This opinion should be seen against the background of the treaties, which give wide discretion to the Member States as regards the definition, organisation and funding of their services of general interest. Furthermore, the treaties leave it up to the Member States to decide on the undertakings responsible for carrying out their public service tasks and their status (private, public or public-private partnership) <sup>(1)</sup>.

<sup>(1)</sup> "The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership." Article 345 TFEU specifies that the EU is to remain neutral on the public or private nature of an undertaking's shareholders and does not affect Member States' rules governing the system of property ownership.

1.3 Public authorities decide on a case-by-case basis whether to use a public undertaking as one of its means of action; this hinges on their analysis of the sector concerned, the defined objectives and tasks and the long-term approach to be promoted.

1.4 According to Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, a "public undertaking" means: "any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it."

*A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:*

a) *hold the major part of the undertaking's subscribed capital; or*

- b) *control the majority of the votes attaching to shares issued by the undertaking; or*
- c) *can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body."*

1.5 All EU countries have set up public undertakings at some stage in their history, either directly, or by nationalising or "municipalising" private companies. They have done so for a wide variety of reasons:

- to implement strategic objectives linked to external or internal security, or to the security of supply of certain essential goods and services;
- to build infrastructure necessary for economic and social life;
- to harness significant investment (particularly after each of the world wars);
- to promote new activities that are not necessarily profitable in the short term;
- to remedy failures of the market (natural monopolies, outsourcing) or of private initiative;
- to address financial, economic, social or environmental crises; or
- to carry out public service tasks.

1.6 Any measurement of the effectiveness, efficiency and, where necessary, the need for reform of public undertakings should not be limited to the usual indicators of economic-activity profitability, but should incorporate all of the objectives and tasks assigned to them by the public authorities.

1.7 According to the official EU definition, competitiveness is the ability of a state to sustainably raise the standard of living for its inhabitants and secure them a high level of employment and social cohesion.

1.8 Every year, the EU loses a bit of ground in terms of productivity. This slowdown is synonymous with deteriorating competitiveness. The telltale signs of this decline include insufficient innovation, and a lack of investment in infrastructure and technologies as well as in human capital.

1.9 The EU's competitiveness and attractiveness thus hinge on investment in infrastructure, education and training, research and development, health and social protection, environmental protection, and so on – all areas in which public authorities can make use of public undertakings as one means of intervention, amongst others.

1.10 However, the state and regional and local authorities are not inherently virtuous and public undertakings sometimes fail, due to:

- administrative, bureaucratic or "political" control;

- a lack of accountability on the part of the public authority, which can be solely focused on financial or economic objectives;

- the use of a public undertaking for purposes other than its stated objective.

1.11 The public undertaking may form part of a defensive or offensive strategy on the part of the relevant public authority:

- defensive, to curb the effects of the crisis, act as a fire-fighter where a company goes bankrupt or to save jobs, temporarily nationalise a company for the time that it takes to find a buyer, sanction a clear abuse of a private company, etc.; or
- offensive, to promote an industrial policy or new technologies, implement public policy, develop new political objectives, promote new goals (biodiversity, renewable energy, the energy transition), generate a new development pattern (sustainable, inclusive).

1.12 This implies that the public authority assumes its responsibilities as regards setting the strategic direction, while giving the management a large degree of autonomy to run the undertaking. The public authority should, however, ensure that there is proper public scrutiny and regulation, which requires putting in place a system of governance for its public undertakings, underpinned by the participation of all stakeholders, as well as representatives of the staff of those undertakings.

1.13 The services of general economic interest that Member States deliver through public undertakings involve industrial or commercial activities, often in direct competition with those of other companies.

1.14 Among the public undertakings that are evolving in a deregulated, competitive environment, the most prominent example would be network industries (e.g. electricity, gas, electronic communications, transport, postal services); continuous access to and supply of these services – which must be of a high quality and affordable – is vital for not only the public, but also a large proportion of private companies. They thus play a fundamental role in the domestic economy and global competitiveness of a Member State. The same applies to other areas, such as the audiovisual sector, housing, health and social care, where market failures may prevent people from exercising their fundamental rights in one way or another.

## 2. Purpose of the exploratory opinion

2.1 In its referral letter, the forthcoming Lithuanian presidency specifically asked that the emphasis be placed on enhancing the efficiency of state-owned enterprises and on their importance for national competitiveness. The presidency has requested an analysis of the current situation and good (or bad) practices, which has been lacking at EU level, as has a structural reform as regards assessing the efficiency of such enterprises in the context of economic policy coordination and their impact on the internal market.

2.2 Although EU law applies only to a few specific areas concerning the activities of state-owned enterprises (state aid and services of general economic interest), the forthcoming Lithuanian presidency proposes that EU-level initiatives on the reform of state-owned enterprises be limited to non-legislative measures and that no targets be set for new legal regulation. The privatisation of state-owned enterprises should also remain exclusively a matter for the Member States.

2.3 Finally, the forthcoming Lithuanian presidency regrets that so far, there has been no comprehensive discussion in the existing and planned initiatives and documents of the European Commission of the reform of state-owned enterprises, their governance, boosting their efficiency, and their contribution to competitiveness and achieving the goals of the Europe 2020 strategy. Up to now, action by the Commission and the European Parliament has been limited to two areas: compliance with the rules on state aid and those on the provision of services of general economic interest.

### 3. The Committee's proposals

3.1 The Committee supports the request from the forthcoming Lithuanian presidency for an analysis of the current situation and good (or bad) practices, as well as a structural reform as regards assessing the efficiency of such undertakings in the context of economic policy coordination and their impact on the internal market.

3.2 The treaties now place a stronger obligation on the EU and the Member States to ensure that services of general economic interest operate effectively, notably by evaluating the performance of such services as part of an ongoing process. Until this is done, evaluations of their performance will not help to meet the needs of the public and of the economy at national and EU levels.

3.3 The purpose of such evaluation is to enhance the effectiveness and efficiency of services of general economic interest and their adaptation to the changing needs of the public and of business. It will also equip public authorities to make properly informed decisions. In addition, it will have a key role to play in achieving a balanced trade-off between markets and general interests, and between economic, social and environmental objectives.

3.4 In its opinion entitled *An independent evaluation of services of general interest*<sup>(2)</sup>, the Committee put forward practical proposals for laying down at EU level the procedures for exchange, collation, comparison and coordination. It will therefore be up to the EU to stimulate this independent evaluation process, while respecting the subsidiarity principle and the principles set out in the protocol appended to the amended treaties, by defining a harmonised evaluation methodology at EU level. This should be based on common

indicators backed by operational provisions, and should be arrived at through dialogue with the representatives of stakeholders.

3.5 As part of its consideration of the way in which public undertakings could contribute more to the EU's economic recovery and competitiveness, the Committee has addressed the issue of Europe's services of general economic interest in a number of opinions.

3.6 A Statute for a European company has been in existence since 8 October 2001. This statute, in use since 8 October 2004, enables companies operating in several Member States to form a single company under EU law and thus apply the same rules: a single system of management and publication of financial information. Companies that adopt this statute thus avoid having to comply with the national legislation of each Member State where they have a subsidiary, thereby reducing their administrative costs.

3.7 Against this backdrop, consideration should be given to introducing a "statute for an EU public enterprise", as proposed by the Commission in 2011 regarding Galileo<sup>(3)</sup> which is now a "de facto EU public enterprise".

3.8 Specifically, EU public enterprises could be envisaged within the major trans-European infrastructure networks, which are defined as a common policy in the treaties, in the areas of energy or transport. They would cooperate with national or local enterprises in these sectors, in order to implement the new provisions and powers laid down in the Lisbon Treaty, particularly in respect of the EU policy on energy (Article 194 TFEU).

3.9 In its opinion on the Green Paper entitled *Towards a secure, sustainable and competitive European energy network*<sup>(4)</sup>, the Committee called for studies to be carried out into the timeliness and feasibility of a European energy service of general interest for the benefit of the public, with a common approach to prices, taxation, financial security rules, continuity, economic development and climate protection.

3.10 In the same Green Paper, the Commission argues for the establishment of a European Transmission System Operator by progressively building an independent company to manage a unified gas transport network throughout the EU.

<sup>(2)</sup> OJ C 162, 25.6.2008, p. 42.

<sup>(3)</sup> Impact assessment on the Proposal for a Regulation on further implementation of the European satellite navigation programme (2014-2020) (SEC(2011) 1446).

<sup>(4)</sup> OJ C 306, 16.12.2009, p. 51.

3.11 Such services at EU level, whatever the status of the service provider (public, private, PPP), could bring added value to essential multinational or transnational areas such as security of energy supply, security of water resources, preservation of biodiversity, maintenance of air quality, internal and external security etc., insofar as these services can be delivered more effectively at EU level than at national or local levels.

3.12 The Committee therefore declares its support for public (EU and Member State) private partnerships to increase the security of energy supply and ensure that interconnected energy networks (gas, electricity, oil) are managed in an integrated way. The Committee also supports the development of wind energy networks at sea and the connection of these wind parks to the terrestrial network – which could significantly reduce operating and investment costs and provide greater incentives to invest in new network projects <sup>(5)</sup>.

3.13 In terms of the powers of each Member State, as regards energy-mix for example, the social and societal questions posed by the management and use of natural resources, nuclear energy, climate change, sustainable

management and security cut across traditional national borders and can be more satisfactorily addressed through a European concept of the general interest and appropriate services.

3.14 The issue could also be raised of the economic activities of the EU's executive agencies.

3.15 There are currently six of these agencies <sup>(6)</sup> which together implement programmes for the period 2007-2013 amounting to approximately EUR 28 billion. Most of these programmes fall within areas in which the EU has competence to support the Member States.

3.16 These executive agencies could be considered as a kind of outsourcing of certain Commission functions, and thus the question arises as to whether they are truly independent, while their tasks and responsibilities lead them to be directly involved in socio-economic activities. Is this so far from the broad definition established by the European Court of Justice of the concepts of economic activity and enterprise?

Brussels, 10 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(5)</sup> OJ C 128, 18.5.2010, p. 65.

---

<sup>(6)</sup> The Trans-European Transport Network Executive Agency (TEN-TEA), the European Research Council Executive Agency (ERC), the Research Executive Agency (REA), the Executive Agency for Competitiveness and Innovation (EACI), the Executive Agency for Health and Consumers (EAHC), and the Education, Audiovisual and Culture Executive Agency (EACEA).



## Opinion of the European Economic and Social Committee on 'The role of civil society in EU-Serbia relations'

(2013/C 327/02)

Rapporteur: **Mr Ionuț SIBIAN**

Co-rapporteur: **Mr Christoph LECHNER**

In a letter from Commissioner Šefčovič dated 12 December 2012, the European Commission asked the European Economic and Social Committee, in accordance with Article 262 of the Treaty and Article 9 of the cooperation protocol between the EESC and the European Commission, to draw up an exploratory opinion on

*The role of civil society in EU-Serbia relations.*

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 June 2013.

At its 491th plenary session, held on 10 and 11 July 2013 (meeting of 10 July 2013), the European Economic and Social Committee adopted the following opinion by 171 votes to 1 with 1 abstention.

### 1. Conclusions and recommendations

1.1 The EESC welcomes the efforts made by the governments of Serbia over the last decade to reform the country's economy and institutions. It sees the process of Serbia's accession to the EU as an opportunity to consolidate and effectively implement the reforms undertaken. It underlines the importance of civil society involvement in the process of aligning Serbian legislation with the EU *acquis*. It calls upon the Government of Serbia and the EU institutions to step up their support to civil society organisations (CSOs) and to involve them closely in the upcoming steps leading to EU accession.

1.2 The EESC welcomes the decision of the European Council to open accession negotiations with Serbia no later than January 2014. The EESC congratulates Belgrade and Prishtina on the signing of the *First agreement of principles governing the normalisation of relations* (Brussels, 19 April 2013) and of its Implementation Plan adopted in May. It now calls on both parties to implement the agreement, assisted by the EU. The EESC stresses that CSOs must be involved in the implementation phase, as they can make a decisive contribution to reconciliation.

1.3 The EESC encourages Serbian public authorities to carry out more public hearings and consultations with CSOs in both the early stages of shaping policies and in the implementation phase. The EESC emphasises the importance of involving them in key areas of the reform process, such as the rule of law, regional cooperation and reconciliation, socio-economic development, the environment, agriculture, minority rights and the fight against discrimination.

1.4 The EESC recommends that the Government pay particular attention to combating trafficking in human beings and corruption and organised crime. It further insists that the

safety of human rights defenders and of the CSO activists involved in fighting organised crime must be acknowledged as a need and guaranteed by the Government.

1.5 The EESC points out that, even if significant progress has been made in promoting a more inclusive society, much remains to be done to build a society in which everyone is equal, regardless of their gender, sexual orientation, origin, or religion. The EESC asks the Government to lose no time in implementing the Anti-Discrimination Strategy adopted in June 2013. The EESC recommends that, working closely with CSOs, the European Commission (EC) use its annual progress reports to monitor the strategy's implementation.

1.6 The EESC welcomes the inclusion of the Office for Cooperation with Civil Society (OCCS) in the Prime Minister's Expert Group of the Coordination Body for EU Accession. The EESC also welcomes the participation of CSOs, including representatives of the social partners, in the Prime Minister's Council for EU Integration. This is a good practice that should be built upon by considering the participation of CSOs, including representatives of the social partners, in Serbia's future accession negotiation team. Frequent and wide-ranging consultations with CSOs should nevertheless be ensured in order to identify key common opinions and recommendations. It is important that experts from CSOs are invited to join a number of expert sub-groups within this Expert Group of the Coordination Body.

1.7 The EESC calls on the EC to use IPA II to provide greater support for building the capacity of CSOs (including the social partners) and to focus on increasing support for partnerships, not only among CSOs but also between CSOs and public authorities. Funds available under the Civil Society Facility should be

increased and target more projects carried out by the social partners as well. Building the capacity of CSOs to engage meaningfully in the EU integration process should be maintained as a priority area, by promoting simplified procedures for the selection and implementation of projects, the use of institutional grants and re-granting. It is not only financial support that is desirable, but also support for mechanisms to improve dialogue between civil society and the public authorities.

1.8 The EESC urges the EU Delegation to Serbia to continue allowing re-granting for smaller CSOs through bigger CSOs as a step forward in making these funds available to the wider CSO community.

1.9 Increasing transparency in public spending must be maintained as a key action in the civil society development strategy, whilst the mechanisms for planning and disbursing co-financing for CSO-implemented EU projects need to be improved and the co-financing increased.

1.10 The EESC calls upon the Serbian Government to increase efforts to implement an institutional and legislative framework conducive to civil society development and sustainability. The EESC recommends considering the introduction of a "percentage law" enabling citizens to earmark a share of their income tax for CSOs to promote individual philanthropy (based on the existing model in Central and East European countries), as well as introducing tax incentives for individual and corporate philanthropy.

1.11 The EESC recommends that the newly adopted Law on Public Procurement, which has created obstacles for CSOs when competing for public tenders, be reviewed. The law introduces mandatory financial guarantees that CSOs cannot have. This might prevent them from competing in public tendering procedures, not only in the area of social services but also of health and educational services.

1.12 The EESC calls upon the Government of Serbia to set up a comprehensive strategy to combat and limit the grey economy. This would improve the country's financial situation, prevent unfair competition and thereby create a better economic environment, while guaranteeing better respect for workers' social rights. This would also help restore confidence in institutions and promote the concept of the rule of law.

1.13 The EESC underlines the importance of social dialogue and calls upon all stakeholders to make the best use of the existing institutions, especially the Social and Economic Council (SEC). It calls upon the Government to further promote the SEC and to consult it more systematically on all policies in which employers and workers have a legitimate

interest. The EESC considers that social dialogue should be regular and structural in nature and not *ad hoc*, and that it should also be more effective and result-driven.

1.14 The EESC asks that the promotion of social dialogue be included among the key priorities of the EU institutions as regards Serbia, and that it should therefore be reflected in all EC programmes available to the country. This would require greater involvement of the SEC, which should also be formally involved and consulted at each stage of the accession negotiations and involved in monitoring the implementation of the EU-Serbia Stabilisation and Association Agreement. The SEC should be able to submit comments and opinions for the attention of the EU institutions when they assess Serbia's progress towards EU accession.

1.15 The EESC considers that social dialogue should be further encouraged at regional and local level, building on the SEC's regional structures. It should also be more systematically developed at sectoral level, particularly in the private sector. The signing – and enforcement – of as many branch collective agreements as possible would stabilise industrial relations in Serbia. Local and national authorities should be constantly reminded of the advantages and importance of social dialogue.

1.16 The EESC notes that a tripartite working group has been set up to review labour legislation, including the laws on striking, trade union registration and the law on the representativeness of social partners. The EESC calls on the International Labour Organization (ILO) and the EC to support this ongoing work in order to bring Serbian legislation and practice fully into line with international and European standards.

1.17 The EESC considers that strengthening the social partners' capacity to participate actively in social dialogue should be included in the priorities of EU assistance programmes. Assistance is needed to develop their ability to participate effectively in all economic, social and legal issues, including in EU accession negotiations. Their organisational structures, internal communication and capacity to serve their members should be strengthened.

1.18 The EESC points out that the fundamental rights of workers are still regularly violated in Serbia and that the mechanisms for preventing and sanctioning those violations are not sufficiently effective. The EESC calls upon the Serbian Government to review the functioning of the Agency for the Peaceful Settlement of Labour Disputes. The EESC suggests considering the possibility of establishing specialised courts for labour disputes. Moreover, the EESC asks the EC to include in



its annual reports a chapter on trade union rights and fundamental workers' rights in close consultation with national and European trade unions and the ILO.

1.19 Serbian female entrepreneurs play an important role across the Balkan region and have effective networks. A cohesive regional approach is now taking shape to further develop female entrepreneurship at the local level. The EESC recommends that support from the European, regional and national levels be increased to significantly speed up the economic and social benefits. Additionally, recognition is needed of the economic and social imperative of supporting female entrepreneurship in Serbia.

1.20 The EESC recommends that an EU-Serbia Civil Society Joint Consultative Committee (JCC) be established between the EESC and Serbian CSOs. This joint civil society body should be established once the negotiations on Serbia's accession to the EU have been formally opened. The JCC will enable CSOs from both sides to pursue more in-depth dialogue and to provide input to the political authorities on the chapters of the accession negotiations.

## 2. Background to the opinion

2.1 Over the last decade, Serbia has made a huge effort to reform its institutions, legal framework and economic regulations, in order to comply with international and European standards and to promote an open and efficient market economy.

2.2 In 2008, the signing of the Stabilisation and Association Agreement (SAA) between Serbia and the EU clearly expressed the choice of the Serbian Government in favour of EU accession and gave new impetus to the reform process. In 2010, an Interim Agreement on Trade and Trade-related issues (part of the SAA) entered into force.

2.3 The new Government, which took office in 2012, has confirmed Serbia's commitment to EU accession. It has taken practical steps to pursue the reforms undertaken so far, focusing in particular on the fight against corruption, the consolidation of the rule of law, the protection of minority rights and economic recovery. It has also pursued efforts to improve regional cooperation.

2.4 In December 2012, the Council asked the EC to draft a report by Spring 2013 assessing the progress made by Belgrade in its dialogue with Prishtina and in its EU-oriented reforms. On the basis of this report, which issued a positive recommendation, the European Council decided on 28 June 2013 that conditions have been met to open EU accession negotiations with Serbia.

2.5 On 19 April 2013, Belgrade and Prishtina finally agreed on the future of Serb-run North Kosovo in the tenth round of EU-led talks, signing the *First agreement of principles governing the normalisation of relations*. In May, an Implementation Plan was adopted by the two sides. An implementation committee has been established by the two sides, assisted by the EU.

## 3. Political, economic and social developments

3.1 Serbia is still a country in transition. There has been some privatisation, but a large part of the economy still consists of public companies, often in dire need of restructuring. Unemployment has increased significantly (24 % of the workforce in 2012). Young people are trying to emigrate. The population is growing older. A large part of the population still works in agriculture and lives in rural areas, where the lack of investment hinders effective development. The informal economy is widespread, undermining the economy as a whole, weakening the state budget and leaving employees without any social protection. Corruption, sometimes linked to organised crime, hampers not only economic development but also consolidation of the institutions. Furthermore, the judiciary is badly in need of reform if it is to guarantee genuine respect for the rights of individuals and organisations.

3.2 The EESC highlighted these different problems in its opinion on *EU-Serbia relations: the role of civil society* (29 May 2008), but it has also underlined the efforts made by the public authorities to undertake the necessary reforms. Many new regulations have been introduced; new institutions, in particular for organising dialogue with the social partners and other CSOs, have been set up; and the rights of minorities are now officially recognised. Although this process has not yet been completed, the main problem is to translate all these institutional and legal changes into practice.

3.3 Serbia has ratified 77 treaties and conventions of the Council of Europe (CoE), including key ones such as the Conventions on the Protection of Human Rights and Fundamental Freedoms, the Protection of National Minorities, the Prevention of Torture, the Protection of Children, Action against Corruption and the European Social Charter. Eight additional conventions have been signed but are still awaiting ratification, including the Convention on Preventing and Combating Violence against Women and Domestic Violence. At international level, Serbia has ratified 75 ILO conventions (73 are now in force).

3.4 As the CoE's Commissioner for Human Rights has emphasised<sup>(1)</sup>, many of these conventions still require further action for proper enforcement. The CoE Commissioner highlighted the problem of the missing persons and of the persons forcibly displaced during the war; rampant discrimination against Roma; violence against women; and widespread homophobia.

<sup>(1)</sup> Thomas Hammarbergh. Commission for Human Rights of the Council of Europe. Report following his visit to Serbia on 12-15 June 2011. CommDH(2011)29.

3.5 Although the Government adopted a Media Strategy in October 2011, violence and threats against journalists still exist. Economic and political interference in the media is also a reality, which threatens the independence of the media and journalists' ability to do their job. Furthermore, trade unionists are still harassed or fired for being members of a trade union organisation.

3.6 The EESC considers that further consolidation of the reform process, the reform of the judiciary system and the enforcement of civil, social and human rights are clearly the priority for Serbia. EU relations with Serbia should clearly focus on those aspects. This is also a key issue for CSOs and their active participation should therefore be encouraged by all means.

#### 4. The current state of play and the role of civil society organisations

4.1 Freedom of assembly and association is constitutionally guaranteed and generally respected. However, freedom of association is jeopardised by increased threats from violent nationalist groups.

4.2 Serbian civil society is predominantly based in cities and is unevenly represented across the regions. Civil society in rural areas is very limited and its capacities are not well developed. Further support is needed to encourage associative movements, build capacities and support the networking of CSOs based in rural areas and/or small towns.

4.3 Particular attention should be paid to agriculture, to developing agricultural interest groups, and to agricultural involvement in social dialogue. Agriculture continues to play a key role in Serbia - around a quarter of the working population is employed in farming, and the agricultural sector is also a key economic sector. Agriculture and agricultural policy will be of great importance in the future EU accession process; at the same time, alignment with EU legislation will be a particular challenge for the Serbian agricultural sector.

4.4 Not only could well-organised and structured interest groups help to promote agricultural interests, above all they could provide useful support for the forthcoming integration process, not least in terms of framing and implementing specific support programmes for agriculture, rural areas and the people who live there.

4.5 There are several active partnerships and coalitions among CSOs, but their resources and support are too limited to enable them to become more active and influential. With respect to partnerships between CSOs and public authorities, the established SECO<sup>(2)</sup> and KOCDs<sup>(3)</sup> mechanisms are examples that may become good practice, so long as their input is taken into consideration and if continuous and systematic funding and support are provided.

4.6 The most significant obstacles to the sustainability of CSOs are the fact that state support is neither sufficient nor based on well-defined priorities, under-developed business sponsorship, lack of individual giving, withdrawal of international donors, under-developed cooperation with local authorities and the limited accountability of decision-makers in general. Efforts should be made and support provided to develop CSOs' constituencies. A limited membership base hinders CSOs' image and recognition, while public funding is still not properly regulated at all levels. CSOs' ability to influence the social and political agenda is generally weak, with the exception of a dozen strong CSOs, most of which are based in Belgrade.

4.7 The EESC welcomes the efforts to improve the legal framework of associations and foundations, including the *Law on Associations* (October 2009), the *Law on Endowment and Foundations* (November 2010), the *Law on Volunteering* (May 2010), and *Simplified accounting procedures for small associations and foundations* (not yet adopted). However, other important laws have been passed but not yet implemented, such as the *Social Welfare Law* (2011). The EESC supports the development of a framework, as provided for by the law, which could ensure fair access by CSOs to public resources intended to support social service provision.

4.8 The EESC welcomes the changes made to Article 41 of the Government's Rules of Procedure on public hearings that lays down the criteria for mandatory public hearings, making them the rule rather than an exception, and providing reasonable timeframes for their duration. The EESC stresses the need to ensure that the mechanism is properly implemented. Priority should be given to raising awareness among public authorities as to the benefits of cooperation with CSOs, both in the early stages of designing public policies and later, when they are implemented. Furthermore, procedures regarding the appointment of representatives of CSOs to different public bodies at national and local level should be considered, taking into account some best practices in neighbouring countries and CSOs' proposals.

<sup>(2)</sup> SECO represents networking and capacity-building in the area of EU integration and the participation of civil society in the IPA programming process.

<sup>(3)</sup> KOCDs are networks of organisations in the area of social protection for marginalised groups that jointly approach decision-makers in this area.

4.9 The Office for Cooperation with Civil Society (OCCS) became operational in 2011. The Operational Plan for 2013-2014 includes key objectives that need to be pursued:

- developing the Strategy for Creating an Environment Conducive to the Development of Civil Society and establishing a National Council for the Development of Civil Society;
- promoting new sources of financing as a prerequisite for sustainability: institutional grants; corporate social activities; corporate philanthropy; social entrepreneurship; developing criteria for the use of public spaces by CSOs, etc.;
- making further progress on an institutional framework conducive to civil society development, i.e. creating specific units or tasks within the relevant government ministries; considering the possibility of establishing a Civil Society Development Fund and strengthening mechanisms for cooperation between CSOs and the Serbian National Assembly.

4.10 The EESC welcomes the OCCS's efforts to make the funding for CSOs from the state budget more transparent, by issuing an Annual summary report on funds allocated to associations and other civil society organisations from the state budget of the Republic of Serbia. The OCCS should be given greater powers, however, to increase the response rate from government bodies at all levels, with the aim of ensuring that data collection is complete and published annually. The EESC therefore welcomes the support provided by the EU Delegation to the OCCS, through the three-year Technical Assistance programme started in December 2012 <sup>(4)</sup>.

4.11 Figures from 2011 reveal that little funding was allocated and actually disbursed for co-financing programmes/projects, even where donor support was assured, despite the fact that such funding is greatly needed by CSOs.

## 5. Social dialogue

5.1 Social dialogue is essential for economic development and to ensure the social cohesion that Serbia requires. A General Collective Agreement was signed in 2008. In April 2011, the Social and Economic Council of the Republic of Serbia (SEC) adopted a new Social Economic Agreement signed by the leaders of the social partners and the Prime Minister, which included important undertakings by the parties. The agreement affirmed that social dialogue is a prerequisite for achieving shared development goals, successfully

overcoming problems linked to the economic crisis, and ensuring economic and social progress in Serbia. In 2012, an agreement was signed by the SEC on the minimum wage. At sectoral level, four branch collective agreements were signed in 2011 and 2012 in the agriculture, construction, and chemical and metal industries. The Labour Minister extended these collective agreements to all State employers. Collective agreements also apply to most of the public sector, covering health workers, local and national government, culture, education and the police.

5.2 The SEC was legally established in 2005 and is the institutional platform for tripartite negotiations. In addition, there are now 18 Social and Economic Councils at local level, although, mainly due to the lack of commitments by the regional authorities, less than half of these are fully operational. The SEC still has to contend with a number of problems that hinder its activities, the most significant of which is the lack of financial and human resources. It has nevertheless managed to establish permanent working groups on economic issues, legislation, collective agreements and occupational health and safety. Representatives of the social partners now participate regularly at the SEC's meetings, in contrast with the Government, which is often represented by officials. Their involvement has increased since the Council was re-established in September 2012. Even the Prime Minister is now a member of the SEC, but the SEC continues to face problems with organising its sessions.

5.3 However, if social dialogue has succeeded in delivering results, it still needs to be consolidated and expanded. The social partners are weak, particularly in the private sector. Collective agreements when signed are not necessarily enforced; and there are vast areas that are simply not covered by social dialogue. At national level, the SEC is not systematically consulted on all the issues that fall within its remit, or the consultation is purely formal, its recommendations being too often ignored by the Government. One positive exception is the Ministry of Labour, which submits all draft laws and strategies for the Council's opinion. Moreover, it proposed recently to set up a tripartite working group to draft changes to labour law. There were also improvements in the legislation related to education, with the Ministry of Education and Science submitting three draft laws for the Council's opinion. In spite of these more positive signs, the SEC continues to be largely ignored, on general economic policies and measures that however have a direct impact on enterprises' and workers' activities.

5.4 An Agency for the Peaceful Settlement of Labour Disputes was established in 2005 to settle both individual and collective labour disputes. Its main focus is on individual cases where an arbiter can make a binding decision and has the same legal means as a court. However, in practice, it appears that the Agency did not really succeed in establishing itself as an alternative and that most of the conflicts are still submitted to the courts, which are notoriously overburdened. In collective dispute settlements, the Agency takes on the role of mediator

<sup>(4)</sup> The budget of the TA programme is EUR 1.2 million, focusing on support for further amendments to the CSO-related legal framework, introducing a framework for transparent state funding and engaging CSOs in the decision-making process.

and thus may not force the disputing parties into any settlement but tries to make both parties voluntarily accept a peaceful settlement.

5.5 In 2013, the Government should sign a "Decent Work Programme" with the ILO. This programme should help to review the different aspects of social legislation and procedures to bring them fully into line with international standards, and to build the capacities of the social partners in order to contribute effectively to social dialogue, supported by EU funding and programmes.

5.6 It is vital that the social partners be better integrated into the Government's economic, social and employment policies, not least in view of the EU accession negotiations. They should also be involved in preparations for Serbia's eligibility for the European Social Fund and other EU funds. Only then will it be possible for the Serbian social partners to effectively fulfil their future role in the forums of participatory democracy at EU level.

## 6. Social partners - current situation

6.1 The Serbian Association of Employers (SAE) is the main national interest group of employers. It represents Serbian entrepreneurs in the SEC. However, the fact that most of the biggest businesses operating in Serbia, as well as other organisations such as the Association of Small and Medium-sized Entrepreneurs (ASME), are not members of the SAE weakens its legitimacy as a participant in social dialogue.

6.2 The Chamber of Commerce and Industry of Serbia, which is the largest business association, was not included in the work of the SEC in the past, due to a compulsory membership system. However, on 1 January 2013, the voluntary membership system was adopted in Serbia and the chamber is strongly committed to contribute to social dialogue, particularly in the areas of vocational training, foreign trade promotion and regional development. It supports the strengthening of the position of the Serbian Association of Employers in the SEC, providing it would be able to voice the broadest range of employers' interests through an efficient consultative process involving all employers' associations.

6.3 In view of the high unemployment rate, employers should be able to have a stronger influence on the development of a good business environment. It should encourage entrepreneurship and faster establishment of new enterprises, particularly small and medium-sized enterprises, one of the major sources of new jobs in Europe. Major obstacles to a better business climate include lack of transparency and predictability of the legislative framework, unattractive tax system including some para-fiscal charges, access to finance, business registration procedures, administration related to foreign trade, etc. The overall assessment of the business community in Serbia is that it is insufficiently involved in the legislative process and its impact assessment, particularly regarding the effects on SMEs.

6.4 Trade unions are fragmented and weak. Many of them are members of one of Serbia's two largest confederations: the Confederation of Autonomous Trade Unions of Serbia (SSSS) and the "Independence" Trade Union Confederation ("Nezavisnost"). There are also two other confederations, the Association of Free and Independent Trade Unions of Serbia (ASNS) and the Confederation of Free Trade Unions (KSSS), which claim to be representative. Under a new law of representativeness, currently under debate, this claim is to be checked. Moreover, according to the Ministry of Labour, there are around 2 000 union organisations in companies that are not members of a national confederation. All relevant workers' organisations need to be more closely involved in social partnership decision-making on the employees' side. The role of trade unions in Serbia is essential to strengthen social dialogue.

6.5 The difficulties of the transition and the economic crisis have accentuated the fragmentation and weakening of trade unions. The heavy registration procedure for trade unions, the opposition and the harassment, sometimes, of managers who are not ready to accept social dialogue at enterprise level, all hinders the normal development of workers' representation and undermines social dialogue. However the effective cooperation that has emerged in recent years between the two representative confederations SSSS and Nezavisnost should, against this background, be welcomed.

Brussels, 10 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE



## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 491ST PLENARY SESSION HELD ON 10 AND 11 JULY 2013

**Opinion of the European Economic and Social Committee on the 'Green Paper on long-term financing of the European economy'**

COM(2013) 150 final/2

(2013/C 327/03)

Rapporteur: **Mr Michael SMYTH**

On 25 March 2013 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

*Green Paper on long-term financing of the European economy*

COM(2013) 150 final/2.

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 19 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July 2013), the European Economic and Social Committee adopted the following opinion by 151 votes to 3 with 3 abstentions.

**1. Conclusions and recommendations**

1.1 One of the most important elements of a strategy to get Europe back on a path of sustainable growth is securing an adequate supply of long-term finance at reasonable cost. The Commission's consultative document on this issue is both welcome and timely.

1.2 The EESC welcomes the Green Paper's focus on productive investment and the formation of long-lived tangible and intangible capital but urges the Commission to give greater attention to the need to finance more "socially useful" capital investment.

1.3 If banks are likely to play a less prominent role in the future as providers of long-term financing, then opportunities may arise for other intermediaries such as national and multi-lateral development banks, institutional investors, sovereign funds and, crucially, bond markets. However, it is important to avoid creating obstacles that prevent banks from fulfilling their role as the main providers of long-term financing, and that a legal framework be in place that avoids driving financing and capital flows outside the regulated sector.

1.4 The EESC welcomes the recent recapitalisation of the EIB as this will strengthen its ability to leverage additional private

investment finance and to play a stronger countercyclical role in investment funding and credit supply to SMEs. While a EUR10 billion capital injection is significant the EESC considers it to be short of what is needed in the present circumstances.

1.5 Similarly the arrival of EU 2020 Project Bonds, albeit in a pilot phase, is also a positive development. These Project Bonds were developed jointly by the Commission and the EIB. Consideration should also be given to similar joint ventures with sovereign funds.

1.6 If initiatives such as Project Bonds succeed in expanding the market for bond finance they should be ramped up once the pilot phase is completed and evaluated.

1.7 The Green Paper examines the role of savings in the supply of long-term investment finance. While some Member States have embarked on special savings schemes to mobilise longer-term savings hypothecated to wider social investments,

the creation of an EU or eurozone wide savings vehicle, perhaps offering an interest rate premium may be worth considering.

1.8 Some Member States have been relatively successful in incentivising pension related and other savings by astute use of the taxation system. Citizens tend to balk at the prospect of paying tax on income earned and then more tax on long-term savings out of this post-tax income. In the context of socially responsible investment, it should be possible to design and market suitable low or zero tax personal savings products with appropriate annual limits so as to encourage greater long-term financial planning.

1.9 Short-termism in the financial system has been a major impediment to the provision of adequate long-term investment and is closely linked to corporate governance. Changing the incentives to promote long-term performance is not an easy challenge. The EESC welcomes the Commission's suggestions about enhanced voting rights and dividends for long-term investors and changes to the shareholders' rights directive. In addition, consideration could be given to a co-ordinated use of capital gains tax allowances to incentivise longer-term shareholding by fund managers.

1.10 In terms of venture capital the Green Paper contains some interesting suggestions. The EESC has already proposed that the EIF's role should be enlarged beyond providing loans to include the provision of venture capital. This was what its creators originally envisaged back in 1994. If the EIF, like the EIB, were to be adequately recapitalised then it could become one of the main providers venture finance for SMEs.

1.11 Finally, given that national and regional governments are already in the business of promoting the survival and long-term growth of SMEs through their regional development bodies, there is a case for these bodies to take on a role in the operation of such SME trading platforms. This role could range from assessing the credit worthiness of client SMEs to providing limited guarantees to institutional investors.

1.12 The EESC would like to see greater emphasis placed on socially responsible investment and proposes the establishment of an observatory to monitor long-term investment conditions.

## 2. Introduction and background to the Green Paper

2.1 The main motivation of the European Commission in producing this Green Paper is the need to get Europe back on the path of growth that is smart, sustainable and inclusive. Europe is facing major long-term, large-scale investment requirements as the basis for sustainable growth. Achieving this is severely complicated by the current risk aversion of households and businesses and the need for fiscal consolidation by many governments which together are restricting the supply of longer term investment finance.

2.2 Failures in the traditional channels of financial intermediation are currently problematical. Banks have been the main source of investment finance in the EU but many of them are now primarily engaged in deleveraging and are thus not able to fulfil their normal role. The Green Paper looks beyond the current crisis, searching for solutions to the provision of the necessary long-term finance for investment.

2.3 The Commission's focus is on productive investment and the formation of long-lived tangible and intangible capital which tends to be less procyclical than shorter lived capital. The Commission defines long-term financing as the way in which the financial system pays for investments that have a long project life.

2.4 Europe has undertaken a programme of reform of the financial sector so as to provide greater stability and confidence in financial markets. The stability of the financial system is a necessary condition for the encouragement of long-term investment but it is not a sufficient condition. The Commission identifies a number of additional areas where action is needed such as:

- the capacity of financial institutions to channel long-term finance for projects;
- the efficiency and effectiveness of financial markets to offer long-term financing instruments;
- policies to encourage longer term saving and investment; and
- the ability of SMEs to more readily access both bank and non-bank finance.

## 3. Comments on the proposals

### 3.1 *Capacity of financial institutions to channel long-term finance for projects*

3.1.1 Commercial banks. The Commission's analysis of the challenges in securing adequate long-term finance in Europe is fundamentally correct. The traditional pre-eminence of banks as the main providers of long-term financing is changing and banks may play a less prominent role in the future. There is no discussion about the potential inconsistency between some new banking regulations and the aims of the Green Paper to stimulate long-term investment. The Green Paper notes merely that the effects of recent and likely future financial reforms may reduce the level of activity of banks in the intermediation chain. A better balance should be struck between the prudential requirements of Basel III and the incentives for banks to continue to provide long-term investment finance. In any case, opportunities are likely to open up for other types of intermediaries such as national and multilateral development banks, institutional investors, greater use of bond markets and sovereign funds.



3.1.2 National and multilateral development banks. These institutions play an important role in sharing the risk with private investors and operators to develop important projects and thus prevent market failures. They also play a counter-cyclical role through their longer term strategic actions. The EIB and the EIF have played increasingly prominent roles in risk-sharing and the recent recapitalisation of the EIB, though inadequate in the opinion of the EESC, will undoubtedly strengthen its ability to leverage additional private investment finance. The EESC encourages the EIB to do more to promote major cross-border infrastructure projects which face particular financing obstacles.

3.1.3 The EESC welcomes the creation of EU 2020 Project Bonds and they are now being piloted in a number of PPP infrastructure investment projects in fields of energy, transport and ICT infrastructures<sup>(1)</sup>. The Commission touches upon the potential role sovereign funds in financing longer term investment. As in the case of Project Bonds which were jointly developed by the Commission and the EIB there may be merit in developing a similar joint initiative with sovereign funds thereby increasing the available pool of longer term investment finance.

3.1.4 On the issue of institutional investors, the Green Paper notes the potential clash between the need for effective regulation of asset risk among insurance undertakings and the need to incentivise them to finance longer term investments. Discussions between the Commission and the European insurance authorities on this matter are on-going. The Commission intends to make proposals on long-term investment funds (LTIF) with a view to stimulating the creation of a number of mechanisms for pooling risks involving different types of institutional investors. This proposal has much to commend it. Pension funds could take a more prominent role in long-term investment but they perceive a number of institutional, regulatory and political obstacles in the way. In particular they are concerned that policymakers attempt to mandate them to finance certain types of project that are not in the interests of their members. Pension funds should be consulted about how to minimise or overcome these obstacles. The creation of a banking union may be helpful in this context.

3.1.4.1 In the context of engendering greater participation of institutional investors in the provision of long-term finance, corporate income taxation incentives could also play a part. A system of tapered allowances in respect of large infrastructure projects investments could lead to greater institutional investor participation in them.

### 3.2 *The efficiency and effectiveness of financial markets to offer long-term financing instruments*

3.2.1 The Green Paper notes that in order to widen and deepen the pool of long-term finance some capital markets in

Europe need to develop and mature. Bond markets in the EU are less developed than in the US and are viewed as off-limits to most mid-caps and SMEs. Even the arrival of Project Bonds has been greeted cautiously by the ratings agencies and this underlines the uphill struggle ahead to grow bond market capacity. If initiatives such as Project Bonds which could create as much as EUR 4.6 billion for new infrastructure projects succeed in expanding the market for bond finance they should be ramped up once the pilot phase is completed and evaluated.

### 3.3 *Policies to encourage longer term saving and investment*

3.3.1 There is an extensive review of the factors influencing long-term saving in financing. On the supply side, while some Member States have made efforts to boost the supply of long-term savings, much more needs to be done. The Green Paper suggests the possible creation of EU wide savings vehicles designed to mobilise more long-term savings hypothecated to wider social objectives. This idea may have advantages in the context of expanding cross-border infrastructures. It may also stimulate greater labour mobility and retirement planning across the single market. It may be necessary to offer new savings products at a premium or tiered rates of interest to incentivise longer term savings.

3.3.2 Taxation. The relationship between taxation, long-term savings and long-term investment is examined in some detail. The corporate taxation treatment of investment tends to produce a bias towards debt over equity finance. In search of suitable reforms to encourage greater use of equity funding of longer term investments, the use of a tapered relief system may be worth considering. Such systems are widely used in the taxation of capital gains and they could be configured so as to offset some of the current fiscal advantages of debt finance.

3.3.3 In terms of long-term savings and the taxation system, the Commission notes the importance of ensuring a stable, adequate supply of savings and of the incentives necessary to bring forth this supply. Some Member States have been relatively successful in incentivising pension related and other savings by astute use of the taxation system. Citizens tend to balk at the prospect of paying tax on income earned and then more tax on long-term savings out of this post-tax income. It should be possible to design and market suitable low or zero tax personal savings products with appropriate annual limits so as to encourage greater long-term financial planning.

3.3.4 The use of tax incentives to achieve desirable long-term investment outcomes is not without its drawbacks. There are serious issues such as deadweight and arbitrage to deal with. Nevertheless the use of tax incentives within a consistent and robust longer term planning perspective is necessary to stimulate and bring forth desired levels of investment.

<sup>(1)</sup> See for example COM(2009) 615 final.

3.3.5 Corporate governance. The issue short-termism lies at the heart of the provision of long-term investment and is very much tied up with corporate governance. Hitherto many of the incentives for fund managers, investment bankers and corporate executives have tended to be short-term in nature. Changing these incentives to encourage greater levels of long-term performance will not be an easy task. The Green paper contains a number of interesting suggestions including enhanced voting rights and dividends for long-term investors and modifications to the shareholders rights directive. Perhaps a more proactive use of capital gains tax allowances might be one means of encouraging longer term shareholding by fund managers.

#### 3.4 *The ability of SMEs to more readily access both bank and non-bank finance*

3.4.1 The Green Paper notes the mounting difficulties facing SMEs in many Member States in accessing funding to survive and to grow. Quite apart from the effects of bank deleveraging, SMEs face a fragmented and rather piecemeal set of alternative sources of finance. Local banks have, to a large extent, lost or lessened links to their local regions. Bank-SME relationships have weakened and these need to be rebuilt or strengthened. Several initiatives have been undertaken to provide non-bank sources of finance for SMEs including access to some venture capital funds, the use of asset finance <sup>(2)</sup>, supply chain finance and crowd funding. Much more needs to be done. The insurance industry and pension funds are willing to play a more prominent role but require appropriate incentives and these should now be addressed by the Commission. Future measures to help SMEs to access longer term finance should ensure that the latter are able to benefit from these measures as originally envisaged - without the banks adding excessive additional conditions, if the measures are to be rolled out via bank lending channels.

3.4.2 Venture capital. The Commission suggests a "funds of funds" approach to creating a critical mass of venture capital funding. In addition the proposed fund of guarantees for institutional investors could expand the market. The EESC has already proposed that the EIF's role should be enlarged beyond providing loans to include the provision of venture capital <sup>(3)</sup>. This was what its creators originally envisaged back in 1994. If the EIF, like the EIB, were to be recapitalised then it could become one of the main providers venture finance for SMEs.

3.4.2.1 Hand-in-hand with the expansion of venture finance for SMEs goes the expansion of existing or the creation of new trading platforms for SME equity finance. The Green Paper contains a number of useful proposals on the subject. Given that national and regional governments are already in the business of promoting the survival and long-term growth of SMEs through their regional development bodies, there is a case for these bodies to take on a role in the operation of such SME trading platforms. This role could range from assessing the credit worthiness of client SMEs to providing limited guarantees to institutional investors.

3.4.3 The EESC would have liked the Green Paper to give greater support to investment in socially responsible funds through the creation of appropriate tax and financial regulations as well as public procurement itself. In this regard there is perhaps a case for the creation of a European Observatory for long-term investment. This body, with the active participation of organised civil society, could monitor developments in both the supply and demand for long-term investment and savings and help ensure an adequate supply of information relevant to sound long-term investment decision-making by economic agents.

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(2)</sup> See for example the *Funding for Lending Scheme* [http://www.hm-treasury.gov.uk/ukecon\\_fundingforlending\\_index.htm](http://www.hm-treasury.gov.uk/ukecon_fundingforlending_index.htm).

---

<sup>(3)</sup> OJ C 143, 22.5.2012, p. 10.

**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on customs risk management and security of the supply chain’**

COM(2012) 793 final

(2013/C 327/04)

Rapporteur: **Mr PEZZINI**

On 18 March 2013, 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 and the European Economic and Social Committee on customs risk management and security of the supply chain*

COM(2012) 793 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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 168 votes to one.

## **1. Conclusions and recommendations**

1.1 The EESC considers it vital to take a common approach to customs risk management and security of the supply chain in order to ensure uniform, non-discriminatory application of EU customs legislation by all of the authorities concerned across the whole of the customs union, which is an exclusive EU competence, under Article 3 TFEU.

1.2 The EESC strongly supports the Commission's proposals, aimed at ensuring greater effectiveness and efficiency in risk management and the movement of goods across EU borders, by means of a **common strategy**, equipped with appropriate IT systems with a view to EU-level risk management.

1.3 The EESC is extremely concerned that the orientation and application of the customs union – established by the 1957 Treaty of Rome and implemented in 1968 as a common policy aimed at providing a single trading area where all people and goods circulate freely and a one-stop-shop for traders to carry out customs dealings on a non-discriminatory basis throughout the EU – is still uneven, which is preventing efficient and effective customs risk management and thus slowing down trade flows and the free movement of goods in the EU.

1.4 The EESC deems it vital to enhance customs capacities across all of the EU, in order to secure a high level of risk management throughout the customs union with regard to the uniform implementation of definitions, classifications, and data collection and transmission to the EU data base, in accordance with unambiguous common criteria whose implementation is checked by a single quality-assurance system and monitored, with penalties for offenders.

1.5 The EESC recommends that common technical standards be developed to ensure uniform implementation of high-quality risk management at all points along the EU's external borders, accompanied by an EU drive to ensure advanced professional training, which takes account of the various obligations pertaining to the many different national circumstances.

1.6 The EESC stresses the need to ensure the full interoperability of the various data bases that operate within the European market surveillance system – on the basis of a common strategy and with substantial support from EU programmes for technological development – in order to ensure real-time information-sharing between the various authorities at the different levels, *inter alia* to bolster efforts to combat the potential risk of health, environmental and social dumping.

1.7 The EESC calls for EU action to be stepped up towards developing skilled human resources and boosting management capabilities, including through measures to iron out disparities in control burdens and the establishment of a common customs support team that would intervene promptly, on request, in difficult situations.

1.8 The EESC deems it essential to strengthen the partnership between customs authorities, carriers and authorised economic operators (AEO), reinforcing its status and benefits, in order to ensure optimal cooperation in risk management, through the transmission of data in a single instalment, without unnecessary bureaucratic duplication.

1.9 The EESC calls for an overhaul of the system of governance here, comprising all national and EU authorities, agencies and EU warning and information systems, to ensure more structured and systematic cooperation between customs and other authorities operating in the internal market.

1.10 The EESC calls for the package of actions set out in the multiannual plan for market surveillance to be implemented in a coherent and coordinated way, in order to prevent duplications of controls, different criteria being applied, multiple requests being made for the same data, differing visions among the various market control and surveillance authorities, and a lack of interoperability.

## 2. Introduction

2.1 The customs union is an exclusive EU competence, under Article 3 TFEU.

2.2 Back in 2004, the EESC was already underlining the need for a "changed emphasis in the strategic approach to customs services policies with the recent additional and merited emphasis on the challenges of the application of common customs policies across a series of new external borders following the enlargement of the Union. It also acknowledges the changed environment created by the raised concerns about security procedures, particularly with regard to the experience of the USA, to protect citizens in the Union" <sup>(1)</sup>.

2.3 In response to the serious challenges facing the customs union in terms of the way it functions, given the uneven application of EU legislation, which could potentially dampen its overall effectiveness through inefficiencies, waste and the mismatch of needs and availability of resources, the EESC has called for "a single customs policy, based on uniform, up-to-date, transparent, effective and simplified procedures, which will contribute to the EU's economic competitiveness at global level ..." <sup>(2)</sup>.

2.4 The customs union is the operational arm of much of the EU's commercial policy measures, and implements numerous international agreements in relation to the trade flows of the EU, developing – through the Member States' administrations – important horizontal processes involving data management, trader management and "risk management, including identifying, assessing, analysing and mitigating the countless different types and levels of risks associated with international trade in goods" <sup>(3)</sup>.

2.5 Establishing a common approach to integrated risk management at entry and exit points would involve the following objectives:

- enhancing the allocation of human and financial resources, concentrating them where necessary;

- full and uniform application of EU customs legislation;

- an integrated system of cooperation between customs, traders and carriers; and

- streamlining of practices and a reduction in transaction times and costs.

## 3. Customs' security role

3.1 As stated in the Commission communication on the state of the customs union at the end of 2012, "customs is the only public authority having a complete overview and control responsibility for all the goods passing through the external borders of the EU, which, once released for free circulation by customs somewhere in the EU, can move freely within any part of the EU customs territory" <sup>(4)</sup>.

3.2 Because of this unique position, EU customs authorities have primary responsibility for the supervision of the EU's international trade, and contribute to the implementation of the external aspects of the internal market, of the common trade policy and of the other policies having a bearing on trade and overall supply chain security.

3.3 The EESC has emphasised that "an efficient customs union is a vital prerequisite for European integration in order to ensure [...] EU-wide efficient, [...] free movement of goods with maximum consumer and environmental protection and effective combating of fraud and counterfeiting" <sup>(5)</sup>, and advocated a single customs policy, based on uniform, up-to-date, transparent, effective and simplified procedures.

3.4 Although it is based on common legislation and policy, the operational functioning of the customs union is complex and is still being implemented by 27 different administrations across the EU, making use of a mix of human, technical and financial inputs at various levels to carry out goods clearance and control procedures, data management and processing, trader management, and management of the different levels of risk associated with international trade in goods and supply chain security.

3.5 The EESC points out that these proposals should not result in Member States' hands being tied when it comes to implementing customs legislation, so that they can continue to take into account the volume of the relevant trade flows. In this connection, the EESC underlines that the Member States have stepped up measures to facilitate trade, moving to paperless formalities, simplifying procedures and implementing authorised operator status.

3.6 Harmonisation should be based on "best practices" and not on an average European level.

<sup>(1)</sup> OJ C 110, 30.4.2004, p. 72.

<sup>(2)</sup> OJ C 229, 31.7.2012, p. 68.

<sup>(3)</sup> COM(2012) 791 final.

<sup>(4)</sup> COM(2012) 791 final.

<sup>(5)</sup> OJ C 229, 31.7.2012, p. 68.

3.7 The EESC also deems it desirable, if the aim is to work in a cost-efficient, results-oriented manner (in financial terms too, with regard to revenues) and to make genuine progress, for controls to be carried out not on a transaction-by-transaction basis but under a systems-based approach underpinned by risk assessment.

#### 4. Risk management of the supply chain

4.1 Constantly growing trade flows, new and increasingly complex business models and an ever faster pace have put growing pressure on the operational functioning of the customs union, which faces a rapidly growing number of tasks and expectations from stakeholders. Modernising its operational functions, in an electronic customs environment, means:

- applying new, cross-EU processes;
- more investment in IT; and
- new skills for staff.

4.2 In order to achieve effective common strategies for risk management, control and analysis, there needs to be a cultural shift within all of the relevant administrations towards common strategies and working methods, within a framework of joint risk management with other agencies and international partners, especially as regards security, health and the environment.

4.3 In particular, effective risk management requires closer cooperation between customs administrations and market surveillance authorities, at national and EU levels, the absence of which would be a serious impediment to developing common risk criteria and specific risk profiles.

4.4 In establishing a common approach to risk management at entry and exit points, it must be borne in mind that customs are currently delegated control responsibilities in more than 60 legal acts <sup>(6)</sup>, while surveillance authorities are responsible for a chain of interdependent processes ranging from inspections, sampling, laboratory testing, interpretation of results and risk assessment, to corrective measures and penalties, with a view to enhancing the safety of products circulating on the market, as envisaged in the Single Market Acts I <sup>(7)</sup> and II <sup>(8)</sup>.

4.5 Risk assessment methods should be pooled in a common systemic platform – *inter alia* by means of administrative cooperation groups – involving customs and market

surveillance authorities at the various levels and be able to benefit from the experience gained in the various data bases that are operational in different areas.

4.6 Customs and market surveillance authorities should pool resources and expertise and "apply SME-friendly methods" <sup>(9)</sup> *inter alia* through the implementation of the guidelines by both sets of authorities, strengthening cooperation and coordination, information exchange and joint activities, and with a view to managing consignments presenting a high safety risk in a targeted way.

#### 5. The role of the partnership between customs, the trading community and carriers

5.1 The customs-trade-carrier partnership plays a fundamental role in securing the integrity of the supply chain, in the interests of citizens, business and government.

5.2 This partnership should be based on solid mechanisms of mutual trust, involving:

- alignment of the general obligations of economic operators to ensure the safety of products and clear responsibilities for manufacturers, importers and distributors, with significant measures to secure the supply chain;
- the provision by traders of high-quality data in coded form to all authorities involved in risk management, while ensuring the identification and traceability of the goods and of the real parties involved;
- ensuring equal treatment of traders in respect of risk management throughout the EU and at every point along its external borders, preventing disparities in treatment;
- closer cooperation with companies transporting goods across borders; and
- limiting the administrative, procedural and bureaucratic burdens on traders, especially SMEs.

5.3 Limiting intrusive controls is already among the provisions of the revised Kyoto Convention on the simplification and harmonisation of customs procedures, under the auspices of the World Customs Organization (WCO) <sup>(10)</sup>, and that this is also an aim of the WTO negotiations on trade facilitation <sup>(11)</sup>, despite the temptation to bolster systematic controls, especially in the wake of "9/11".

<sup>(6)</sup> Annex 2 of SEC(2011) 1317 final – Impact assessment accompanying the *Action programme for customs and taxation in the European Union for the period 2014-2020 (FISCUS)*.

<sup>(7)</sup> COM(2011) 206 final.

<sup>(8)</sup> COM(2012) 573 final.

<sup>(9)</sup> COM(2013) 76 final, action 9.

<sup>(10)</sup> WCO 2003.

<sup>(11)</sup> Article VIII of GATT, which aims to minimise import and export formalities.



5.4 There is a need to address the fragmentation in information flows and overcome difficulties associated with differences in risk management capacity between Member States so as to ensure a uniform standard of electronic risk analysis and management: the basis of this remains the development of a common European culture of risk management and supply security.

## 6. New technologies: system interoperability and information-sharing

6.1 The EU's multiannual R&D programmes – and in particular the 7th Framework Programme, but also IDABC <sup>(12)</sup> and ISA <sup>(13)</sup>, for the interoperability of public administrations – have laid foundations for the development of various joint projects in the field of risk management, with new tools that can overcome the national processes and national domains of the IT infrastructure and applications, which vary significantly among the Member States.

6.2 It is essential that R&D and innovation efforts in the field of risk management and supply chain security be coordinated across the EU to ensure the timely deployment and commercialisation of the technologies. In particular, "proof-of-concept" demonstration projects and manufacturing pilot lines are preconditions for the deployment of technologies on an industrial scale. Public-private partnerships can provide the funding for such initiatives, using the Structural Funds or in the framework of Horizon 2020 and through other EU programmes.

## 7. Structured and systematic cooperation and coordination between customs and other authorities

7.1 The EESC recently emphasised that "**closer cooperation** is needed between customs administrations, market surveillance authorities, Commission departments and European agencies in order to ensure better quality control of goods crossing the borders" <sup>(14)</sup>, and stressed the need to provide appropriate joint training and information.

7.2 According to the Commission "at EU level, better pooling of the capacity and resources of Member States is required to achieve EU risk management objectives more effectively at all points of the external border" including through the "deployment in real time of an electronic risk engine" boosting capabilities at EU level.

7.3 In the EESC's view, the issue of cooperation and coordination in the field of risk management is one of the key points of the Commission proposal, not only in terms of systematic coordination between Member State authorities, but also at the level of the EU itself, between the various directorates-general and operating agencies.

<sup>(12)</sup> Interoperable Delivery of Pan-European e-Government Services to Public Administrations, Businesses and Citizens. IDABC contributes to the i2010 initiative of modernising the European public sector.

<sup>(13)</sup> Interoperability Solutions for European Public Administrations programme 2010-15.

<sup>(14)</sup> OJ C 229, 31.7.2012, p. 68.

## 8. General comments

8.1 The EESC welcomes the Commission's initiative, aimed at ensuring the effectiveness and efficiency of risk management and of the movement of goods across EU borders, by means of a multi-layered strategy for identifying the type and level of risk and the range of possible responses, within an EU framework of multi-agency coordination, and on the basis of a uniform approach and predefined common criteria.

8.2 The EESC is convinced of the need to centralise the process of **electronic clearance**, equipping the Commission with appropriate IT systems with a view to **EU-level risk management** on the basis of a network of interoperable data bases and the systematic use of standardised working methods which ensure that workers, consumers and businesses are protected against the risk of health, environmental and social dumping.

8.3 In the EESC's view, it is vital to increase customs capacities so as to ensure an equivalent level of risk management throughout the EU, in accordance with unambiguous common criteria whose implementation is checked by a single quality-assurance system and monitored, with penalties for offenders.

8.4 The EESC believes that this issue rightly belongs **within the scope of the multiannual action plan for market surveillance, which sets out 20 practical actions** <sup>(15)</sup> to be implemented by 2015 with particular regard to:

- support for the implementation of the guidelines in the Member States by customs and market surveillance authorities (action 17);
- improving the efficiency of border safety and compliance controls (action 18);
- mapping the differences in dealing with safety and compliance controls for products entering the EU (action 19); and
- developing a common risk approach to customs controls in the area of product safety and compliance (action 20).

8.5 The EESC believes that the management of customs controls and the management of market surveillance cannot be addressed in isolation and that the framing of a **common approach at EU level** should be pursued jointly, along with full interoperability of the tools for analysing, collecting and processing the data in the network **by the various authorities involved**.

<sup>(15)</sup> COM(2013) 76 final.



8.6 The EESC is in favour of a support system to bolster Member States' risk management capacities, with a view to ensuring uniform standards of quality and providing an EU mechanism for checks, controls and monitoring, as well as penalties. It also calls for greater EU efforts to ensure advanced professional training, which is particularly needed in the areas where the undertakings and costs involved are greater, such as along the borders of the Schengen area.

8.7 In this regard, the EESC calls for EU action to be stepped up towards developing skilled human resources and boosting management capabilities, including through the establishment of a common customs support team that would intervene promptly in difficult situations.

8.8 With a view to ensuring a clear and coherent set of common standards throughout the single market, for the

same levels of security, the EESC strongly calls for **closer cooperation and increased information-sharing** – on the basis of high common standards – between customs administrations, market surveillance authorities, Commission departments and European agencies, in order to ensure better quality control of goods crossing the borders.

8.9 The EESC endorses the **Council conclusions** on progress in the strategy for the evolution of the customs union as regards **improving the governance of the customs union** <sup>(16)</sup>, enhancing its ability to measure its own impact and promote uniform application of customs legislation, enhancing cooperation between agencies and, above all, adopting "a more comprehensive approach of the international supply chain", facilitating trade and "bringing real and tangible benefits to authorised economic operators".

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(16)</sup> OJ C 80, 19.3.2013, p. 11.

**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 — Setting up a European retail action plan’**

COM(2013) 36 final

(2013/C 327/05)

Rapporteur: **Ms RONDINELLI**

On 18 March 2013, 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 – Setting up a European retail action plan*

COM(2013) 36 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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 174 votes to one with three abstentions.

**1. Conclusions and recommendations**

1.1 The Committee supports the holistic approach taken by the action plan and has already given its views on many of the 11 actions proposed, which will require time and support (including economic support) to be put into effect.

1.2 The Committee considers that some actions may not be implemented or completely feasible because they do not take account of the impact of the economic crisis on the sector, particularly in the countries hardest hit by austerity measures.

1.3 The Committee recommends that, when implementing the plan, the diversity of forms that SMEs and microenterprises often take should be taken into account and harnessed.

1.4 The Committee welcomes the proposal to set up a permanent *Group on Retail Competitiveness* and hopes that the European social partners and representatives of consumer and SME organisations will be part of it.

1.5 The Committee recommends that relevant and truthful information be made available and truly accessible to consumers, in a form which is both concise and easily understandable (avoiding technical or legal language).

1.6 The Committee recommends that the Member States be encouraged to define which forms of retail can be included among the general interests (social and cultural) referred to in the Services Directive.

1.7 The Committee asks that businesses be encouraged to integrate online and offline trade (in many cases, businesses

give priority to just one form), with a view to overcoming problems related to opening hours and days when shops are closed.

1.8 The excessive concentration in the distributive trades poses various problems, including difficulties in achieving genuine competition.

1.9 The EESC recommends that abusive transfer pricing, which is a way of setting the prices of transactions within the same group on the basis of evaluation criteria that reflect the fiscal requirements of the group concerned rather than the natural market conditions, should be addressed at European level, as already recommended in a Committee opinion <sup>(1)</sup>.

1.10 The Committee recommends working towards a sustainable retail sector and the reduction of waste, partly by promoting the roll-out of a dispensing-based sales system which cuts back on packaging which is a source of pollution.

1.11 The Commission should strive to achieve innovation and change using all the instruments available to it, as competition is a condition for change but will not trigger change on its own.

1.12 The Committee considers that matching up the professional skills needed and the skills possessed by workers is crucial, and believes that corporate involvement should include targeted investments as well as influencing the curriculum of training courses.

<sup>(1)</sup> EESC opinion on *Tax and financial havens: a threat to the EU’s internal market*, points 3.25 and 3.26, OJ C 229, 31.7.2012, p. 7.

1.13 Building on the experience of the European Skills Council for Commerce, the Committee urges the Member States to set up bilateral bodies between the social partners to develop professional training (matching, training schemes, financing, identifying training needs, and carrying out and getting feedback on training).

1.14 The Committee endorses the Commission's move to initiate dialogue with all stakeholders to define effective measures at EU level to combat the informal economy and undeclared work. It hopes that the Member States will bring strong political will to bear which the Commission will be able to coordinate via an enhanced partnership.

## 2. Achieving a single market in the distributive trades

2.1 In order to achieve the single market in the distributive trades, the action plan proposes a roadmap of five priorities and 11 actions within the framework of the Europe 2020 strategy, to be carried out by 2014. The Commission will be responsible for monitoring and in 2015 will submit a progress report.

2.2 In the EU, the distributive trades are crucial for stimulating growth, job creation and more sustainable innovative consumption patterns. The sector represents 11 % of GDP and almost 15 % of jobs, accounting for almost 36 million employees in over 6 million businesses, which comprise 29 % of all businesses and include a very high level of SMEs and micro-enterprises.

2.3 The plan shows that the distributive trades are increasingly integrated with other economic sectors and that the distinction between them is fading. It points out that obstacles remain to the creation of an efficient, competitive and integrated single market in the distributive trades. It is therefore essential to make the sector more competitive and productive and to improve its economic, social and environmental performance, taking into account its diversity in general and the situation of SMEs and microenterprises in particular.

2.4 The Committee points out that, despite efforts over the last two decades to modernise the sector, many SMEs in the retail sector are failing. This is partly due to rising price competition and falling profit margins, and partly to the economic crisis which has brought about a contraction in consumption and dissuaded people from buying.

2.5 The financial crisis, rising prices of raw materials, demographic ageing, the drive for greater sustainability and technological innovation (e.g. electronic payments, self-scanning) are revolutionising business processes and models both in large-scale commercial chains and in SMEs.

2.6 The Committee welcomes the proposal to set up a permanent *Group on Retail Competitiveness* (involving Member

States, stakeholders and SMEs) to bring the problems besetting the sector to the fore in European political debate, identify avenues for development, monitor progress and prepare recommendations. The Committee calls for the European social partners in this sector (UNI-Europa commerce and Eurocommerce), which have been engaged in constructive social dialogue since the late 1980s, to be part of this group as representatives of civil society, particularly consumer and SME organisations.

2.7 The Committee urges the Commission and the Member States to encourage and support all fair and balanced forms of collaboration and trade associations between independent businesses as well as between large retail companies and independent businesses on the basis of contracts with clear, balanced guarantees.

## 3. Consumer empowerment (actions 1 and 2)

3.1 Rights only really exist when they are exercised, and for that they need to be known. Information does not equate to knowledge, the primary right of consumers which gives them the freedom to make their choices in pursuit of wellbeing and individual and collective convenience. These days, many purchase choices are accompanied by a vast quantity of available information.

3.2 One of the chief problems currently affecting the sector is the large retail companies' marketing strategy, which focuses almost exclusively on the price for the consumer and overlooks value for money. In many Member States, the result is a drop in the quality of food products, partly because natural ingredients are replaced by substitutes. This reduces the choice available to consumers who would often be prepared to pay more for a good quality product but cannot find one in the range on offer.

3.3 Knowledge of product features enables people to make informed choices, thus spurring on quality, diversification and service in the product range. However, an increase in available information does not equate to an increase in knowledge, and in fact the opposite is often true: faced with an excess of information, consumers often choose not to read it owing to lack of time and the overly technical, incomprehensible language used.

3.4 In addition to drawing up guidelines on good practice and codes of conduct (action 1) <sup>(2)</sup>, the Commission should establish effective, binding instruments requiring producers and distributors to provide consumers with accessible information on all the features of their products, services and prices which are vital for other social, environmental, territorial and economic purposes. In addition, all necessary information should be made available in concise, easily understandable form. They can then freely decide which of these features they will give priority to and not base their choice solely on marketing aspects.

<sup>(2)</sup> The report on Comparison Tools was presented at the European Consumers' Summit on 18 March 2013.

3.5 The supply system generates a wealth of knowledge which is useful to consumers when making their choices, but that knowledge is largely concentrated on product aspects linked to purchase and initial use, focusing on initial satisfaction and overlooking the later stages in the product's lifecycle (to what extent the packaging can be recycled, duration of performance, whether assistance and spare parts are available, value in the event of the item being sold on second hand, after-sales services).

3.6 As well as proposing methodologies for measuring and communicating the overall impact of products and organisations (action 2) <sup>(3)</sup>, the Commission should take on the task of supplementing the knowledge that shapes consumers' purchase choices <sup>(4)</sup>. In doing so, it should provide clear indications regarding:

- the extent to which products and packaging can be recycled;
- the amount of packaging actually needed (for the purposes of transport, provision of useful information, conservation and hygiene, ensuring that the product is in good condition throughout the period of use) compared to the large amount which can be dispensed with;
- the extent to which the production and distribution sectors comply with standards in the areas of production, environmental protection and workers' rights;
- ease of access to after-sales services.

3.7 The Committee therefore proposes that this action should be implemented effectively and realistically in the interests of consumers, ensuring stronger protection, and of companies (particularly SMEs), ensuring that they know how to implement it in practice.

#### **4. Better access to more sustainable and competitive retail services (actions 3, 4 and 5)**

4.1 When prohibiting the imposition of compliance with certain requirements, the Services Directive stipulates that "this prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest" and "This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest". The Directive clearly states that these "overriding reasons relating to the public interest" include "the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives".

4.2 Some forms of retail are characteristic of the local culture and lifestyle. These and only these forms should be

able to compete in a system of similar businesses which continually seeks improvements in quality and efficiency in the interest of consumers. Exposing such businesses to the aggressive tactics of large organisations could uphold free market principles in the short term but would result in the probably permanent loss of a cultural and lifestyle heritage, thereby weakening the community and the area, not least from an economic point of view.

4.3 Competition has forced retail businesses to deliver better service and become more efficient. It is imperative that the Commission distinguish between healthy competition between similar businesses (which drives the pursuit of continual improvements in quality and efficiency, in the interest of consumers) and other forms of economic and commercial conflict between businesses.

4.4 It is important for areas to have healthy competition between businesses in the sector, regardless of their size, not with a view to aggressive tactics but so that each business spurs on the others in a virtuous circle. This will result in better services, a wider selection, more user-friendly organisation, better prices and a local identity.

4.5 When the economic strength of major chains undermines traditional shops, this should be recognised as a loss as it destroys part of the cultural and lifestyle heritage as well as the economic and social fabric of that area and community, which is worth more than the mere convenience of selection and prices for the consumer.

4.6 With regard to actions 3 and 4, the Commission, in line with the Services Directive, should encourage the Member States to assess whether and which forms of retail can achieve these social policy and cultural objectives. Therefore, the Commission should promote the inclusion of traditional independent local retail in general interests, where retail reflects local culture and characteristics. However, it is important to ensure that local vested interests do not masquerade as general interests of the community such as the environment and land use. The Commission should therefore state very clearly what constitutes acceptable general interests of a region, and even ask each region to draw up a list of three priority interests in order of importance to be used as criteria when assessing new commercial establishments.

4.7 Online retail cannot replace bricks-and-mortar retail, but the two models need to find ways to integrate, particularly since retail has a key role to play in society beyond simply supplying goods and services at low cost.

4.8 The Committee calls on the Commission, hand in hand with the Member States and in cooperation with SME organisations, to spur on SME training on integrating various types of sales alongside traditional forms.

<sup>(3)</sup> *Building the single market for green products*, adopted by the Commission on 9 April 2013.

<sup>(4)</sup> Examples of information which have become knowledge: the source of meat and the meat industry, regional coverage of mobile phone signals, the zero-food mile sector in the agri-food industry.

4.9 The growth potential of online trade cannot be predicted with any certainty because it is dependent on how the markets and institutions will regulate it. The Commission should initiate and facilitate all actions that will enhance the value of non-sale services (which do not relate directly to a specific purchase) performed by offline retail.

4.10 Shops currently offer customers many services free of charge (for instance window shopping), with the cost reimbursed by the margin on sales. Producers therefore often deter online purchasing, obliging customers to buy offline. However, increasing numbers of consumers now combine purchasing techniques: comparing products and prices online and physically handling the product and trying it out offline. The Committee recommends rendering this online/offline competition obsolete by integrating and developing services delivered by traditional shops, since shopping in person leads to real, physical social interaction which cannot be converted into digital interaction: integration is needed, not replacement.

4.11 The Committee points out that Member States have different legislation on retail business opening hours and opening on Sundays and at night. These rules are under discussion in many Member States in terms of competition between independent businesses, SMEs and micro-enterprises, and impact on staff. The Committee asks the Commission to overcome this barrier to the completion of the single market and the European social model, partly by integrating online and offline trade.

## 5. Better commercial relationships throughout the retail supply chain (action 5) <sup>(5)</sup>

5.1 The Committee considers that the distributive trades sector is one of the most highly concentrated. The market in every Member State is controlled by three to five companies, often multinationals. This poses major problems in terms of competition, as the sector has far too much power over suppliers which are much greater in number.

## 6. Developing a more sustainable retail supply chain (actions 6 and 7)

6.1 The Committee supports action 6, which is aimed at supporting retailers in implementing actions to reduce food waste <sup>(6)</sup> and welcomes the decision to adopt a communication on sustainable food in 2013.

6.2 The Committee supports action 7, which aims to "make supply chains more environmentally-friendly and sustainable" by using every means possible to cut back on energy use and the production of materials which are a source of pollution. With regard to such materials, the Committee suggests promoting a distribution model for general consumer goods based on dispensers as an alternative to packaged products. The Committee asks the Commission to consult all stakeholders

with a view to implementing this action, intended to reduce the production of packaging which will then have to be disposed of.

6.3 This practice is used in a handful of situations and for a very small number of products but could be applied much more widely:

- Less packaging. By purchasing a product via a dispenser, consumers would be discouraged from buying a new container: they could re-use the one they already have.
- Improved hygiene. The dispenser would protect the product more effectively as the product would not be handled by people who then did not buy it.
- Less waste. A dispensing system enables people to specify the amount purchased; they will not be forced to buy products in containers which do not match their needs – a major source of waste.
- Better communication for brands. Dispensers are generally bigger than individual packs, and the area thus available could be used to convey more information than would be possible on a smaller label.

6.4 This model is currently used in small-scale situations, for instance selling fresh milk, and fuel for vehicles is already sold on a huge scale using the dispensing model. The product itself is not environmentally-friendly but the distribution of it does not generate a single gram of plastic nor is any of it wasted.

6.5 This model would entail changing the way that sales points are set up; they would need to arrange warehouse-to-shelf re-supply pipes or at least systems for refilling the dispensers. In any case, shop shelves would no longer be static and bland.

6.6 To have a real chance of success, this shift in model would have to be pushed by the major distributors responsible for most consumer products which would have the capacity and the resources needed to kick off this game-changing process. SMEs would also need to play a key role.

6.7 The Commission could help kick-start this change, raising awareness of the social and environmental advantages and using every instrument available to it (including economic and financial instruments) to promote and facilitate practical initiatives and projects.

## 7. More innovative solutions (actions 8, 9 and 10)

7.1 Recovery in the real economy is partly dependent on innovation in this sector (action 8) and it is crucial that SMEs have more and easier access to bank loans so that they can begin innovative projects and activities.

<sup>(5)</sup> EESC opinion on *Unfair trading practices / supply chain* (See page 26 of this Official Journal).

<sup>(6)</sup> EESC opinion on the *Prevention and reduction of food waste*, rapporteur: Mr Somville; OJ C 161 of 6.6.2013, p. 46.



7.2 Unlike past developments in the USA, business investment in innovation must be combined with employee protection and job quality.

7.3 The Commission seems to expect these changes to result from enhanced retail competitiveness – boosting this competitiveness is the sole purpose of the actions proposed in the communication. However, while a lack of competition hinders change, competition per se does not guarantee change.

7.4 The Commission, when it describes retail businesses as "innovation multipliers", recognises that SMEs in the retail sector, being in closer contact with consumers, have a better grasp of new needs and so, as they are also more flexible than large companies, they are better able to match supply to the varying and varied demand.

7.5 However, some changes in system and model require planning capacity and above all bargaining power – meaning that large companies have to be involved. The Commission must strive to include all small, medium and large companies in the processes of innovation and change.

7.6 The Committee welcomes the creation of a database containing all EU and domestic food labelling rules (action 9) <sup>(7)</sup>.

7.7 The Committee supports the Commission's moves to ensure better market integration for card, internet and mobile payments (action 10) <sup>(8)</sup> and hopes that this will be rolled out swiftly.

## 8. Better working environment (action 11)

8.1 Matching up skills is essential for improving the quality of jobs <sup>(9)</sup> in the sector, which often serves as the way into or back into the labour market and is not generally seen as an attractive, interesting sector in which to spend one's entire working life.

8.2 In order to make the retail sector more competitive and productive, employers' requirements and employees' skills need to match up more closely (action 11); employees need to be given the opportunity to enhance their performance, partly in response to rising levels of automation.

8.3 The Commission aims to step up cooperation between the social partners in order to improve training and reskilling policies, partly through the EU Sectoral Skills Council.

8.4 Despite technological innovation, productivity in the sector is still relatively low and SMEs struggle to invest in new technology, innovation and staff training.

8.5 However the action plan cannot overlook the fact that within the single market, the sector is being hit by social dumping and unfair competition between retail businesses, regardless of their size. This is because industrial relations and collective bargaining systems vary from one country to another, resulting in different development models and investment policies.

8.6 One limiting factor in the analysis is that it refers only to skills-needs matching and does not consider the host of problems preventing the establishment of an integrated, competitive European single market in this sector, in terms of working conditions, organisation of work, low salaries, flexibility, insecure employment and a high rate of false self-employed.

8.7 The communication proposes investment in training, responsibility for which would fall to governments, individuals and the education system, calling on companies to play an important part in preparing new programmes for study, training and traineeships. The Committee considers that company involvement should extend beyond identifying training needs; they should also be proactive, investing in the skills they want <sup>(10)</sup>.

8.8 Public and private investment together would aid young people to enter the labour market, as well as groups which find it very difficult to break back in (long-term unemployed, older workers, immigrants and people with disabilities). Efforts should focus on women who are in greater danger of losing their job following restructuring and who have more problems balancing home life and work.

8.9 Matching up skills, strengthening school-business partnerships and traineeship-based training schemes cannot deliver the expected results in terms of employee mobility and higher productivity in the sector unless it is accompanied by EU-wide recognition of formal qualifications, traineeships, apprenticeships and acquired skills.

<sup>(7)</sup> OJ C 198, 10.7.2013, p. 77 and OJ C 204, 9.8.2008, p. 47.

<sup>(8)</sup> OJ C 351, 15.11.2012, p. 52.

<sup>(9)</sup> 32 % of employees are not or are only partly qualified, compared to the average of 27 %; 15 % of employees in this sector are under 24, against an average of 9 %; 60 % of employees are women.

<sup>(10)</sup> In some countries, such as Italy and France, inter-professional training funds in the context of bilateral bodies or joint committees have produced interesting results.



8.10 Despite efforts at national level undeclared work is still a serious problem, with companies competing unfairly in the area of labour costs. Workers in the informal economy have no access to health and welfare systems, or to training and traineeship schemes which obviously damages their chances of acquiring professional skills.

8.11 The Commission's move to initiate dialogue with all stakeholders to assess the informal economy's impact on labour conditions and to define effective measures at EU level

to combat it, is laudable. The Committee considers that the more political will the Member States bring to bear, the more effective this initiative will be; the Commission could coordinate this via an enhanced partnership.

8.12 The Committee considers that measures on combating undeclared and informal work must remain a discussion point for the social partners as part of the European social dialogue <sup>(11)</sup>.

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(11)</sup> Joint opinion issued by UNI-Europa Commerce and Eurocommerce on 24 April 2012.

**Opinion of the European Economic and Social Committee on the 'Green Paper on unfair trading practices in the business to business food and non-food supply chain in Europe'**

COM(2013) 37 final

(2013/C 327/06)

Rapporteur: **Mr ŠARMÍR**

On 18 March 2013, 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

*Green Paper on unfair trading practices in the business to business food and non-food supply chain in Europe*

COM(2013) 37 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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July), the European Economic and Social Committee adopted the following opinion by 140 votes to one with nine abstentions.

**1. Conclusions and recommendations**

1.1 The EESC takes note of the European Commission's publication of this Green Paper and thinks that it reflects a positive and marked shift in the Commission's approach to unfair trading practices (UTPs).

1.2 The EESC considers the use of unfair trading practices as not only "unfair" or "unethical", but also as contrary to fundamental legal principles and to the interests of the supply and demand sides. Since it amounts in fact to the abuse of a significantly stronger market position, we recommend using the term "abusive trade practices", which is routinely used in French and English, for example.

1.3 The Committee sees the present breadth and depth of unfair trading practices as being mostly the result of the mergers and acquisitions that have occurred over recent decades.

1.4 In the Committee's view, the results so far of the High Level Forum for a Better Functioning Food Supply Chain are unclear and the approaches proposed are insufficient to solve the problem of unfair practices. It would therefore urge the European Commission to come up with further initiatives.

1.5 While the EESC has no doubt that unfair practices may be employed in any kind of contractual relationship, it is convinced that matters are particularly grave when it comes to dealings between supermarkets on the one hand and

farming and food SMEs on the other. There are forms and degrees of abuse here that do not occur elsewhere.

1.6 The EESC is particularly pleased that the Commission explicitly casts doubt in the Green Paper on the existence of true contractual freedom where relationships are very unequal, thus concurring with the EESC view.

1.7 The Committee finds that the Commission's Green Paper captures very well the essence and main types of unfair trading practices. However, it firmly believes that the Commission should provide a uniform definition of UTPs similar to that already set out in Directive 2005/29/EC, since the practices referred to in the Green Paper bear some resemblance to "misleading marketing practices" <sup>(1)</sup>.

1.8 UTPs are all the more important within a "climate of fear" in which the weaker contracting party is frightened of losing the custom of the stronger party. This is especially true when large retailers put unfair pressure on their suppliers and/or they pass on excessively high prices to the retailers and consequently to the consumers.

1.9 In the EESC's view, the consequences of unfair trading practices are not restricted to business-to-business dealings; nor do they affect only weaker contracting parties. Consumers are also victims, as are national economic interests – a fact insufficiently highlighted in the Green Paper.

<sup>(1)</sup> EESC opinion on misleading marketing practices (OJ C 271, 19.9.2013, p. 61-65).

1.10 The EESC thinks that the laws to curb unfair trading practices adopted in several Member States reflect the fact that the current state of affairs is unacceptable. Although these laws have for various reasons not produced satisfactory results, it would be wrong to say that nothing has been achieved. One success is the greater transparency in the sharing of benefits and the cessation of the most outrageously extortionate practices.

1.11 Although the EESC has no reason to believe that the adoption of these laws by Member States is detrimental to the free movement of goods in the EU, some restrictions may occur. However, none of these laws is protectionist in nature and they apply equally to domestic businesses and to those from other Member States.

1.12 The EESC recommends that any further consideration of how to address the problem of UTPs should start with the absence of contractual freedom in some relations.

1.13 The EESC recommends that any proposals in future to regulate unequal commercial relations take the "fear factor" into account. The essential balance between contracting parties must be secured so that their relationship is a fair one. For this reason, the prime aim of UTP regulation cannot be to protect the weaker contracting party exclusively, but also the national economic interest. This would mean, for example, that food suppliers affected would not have to take an active part in administrative and legal proceedings.

1.14 The EESC calls on the European Commission to propose legislation banning UTPs. This should be based on an indicative list of the most typical such practices employed by the stronger contracting party and designed to transfer its own normal costs and risks to the weaker party.

1.15 The EESC calls on the European Commission to work with national competition authorities in drawing up, on the basis of practical experience over recent decades, a radical revision of current – and evidently obsolete – competition rules so as to promote fair competition based on the fair exchange of relevant information in this sector and take all existing dominant positions into account.

## 2. Introduction

2.1 The Green Paper draws a distinction between food and non-food supplier/distribution chains, which is entirely justified, since the former has its own distinct features compared with others.

2.2 Substantial consolidation has taken place among companies belonging to supply/distribution chains in the last two decades, leading to the creation of what are in reality oligopolies. As far as food supply/distribution chains are concerned, this is particularly true in the retail sector, somewhat less in the processing industry and least of all in the primary production of agricultural products. This has resulted in large imbalances in the food supply chain, since the oligopolies have enormous bargaining power vis-à-vis their commercial partners, who are far more fragmented.

2.3 The EESC is convinced that the structural imbalances that have emerged lead to UTPs being used in some cases and that these practices are often not only inimical to fairness, honesty and ethics, but also contravene fundamental principles of law.

2.4 The Green Paper is wrong in stating that UTPs were first discussed at EU level only in 2009. This is the year in which they first appeared on the European Commission's official agenda. As early as 2005, however, the European Economic and Social Committee issued an important opinion <sup>(2)</sup> which – at a time when the question of UTPs was still taboo – highlighted and criticised a number of negative aspects of the behaviour of retail chains. Mention should also be made of the important role played by the 2007 *Written declaration on investigating and remedying the abuse of power by large supermarkets operating in the European Union* <sup>(3)</sup>, in which the European Commission was directly called upon to take the steps needed to remedy the situation.

2.5 In the EESC's view, the results so far of the High Level Forum for a Better Functioning Food Supply Chain are somewhat uncertain, since the proposed good practice implementation framework has brought no agreement on tackling UTPs, a matter on which three European Commissioners, among others, have expressed regret <sup>(4)</sup>.

2.6 The European Competition Network (ECN) report confirms that the use of UTPs is a reality, especially in the food sector. This accords with the EESC's conviction that the abuse of a stronger economic position by supermarkets vis-à-vis SME food producers and processors is orders of magnitude more serious than in other contractual relations. The fact that for years it is only these suppliers of food to large retail chains that have been complaining, and no one else, is further proof of this.

<sup>(2)</sup> OJ C 255, 14.10.2005, p. 44.

<sup>(3)</sup> 0088/2007. Written declaration on investigating and remedying the abuse of power by large supermarkets operating in the European Union.

<sup>(4)</sup> European Commission, Press release, Brussels, 5 December 2012, Improving the functioning of the food supply chain.

2.7 The EESC notes the Commission's statement that UTPs are harmful to the EU economy as such and not only to contractual relations between two businesses.

### 3. Definition of unfair trading practices

#### 3.1 The concept of unfair trading practices

3.1.1 So far, no doubt has officially been cast upon the existence of contractual freedom in commercial relations – not even between supermarkets and SME food producers. Until recently, this freedom was one of the main arguments not only of the supermarkets, but also public authorities, against the regulation of UTPs, which would allegedly have curtailed such freedom. The EESC finds it very significant that the Green Paper has abandoned this position and that it explicitly acknowledges that there is no true contractual freedom where there is marked inequality of economic muscle between the two contracting partners.

3.1.2 For the European Economic and Social Committee this recognition of the lack of contractual freedom is the fundamental prerequisite for effectively seeking comprehensive solutions to problems arising from existing imbalances in the supply/distribution network, above all in the case of food.

3.1.3 In this section of the Green Paper, the European Commission captures very well the essence and main types of UTPs. In relations between supermarkets and food suppliers, in particular, the weaker party has no real alternative, since there are very few major customers in the market and, more importantly, they all treat suppliers in a very similar way.

3.1.4 Several examples of UTPs mentioned in the Green Paper reveal that some buyers do not hesitate to use any means whatsoever to secure extra and totally unwarranted benefits to the detriment of the other party. One particular form is payment for fictitious services or unsolicited services that have no value for the other party.

3.1.5 These are the EESC's answers to the questions posed in this section of the Green Paper:

- Question 1: The EESC thinks that the Green Paper should offer a definition of UTPs similar to that already given in Directive 2005/29/EC. It agrees, however, with the elements and parameters that, according to the Green Paper, epitomise UTP situations.
- Question 3: The UTP concept should not be limited to contractual negotiations, but should cover the entire duration of the commercial relationship.

- Question 4: In theory, UTPs can occur at any stage of the supply/distribution chain, but they only occur in the form under discussion in relations between supermarkets and SME food producers and processors. There is no indication, for example, that multinational food companies, which are also oligopolies, ask their suppliers for listing fees or payments for fictitious services. However, cases should also be mentioned in which multinational food companies make the supply of their (desired) products conditional on similar goods not being sourced from their competitors.

- Question 5: The fear factor is a familiar reality, particularly in relations between retail chains and SME food producers. Its source is the explicit or implicit threat of ceasing to trade with the supplier and the consequent serious economic difficulties for the latter. Any attempt to regulate UTPs must take on board this fear factor, because it thwarts any expectation that the supplier will provide any complaint, or even evidence, in the event of administrative or legal proceedings.

#### 3.2 Examples of unfair trading practices

3.2.1 The EESC welcomes the fact that the European Commission draws here on information from a number of national competition authorities. In addition to those mentioned, we particularly recommend collaboration with the French and Czech authorities, which have direct experience with implementing their national UTP laws. In conducting their inspections, anti-monopoly authorities have the right to examine accounting documents (contracts, invoices, bank statements, etc.) that can directly prove the use of UTPs.

3.2.2 These examples furnished by the UK, Spanish and Irish competition authorities show that it is misplaced to refer to many of the practices deployed as merely "unethical", since they are patently beyond the bounds of legality (especially where "bullying and intimidation" are involved).

#### 3.3 Potential effects of unfair trading practices

3.3.1 The adverse impact of the stronger party's use of UTPs against the weaker party is beyond doubt and the stifling of investment and innovation in production is their logical consequence. However, the impact on consumers is, in the EESC's view, inadequately signalled, since it translates into far more than just impeding innovation. Yet, this section completely ignores the threat to national economic interests, which does get some mention earlier in the Green Paper. This threat is most in evidence in the countries of Central and Eastern Europe, where supermarkets are entirely in the hands of businesses from other Member States. Given that domestic producers – the vast majority of them SMEs – are unable to meet what often amount to extortionate terms, the whole agri-food sector in this region is collapsing and countries that were traditionally self-sufficient in the production of food staples

have to a large extent lost their food security. Domestic production is thus replaced by imports of often very dubious quality.

3.3.2 These are the EESC's answers to the questions posed in this section of the Green Paper:

— Question 6: UTPs are routinely used in the food sector, especially by supermarkets, in day-to-day commercial dealings.

— Question 7: Suppliers of commodities other than foodstuffs are evidently victims of UTPs by retail chains to a far lesser degree. This is probably because of their lesser dependence on large retail networks, since suppliers of toys, sports goods or clothes, for example, have a far greater range of potential buyers than food producers. Unfair trading practices occur in franchise relations, both in the food and non-food retail sectors. The same problems in food supply chains described in the opinion apply here too, with an imbalanced relation between stronger parties (franchisers/chains) and significantly weaker ones (franchisees). As a result, we see the same lack of freedom in negotiating contracts. Franchisees sign initial contracts with conditions imposed by franchisers and have no other choice if they want to secure the contract. The same comments about the fear factor and costs inherent in distribution (the franchiser) being transferred to suppliers (franchisees) without compensation/added value for the franchisee also apply here. Often during execution of a contract, franchisers extra-contractually impose unilateral changes by means of instructions.

— Question 8: UTPs have a big impact on the ability of farming and food SMEs to invest and innovate. Investment to protect aspects of public interest – such as the environment, working conditions, animal welfare and climate – is lower because of dependence on a small number of purchasers and the uncertainty this situation engenders.

— Question 9: The impact of UTPs in business-to-business relations on consumers is examined in detail in a specific study<sup>(5)</sup>. The current system is detrimental to consumers

particularly over the long term, since investment is lacking for sustainable production and innovation. In the long run, again, they also lose out as a result of market failure in areas such as the environment, climate, working conditions and animal welfare. In the interests of counteracting this, it seems to us more acceptable for consumers to pay a little more for food now, since competition between retail chains is currently based solely on the lowest possible consumer price, with everything else sacrificed to this.

— Question 10: There is no doubt that UTPs have an adverse effect on the functioning of the single market, since they significantly restrict the opportunities for small and medium-sized operators to make their mark. In effect, large retailers decide what is sold where and in many cases the criterion is not the best value for money, but often the greater "willingness" or "ability" to accept UTPs.

#### 4. Legal frameworks on unfair trading practices

4.1 Two facts emerge from analysis of current legal frameworks at Member State and EU level. Firstly, the use of UTPs by some strong economic players is now a matter of common knowledge and an indisputable fact, with the appropriate authorities in several Member States having concluded that the current situation calls for regulation.

4.2 The current extent of UTPs, especially in dealings between large retail chains and food producers, reveals above all the obsolescence of competition legislation. Some forms of UTP highlight the severe distortion of the competitive environment and the existence of real dominant positions that current monopolies legislation fails to address.

4.3 In addition to revision of competition legislation, the EESC thinks it entirely legitimate to ban at EU level the use of certain defined UTPs and so create the necessary harmonisation of a disparate legal environment. However, there must be a logical link between regulation of UTPs and revised monopolies legislation to make sure that it is only the logical initiators of contracts with UTPs – i.e., parties with the dominant position – that are sanctioned.

4.4 To be effective, this harmonised regulation must take account of the "threat of delisting" and hence the inability of weaker contracting parties, especially SME suppliers to supermarkets, to complain; it must be conceived to do more than merely tackle problems in B2B relations.

<sup>(5)</sup> Consumers International, *The relationship between supermarkets and suppliers: What are the implications for consumers?*, 2012.



4.5 These are the EESC's answers to the questions in this section of the Green Paper not yet answered:

- Question 11: UTP regulation that has been adopted in some Member States has so far not delivered satisfactory results. The reason for this, in the EESC's view, is partly because most of this regulation has been adopted only relatively recently (in Italy, Slovakia, the Czech Republic, Hungary and Romania), but also because the legal premise behind it did not rest explicitly on the absence of contractual freedom, although the very acknowledgment that UTPs are being used implies that all is not well where contractual freedom is concerned. It would be wrong, however, to say that these laws have achieved nothing. In countries where they have been adopted, the more outrageous contractual terms are no longer imposed and supermarkets have to use more sophisticated methods if they wish to secure advantages to which they are not entitled. The greatest progress has been achieved in France, where the pressure of legislation and enforcement action has reduced supplier rebates to an acceptable level (10 to 15 % instead of the 50 to 60 % of the past) <sup>(6)</sup>. The result is far greater transparency in the distribution of benefits in the food supply chain.
- Question 12: How urgent it is to adopt a dedicated law depends, among other things, on the scale of UTP use, but this varies from country to country. There are different situations in the south of Europe, in the countries of Central and Eastern Europe, and then again in the north of Europe. Each region also has a slightly different legal culture and tradition. This is why some countries already have a regulatory (or self-regulatory) framework and others do not.
- Question 14: The EESC is convinced that new harmonisation measures should be adopted at EU level (see points 4.2, 4.3 and 4.4).
- Question 15: A certain positive effect of regulation is already apparent (see above). There are some concerns about introducing regulation in this area, but these involve the assumption of contractual freedom. Since this is in effect non-existent in the contractual relations under discussion, these concerns are groundless.

## 5. Enforcement of rules against unfair trading practices

### 5.1 Enforcement mechanisms at national level

5.1.1 The EESC endorses the European Commission's view that current mechanisms implemented at national level against UTPs are generally inadequate. This is mainly because they fail to take into account a certain climate of fear arising from the absence of true contractual freedom and the threat of delisting. These problems have so far been best tackled by France, where the supervisory authority can act on the basis of unofficial

information and on its own initiative. Suppression of UTPs is also based on the protection of the national economic interest and not on protecting the weaker contracting party.

5.1.2 While some Member States have laws to combat the use of unfair contractual practices, others do not. Moreover, there are rather significant differences between individual laws. There is no doubt that these two facts constitute a certain hurdle to crossborder trade (question 16).

5.1.3 In the view of the EESC, the only sensible common approach to tackling the adverse impact of differences in the applicable legislation would be to adopt harmonising legislation targeting the use of UTPs (question 17).

### 5.2 Enforcement mechanisms at EU level

5.2.1 The EESC agrees with the Commission's claim that there is currently no specific mechanism at EU level to combat UTPs. It is also convinced of the necessity – if the fear factor is to be overcome – of giving national authorities for this area the powers to act on their own initiative, to receive anonymous or unofficial complaints and to impose sanctions (question 18).

## 6. Types of unfair trading practices

6.1 The EESC agrees that UTPs occur throughout the food and non-food supply chain, but is convinced – in keeping with what has been said above – that the situation is at its worst in dealings between supermarkets and SME producers.

6.2 Where listing is concerned, it is not at all clear what the consideration is for the fee that the would-be supplier has to pay. In the vast majority of cases, even payment of this fee – which is a preliminary and necessary condition of any form of commercial dealings – does not give the supplier any guarantee that the purchaser will actually take the goods in question and will not, for no reason, delist him.

6.3 Supplier rebates are a routine part of the current practice of large retail chains. The EESC believes their general benefit to be doubtful, to say the least. On the one hand, supplier rebates are a symbol of the abuse of an actual dominant position, since they often conceal unsolicited and fictitious services; on the other, they create a significant lack of transparency regarding the distribution of benefits. The existence of supplier rebates means that suppliers (and outside observers) find it very difficult to ascertain how much they have really been paid for the goods supplied. In reality, the order to supply goods is conditional upon acceptance of services offered by the buyer. In the view of the EESC, fees for real and justified services provided by the buyer to the supplier should be included in the purchase price of food.

<sup>(6)</sup> Information from France's General Directorate for Competition Policy, Consumer Affairs and Fraud Control.



6.4 These are the EESC's answers to the questions in this section of the Green Paper not yet answered:

- Question 19: We would add to the list of UTPs the payment for fictitious and unsolicited services, unduly high payments for services actually provided and the transfer to the supplier of business risk and marketing costs.
- Question 20: A list of UTPs is the prerequisite for combating these practices. It should, of course, be regularly updated. But lists alone are not enough. A broad enough definition of UTPs must be proposed that covers any cases that fail to meet the broad definition of "good business practice" in terms of "good faith", "contractual balance" and the common rules of businesses in the relevant sectors of the economy.
- Question 21: The EESC thinks that every link in the entire supply chain should bear its natural costs and risks and so arrive at a just share in the overall margin. In other words, the producer should bear the costs and risks involved in production and the retailer those involved in selling.
- Question 23: The EESC thinks that fair practices should be embodied in a framework at EU level.
- Question 24: The EESC is convinced that a binding legislative instrument such as a regulation should be adopted at EU level.
- Question 25: In the view of the EESC, the Green Paper does not pay sufficient attention to assessing the impact of UTP use in B2B on consumers and the national economic interest.

Brussels, 11 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendment, which received at least a quarter of the votes cast was rejected during the plenary session (Rule 54(3) of the Rules of Procedure):

**Point 1.10**

Amend as follows:

1.10 The EESC thinks that the laws to curb unfair trading practices adopted in several Member States reflect the fact that the current state of affairs is unacceptable. Although these laws have for various reasons not produced satisfactory results, it would be wrong to say that nothing has been achieved. ~~One success is~~ However, the greater transparency in the sharing of benefits price setting has still a long way to go and the cessation of the most outrageously extortionate practices is still far from being a reality.

**Reason**

To be given orally.

**Outcome of the vote:**

Votes in favour: 54

Votes against: 63

Abstentions: 27

---

**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 — Smart regulation — Responding to the needs of small and medium-sized enterprises'**

COM(2013) 122 final

(2013/C 327/07)

Rapporteur: **Ms DARMANIN**

Co-rapporteur: **Mr BURNS**

On 18 April 2013 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 - Smart regulation - Responding to the needs of small and medium-sized enterprises*

COM(2013) 122 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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July), the European Economic and Social Committee adopted the following opinion by 156 votes to two with two abstentions.

## 1. Conclusions and recommendations

1.1 The EESC supports the Commission's objective of placing smart regulation high on its agenda. Regulation is a necessity but needs to be well designed in order to achieve EU policy goals at minimum cost. The EESC welcomes the European Commission's efforts over the year to promote the design and application of better regulatory tools, including impact assessments (IAs) and stakeholder involvement.

1.2 The Committee therefore:

- a) notes that, while smart regulation is necessary for businesses of any size, red tape has a disproportionate impact on small companies, especially on micro-enterprises;
- b) reminds all Commission services that the SME test is an integral part of IAs. It invites the European legislator to take into account the specific characteristics of the small and micro companies within the SME group when preparing impact assessments and drawing up legislative texts;
- c) welcomes the REFIT programme which will identify burdens and ineffective measures for SMEs. This programme should be used to identify and propose withdrawal of existing regulations that are no longer fit for purpose and the consolidation of existing legislation. We propose that the Commission launches new fitness checks as soon as possible by prioritising those arising from the "top ten" most burdensome regulations presented in the current Communication, with a specific focus on micro-enterprises;
- d) points to one principle of that programme which mentions that IAs are made more user-friendly by using a standard template and having a clear executive summary highlighting the main issues, including implementation costs, especially as regards micro businesses;
- e) supports the creation, in the long term, of a single independent assessment board (IAB) operating across all EU institutions. This independent IAB should make use of external experts to provide additional scrutiny of Commission proposals to ensure that the different concepts involved are properly understood;
- f) agrees that micro-enterprises should not be given blanket exemptions but rather that a case-by-case approach on legislative proposals should be adopted, following a thorough impact assessment exercise;
- g) reminds the Commission to attach details of what changes were made and the reasons for the changes, as a result of the consultation process;
- h) considers that the European Commission should constantly monitor the SME scoreboard that is set up through a centralised coordinating service in close cooperation with SME organisations;

- i) asks for a new programme for reducing the unnecessary burden of regulation and ensuring that smarter regulation does not exempt businesses from regulation on worker protection, gender equality standards or environmental standards. It therefore strongly advocates a new mandate until 2020 for the *Stoiber Group* that will monitor and implement policies, especially relating to micro and small businesses in cooperation with SMEs organisations;
- j) asks the Council and the Parliament to limit the administrative burden on businesses also when dealing with EU legislation policy-making;
- k) proposes that Member States exchange best practices in the area of Smart Regulation in order to avoid gold-plating.

## 2. Commission proposal

2.1 In November 2011, the Commission published a Report on "Minimising regulatory burden for SMEs – Adapting EU regulation to the needs of micro-enterprises <sup>(1)</sup>" setting out measures aimed specifically at SMEs. This Report reflected on the "Think Small First" principle set out in the Small Business Act <sup>(2)</sup> (SBA) which required that impacts on SMEs be taken into account when designing legislation and that the existing regulatory environment be simplified. The Commission expressed its willingness to address SMEs burdens via the new Regulatory Fitness and Performance Programme (REFIT) <sup>(3)</sup> launched in December 2012 as well.

2.2 The Commission's Communication to the Spring European Council on "Smart Regulation – Responding to the needs of small and medium-sized enterprises <sup>(4)</sup>", adopted on 7 March 2013, takes stock of all the measures carried out by the Commission since 2011 as regards SME burden issues. The report reviews progress in:

- discussing the role of impact assessments for SMEs regulation;
- introducing an annual SME scoreboard;
- ensuring regulatory fitness checks.

<sup>(1)</sup> [http://ec.europa.eu/dgs/secretariat\\_general/simplification/sme/sme\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/simplification/sme/sme_en.htm).

<sup>(2)</sup> See Lannoo – Opinion on "Review of the SBA", OJ C 376, 22.12.2011, p. 51.

<sup>(3)</sup> [http://ec.europa.eu/governance/better\\_regulation/documents/1\\_EN\\_ACT\\_part1\\_v8.pdf](http://ec.europa.eu/governance/better_regulation/documents/1_EN_ACT_part1_v8.pdf).

<sup>(4)</sup> [http://ec.europa.eu/governance/better\\_regulation/documents/1\\_EN\\_ACT\\_part1\\_v4.pdf](http://ec.europa.eu/governance/better_regulation/documents/1_EN_ACT_part1_v4.pdf).

## 3. Observations and comments

### 3.1 Drafting smart regulation is key for SMEs – especially micro-enterprises

3.1.1 The EESC has always supported and encouraged initiatives for better regulation, as indicated clearly in its various opinions <sup>(5)</sup>. We recognise that, while smart regulation is necessary for all businesses, red tape has a disproportionate impact on micro and small enterprises. Therefore, the application of the Think small first principle has to be a priority guideline when drawing up new legislation and throughout the decision making process.

3.1.2 SMEs differ in their size, field of activity, objectives, financing, management, geography and legal status <sup>(6)</sup>. Policy-makers therefore need to take into account these variations when drafting regulation for them. They need to remember that individual regulations may not seem especially burdensome, but it is, *inter alia*, the accumulation of rules and legislations that discourages a micro or a small business from developing new ideas, expanding existing markets or employing more people.

3.1.3 As a consequence, many SMEs, especially micro and small enterprises, perceive legislation as a way to stifle entrepreneurial development rather than facilitate growth. The EESC takes the view that smarter regulation at EU level is not going to help unless legislation clearly identifies which businesses it is trying to help and which (if any) exemptions these businesses are being given or allowed to claim. The EESC therefore strongly urges the Commission to fully implement the SME test during all Impact Assessment exercises carried out in different DGs. Our Committee is of the opinion that the SME test must include the potential costs and benefits of the proposals with respect to the business size, clearly differentiating between micro, small and medium enterprises. If the SME test would not be carried out properly, then it would receive a negative opinion from the Impact Assessment Board.

### 3.2 The role of impact assessments (IAs)

3.2.1 The EESC therefore acknowledges the role of IAs <sup>(7)</sup> as a key element of SME policy making at EU level. The Committee insists that the Commission prepare robust IAs that are fit for purpose and logical. The EESC reminds the Commission that the principles of subsidiarity and proportionality need to be respected. Impact assessment must focus on cost analysis as well. The increased costs borne by business as a result of regulation render uneconomic some activities that,

<sup>(5)</sup> See Pegado Liz - Opinion on *Smart Regulation* OJ C 248, 25.8.2011, p. 87.

<sup>(6)</sup> See Cabra de Luna - Opinion on *Diverse forms of enterprise* (Own-initiative opinion) - OJ C 318, 23.12.2009, p. 22.

Example: Liberal professions as a group which have to respect strong professional regulations to fulfil the clients and public interest.

<sup>(7)</sup> See Pegado Liz - Opinion on *Smart Regulation* - point 4 A OJ C 248, 25.8.2011, p. 87.

in the absence of regulation, would be profitable. As a consequence, therefore, some marginal firms will be forced to leave the market, thereby depressing the potential for private sector economic activity. The EESC invites the Commission to issue an independently verified annual statement of the total net cost to business of regulatory proposals. The statement should also report key changes to policy proposals introduced as a result of IAs.

3.2.2 The EESC recognises that IAs are technical documents, but their length and language can make them impenetrable, especially if small companies want to contribute. The Committee recommends making them more user-friendly<sup>(8)</sup> by using a standard template and a clear executive summary highlighting the main issues that have been addressed and focussing on each SME subgroup.

3.2.3 The EESC calls for independent and transparent scrutiny of draft impact assessments by stakeholders, including business organisations representing micro/small and medium enterprises, to ensure that they are of a high quality and drawn up according to the guidelines<sup>(9)</sup>.

3.2.4 Impact assessments need to judge in detail how and to what extent special measures and models (such as exemptions, simplifications, etc.) should be used to reduce the regulatory burden on SMEs. The EESC welcomes increased application of the SME test but reminds the need to screen thoroughly and individually the impact of legislation for the three different subgroups and thereafter examine the scope for exempting micro-enterprises from new regulations or adopting lighter regimes.

3.2.5 The EESC notes that the Commission seems to be moving away from its plans for blanket dispensation for micro-enterprises from EU rules when concluding the impact assessment exercise. The EESC welcomes this move and underlines the fact that smart legislation should be modulated, relevant to the type and size of the business and not overly complicated. Providing that these parameters are met, it is easy for business owners to respond by developing appropriate internal procedures that meet the objectives of smart legislation.

3.2.6 Micro and small businesses recognise that they are closer to their customers than large multinational companies. They also recognise that there is a growing demand from customers to use local businesses that are ethical and care for

the local environment. The EESC reminds the Commission that it is therefore essential that standards and regulations governing the quality of enterprises, their products and their services be respected by companies if they want to be successful and remain competitive in different markets. Exempting micro-enterprises from consumer and environmental protection regulations, for instance, may ultimately harm those businesses<sup>(10)</sup>.

3.2.7 The Committee feels that, in addition to the above-mentioned points, impact assessments should also aim to quantify accurately the possible domino effect of measures aiming to reduce the administrative burden by amending regulations targeting SMEs. Such measures could have side effects for social balance and relations with State authorities (undeclared work, knowledge of tax data, social contributions, classification and nature of employment contracts, etc.).

Smart regulation aimed at SMEs must, by its very nature, ensure that it has no external impact, or at least no negative consequences. In this respect, the EESC reminds the Commission that smart regulation should neither undermine worker's rights<sup>(11)</sup> nor reduce their basic level of protection, especially in terms of occupational health and safety.

### 3.3 *The SME scoreboard*

3.3.1 The EESC welcomes the establishment of an annual SME scoreboard making it possible to track specific measures throughout the decision making cycle. We await to see its implementation and outcome.

3.3.2 The EESC considers that the European Commission should constantly monitor the SME scoreboard through a centralised coordinating service in close cooperation with the different institutions and organs of the EU. Member States and SME organisations are invited to join the exercise as well.

### 3.4 *Improving consultation of SMEs*

3.4.1 The EESC welcomes the fact that roadmaps informing stakeholders about possible Commission initiatives are made available to them in planned preparatory and consultative work. Consultations with stakeholders should be widely advertised so that they can respond in good time. However, they should be based not on quantity but on quality and supported by empirical evidence gained from interviews with real businesspeople, including employees, and business organisations, visits or observation of micro and small companies. The EESC recalls the Commission that roadmaps should always

<sup>(8)</sup> The recent IA of the Roadworthiness Package ran to 102 pages, while the one on Data Protection ran to 241 pages.

<sup>(9)</sup> See Pegado Liz - Opinion on *Smart Regulation* - point 4 B OJ C 248, 25.8.2011, p. 87.

<sup>(10)</sup> BEUC – Smart Regulation – Response to stakeholder consultation. [http://ec.europa.eu/governance/better\\_regulation/smart\\_regulation/consultation\\_2012/docs/registered\\_organisations/beuc\\_en.pdf](http://ec.europa.eu/governance/better_regulation/smart_regulation/consultation_2012/docs/registered_organisations/beuc_en.pdf).

<sup>(11)</sup> [http://www.etuc.org/IMG/pdf/our\\_priorities\\_soc\\_dial\\_in\\_smes.pdf](http://www.etuc.org/IMG/pdf/our_priorities_soc_dial_in_smes.pdf).



include a first rough assessment of expected costs in order to allow stakeholders to provide a quality check of the possible impacts. Our Committee reminds the Commission that comprehensive stakeholder consultation is crucial for collecting high quality data as well as drawing up proposals for smart regulation.

3.4.2 After consultation has taken place, many business associations and their members are left wondering whether their efforts to help identify potential problems and possible solutions have been worthwhile. The EESC advocates that some of them, following an official procedure, participate in the IAB as external experts to provide additional scrutiny of Commission proposals in order to ensure that different concepts at stake are properly understood.

3.4.3 The EESC has noted a relative increase in the number of delegated acts passed by legislators in recent years. Many of the decisions taken via delegated acts have a significant impact on SMEs. The Committee therefore feels that the scope of consultation should also be extended to cover some key delegated acts which may have a substantial economic, environmental and/or social impact on a specific sector or on major stakeholders.

3.4.4 The EESC calls for a genuine and structured "SME dialogue" with different parties when drawing up legislation. This partnership should ensure participation by all SMEs and their organisations, especially small business associations defending application of the "Think Small First" and "only once" principles of the SBA <sup>(12)</sup> in order to stimulate efficiency objectives.

3.4.5 The EESC supports the Enterprise Europe Network (EEN) in principle. It regrets that its potential has not yet been realised because many European SMEs appear to be unaware that it exists. The services offered by the EEN should be grounded in real SME demands and needs with a close cooperation of SMEs organisations.

The Committee takes the view that Enterprise Europe Network host organisations shall be supported to dedicate more resources towards SMEs needs when dealing with public administration. The EESC believes that this support should especially focus on the smallest enterprises which should be directly consulted by their local Enterprise Europe Network Center when facing regulation issues. The findings out of the face to face meetings and the input of SME organisations should be taken into consideration by all Commission services in order to put the "Think small first" principle into practice.

3.4.6 The EESC welcomes the extension of the mandate of the High Level Group of Independent Experts on Administrative Burdens <sup>(13)</sup> (the *Stoiber Group*). The EESC would especially like

to see the group given a new key role in assisting the Commission with the preparation, monitoring and implementation of policies relating to micro and small businesses in close cooperation with SME organisations and trade unions.

3.4.7 The EESC notes the results of the TOP 10 consultation on the worst examples of red tape affecting SMEs <sup>(14)</sup>. The Committee invites the Commission to respond to its findings as soon as possible by publishing specific proposals for simplification.

### 3.5 Taking SMEs' needs into consideration

3.5.1 The EESC supports a regulatory fitness check for SME policy making <sup>(15)</sup> (the so-called "REFIT programme"). The EESC looks forward to seeing the results of the pilot assessments <sup>(16)</sup>, and would encourage the Commission to launch further fitness checks in its 2014 programme in key areas which we believe are crucial to creating growth and jobs. The Commission is invited to publish on its website all fitness checks that have been carried out or are planned.

3.5.2 The EESC also proposes a comprehensive fitness check of EU legislation that businesses encounter when trading across the EU's external borders. The EESC considers that the regulatory burden of such legislation is high and that such a check would make a significant contribution to the EU's agendas for smart regulation, growth, and trade.

3.5.3 The EESC invites the Commission to use the REFIT programme to identify and propose for withdrawal as soon as possible existing regulations and pending proposals that are no longer of use, and to pursue the consolidation of existing legislation as part of its simplification efforts. It is recommended that all reduction targets must be measurable and aimed at delivering tangible, positive change for businesses.

3.5.4 The EESC considers that a better selection of legal instruments should be used, including mechanisms for self-regulation and co-regulation <sup>(17)</sup>.

### 3.6 Towards better governance and a coordination mechanism in SME policy-making

3.6.1 The EESC points out that smart regulation is the shared responsibility of all those involved in EU policy-making whether at European level or Member States level.

<sup>(14)</sup> [http://europa.eu/rapid/press-release\\_MEMO-13-168\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_MEMO-13-168_en.htm?locale=FR).

<sup>(15)</sup> [http://ec.europa.eu/governance/better\\_regulation/documents/com\\_2013\\_en.pdf](http://ec.europa.eu/governance/better_regulation/documents/com_2013_en.pdf).

<sup>(16)</sup> [http://ec.europa.eu/dgs/secretariat\\_general/evaluation/docs/fitness\\_check\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/evaluation/docs/fitness_check_en.pdf).

<sup>(17)</sup> <http://www.eesc.europa.eu/?i=portal.en.self-and-co-regulation>.

<sup>(12)</sup> Idem Point 2.

<sup>(13)</sup> [http://ec.europa.eu/dgs/secretariat\\_general/admin\\_burden/ind\\_stakeholders/ind\\_stakeholders\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/admin_burden/ind_stakeholders/ind_stakeholders_en.htm).

## 3.6.2 At European level:

- The Committee believes that while the Commission commits to keeping administrative costs for businesses to a minimum in its legislative proposals, the Council and the Parliament should similarly undertake to reduce or limit the administrative burden on businesses to levels intended by the Commission's proposal.
- If the Council and the Parliament go above these levels, they should have to justify these decisions. The EESC calls therefore on the Parliament and the Council to further commit themselves to carrying out impact assessments on substantive amendments to Commission proposals if needed.

## 3.6.3 At Member State level:

- The EESC is of the opinion that the principle of Smart Regulation will only work if there is also smart implementation. The Committee calls on Member States to avoid undermining simplification measures taken at EU level when enacting them in national laws. This "gold plating"

clearly hampers entrepreneurial development. Our Committee therefore suggests that specific training be mandatory for politicians, ministry officials and others involved in enacting legislation in national law.

- However, this does not preclude any Member States for having higher standards if they so wish.
- The EESC invites the Commission to provide assistance to Member States in the form of meetings and workshops with public authorities to smooth the implementation process. The EESC considers that the Commission should carefully coordinate follow-up of implementation in close cooperation with the various DGs and with Member States.
- The EESC proposes that the Commission and Member States work more closely together to share examples of best IA practice, with a view to developing comparable, transparent and flexible procedures. Member States are also invited to step up exchange of examples of best practice in simplifying SME regulation <sup>(18)</sup> (for example, e-government solutions for businesses to comply with and understand rules <sup>(19)</sup>).

Brussels, 11 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(18)</sup> [http://ec.europa.eu/dgs/secretariat\\_general/admin\\_burden/best\\_practice\\_report/best\\_practice\\_report\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/best_practice_report_en.htm).  
See following example: <http://www.bru.gov.mt/15-6-reduction-in-administrative-burden-registered-news-posted-on-17th-december-2012>. In Malta, the Better Regulation Unit (BRU) was set up at the beginning of 2006, following a national commitment by Government to foster an environment conducive to Better Regulation.

<sup>(19)</sup> <http://www.irma-international.org/viewtitle/21237/> Ron Craig, "E-government and SMEs".

**Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council establishing a space surveillance and tracking support programme'**

COM(2013) 107 final — 2013/0064 (COD)

(2013/C 327/08)

Rapporteur: **Mr IOZIA**

On 14 March 2013 the European Parliament and on 20 March 2013 the Council of the European Union 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 Decision of the European Parliament and of the Council establishing a space surveillance and tracking support programme*

COM(2013) 107 final — 2013/0064 (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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 165 votes to one with seven abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC recognises the importance for Europe of having an autonomous space surveillance system in order to protect its space infrastructure and launches. It welcomes the Commission's initiative, which raises this issue for the first time and puts forward options for initiating a process of collaboration and integration in this field in the European Union.

1.2 The EESC backs the Commission's idea that Member States should submit practical proposals for the Commission's approval, since it is clearly in the European interest to have the quality and quantity of information envisaged and to share knowledge, including on methodology and data analysis capacity.

1.3 The EESC is aware of the difficulty of finding options that Member States agree on and sees the Commission's proposal as a first and important step towards more ambitious goals for collaboration. The fact that there are strong military interests in this programme makes the creation of a shared infrastructure very difficult and the EESC hopes this particular initiative will enable this to be achieved as quickly as possible. It is a good thing, however, to get the foundations of this collaboration between civilians and military underway. This should be shared with the ESA, the European Defence Agency and the Crisis Management and Planning Directorate.

1.4 In the EESC's view, funding provided for SST operations in the seven years in which the service is set up must be used, as a matter of priority, to create the initial embryo of an independent European capacity into which some of the capacity currently belonging to the defence departments of the

Member States is transferred. This should be achieved by employing the optical telescopes already in use in Europe (Canary Islands) and by building at least one European radar of similar class to those that defence departments have available. This would give the sense of a long-term investment in which new capacities and competences are transferred into the civil domain to improve the quality of life of Europe's citizens.

1.5 For the seven years envisaged for implementing this programme, the EESC thinks it necessary to establish specific provisions to make clear the level of services expected by national partners in terms of quantity and type of data, frequency, quality and availability. This will mean the necessary instruments are then available for evaluating the service in a way similar to research programmes in the Seventh Framework Programme, in which these parameters are clear and agreed.

1.6 The EESC recommends keeping criteria for access to the programme open and explaining it in greater detail in Article 7(1)(a). It is crucial that participation in the programme be open not only to countries that already have an independent capacity (France, Germany and the United Kingdom, for example), but to all those that can make data processing competences available. The proposed wording should be revised.

1.7 The EESC points out that the surveillance package of operations known as Space Situational Awareness includes not just Space Surveillance and Tracking, but also Space Weather (relating to magnetic solar activity) and monitoring of Near Earth Objects (NEO).

1.8 In particular, since it is generally recognised that the danger to space infrastructure from solar activity is at least the same, if not far greater than from the effects of particularly intense events, the EESC thinks that the two aspects, as originally intended in the definition of SSA, must be pursued in parallel. For this reason, it calls on the Commission to lay down a comprehensive and integrated framework of the various facets of space infrastructure defence, especially with the ESA, which is already actively engaged in a solar radiation protection programme. The conclusion of the Conference on Space and Security held in Madrid on 10 and 11 March 2011 (referred to in the impact assessment) clearly sets out the path for strengthening cooperation in this area between all stakeholders, especially the EU, the ESA and the Member States.

1.9 The EESC endorses the Commission's proposal to improve cooperation with the USA and with other countries interested in a joint project for protecting space infrastructure and averting dangerous and sometimes catastrophic collisions, including with minute particles that can put out of use a satellite that is expensive and indispensable for human activities.

## 2. The Commission document

2.1 This communication proposes the creation of a new European programme for space surveillance and tracking of space objects in orbit around the Earth, known as SST (Space Surveillance and Tracking).

2.2 The programme is being created in response to the need to protect space infrastructure – especially that involved in the Galileo and Copernicus/GMES programmes, but also European launches – from the danger of collision with space debris.

2.3 The communication also sets out the programme's legal framework and its funding arrangements for the period 2014-2020.

2.4 The communication is accompanied by a report<sup>(1)</sup> which discusses in particular five funding and governance options for the programme, setting out their characteristics, costs and benefits.

2.5 The legislation proper is prefaced by an explanatory memorandum which sets out the background.

2.6 The indicative overall EU contribution to the implementation of the SST is EUR 70 million over the period 2014-2020.

2.7 This would cover the cost of operating the sensors already in the possession of participating Member States (usually their military) and a warning system based on data provided by these Member States and run by the European Union Satellite Centre (EUSC).

2.8 Involvement in the programme is optional and requires participating countries to have sensors (telescopes, radars) already operational and the necessary technical and staffing resources or competences needed for data processing.

2.9 According to the impact assessment summary accompanying the proposal, the minimum loss occasioned by the collision of debris with operational European satellites is EUR 140 million a year in Europe, estimated to grow to EUR 210 million in view of the predicted 50 % increase in satellite sector services over the next few years. These figures represent a very conservative estimate and do not include the loss "on the ground", meaning the economic loss due to the rupture of services that rely on satellite data.

2.10 It is important to note that almost all of these losses involve not so much the physical loss of satellites, but the reduction in their operational life as a result of manoeuvres taken to avoid collisions.

2.11 Although a number of Member States already have their own surveillance service, the Commission believes that the EU must be involved in order to gather together the investment necessary to fund the project, to specify the management aspects and a data policy and to ensure that current and future capacities are exploited in a coordinated manner.

2.12 At this time, the standard for all warning services is set by the US Space Surveillance Network (SSN), managed by the US Department of Defense. Cooperation between the EU and the USA in which US data is made available without charge is considered insufficient, since this data is not accurate enough and the EU can have no control over its management.

2.13 Setting up the services under discussion would therefore be very much in keeping with the strategy of making Europe independent in areas deemed critical, especially access to space.

2.14 It is currently estimated that 65 % of sensors for Low Earth Orbit (LEO) satellites in Europe are totally or partially managed by institutions linked to defence<sup>(2)</sup>.

2.15 The European Space Agency (ESA) is not considered the appropriate agency to implement a programme of this nature, since it is not equipped to process classified data such as that from sensors managed by the military.

<sup>(1)</sup> Commission Staff Working Document – Impact Assessment, SWD(2013) 55 final.

<sup>(2)</sup> Study on Capability Gaps concerning Space Situational Awareness, ONERA, 2007.

2.16 The European body intended to manage coordination is the European Union Satellite Centre (EUSC), an EU agency established by the Council Joint Action of 20 July 2001, which provides geospatial imagery information services and products with various levels of classification to civil and military users. The EUSC could facilitate the provision of SST services and will collaborate with the participating Member States in the establishment and operation of the SST service function, which is one of the aims of the SST support programme. At present, however, the centre's statutes do not provide for any operations in the SST domain.

2.17 Management of the programme is expected to require a staff of 50 (including HR made available by participating Member States, EUSC and Commission).

### 3. General comments

3.1 In the EESC's view, the proposal does not provide for the creation of adequate instruments and competences at European level for the gathering and analysis of the data. As a result, Europe would find itself in the same position at the end of the programme's five-year funding period as it was in at the beginning and would therefore, presumably, have to renew this agreement to secure the continuing provision of data from the defence infrastructure of participating Member States.

3.2 There is no specification of the requirements in terms of availability, quality and currency of data to be provided by the national bodies for the proposed funding of EUR 70 million. This makes it difficult to establish criteria for evaluating the services provided, which will only be possible when the Commission has issued the implementing acts that will have to be drafted.

3.3 The Member States contend that the ESA does not provide sufficient guarantees for the processing of sensitive data, which should be handled by the EUSC. However, those countries that have their own surveillance and tracking service (such as the United Kingdom, France and Germany) run it as part of a collaboration between space and defence agencies, which suggests that this kind of collaboration between such agencies is in fact effective. It is not clear, therefore, why the ESA should be excluded from a service of this kind, not least given that it is already participating in a global warning and disaster management service, namely the International Charter on Space and Major Disasters.

3.4 The SST programme is one of three domains in the Space Situational Awareness (SSA) Preparatory Programme implemented on a pre-operational basis by the ESA since 2009, the other two being Space Weather and Near-Earth Objects.

3.5 The ESA's SSA Preparatory Programme has had funding of EUR 55 million. It is not clear what the relationship between these two programmes is. Above all, it is not clear how this SST service is to be supported by a similar service that generates and manages warnings of risks from solar activity.

3.6 It is useful to compare the severity of the damage caused by collisions with debris and that caused by geomagnetic/solar activity. According to a study carried out by the US National Oceanic and Atmospheric Administration (NOAA) <sup>(3)</sup>, economic loss due to the influence of solar storms on satellite infrastructure is enormous. In 2003, intense solar activity destroyed ADEOS-2, a Japanese satellite that cost USD 640 million. In 1997, a magnetic storm caused the loss of the Telstar telecommunications satellite, worth USD 270 million. In 1989, another magnetic storm caused nine hours of blackout in Canada, with losses calculated at USD 6 billion.

3.7 It is thought that a solar superstorm like the one recorded in 1859 would today cause losses of USD 30 billion in damage to satellites in geostationary orbit alone, with damage to power grids raising the figure to USD 1-2 trillion. Four to ten years would be needed to restore full operation.

3.8 The risk level from solar activity is at least the same as that from debris. The two should therefore be monitored together, as was in fact envisaged at the Madrid conference in March 2011. However, the Commission does not make it clear who will implement an operational service for solar activity warnings.

3.9 The EESC believes the proposal should take into account the protection of European space infrastructure, including complementary activity to monitor Space Weather and time-scales for implementation and integration of the two systems.

### 4. Specific comments

4.1 Article 5(2) stipulates that no new capacities will be created: existing Member State capacities will simply be re-employed. However, section 2 of the explanatory memorandum states explicitly that existing capacities are insufficient. When it comes down to detail, then, it is by no means clear what type of system – including which of the five listed in the impact assessment – is the one chosen for implementing.

4.2 The technical characteristics of this system are not explicitly defined. While its aims are defined, a decision on what it will comprise is left to future discussions between the Member States.

<sup>(3)</sup> Value of a Weather-ready Nation, 2011, NOAA.



4.3 Relationship between military and civil use. The system is built as a civil system. Most of the information, however, comes from military sources. There are no explicit conditions or protocols obliging the military side to provide this information to the civil side. Here, again, the proposal says the matter will be resolved in the future.

4.4 Member State/EU relationship. The proposal states that all the sensors are and must remain in the hands of individual Member States. There do not appear to be explicit conditions guaranteeing a minimum data and information flow.

4.5 Definition of the service. The proposal does not provide this explicitly. It is not possible, therefore, to gauge whether it is sufficient for the projects established for the programme.

4.6 In its resolution of 26 September 2008 entitled 'Taking forward the European space policy', the Council referred to the need to "develop a capacity to meet European user needs for comprehensive situational awareness of the space environment".

4.7 It is important to continue development of both the SST programme and current SSA programmes.

4.8 The "indicators of results and impact" in paragraph 1.4.4 are rather tautological, providing little, in operational terms, for an ex post evaluation of the effectiveness of the programme.

4.9 Beyond the definitions of governance, an operational model of the system is not well defined. Member State participation is not obligatory. What is a minimum basis on which the service can operate?

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks'**

COM(2013) 162 final — 2013/0089 (COD)

(2013/C 327/09)

Rapporteur-General: **Bernardo HERNÁNDEZ BATALLER**

On 15 and 16 April 2013 respectively the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 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 to approximate the laws of the Member States relating to trade marks (Recast)*

COM(2013) 162 final — 2013/0089 (COD).

On 16 April 2013, the Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Hernández Bataller as rapporteur-general at its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), and adopted the following opinion by 116 votes, with 2 abstentions.

## 1. Conclusions and recommendations

1.1 In view of the unquestionable economic value of trade marks and their positive effect on the functioning of the internal market, the current supranational legislative framework for their protection is manifestly inadequate. Nevertheless, the Proposal for a Directive is an improvement on the current situation, which is characterised by regulatory differences between the EU and national frameworks.

1.2 As a consequence, the EESC advocates strengthening the intellectual property rights inherent in the legitimate use of trade marks, supports, as far as possible, the EU registration of trade marks, and urges the Commission to support the Office for Harmonisation in the Internal Market (OHIM) in carrying out its oversight functions in relation to these rights.

1.3 In this regard, EU law confers on the proprietor of a trade mark both its exclusive use for profit-making purposes ("ius utendi"), and the possibility of preventing its use from being undermined by the actions of third parties through imitation or improper appropriation of their distinguishing marks ("ius prohibendi"). The EESC calls for preventative and compensation measures to tackle piracy, which undermines the competitiveness of European businesses.

1.4 However, the EU legislation in force does not precisely state the conditions in which the proprietor of a trade mark can take the relevant action to prevent that use.

1.5 In general, the entire process should complete the alignment of trade mark laws within the next few years,

culminating in the adoption of an EU trade mark rulebook, which should establish, inter alia, the creation of a flexible, uniform and cost-effective procedure giving interested parties the option to register trade marks on a voluntary basis and putting an end to current differences in the law.

1.6 The EESC should play an active role in the legislative process for adopting all legislation on intellectual property. It therefore regrets that it was not consulted on the proposal to amend the Regulation on the Community trade mark.

1.7 The EESC hopes that, in the future, there will be a system that ensures the uniform protection of trade marks for businesses and consumers.

## 2. Introduction

2.1 At international level, the law on trade marks is governed by the Convention for the Protection of Industrial Property signed in Paris on 20 March 1883, as last revised at Stockholm on 14 July 1967 and amended on 28 September 1979 <sup>(1)</sup> (hereinafter the 'Paris Convention').

2.2 Under Article 19 of the Paris Convention, the States to which it applies reserve the right to make separately between themselves special agreements for the protection of industrial property.

<sup>(1)</sup> United Nations Treaty Series, Vol. 828, No 11851.

2.3 That provision served as a basis for the adoption of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, concluded at the Nice Diplomatic Conference on 15 June 1957, last revised in Geneva on 13 May 1977 and amended on 28 September 1979 <sup>(2)</sup>. The Nice Classification is revised every five years by a committee of experts.

2.4 According to the database of the World Intellectual Property Organisation (WIPO), of the Member States of the European Union, only the Republic of Malta and the Republic of Cyprus are not party to the Nice Agreement, but nevertheless use the Nice Classification.

2.5 Trade mark protection is, quintessentially, territorial. That is because a trade mark is a property right that protects a sign in a defined territory.

2.5.1 In the Union's primary law, Article 17-2 of the European Charter of Fundamental Rights provides for the protection of intellectual property.

2.5.2 Furthermore, Article 118 of the TFEU states that, in the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

2.6 Within the European Union, national and Community trade mark protection co-exist. A proprietor of a national trade mark can exercise the rights associated with that mark within the territory of the Member State under whose national law the mark is protected. A proprietor of a Community trade mark can do the same within the territory of the 28 Member States because the mark is effective throughout that territory.

2.7 The laws of the Member States relating to trade marks were partially harmonised by Council Directive 89/104/EEC of 21 December 1988, subsequently codified as Directive 2008/95/EC.

2.8 Alongside and linked to the national trade mark systems, Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, codified as Regulation (EC) No 207/2009, established a stand-alone system for the registration of unitary rights having equal effect throughout the EU. In that context the Office for Harmonization in the Internal Market (OHIM) was set up to be responsible for registering and administering Community trade marks.

2.9 Over recent years, the Commission has launched public debates on intellectual property, with the participation of the EESC, and in 2011 announced a review of the European trade

marks system, with a view to modernising it, both at EU and at national level, making it more effective, efficient and consistent as a whole.

2.10 In its Resolution on a comprehensive European anti-counterfeiting and anti-piracy plan, the Council called for a review of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights <sup>(3)</sup>. The EESC hopes that improvements will be made to the legal framework to strengthen the protection of intellectual property rights by the customs authorities and to ensure adequate legal certainty.

2.11 The European trade marks system is based on the principle of coexistence and complementarity between Union and national trade mark protection.

2.12 While the Regulation on the European trade mark provides a comprehensive system in which all issues of substantive and procedural law are provided for, the Directive is limited to selected provisions of substantive law only, and the proposal therefore intends substantive rules to be essentially similar and procedural provisions at least to be compatible.

2.13 The objective of the proposal is to foster innovation and economic growth by making trade mark registration systems all over the EU more accessible and efficient for businesses in terms of lower costs and complexity, increased speed, greater predictability and legal security.

2.14 This initiative to recast the Directive is driven by the following objectives:

- modernising and improving the existing provisions of the Directive, by amending outdated provisions, increasing legal certainty and clarifying trade mark rights in terms of their scope and limitations;
- achieving greater approximation of national trade mark laws and procedures with the aim of making them more consistent with the Community trade mark system, by:
  - a) adding further substantive rules;
  - b) introducing principal procedural rules into the Directive in accordance with provisions contained in the Regulation, including those where existing differences create major problems from the users' perspective, and where such alignments are deemed indispensable for creating a harmonious, complementary system of trade mark protection in Europe;
  - c) facilitating cooperation between the offices of the Member States and OHIM for the purpose of promoting convergence of practices and the development of common tools, by putting in place a legal basis for this cooperation.

<sup>(2)</sup> United Nations Treaty Series, Vol. 818, No I-11849.

<sup>(3)</sup> OJ L 196, 2.8.2003, p. 7.

2.15 On the one hand, the proposal for a Directive modernises and improves the existing provisions in relation to:

- defining the trade mark while leaving the door open to register matter that can be represented by technological means offering satisfactory guarantees;
- the rights conferred by a trade mark, provided for in Articles 10 and 11, on rights conferred without prejudice to prior rights; cases of double identity; use as a trade or company name; use in comparative advertising; consignments from commercial suppliers; goods brought into the customs territory, preparatory acts and limitation of the effects of a trade mark.

2.16 On the other hand, the proposal intends to achieve greater approximation of substantive law, through the protection of geographical indications and traditional terms; the protection of trade marks with reputation; stressing trade marks as objects of property, since they may be subject to transfers of right in rem, and the regulation of collective marks.

2.17 With regard to the alignment of principal procedural rules, it deals with designation and classification of goods and services; ex officio examination; fees; the opposition procedure; non use as defence in opposition proceedings; procedure for revocation or declaration of invalidity, and non use as defence in proceedings seeking a declaration of invalidity.

2.18 The proposal also intends to facilitate cooperation between offices. As a complement to the legal framework for cooperation proposed in the context of the review of the Regulation, Article 52 provides a legal basis to facilitate cooperation between OHIM and the intellectual property offices of the Member States.

### 3. General comments

3.1 The EESC welcomes the European Commission's Proposal for a Directive, which is particularly timely in a global economic context which is highly competitive and at a time of economic slowdown in Europe.

3.1.1 The trade mark contributes, on the one hand, to creating business value and customer loyalty, whilst, on the other, protecting consumers.

3.1.2 The latter is very important here, for various reasons:

- firstly, because the protection of trade marks reduces search costs for consumers;
- secondly, because it guarantees them a consistent level of quality, obliging the producer to take care over the content of the product or service;
- thirdly, because it requires investment in improvement and innovation which increases the commercial confidence of consumers.

3.2 The Proposal for a Directive will very significantly improve the current legal framework in the legislations of the Member States, in three regards:

- simplifying systems for the registration of trade marks throughout the EU, with the resulting lower costs and faster procedures;
- the legal security resulting from greater complementarity between internal and supranational rules in this area, and from the coordination between competent authorities; and, finally;
- increasing levels of intellectual property protection, mainly by means of the clarification of the system for goods in transit, the inclusion of new criteria for registration, such as sound marks, and certain specifications on the protection of geographical indications and on non-EU languages, etc.

3.3 It also includes, in light of economic, commercial and legal developments, significant innovations, such as the definition of a trade mark, permitting representation by other than graphical means, permitting a more precise identification of the mark, and leaving the door open to register matter that can be represented by technological means offering satisfactory guarantees.

3.4 We welcome the intention to achieve greater approximation of substantive law, such as adding the protection of geographical indications and traditional terms, the protection of trade marks with reputation and the treatment of trade marks as objects of property, such as transfers or right in rem, and vital aspects of the commercial exploitation of trade marks. The Proposal for a Directive's inclusion of collective marks and guarantee marks will be very important for businesses and consumers.

3.5 Finally, the EESC welcomes the alignment of the principal procedural rules since this would establish common rules for the designation and classification of goods and services, in line with the principles established by the Court of Justice, and ex officio examination and the opposition procedure and the procedure for revocation or declaration of invalidity.

3.6 Furthermore, the Committee welcomes the fact that the procedure for drawing up the Proposal for a Directive has taken place with a high degree of publicity and with the participation of the relevant sectors of civil society.

3.7 However, the Committee has certain objections to the object and content of the proposal, without prejudice to the proposed amendment of Regulation (EC) No 207/2009, which established a stand-alone system for the registration of unitary rights, and which makes up a legislative package with the Proposal for a Directive.

3.8 In this context, the EESC wishes to express its surprise that the proposal to amend the abovementioned Regulation on the Community trade mark (COM(2013) 161 final of 27.3.2013) was not submitted to it for its advisory opinion.

3.9 Since this matter has a direct impact on the functioning of the internal market (Article 118 TFEU) and affects the level of consumer protection (Article 169 TFEU), a contextual and consistent interpretation of the provisions of the Treaties, which explicitly grants the EESC a consultative role in these areas, requires the mandatory participation of the EESC in the legislative process for adopting this act.

3.10 In this regard, EU law confers on the proprietor of a trade mark both its exclusive use for profit-making purposes ("*ius utendi*"), and the possibility of preventing its use from being undermined by the actions of third parties through imitation or improper appropriation of their distinguishing marks ("*ius prohibendi*"), Article 9 of Regulation (EC) No 207/2009.

3.11 However, the EU legislation in force does not precisely state the conditions in which the proprietor of a trade mark can take the relevant action to prevent that use.

3.11.1 Although the Proposal for a Directive significantly increases the number of situations in which the proprietor of the trade mark can prohibit its use by third parties (Article 10), establishing a new provision in this regard, i.e. infringement of the rights of the proprietor by use of get-up, packaging or other means (Article 11), or the improper use of a trade mark registered in the name of an agent or representative (Article 13), it falls to the court to determine the precise scope of the law in the event that the proprietor launches judicial proceedings.

3.11.2 It will therefore be for each judicial body to establish whether or not there is a risk of confusion or improper appropriation of the protected mark by a third party, and in the event that there is, also to determine the compensation for the proprietor in accordance with the action brought.

3.11.3 Consequently, the proposal does not offer uniform protection for the rights of proprietors to use their trade marks or for consumers, when they are affected by the inappropriate or fraudulent use of a commercial trade mark.

3.12 The complementarity between the supranational and national protection systems for the rights of trade mark proprietors therefore implies a clear risk in terms of whether this protection is as efficient and expeditious as possible, in line with the proposal's objectives.

3.12.1 Thus, for instance, there is no guarantee that internal differences resulting from the incorrect transposal of the provisions of Directive 2004/48/EC (on the enforcement of intellectual property rights) concerning protection measures will ensure:

- an end to the infringement, including the possibility of destroying the goods or the means of production or the application of fines;
- compensation for any harm or prejudice or the possibility of publishing the relevant judgment.

3.12.2 This legal uncertainty will be aggravated if the rights of a trade mark proprietor are infringed in a number of Member States.

3.13 This is compounded by the fact that the proposal sets out a number of provisions that make protection more complex.

3.13.1 Thus, for example, the third paragraph of Article 4 (grounds for refusal or invalidity), establishes that a "trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant" and that "any Member State may also provide that such a trade mark shall not be registered".

3.14 Since according to the OHIM, absence of intent to use is not a ground for establishing bad faith, what authority will establish uniform criteria to enable the relevant assessors to determine whether there are other indications of bad faith?

3.15 This gap in the laws is paradoxical if compared with the new provision of Article 10(5) of the proposal, which entitles the proprietors of registered trade marks to prevent all third parties from bringing goods into the customs territory of the Union without being released for free circulation there. As a result, this proposal is not in line with the current case-law of the Court of Justice on goods in transit (Joined cases C-446/09 and C-495/09, Philips and Nokia), and any presumption or proof of good faith on the part of third parties is invalid<sup>(4)</sup>.

<sup>(4)</sup> According to the Article 10(5) of the proposal: "The proprietor of a registered trade mark shall also be entitled to prevent all third parties from bringing goods, in the context of commercial activity, into the customs territory of the Member State where the trade mark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorization a trade mark which is identical to the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark." In short, it is a matter of establishing a decisive mechanism to tackle the counterfeiting of goods produced outside the EU and preventing the interested parties from exploiting the legal fiction that goods in transit do not enter the customs territory of the EU.



3.16 On the other hand, the prevention and prosecution of these types of illegal commercial practices would undoubtedly be strengthened if the Proposal for a Directive established a specific legal basis authorising the European Commission to step up its action through cooperation with authorities in third countries where these business practices are widespread and systematic.

3.17 There are also shortcomings in the provisions of Article 45(1) of the proposal, which generally foresees that Member States shall provide for an efficient and expeditious administrative procedure before their offices for opposing the registration of a trade mark application on the grounds provided for in Article 5. There need to be more concrete provisions on the nature of this procedure and to legally establish the reasonable timeframe within which the relevant national authorities can take action, in line with Article 41(1) of the EU Charter of Fundamental Rights (right to good administration).

3.18 Similarly, the efficiency and predictability inherent in supranational protection of the rights of trade mark proprietors necessitates a revision of the content of other provisions of the proposal, such as Articles 44 and 52. With regard to Article 44, which establishes that the registration and renewal of a trade mark shall be subject to an additional fee (generic) for each class

of goods and services beyond the first class, a maximum rate needs to be established for these fees.

3.19 With regard to Article 52, which provides for cooperation between the Member States and the OHIM in order to promote convergence of practices and tools and achieve coherent results in the examination and registration of trade marks, a specific provision needs to be established, in compliance with Article 291 TFEU, granting the Commission implementing powers to adopt a binding "code of conduct".

3.20 Administrative cooperation between the OHIM and the national offices should be regarded as a matter of common interest, in line with Article 197 TFEU. It would be particularly worthwhile, in this context, to exchange information and staff and to promote training programmes, establishing a public budget for this purpose.

3.21 In general, the entire process should complete the alignment of trade mark laws within the next few years, culminating in the adoption of an EU trade mark rulebook, which should establish, inter alia, the creation of a flexible, uniform and cost-effective procedure giving interested parties the option to register trade marks on a voluntary basis and putting an end to current differences in the law.

Brussels, 11 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups’**

COM(2013) 207 final — 2013/0110 (COD)

(2013/C 327/10)

Rapporteur: **Ms PICHENOT**

On 2 May 2013, the Council, and, on 21 May 2013, the Parliament decided to consult the European Economic and Social Committee, under Article 50(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 Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups*

COM(2013) 207 final — 2013/0110 (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 27 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), the European Economic and Social Committee adopted the following opinion by 95 votes to 31 with four abstentions.

## 1. Conclusions

1.1 The Committee welcomes the Commission's proposed amendments to the accounting directives concerning both disclosure of non-financial information and diversity on governing bodies. These limited amendments will help to improve the EU's corporate governance framework<sup>(1)</sup>.

1.2 The Committee recommends that the European Parliament and the Council take account of the balance achieved with these amendments, which increase transparency regarding environmental, social and corporate governance (ESG). The Commission's proposal constitutes a flexible and appropriate mechanism for improving communication with shareholders, investors, workers and other stakeholders. This proposal is targeted only at large companies, in order to avoid imposing additional burdens on smaller businesses.

## 2. Recommendations

2.1 The Committee recognises that a **balanced combination of the following elements** will make it possible to provide shareholders at annual general meetings with non-financial information and to inform stakeholders in large companies. This set of requirements meets the stated objectives of transparency and consistency:

— substantive non-financial information is incorporated in the annual report;

— this information relates *inter alia* to environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters;

— the information covers the company's policies in these areas, the results of those policies, the risks and uncertainties involved and how the company manages them;

— the mechanism covers all limited liability companies within the scope of the current accounting directives;

— subject to a threshold such that it applies only to companies with more than 500 employees and either a balance sheet total of over EUR 20 million or a net turnover of over EUR 40 million, which exempts SMEs from the requirement;

— businesses can follow national, EU or international frameworks setting out principles and/or indicators as well as reporting guidelines;

— each business prioritises the information relevant to it;

— using the "comply or explain" method makes reporting mandatory but allows businesses some latitude where in their view the lack of information is justifiable;

— the flexibility of the instrument means that the administrative burden need not rise, particularly as it provides the option of continuing to produce a separate report that meets the same requirements and is an integral part of the annual report.

<sup>(1)</sup> The EU corporate governance framework, OJ C 24, 28.1.2012, p. 91.

2.2 Given this degree of balance, the Committee feels that this would be **a good time** to adopt the proposal for a directive amending the accounting directives:

- at a time when civil societies are paying ever greater attention to businesses' impact on the community, when States and business communities are being expected to show greater transparency and when socially responsible investment is on the rise <sup>(2)</sup>;
- in a context where the Member States' national legislation and recommendations on non-financial reporting are still varied but are converging, where within the last ten years the international benchmarks by, for example, the OECD and the ILO were revised, and ISO 26000 was established, and where there has been ongoing refinement of tools for non-financial reporting such as those developed by the Global Reporting Initiative (GRI), the European Federation of Financial Analysts Societies (EFFAS), ratings agencies and corporate analysis bodies, as well as of sectoral benchmarks;
- at a time when, at both European and international scale, the lessons learned from the financial, economic, social and environmental crises are increasing the need for transparency <sup>(3)</sup> concerning investment, taxation and anti-corruption measures, particularly in the extractive industries;
- now that tools have been developed to quantify the environmental impact of productive activities, such as product life-cycle analysis, environmental footprint and calculating the cost of negative externalities;
- and now that some businesses are responding to the concerns of responsible consumers by providing more sustainable goods and services, for example by avoiding planned obsolescence and encouraging fair trade.

2.3 The Committee welcomes the fact that these amendments to the accounting directives open up new **prospects**, as they:

- move towards incorporating ESG issues into businesses' strategies and communications;
- give shareholders' AGMs and responsible investment principles a more prominent role;
- provide guarantees and degrees of flexibility that allow all businesses that see CSR as the microeconomic incarnation of sustainable development to commit to this progressive approach;
- initiate a new approach to presentation and decision-making in business strategies, which focuses on the long term and strengthens the relationships between branches and the head of the group.

2.4 The Committee would draw the **attention of the European Parliament and the Council to the following recommendations**:

- companies should outline the positive or negative effects of their actions on society;
- companies should mention in their reports if there are workers' representatives on their boards;
- bodies representing the workforce should be informed and consulted during the process of preparing the annual report;
- the details in the ESG part of the report should be provided by specialists in the relevant fields, particularly with regard to the social and environmental aspects;
- contractors should provide information on their relationship with their supply chain or value chain, inter alia with regard to labour rights and human rights;
- businesses not subject to the directive could use this transparency-based approach on a voluntary basis to improve the way they operate;
- Member States should incorporate the quality of non-financial reporting into their national CSR strategies;
- when transposing the directive, Member States could, if they see fit, lower the stated thresholds to ensure that a significant number of the country's companies are included;
- the Commission should be invited to launch or facilitate a process involving "multiple stakeholders" <sup>(4)</sup> with a view to more effectively establishing guidelines and reference standards to facilitate comparability and, in the longer term, harmonisation;
- in its own promotional and awareness raising CSR policies, as laid down in the October 2011 Communication, the Commission should recommend relevant companies to use those international benchmarks for guidance on disclosure of non-financial information which demonstrate most affinity with its new definition of CSR.

2.5 The Committee endorses the proposed amendment to the fourth directive regarding the requirement to provide information on the **diversity policy pursued by the company for its governing bodies**.

2.6 It would stress that this does not only involve administrative and supervisory boards, and that it may be worth extending the diversity policy to cover board committees such as the audit committee.

<sup>(2)</sup> Socially responsible financial products, OJ C 21, 21.1.2011, p. 33.

<sup>(3)</sup> European company law and corporate governance, CES982/2013 - INT/678.

<sup>(4)</sup> Employee involvement and participation, CESE 2096/2012 - SOC/470.

2.7 It points out that the ambitions regarding numbers of women on boards have not been achieved in most Member States <sup>(5)</sup>.

2.8 It believes that the diversity criteria should include the involvement of employee board members from the workplace, for example from the European Works Council, appointed by the trade unions.

2.9 The Committee finally recommends that the Commission make this revision subject to a non-regression clause in respect of existing national legislation, and carry out an assessment of the impact of these amendments to the accounting directives on corporate practice as regards disclosing non-financial information, within five years of the entry into force of the directive.

### 3. Contextual elements

3.1 The proposed amendments to the accounting directives follow on from the work done since the 2001 Green Paper on CSR <sup>(6)</sup>, as supplemented by the communication in 2006 <sup>(7)</sup>, and meet the commitments undertaken in the work plan in the communication from 2011 <sup>(8)</sup>. These amendments are necessitated by the results of the impact assessment, showing the limited effectiveness of the non-financial information disclosed by businesses and largely fed by contributions from public consultation. The quality of the information is patchy, and not enough businesses are involved.

3.2 The Commission stated its intention to improve companies' transparency concerning social and environmental issues in April 2011, in its communication on the Single Market Act.

3.3 In its opinion on information and measurement instruments for CSR (2005) <sup>(9)</sup>, the Committee referred to the fourth directive on annual accounts, which includes a provision on non-financial information giving businesses the option of disclosing certain information on the social and environmental aspects of their activities. In 2012, the Committee supported the Commission's objective of increasing diversity on administrative and supervisory boards. In its 2012 opinion <sup>(10)</sup> on the communication on CSR, the Committee reiterated its support for mandatory reporting of non-financial information.

3.4 The United Kingdom was the first Member State, in 1992, to introduce a corporate governance code (known as the Cadbury Code) <sup>(11)</sup> following the "comply or explain" principle. This approach was adopted, with variations in provisions, by other countries including Germany and Denmark. The flexibility of the method means that companies have a right to hold back information on certain sensitive issues, such as anti-corruption actions, that require a degree of discretion or even confidentiality in order to be effective.

3.5 Over the past decade, a number of Member States, including France, the Netherlands, the United Kingdom, Sweden and Spain, have adopted legislation aiming to create a national reporting framework with a view to harmonising European standards.

3.6 A European agreement on transparency in the extractive industries was concluded under the Irish Presidency, which revises the Accounting Directive. The directive now requires country-by-country and project-by-project transparency regarding all payments made by European extractive and logging companies to the States where they operate.

3.7 In its resolution of February 2013 <sup>(12)</sup>, the European Parliament acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust. The EP called on the Commission to present a proposal on the disclosure of non-financial information by companies.

3.8 In a context of crisis in which European public opinion is calling on businesses to act more ethically, CSR practices are acknowledged to be contributing factors in the European Union's trade and development policies and the implementation of the Europe 2020 strategy. They promote social and civil dialogue (societal dialogue), and should also improve understanding of the realities throughout the subcontracting chain. Disasters such as the collapse of the Rana Plaza building in Bangladesh are a reminder of the need to pay attention to the responsibility held by the client.

Brussels, 11 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

<sup>(5)</sup> Gender balance on company boards, OJ C 133, 9.5.2013, p. 68-76.

<sup>(6)</sup> COM(2001) 366 final.

<sup>(7)</sup> COM(2006) 136 final and OJ C 286, 17.11.2005, p. 12.

<sup>(8)</sup> COM(2011) 681 final and OJ C 229, 31.7.2012, p. 77.

<sup>(9)</sup> OJ C 286, 17.11.2005, p. 12.

<sup>(10)</sup> OJ C 229, 31.7.2012, p. 77.

<sup>(11)</sup> "The financial aspects of corporate governance", 1 December 1992.

<sup>(12)</sup> Resolution 2012/2098 (INI), rapporteur: Raffaele Baldassarre.

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendment, which received at least a quarter of the votes cast, was rejected during the debate (Rule 54 (3) of the Rules of Procedure):

Replace opinion CES3548-2013\_00\_00\_TRA\_AS with the following:

**1. General comments**

1.1 The EESC considers the proposal for a directive to be superfluous (especially where compulsory disclosure of diversity policy is concerned), since it does not believe that further legislation is needed in this area on the European level. **Generally speaking, the EESC does not see how the proposal delivers any essential added value compared with the present legislation and also fears a potential further increase in red tape.**

1.2 For the EESC, transparency is part and parcel of modern company management. Europe's companies have demonstrated that they are sufficiently transparent within the current legislative framework. In Europe, social responsibility is a matter for businesses themselves, is part of company strategies and operates on a voluntary basis. Even at a time of crisis Europe's businesses have not compromised on levels of transparency and responsibility.

1.3 The EESC is aware of the need on the part of some stakeholders and the public for greater transparency in company policy, particularly with respect to disclosure of social and environmental information. This applies especially to companies operating in third countries, such as mining companies in Africa (risks for the environment; risk of corruption), clothing companies in Asia (social sphere, human rights), and so on.

1.4 The only added value discernible in the proposal is that it addresses the question of risk, how risks are defined and managed, and the obligation to report them. This could help companies to manage these risks and opportunities better and so take greater responsibility for the consequences of their operations in the non-financial sphere. Even here, however, it should be solely a matter for companies themselves to decide whether they wish to undertake this or not.

**2. Non-financial information**

2.1 The EESC is aware that improving transparency generally plays an important role in effective functioning of the single market. The ability to more easily compare information on how companies operate can help investors and shareholders make better decisions.

2.2 The EESC considers that the present method and scope of disclosure of non-financial information are very good and fit for purpose. The mandatory disclosure now being proposed would constitute an unnecessary burden at odds with the proportionality principle. For this reason, the EESC would like the proposal to require disclosure only of truly relevant and meaningful information. This would avert any unnecessary increase in red tape for companies and would also mean the proposal had as much added value as possible for those using this information (investors, shareholders, employees, etc.).

2.3 The EESC would prefer companies to disclose non-financial information only of their own free will. Accordingly, it proposes the following change to Articles 1 and 2 of the proposal for a directive.

2.4 According to the proposal, SMEs will not be required to disclose non-financial information, which matches the European Union's long-term goal of cutting red tape for businesses.

2.5 The EESC believes that disclosure of non-financial information in the annual report and its verification by auditors as set out in the proposal is burdensome and difficult to understand, which will mean that a user's guide will have to be drafted. European legislation requires the auditor to comment on the consistency of the annual report with the annual accounts, at the same time requiring the annual report to include the annual accounts, the audit report and possibly further documents. Nevertheless, verification of non-financial information could be rather difficult and costly. Precisely what information must be disclosed in the annual report must be carefully specified, not least to avoid users of the report being overwhelmed by information that is not relevant. The EESC will promote publication of non-financial information in documents that are not subject to verification by audit.



### 3. Diversity

3.1 The EESC considers the compulsory disclosure of diversity policy to be an unnecessary administrative burden lacking sound justification and any demonstrable benefits. Any requirement whatsoever on private entities to introduce a diversity policy, including imposing the requirement to publish a corporate diversity policy or explain why they have not done so, constitutes, in the view of the EESC, an unwarranted intrusion into the freedom to do business and the freedom of company owners to make their own decisions. As such it is rejected outright. Disclosure of company information should remain entirely a voluntary decision taken by the company itself as to whether such disclosure offers a competitive advantage or not. For a number of reasons, the EESC rejects disclosure of details concerning diversity policy.

3.2 Above all, it must be stressed that disclosure of diversity policy regarding the composition of a company's bodies bears no relation to its running and performance, as the explanatory memorandum erroneously states. The EESC takes the view that the owner(s) or shareholders of the company should decide who will run their company, what the management control mechanisms will be and what influence in these processes the members of the supervisory/management bodies will have. How companies operate is above all the responsibility of the owners and this includes bearing the risk of loss arising from bad business decisions. Artificially engineering the composition of supervisory or management boards can only interfere with a current set-up that is working well.

3.3 On no account should the European Commission interfere in a company's decision making processes (such as the number of board members or their expertise, age or sex). The European Commission's appended analysis asserts a direct link between age, sex and other aspects and company performance. However, even if this were the case, this would not constitute any justification for **authoritarian intervention in the composition of a company's management or supervisory bodies**.

### 4. Conclusions

In view of the arguments presented above, the EESC will:

- 1) favour the disclosure of non-financial information being left, in line with the principle of subsidiarity, to the voluntary decision of companies themselves, or to the stipulation of disclosure requirements by national legislations;
- 2) recommend that paragraph 2 on diversity policies be deleted from Article 1 of the proposal for a directive, or – if this cannot be achieved – that the information published on diversity policy, including an explanation of why the company has not introduced such a policy, be left to the voluntary decision of the company itself or to national legislation.

### Outcome of the vote

Votes in favour: 37  
Votes against: 96  
Abstentions: 2

---

**Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012’**

COM(2013) 228 final — 2013/119 (COD)

(2013/C 327/11)

Rapporteur-general: **Vincent FARRUGIA**

On 13 May 2013 the Council and on 21 May 2013 the European Parliament decided to consult the European Economic and Social Committee, under Article 114 (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 promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012.*

COM(2013) 228 final — 2013/119 (COD).

On 21 May 2013, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Farrugia as rapporteur-general at its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), and adopted the following opinion by 96 votes to two with two abstentions.

## 1. Conclusions and recommendations

1.1 Citizens are at the heart of European integration. The EU Citizenship report underlines that EU citizenship brings citizens new rights and opportunities. The report calls to attention that the right that persons living in Member States (MS) associate most closely with is the right to move and live freely within the EU: the ability to come and go between EU MS, for shorter or longer periods, to work, study, train, to travel for business, or to shop across borders <sup>(1)</sup>.

1.2 The 2013 EU Citizenship Report presents twelve new actions in the following six areas directed to further remove obstacles standing in the way of citizens' enjoyment of their EU rights, including the right to move freely across EU borders. These include the <sup>(2)</sup>:

(01) Removal of obstacles for workers, students and trainees in the EU which facilitate the proper working of the EU labour market and thereby allow them to benefit from job opportunities in other MS and hence contribute to the EU economy.

(02) Cutting of red tape with regard to the right to free movement given that citizens who use their right to free

movement experience problems often as a result of lengthy and unclear administrative processes.

(03) Protection of the more vulnerable persons in the EU given that consultation feedback suggests that people with disabilities do encounter difficulties when moving around the EU.

(04) Elimination of barriers to EU citizens with regard to e-commerce, which has increased significantly, who still experience problems when shopping online.

(05) Targeting and accessibility of information with regard to citizens being aware of and understanding their EU rights.

(06) Participation of EU citizens in the democratic life of the EU.

1.3 The European Economic and Social Committee (EESC) welcomes the European Commission's (EC) Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012: COM(2013) 228 final, 2013/0119 (COD).

<sup>(1)</sup> COM(2013) 269 final.

<sup>(2)</sup> Ibid.

1.4 This proposal is consistent with EU Citizenship report as it introduces measures that will facilitate the ability of EU citizens to genuinely enjoy the substance of the rights conferred by their status as EU citizens.

1.5 Although the Lisbon Treaty and the EU Charter of Fundamental Rights reinforced EU citizens' rights defined by Maastricht Treaty, including the right to move and reside freely within the EU, the administrative process that supports the use of this right has not been reformed accordingly. Indeed, the presentation of an Apostille – a formality based on the Hague Apostille Convention of 1961 designed to facilitate movement across international borders in a world devoid of technology - does not reflect the fact that the EU is borderless and hence hampers rather than facilitates the execution of EU citizenship right for free intra-EU movement.

1.6 The simplification of the following certain public documents in the EU as presented in the proposal is one important measure that will result in a more cohesive legal framework which will facilitate the right of intra-EU movement:

#### Public documents of EU citizens

- Civil status records (e.g. documents relating to birth, death, name, marriage, registered;
- partnership, parenthood and adoption);
- Documents relating to residence, citizenship and nationality;
- Documents relating to real estate;
- Documents relating to intellectual property rights;
- Documents proving the absence of a criminal record; and

#### Public documents of EU businesses (companies and other undertakings)

- Documents relating to their legal status and representation;
- Documents relating to real estate;
- Documents relating to intellectual property rights;
- Documents proving the absence of a criminal record.

The simplification of these public documents will, undoubtedly, facilitate the promotion of the free movement of citizens and businesses as it will further increase commerce within the internal market as well as render increased ease in the collection of such documents by citizens of each MS.

1.7 The introduction of a simplified framework for the acceptance of certain public documents up to local public administration level is to be considered as an important policy instrument as it also:

- Reduces the cost for business and public administration: According to 2010 data nearly 30 % of SMEs are engaged in import/export activities and 2 % have foreign direct investment abroad. Moreover, about 7 % of EU SMEs are involved in international subcontracting practices where about 26 % have clients in other MS <sup>(3)</sup>.
- Increases the ease in interacting with public administration and reduces costs for citizens and businesses: The average annual cost for obtaining an Apostille amounts to EUR 13,20. It is estimated that the cost for EU citizens and business for obtaining Apostilles for intra-EU use amounts to over EUR 25 million. Additionally, the cost of legalisation of public documents not covered by the Apostille Convention is significant with an average price of EUR 16,50. Moreover, the costs of certified translations is calculated on a basis of EUR 30 per page: the cost for certified translations required for a cross-border marriage amounts to EUR 120 for the majority of MS <sup>(4)</sup>.
- Achieves net cost savings for MS that range between EUR 5-7 million as a result of the abolition of the Apostille and a further estimated EUR 500 000 to EUR 1 million as a consequence of abolishing legalisation <sup>(5)</sup>.
- Removes indirect discrimination of nationals of other MS in comparison to a MS' nationals in cross-border scenarios given that in general, national authorities are not familiar with the requirements applicable to public documents in the MS of origin, including their signatures, seals and stamps.

1.8 The EESC regrets that the reforms being brought in by virtue of the proposal directed to facilitate citizens and businesses to exercise their right for intra-EU movement are presented 20 years after the launch of the EU citizenship and 42 years after the Hague Convention. Indeed, the EU has not moved in parallel with technological progress which could have been leveraged to reduce or eliminate the burdens placed on citizens and businesses to exercise their right to movement. The EESC emphasises that the Internal Market Information System (IMIS) is an important vehicle that should be exploited more aggressively with regard to enabling EU citizens to exercise their fundamental rights.

1.9 The EESC, therefore, concludes that the policy recommendation presented by the EC for:

- a legislative measure that promotes the free movement of citizens and business by simplifying administrative formalities related to the use and acceptance of certain public documents in the EU;

<sup>(3)</sup> SWD(2013) 144 final.

<sup>(4)</sup> Ibid.

<sup>(5)</sup> Ibid.

— complemented by improved administrative cooperation between MS based on the Internal Market Information System (IMIS); and

supported by optional multilingual standard forms used independently in cross border cases is an excellent proposal. It, however, underlines that certain provisions in the proposal can be re-positioned to further strengthen the rights of EU citizens to movement which, amongst other matters, generates mutual economic benefits for business and citizens.

#### 1.10 The EESC recommends:

1.10.1 Future simplification exercises with regard to public documents should target important public documents such as those relating to intra-EU mobility of workers (which is fundamental for the development of cross-border enterprise and commerce) or vulnerable persons such as persons with disabilities in so far that such public documents are not accounted for by other EU Directives.

1.10.2 A citizen or a business should have the maximum degree of certainty with regard to the extent that public documents presented are exempted from all forms of legalisation or similar formality and, thus, the definition of "reasonable doubt" as presented in the proposal is amended as follows:

"2. The reasonable doubt referred to in paragraph 1 relates to:

- (a) the authenticity of the signature,
- (b) the capacity in which the person signing the document has acted,
- (c) the identity of the seal or stamp."

1.10.3 In the event that a MS is to make an official request with regard to reasonable doubt, to the relevant authorities of the MS where the document were issued it is to explicitly inform the person or business on the reasons of why such a request is being made.

1.10.4 There is a need for a balanced system of accountability achieved through the carrying out of annual benchmarking by the EC directed to assess the extent to which MS are effectively implementing the proposal.

1.10.5 In the event that expected benefits materialise once the IMIS stabilises the maximum period for a response under the administrative cooperation mechanism is reduced to two weeks. This will send a strong message to citizens and

business alike that the EU is truly making EU citizenship effective and that it is placing citizens at the heart of EU policies.

1.10.6 The exchange and transmission of information and documents by MS pursuant to the proposal reflect the EU's principles with regard to data protection.

## 2. Introduction

2.1 The 2009 Stockholm Programme "An open and secure Europe serving and protecting citizens"<sup>(6)</sup> stressed the importance of making Union citizenship effective and place citizens at the heart of EU policies in the area of justice. The related Action Plan<sup>(7)</sup> confirmed this mandate and stated that a well-functioning European judicial area that "should be put at the service of citizens and business so as to support economic activity in the single market (...)". The EC responded by confirming its commitment to facilitating the free circulation of public documents within the EU in its 2010 Citizenship Report and presented in December 2010 a concrete vision to the public in the Green Paper on "Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records"<sup>(8)</sup>.

2.2 In parallel to the above a Single Market Act<sup>(9)</sup> was introduced directed towards strengthening citizens' confidence in the internal market and in maximising its potential as the growth engine within the EU's economy. This demanded, amongst others, the elimination of disproportionate barriers hampering of internal market freedoms by citizens and business. The fostering of citizen and business mobility within the EU is one of the cornerstones of the Single Market Act II<sup>(10)</sup>.

2.3 The EC's Action Plan on company law and corporate governance<sup>(11)</sup> focuses on supporting European business particularly with regard to the strengthening of legal certainty for cross-border operations. The Digital Agenda for Europe<sup>(12)</sup> refers to the proposed legislation on electronic identification and e-Signatures<sup>(13)</sup> which includes the introduction of a regulatory framework for common administrative facilities relating to citizen and business electronic identification.

2.4 The recent Entrepreneurship 2020 Action Plan<sup>(14)</sup> underlines that reducing excessive regulatory burden remains on the top of the EC's political agenda. The Action Plan calls for the elimination or reduction of red tape whenever possible for all businesses and particularly for micro-enterprises.

<sup>(6)</sup> OJ C 115, 4.5.2010, p. 1.

<sup>(7)</sup> COM(2010) 171 final.

<sup>(8)</sup> COM(2010) 747 final.

<sup>(9)</sup> COM(2011) 206 final.

<sup>(10)</sup> COM(2012) 573 final.

<sup>(11)</sup> COM(2012) 740 final.

<sup>(12)</sup> COM(2012) 784 final.

<sup>(13)</sup> COM(2012) 238 final.

<sup>(14)</sup> COM(2012) 795 final.

Consequently, cutting red tape, simplifying the procedures for cross-border use and acceptance of public documents between the MS as well as harmonising the related rules contributes to all actions aimed at moving towards the creation of a citizens' Europe and a well-functioning Single Market for EU businesses.

2.5 The EU Citizenship report underlines that EU citizenship brings citizens new rights and opportunities. The report calls to attention that the right that persons living in MS associate most closely with is the right to move and live freely within the EU: the ability to come and go between EU MS, for shorter or longer periods, to work, study, train, to travel for business, or to shop across borders. The 2013 EU Citizenship Report presents twelve new actions in the following six areas directed to further remove obstacles standing in the way of citizens' enjoyment of their EU rights, including the right to move and to go into business freely across EU borders. These include the <sup>(15)</sup>:

(01) Removal of obstacles for workers, students and trainees.

(02) Cutting of red tape.

(03) Protection of the more vulnerable persons.

(04) Elimination of barriers to EU citizens with regard to e-commerce.

(05) Targeting and accessibility of information.

(06) Participation of EU citizens in the democratic life of the EU.

2.6 Although Lisbon Treaty and the EU Charter of Fundamental Rights reinforced EU citizens' rights defined by Maastricht Treaty, including the right to move and reside freely within the EU, the administrative process that supports the use of this right has not been reformed accordingly. Indeed, there continues to exist a fragmented legal framework in EU as MS continue to apply administrative formalities such as the presentation of an Apostille to certify copies and translations – a formality based on the Hague Apostille Convention of 1961 designed to facilitate movement across international borders. This is a formality that does not reflect the fact that the EU is borderless and hence hampers rather than facilitates the EU citizenship right for free intra-EU movement.

<sup>(15)</sup> Ibid.

2.7 Currently, for example, citizens who move to another MS have to spend a lot of time and money in order to ensure that public documents from a MS state of origin are authentic. It is recognised that businesses and citizens will, undoubtedly, benefit from a framework of consistent and transparent rules governing certain public documents that are critical to the flow of goods, services and people within the EU and single market.

2.8 The EU has not moved in parallel with technological progress which can be leveraged to reduce or eliminate the burdens placed on citizens and businesses to exercise their right to movement. The EESC understands that the IMIS, a web-based application that allows national, regional and local authorities to communicate quickly and easily with their counterparts abroad, is an appropriate ICT platform that will facilitate administrative cooperation once the proposal is implemented. The IMIS will also act as an important repository of templates of the most frequently used national public documents within the EU, including their translation into all Union official languages, in order to support authorities with insufficient linguistic expertise to judge correctness or quality of translations of public documents presented to them <sup>(16)</sup>.

2.9 The EESC regrets that the reforms being brought in by virtue of the proposal directed to facilitate citizens and businesses to exercise their right for intra-EU movement is presented 20 years after the launch of the EU citizenship and 42 years after the Hague Convention.

### 3. Legal elements of the proposal

This is the response of the EESC to the main features of the proposal.

#### 3.1 Subject matter, scope and definitions

3.1.1 The EESC agrees that the definition of "public documents" as presented in Article 3(1) of the proposal embraces the important public documents related to EU rights of EU citizens and businesses.

3.1.2 The EESC underlines, however, that the public documents identified in the proposal should indeed be the first of a series of public documents that should be subject to a simplification process directed to enhance intra-EU mobility, cross-border activities, and the functioning of the EU single market.

<sup>(16)</sup> Regulation 1024/2012 of 25 October 2012 on administrative cooperation through the Internal Market Information System) was published in the Official Journal on 14 November 2012 provides a high level of flexibility for future expansion of IMI to Union acts not yet listed in the Annex (Art. 4 of the "IMI Regulation"), based on pilot projects carried out by the Commission and evaluations of their outcomes, including data protection issues and effective translation functionalities.



3.1.3 The EESC underlines that future simplification exercises with regard to public documents should target important public documents such as those relating to intra-EU mobility of workers (which is fundamental for the development of cross-border enterprise and commerce) or persons with disabilities in so far that such public documents are not being accounted for by other EU Directives. Such public documents may include, for example, national education accreditation certifications and social security public documents.

### 3.2 *Exemption from legalisation, simplification of other formalities and requests for information*

3.2.1 The EESC emphasises that the current requirements demanding the presentation of an Apostille reflects international procedures and, thus, do not reflect the developments of the EU as a single market. There are approximately 12.5 million EU citizens living in MS other than their own and over 380 thousand of EU micro and small and medium sized (SMEs) businesses involved in MS cross border subcontracting practices which are continuously confronted by red-tape and unnecessary bureaucracy to move from one MS to the other or to carry out cross border business. This is a state of play which does not reflect a borderless EU.

3.2.2 The EESC, therefore, agrees with the EC's proposal's objective to exempt the public documents from legal and administrative requirements in place across MS. The EESC considers this as a first phase in a continued programme of the simplification of public documents.

3.2.3 The EESC agrees that provisions should be introduced to ensure that the necessary level of verification is undertaken where there is a case of a reasonable doubt. The EESC recognises that there will be instances where administrative coordination would be required amongst MS to ensure that a public document or its certified copy is authentic.

3.2.4 The EESC strongly supports the principle that a citizen or a business should have the maximum degree of certainty with regard to the extent that public documents presented are exempted from all forms of legalisation or similar formality. Such certitude will allow a citizen or a business to pro-active plan his/her or its activities and in doing so ensure that tangible and intangible gains and benefits identified in the EC Impact Assessment are actually accrued <sup>(17)</sup>.

3.2.5 The EESC notes that under the current system 99 % of the approximate annual 1.4 m Apostilles presented for intra-EU activity do not result in issues. The EESC, therefore, is of the opinion that the policy option presented by the EC with regard to administrative cooperation (that is based on the IMIS in cases of reasonable doubt on the authenticity of public documents supported by multilingual forms) should lead to improved results.

3.2.6 The EESC recommends that the definition of "reasonable doubt" as presented in the EC's proposal should be rendered unequivocal to remove uncertainty. In the regard the EESC proposes the following amendment:

"2. The reasonable doubt referred to in paragraph 1 relates to:

- (a) the authenticity of the signature,
- (b) the capacity in which the person signing the document has acted,
- (c) the identity of the seal or stamp."

3.2.7 In the event that a MS is to make an official request with regard to arising of reasonable doubt, on the basis of this new definition, to the relevant authorities of the MS where the document were issued it is to explicitly inform the person on the reasons of why such a request is being made.

3.2.8 The EESC is confident that once the IMIS is implemented across MS and regular progress reports show that the system is stable and working and that MS staff would have accrued the necessary knowledge, the requests for administrative coordination amongst MS will be far more efficient than the maximum period of one month established in the proposal. The EESC, thus, recommends that in the event results demonstrate such significant improvement the EC should reduce the stated maximum period to two weeks. Such a revision will send a strong message to citizens and business alike that the EU is truly making EU citizenship effective and that it is placing citizens at the heart of EU policies.

3.2.9 The EESC gives importance for the need for a balanced system of accountability that assesses the extent to which MS are effectively implementing the proposal. The EESC recommends that the EC benchmarks MS performance with regard to implementation on an annual basis.

### 3.3 *Administrative cooperation*

The EESC agrees that the Internal Market Information System (Article 8) shall be used in cases where the authorities of a MS have a reasonable doubt on the authenticity of a public document or its certified copy and cannot be otherwise resolved (Article 7). The Committee also agrees that MS shall designate at least one central authority and all appointed central authorities and their contact details shall be communicated to the Commission (Article 9) and that these central authorities shall provide assistance in relation to request for information pursuant to Article 7 and take any other measures necessary to facilitate the application of this Regulation (Article 10).

<sup>(17)</sup> SWD(2013) 144 final.

### 3.4 Union multilingual standard forms

The Committee is in agreement that the Union multilingual standard forms concerning birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking are being established and set out in the Annexes (Article 11) and that these forms shall be made available upon request to citizens, companies or other undertakings as an alternative to the equivalent public documents, bearing the date of issue, signature and seal of the issuing authority (Article 12). The EESC also agrees that the Commission shall develop detailed guidance on the use (Article 13) of such standard forms and also the development of their electronic versions (Article 14) and that the forms shall have the same formal evidentiary value as their public document equivalent and shall be accepted by the authorities of the MS without the need for formalities (Article 15)

### 3.5 Relations with other instruments

The EESC agrees that this Regulation shall not prejudice other Union law or the use of other systems of administrative cooperation established by it (Article 16) and shall not affect the application of international conventions to which one or

more Member States are party but shall take precedence over conventions concluded by them in so far as such conventions concern matters governed by this Regulation (Article 18). The Committee is also in agreement with the inclusion of standard text as outlined in Article 17.

### 3.6 General and final provisions

3.6.1 The EESC agrees that the exchange and transmission of information and documents by the MS shall serve the purpose of making the verification of authenticity of public documents through the Internal Market Information System (Article 19). The Committee also agrees that the MS shall communicate to the Commission the designation of central authorities and any subsequent changes to such information and that the Commission will make such information publicly available (Article 20). Lastly the EESC agrees that the Commission shall submit at the latest every three years a report on the application of this regulation to the European Parliament (Article 21).

3.6.2 The EESC emphasises that Article 19 titled 'Data protection' must ensure that the exchange and transmission of information and documents by MS pursuant to the proposal are to reflect the EU's principles with regard to data protection.

Brussels, 11 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

**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 — Rethinking Education: Investing in skills for better socio-economic outcomes'**

COM(2012) 669 final

(2013/C 327/12)

Rapporteur: **Mário SOARES**

Co-rapporteur: **Pavel TRANTINA**

On 20 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 - Rethinking Education: Investing in skills for better socio-economic outcomes*

COM(2012) 669 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 154 votes with 3 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC broadly welcomes the Commission's initiative, especially its efforts to combat youth unemployment, but believes that the contents of the communication do not match the ambition expressed in the title "Rethinking Education".

1.2 The current economic and social crisis is imposing constraints on the budgetary decisions of the countries of the European Union, especially those subject to fiscal adjustment programmes - a situation that is exacerbated by the reduction in the EU's own budget. The Committee warns that the cuts being applied to education budgets are in danger of turning initiatives and proposals that are deemed necessary into mere statements of good intent.

1.3 Aware that there are significant shortcomings in education systems that need to be tackled, and that problems in linking schools and employment need to be remedied, the EESC wishes to recommend:

that the European institutions

1.3.1 review the current mechanisms for collecting, presenting and interpreting data on education and training to ensure that they are transparent and comparable;

1.3.2 also review the current European educational processes and the different instruments already in place and especially that the European Standards and Guidelines for Quality Assurance (ESGQA) be revised;

1.3.3 implement the measures now being proposed, incorporating them into other initiatives aimed at integrating young people into the labour market, in particular the Youth on the Move action plan for employment and entrepreneurship;

1.3.4 ensure that the forthcoming EU budget provides the necessary funds for the entire programme, particularly for the recently-approved Youth Employment Initiative.

that the Member States

1.3.5 carry out a review and/or forward-looking update of policies related to employment and high-quality public services, in the belief that to fully achieve the objectives set for education, investment in this sector must go hand in hand with labour-related, social and economic policies supporting sustainable growth and prosperity, ensuring that the social partners and other civil society organisations are fully involved in this process;

1.3.6 encourage the incorporation into education policies and programmes of the acquisition of entrepreneurial skills which, besides what is learned at school, could be supplemented, where appropriate, with workplace learning and by fostering business involvement in schemes promoted by schools;

1.3.7 encourage the introduction into schools of dual systems of education and training that combine classroom learning with workplace experience, raising awareness among education authorities and businesses of the importance of such initiatives;

1.3.8 review as a matter of urgency the links between vocational education and training and employment, in order to gain a better understanding of possible shortcomings and to design vocational training that actually meets labour market needs;

1.3.9 ensure that the conditions for everyone to engage in ongoing learning and for improving training (advanced courses and retraining) are met, showing due regard for the right to high-quality lifelong learning;

1.3.10 recognise and value non-formal learning in a creative and innovative way, raising the visibility of skills acquired outside the formal system and fostering complementarity between non-formal and formal learning, while at the same time promoting equal opportunities;

1.3.11 adopt common rules and principles for defining quality criteria for systems that will guarantee the recognition and validation of non-formal learning;

1.3.12 invest in training and hiring good teachers, improving their academic and professional training, striving to ensure gender balance in teacher recruitment, and providing suitable work, pay and career conditions in order to make teaching more attractive to younger generations;

1.3.13 view education and training budgets as investments in the future and as an ongoing necessity in order to be able to meet the obligation to ensure high-quality and relevant education for all, avoiding cuts that make this obligation harder to meet;

1.3.14 All stakeholders (including youth and community organisations, schools and teachers, parents and guardians, businesses and unions) should be involved in framing and monitoring educational policies and identifying potential problems and should also be involved in educating, training and integrating young people into society, providing clear goals, regular assessments and sufficient resources to ensure that these are sustainable.

that the social partners

1.3.15 take responsibility and properly implement the Framework of Action on Youth Employment adopted under their joint work programme for 2012-2014, focussing on the link between education, young people's expectations and labour market needs, while taking account of young people's transition from school to the labour market, with a view to increasing employment rates in general.

## 2. Introduction

2.1 Education often takes centre-stage in the EESC's discussions and the Committee therefore welcomes the Commission Communication's statement that "investment in

education and training is key to increasing productivity and economic growth" <sup>(1)</sup>. The Committee also shares the document's concern at the major changes taking place in Europe's labour markets, which demonstrate the need to reshape educational systems, in order to remedy any failings or shortcomings that they may have.

2.2 The EESC has issued a large number of opinions contributing to the recognition of education as a fundamental human right <sup>(2)</sup>, in which the Committee makes it clear that the main purpose of education remains to teach people to be free, critical and independent individuals who are able to contribute to the development of the society in which they live and understand that they share values and culture.

2.3 The Committee is convinced that as part of teacher training, attention should be given to modern communication skills, which should help make school life relevant and interesting <sup>(3)</sup>.

2.4 The EESC also agrees with the urgent need for consistent and transversal political responses to a number of key issues: Europe's early school-leaving rate, which remains high, the low participation of workers in lifelong learning, the millions of people who still have low levels of education, the lack of sufficient reading skills in children under the age of 15 and mass youth unemployment in some EU countries.

2.5 The Committee fears, however, that the value of the initiatives proposed in the communication is being lost in light of the reality facing European countries in crisis. Budget cuts, especially in the resources earmarked for education and training can make it harder to remedy students' unequal starting points and to promote high-quality education for all <sup>(4)</sup>.

<sup>(1)</sup> COM(2012) 669 final.

<sup>(2)</sup> OJ C 161, 06.06.2013, p. 67-72; OJ C 161, 06.05.2013, p. 27-34; OJ C 11, 15.01.2013, p. 8-15; OJ C 299, 04.10.2012, p. 97; OJ C 191, 29.06.2012, p. 103; OJ C 76, 14.03.2013, p. 1; OJ C 181, 21.06.2012, p. 154; OJ C 143, 22.05.2012, p. 94; OJ C 181, 21.06.2012, p. 143; OJ C 68, 06.03.2012, p. 11; OJ C 318, 29.10.2011, p. 50; OJ C 68, 06.03.2012, p. 1; OJ C 318, 29.10.2011, p. 142; OJ C 318, 29.10.2011, p. 1; OJ C 132, 03.05.2011, p. 55; OJ C 21, 21.01.2011, p. 66; OJ C 255, 22.09.2010, p. 81; OJ C 318, 23.12.2009, p. 113; OJ C 128, 18.05.2010, p. 10; OJ C 224, 30.08.2008, p. 100; OJ C 204, 09.08.2008, p. 95; OJ C 151, 17.06.2008, p. 45; OJ C 218, 11.09.2009, p. 85; OJ C 151, 17.06.2008, p. 41.

<sup>(3)</sup> Survey of Schools: ICT in Education (<https://ec.europa.eu/digital-agenda/node/51275>).

<sup>(4)</sup> As well as criticising the faltering progress towards the Education for All (EFA) goals, the 2012 monitoring report on UNESCO's EFA initiative concludes that if they are to deliver results for citizens, education systems must be built on sufficient and sustainable funding. The OECD has noted in recent statements, however, that having public education focused on quality and equality is the best choice for governments, in terms of both saving money and making a sound investment. Communities and disadvantaged people should be involved, however, because only then will a high-quality educational system be possible (Education International - OECD Conference on "Quality and dialogue key to public education", 4 February 2013).

2.6 Although responsibility for education falls to the Member States, the European Union also has an important role to play, through its open method of coordination among the various education ministers, through European-level data collection mechanisms and through various European educational initiatives such as the Bologna and Copenhagen processes, the Bruges Communiqué, the European Credit Transfer and Accumulation System (ECTS), the European Credit System for Vocational Education and Training (ECVET), the European Qualifications Framework (EQF) and the European Standards and Guidelines for Quality Assurance ESGQA <sup>(5)</sup>.

2.7 The concern expressed by broad swathes of civil society at the mismatch between the skills held by young people today and the requirements of business and at the difficult transition between school and work or between unemployment and employment are relevant and should consequently be addressed. The EESC therefore particularly welcomes the Commission's decision to further develop sharing between the spheres of education and employment, promote joint initiatives and measures to smooth the transition from school to work, lower barriers to mobility in the EU, decisively improve the workings of the labour market and guarantee equal opportunities. The EESC urges the Commission and the Member States to pursue this approach, while upholding the European social model and strengthening social cohesion.

2.8 The EESC welcomes the new Framework of Action on Youth Employment, developed by the social partners, as an essential part of their joint work programme for 2012-2014, presented for the first time at the Tripartite Social Summit on 14 March 2013.

### 3. General comments

3.1 The Committee is pleased to note that the Commission pays particular attention to combating youth unemployment in four key areas: high-quality education and training, the inclusion of practical work-based learning, the inclusion of apprenticeships and dual learning models and the promotion of partnerships in order to achieve a common goal.

3.2 The title of the Communication suggests an ambition that is not matched by its content, probably because the Commission wanted to focus its work on a single goal. The Committee believes that the document could have gone further, however, and could have addressed such pressing issues/challenges as the current demographic situation in Europe, energy

and migration, which would require far more complex responses. Similarly, account should in future be taken of other studies such as those produced recently by the United Nations and UNESCO <sup>(6)</sup>.

3.3 As far as the Commission proposal is concerned, the Committee warns against treating education as nothing more than a tool for developing solely work-related skills and for increasing employability <sup>(7)</sup>. The Committee reiterates its conviction that employability depends not only on the acquisition of basic skills and practical experience, but also on qualities and mindsets such as active citizenship, personal development and well-being. Thus, although employability can be regarded as a goal to work towards as part of the process of re-evaluating education, it should not be interpreted too narrowly.

3.4 The Committee points out that if investment in education is to fully achieve its goals, it must go hand in hand with labour-related, social and economic policies, with a view to supporting sustainable growth and prosperity. The Committee has previously recommended that the EU and the Member States, especially against the backdrop of the crisis, carry out a review and/or forward-looking update of policies related to employment and high-quality public services, focussing more on specific groups (children, adults with special needs, migrants, etc.), and that all of these policies incorporate the gender dimension and the full participation of civil society organisations <sup>(8)</sup>.

3.5 The recognition that there is a mismatch between the skills required by the labour market and those generally held by young people and workers makes it even more urgent to link school and work in order to address this disparity. It is also clear, however, that school hours and working hours are not and cannot be the same.

3.6 The EESC welcomes the recent decision of the European Council to launch a Youth Guarantee, aimed at ensuring access for everyone under the age of 25 to good work opportunities, ongoing education or a traineeship within four months of completing education or becoming unemployed.

<sup>(6)</sup> At UNESCO headquarters in Paris on 12/14 February 2013, twelve international education experts embarked on a critical review of the most important reports on education produced by the organisation in the twentieth century - *Learning to Be*, by Edgar Faure (1972) and Jacques Delors' report, *Learning: The Treasure Within* (1996) - in light of the most recent and far-reaching social changes [www.unesco.org](http://www.unesco.org).

<sup>(7)</sup> The terms "employability" and "job creation" do not mean the same thing or express the same concept. While "job creation" is a complex phenomenon involving responsibilities shared between the State, employers and workers and requiring social dialogue and negotiation, "employability" appears to refer almost exclusively to the individual responsibility of the jobseeker.

<sup>(8)</sup> OJ C 18, 19.1.2011, p. 18.

<sup>(5)</sup> All of the acronyms refer to the English titles.



3.7 The Committee would point out, however, that the current levels of unemployment affect not only young people but also older workers. Use should, therefore, be made of the know-how of these older workers, not only to help young people find work but also to pass on knowledge gained from a wide variety of experiences.

3.8 The EESC regrets that the Commission has failed to seize the opportunity offered by this communication to recognise the role that non-formal education can play as a supplement to formal education and draws attention to the call made by participants at the Strasbourg Symposium for a common long- and medium-term process to be established to recognise non-formal education in Europe <sup>(9)</sup>.

#### 4. Specific comments

##### 4.1 Basic and transversal skills

4.1.1 The EESC shares the Commission's view that "efforts need to be concentrated on developing transversal skills, particularly entrepreneurial skills" but considers that the first step must be that foundation or basic skills are achieved by all. The Committee also agrees that language learning should continue to receive particular attention. The fact is that a young person who has acquired sound basic, cross-cutting skills (such as teamworking, mastering several languages, knowing how to use IT tools, being able to form and express opinions, taking part in decision-making, etc.) will probably experience less difficulty in entering the labour market and succeeding in the business world.

4.1.2 "Entrepreneurial skills" are certainly an important element, provided that they do not aim solely to create businesses. Without an entrepreneurial attitude, one can achieve little in life, especially in such hard times. Incorporating these skills into educational policies and programmes is therefore to be welcomed.

4.1.3 To develop the entrepreneurial spirit, and going beyond curriculum-related issues, the possibility of taking part in workplace learning may be important, along with encouraging businesses and organisations to get involved in schemes promoted by schools. The Commission and the Member States should provide a more transparent definition of "equitable access to appropriate learning and life skills programmes" and draw up a coherent set of indicators for drawing comparisons at the various levels and for assessing outcomes, with the involvement of the social partners and civil society.

<sup>(9)</sup> The symposium, which was held on 14-16 November 2011, was co-organised by the European Commission and the Council of Europe in conjunction with a number of youth organisations such as the European Youth Forum, JUGEND für Europa – the German National Agency for the Youth in Action programme - and the SALTO Training and Cooperation Resource Centre ([http://youth-partnership-eu.coe.int/youth-partnership/documents/EKCYP/Youth\\_Policy/docs/Youth\\_Work/Policy/STATEMENT\\_Symposium\\_participants\\_160312.pdf](http://youth-partnership-eu.coe.int/youth-partnership/documents/EKCYP/Youth_Policy/docs/Youth_Work/Policy/STATEMENT_Symposium_participants_160312.pdf)).

4.1.4 The EESC believes, however, that the entrepreneurial spirit can only achieve its full potential if it is coupled with the team spirit that education should also be fostering in children and young people.

4.1.5 STEM subjects (Science, Technology, Engineering and Mathematics) <sup>(10)</sup> must continue to receive special attention from education systems because they remain at the heart of a society that is dominated by technology and technological development and because highly-skilled workers with considerable scientific knowledge will be in ever greater demand <sup>(11)</sup>. It is important, however, that these subjects are presented in a more user-friendly, more creative and consequently more attractive manner that also facilitates greater and better gender balance <sup>(12)</sup>.

4.1.6 The document makes no reference to the effects of the crisis and of adjustment policies on science and research and its stakeholders (researchers, academics, universities) or to the brain drain that is taking place in different EU countries. In a number of opinions <sup>(13)</sup>, the EESC has commented on the need to press ahead with completing the European Research Area and has stated that the free movement of researchers, scientific knowledge and technology should be the "fifth freedom" of the internal market.

##### 4.2 Vocational skills

4.2.1 The EESC shares the Commission's concern at the mismatch between education and the labour market. It is clear that an education system out of step with the labour market could not only generate skills that are incomplete but also and even worse, unemployment <sup>(14)</sup>. The EESC agrees that greater attention should be given to a review of vocational education and training and for greater mutual understanding of the links between these and the labour market, to ensure that they genuinely meet its requirements, and emphasises that *the involvement of the social partners and organised civil society is indispensable for vocational training that is relevant to the labour market* <sup>(15)</sup>.

<sup>(10)</sup> STEM is the English acronym.

<sup>(11)</sup> According to CEDEFOP, the demand for highly-skilled individuals could grow by 16 million by 2020 and mid-skilled workers by an average of 3.5 million, while the demand for poorly skilled workers could fall by 12 million.

<sup>(12)</sup> A number of projects carried out in various Member States have shown that the teaching of mathematics can be made more attractive.

<sup>(13)</sup> OJ C 95, 23.04.2003, p. 8; OJ C 218, 11.09.2009, p. 8; OJ C 306, 16.12.2009, p. 13; OJ C 132, 03.05.2011, p. 39; OJ C 318, 29.10.2011, p. 121; OJ C 181, 21.06.2012, p. 111; OJ C 299, 04.10.2012, p. 72; OJ C 229, 31.07.2012, p. 60; OJ C 44, 15.02.2013, p. 88; OJ C 76, 14.03.2013, p. 43; OJ C 76, 14.03.2013, p. 31).

<sup>(14)</sup> UNESCO's revised recommendation on technical and vocational education points out that given the immense scientific, technological and socio-economic development, either in progress or envisaged, which characterises the present era, particularly globalisation and the revolution in information and communication technology, technical and vocational education should be vital aspects of the educational process in all countries (UNESCO, 2001).

<sup>(15)</sup> Memorandum on Cooperation in Vocational Education and Training in Europe Berlin, 10-11 December 2012.

4.2.2 ICT training and skills certification is of enormous importance to the labour market: investment should therefore be made in the appropriate programmes in order to guarantee these skills in vocational training and higher education, especially concerning young women. The EESC supports the proposal for a European quality seal for industry and for ICT training and certification.

4.2.3 The EESC reaffirms every individual's right to have a range of knowledge and skills that enable him or her to play a full role in working life and in society. The right to vocational training should not be granted only to young people who will go on to join the labour market, but also to all workers, to enable them to update their skills and meet the challenges arising from the changes that are currently taking place. Employability is not the preserve of young people alone.

4.2.4 Work-based learning, and especially dual systems that combine classroom teaching with experience in the workplace, can play an important role in effecting the changes needed to create jobs<sup>(16)</sup>, but they must form part of the education system, which requires some clarification of the roles of the different players concerned. Raising awareness among schools and business of this type of learning is vitally important<sup>(17)</sup>.

### 4.3 Stimulating open and flexible learning

4.3.1 Recognising that models are changing at a hitherto unseen speed (from an industrial society to a knowledge society and thence to a network society) requires a more creative and innovative approach, linking different areas of life and different activities, acknowledging and valuing successes, building bridges between culture, general education and vocational training and the labour market and fostering complementarity between non-formal and formal learning, while at the same time promoting equal opportunities.

4.3.2 Stimulating learning makes sense, provided that people are enabled to take advantage of it and that this task does not depend solely on the effort that each person can and must make. Otherwise, the groups that are already by their nature the most disadvantaged or marginalised will, collectively, remain segregated. The EESC consequently notes, with growing unease, that participation in adult education programmes remains very low; according to the Commission, the average percentage of EU adults in lifelong learning is 8.9 % and in seven Member States barely reaches 5 %.

<sup>(16)</sup> The Communication mentions the following sectors as having growth potential: information and communication technologies (ICT), health, low carbon technologies, personalised services, business services, the maritime economy and green sectors, or those undergoing major transformation requiring a better skilled workforce.

<sup>(17)</sup> Experience of the dual system in Austria is an example of a good practice that warrants close attention to the conditions needed to achieve it and to the outcomes that delivered in the meantime.

4.3.3 Procedures for the recognition of knowledge acquired outside school (non-formal education), currently too formalist, need to be improved. It should also be emphasised that decisions need to be the result of consultation with the relevant social partners and other civil society organisations and that the State should be responsible for ensuring the quality of this recognition. Recognition procedures can more effectively help to increase the visibility, especially among the social partners, of the benefits of non-formal education. It is also important to provide information that is as broad and as easy to understand as possible about the modes of recognition and validation of skills to ensure that they benefit everyone.

4.3.4 At a time of high unemployment, especially among young people, rethinking the acquisition of skills in a more open and flexible way is a major medium- and long term challenge for Europe. Meeting these challenges requires that the Member States, among other things:

- a) ensure that everyone is able to engage in lifelong learning, enabling them to upgrade their skills and gain access to more highly qualified jobs, thus achieving the goal of "inclusive growth" contained in the Europe 2020 Strategy;
- b) guarantee young people the opportunity to consult career guidance specialists;
- c) improve, through practical, innovative and creative measures on which agreement is reached through social dialogue, training (further training and retraining) for those already in work or who would like to be, but who have inadequate academic or non-academic skills. These initiatives should take account of the age, experience and knowledge of the workers in question;
- d) formalise the individual's right to high-quality certified training, stipulating a number of training hours per year for all workers, irrespective of their qualifications or type of contract;
- e) encourage businesses to draw up skills upgrade plans, involving both workers and employers, taking into account the situation of the business, especially where SMEs are concerned, thereby complying with the agreements reached between the social partners at the European level;
- f) support initiatives aimed at raising the visibility of skills acquired outside formal education, boosting recognition of non-formal learning and guaranteeing its quality.

4.3.5 The Committee supports the Commission's intention to create a European Area of Skills and Qualifications to ensure greater convergence and transparency in the recognition of skills and qualifications in the EU.

#### 4.4 *Supporting Europe's teachers and educators*

4.4.1 The EESC shares the communication's recognition of the key role of teachers and educators in improving learning and encouraging children and young people to acquire the skills they need to face the challenges of globalisation. Investing in training and hiring high-quality teachers and educators is therefore a necessary and positive strategy.

4.4.2 Saying that good teachers and educators can make a difference is not, however, the same as saying that teaching alone determines the students' learning or underestimating the socio-economic context in which this takes place.

4.4.3 Against a backdrop of far-reaching economic, social and technological change, the teaching profession should be seen as a key element in promoting high-quality education that can adapt to today's requirements, which means that improving teachers' academic and professional training, as well as providing adequate pay and career conditions and making the profession more attractive to young people, are becoming vital issues in this regard. It is also incredibly important to secure greater gender balance in teacher recruitment.

4.4.4 The Committee would like to point out that teacher recruitment should take account of diversity aspects, particularly in terms of ethnic origin, culture, religion, age, etc. Moreover, in a context of free movement of persons and migration, it is particularly vital to boost language and intercultural communication skills among both children/young people and teachers in order to improve cooperation, even when native languages are different. Teachers should be given the right training enabling them to deal with needy pupils and those dropping out of education, in areas facing high social risks and exposed to exclusion. We therefore need teachers that can adapt to a multi-cultural and multifaceted learning environment <sup>(18)</sup>.

#### 4.5 *Funding education*

4.5.1 The EESC welcomes the Commission's commitment to focussing more on the funding of education, opening a debate with the key actors on the benefits of investing in education <sup>(19)</sup>.

<sup>(18)</sup> OJ C 151, 17.6.2008, p. 41; OJ C 218, 11.9.2009, p. 85.

<sup>(19)</sup> UNESCO has published a new study analysing the contributions of businesses and private foundations to education, which shows that such contributions total no more than USD 683 million per year. To put it into some kind of perspective, this equates to 0.1 % of the profits of the world's two largest oil companies and represents the cost of two Airbus A380 aeroplanes. This is in fact a tiny contribution compared to the USD 16 000 million needed each year to enable all children to attend primary school. Presentation at the Davos Forum, 23 January 2013.

It also supports the idea of working together with the social partners to study how to increase the supply of high-quality workplace training.

4.5.2 The Committee is pleased to note that the Member States are promoting national debates on sustainable funding mechanisms for education and training. However, despite this attention, funding for education and training is decreasing in many Member States <sup>(20)</sup>. The EESC underscores the importance of the broad and ongoing involvement of the social partners and other civil society organisations throughout the process. The Committee welcomes the efforts to involve the private sector in co-financing the education sector, especially vocational education and training, but at the same time recommends that clear criteria be established for the responsibilities shared between the different sectors (public, private and others) in such cases. This cannot entail taking responsibility away from States for the national and international commitments they have given to guarantee appropriate funding and high-quality education for all <sup>(21)</sup>.

4.5.3 The EESC emphatically reaffirms the importance for youth mobility of programmes such as Erasmus, Erasmus Mundus and Youth in Action, whose contribution to young people's personal development, skills and qualifications is universally recognised. Funding for these programmes should therefore be increased under the new multiannual financial framework. At the same time, procedures for selecting participants should be improved so that everyone has equal, fair and effective opportunities, with programmes encouraging specific high-risk groups to take part in these initiatives and solutions to overcome financial and skills-related obstacles faced by many students and young people.

#### 4.6 *Partnerships*

4.6.1 The EESC agrees with the Commission on the importance of closer cooperation with the different actors and social groups in the field of education and training; partnerships can provide an enriching exchange of experiences and represent an opportunity to include in the educational process anyone who can provide and/or update specific skills, especially those in demand by the labour market.

4.6.2 The EESC emphasises the importance of involving all stakeholders (including youth and community organisations, schools and teachers, parents and guardians, businesses and unions, local and regional authorities and other national

<sup>(20)</sup> Eurydice report "Funding of Education in Europe 20-2012. The Impact of the Crisis" ([http://eacea.ec.europa.eu/education/eurydice/documents/thematic\\_reports/147EN.pdf](http://eacea.ec.europa.eu/education/eurydice/documents/thematic_reports/147EN.pdf)).

<sup>(21)</sup> The commitment to guarantee high-quality education for all features in all national constitutions and, at international level, in the final declaration of the World Conference on Education, UNESCO, Jomtien, 1990, and in the Millennium Development Goals, UN, New York, 2000, to which all EU Member States are signatories.

government authorities) in school life and of providing clear goals, regular assessments and sufficient resources to ensure they are sustainable. The Committee hopes that the Erasmus for All programme will make a decisive contribution to supporting, encouraging and promoting partnerships that strive to ensure high-quality education and equal opportunities. Education is a holistic process and therefore demands a high level of careers guidance, combined with a vocational advisory service. In addition, there are also many schools which are used after-hours for cultural activities, meetings and continuing education, with facilities for different generations from diverse social groups. Such best practices should be disseminated.

4.6.3 The Committee recognises the value of youth associations in the dynamics of youth participation and their

contribution to solving the immense problems that affect young people today. These include, of course, youth unemployment, the extremely high rates of which are totally unacceptable. Establishing partnerships with these organisations to boost the acquisition of "soft skills" such as organisation, communication, leadership, initiative, knowledge of foreign languages and other skills, could be a positive strategy provided that the resources needed for its implementation are also guaranteed <sup>(22)</sup>.

4.6.4 The EESC welcomes the idea of setting up youth guarantees in the Member States, financed by a specific fund under the multiannual financial programme, although it considers EUR 6 000 million to be clearly insufficient, given that some of this money is already provided by the European Social Fund.

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(22)</sup> A report by the University of Bath/GHK 2012 showed the impact of formal education on young people's employability and the importance that youth organisations can have in this process.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products'**

COM(2012) 788 final — 2012/0366 (COD)

(2013/C 327/13)

Rapporteur: **Mr RODRÍGUEZ GARCÍA-CARO**

On 15 January 2013, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 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 approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products*

COM(2012) 788 final — 2012/0366 (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 26 March 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July), the European Economic and Social Committee adopted the following opinion by 173 votes to 52 with 28 abstentions.

## 1. Assumptions

1.1 The legal basis for the European Commission's proposed legislative act is Article 114 of the Treaty on the Functioning of the European Union (TFEU) <sup>(1)</sup>. The objective of the proposed rules is therefore ostensibly to approximate the legal rules applicable to tobacco products in order to ensure the proper functioning of the internal market. Point 3.9.1 of the explanatory memorandum for the proposed directive explains that this choice of legal basis was confirmed by the Court of Justice of the European Union in relation to Directive 2001/37/EC <sup>(2)</sup> and that the same legal basis is therefore appropriate for this proposal, which seeks to achieve a high level of public health protection in relation to the risks of tobacco.

1.2 The European Economic and Social Committee (EESC) in principle welcomes this legal basis, considering it appropriate in the light of the objectives of the proposal, which the EESC fully shares, in particular that of preventing people, especially young people, from taking up smoking. Nevertheless the EESC notes that on some occasions, for example in the European

Parliament's Committee on Legal Affairs, misgivings have been expressed regarding this legal basis, notably on the grounds that the objective can be sufficiently achieved by the Member States.

1.3 The EESC fully agrees with the European Commission that the right to health must take priority over all economic considerations. In that context, the EESC is strongly in favour of promoting public education and awareness-raising plans and campaigns concerning the serious health effects of smoking. Nevertheless, scepticism remains as to whether the proposed measures will help with the gradual process of quitting smoking. Thus, the Committee recommends that the measure under examination be extended to stress the importance at EU level of school-based educational and counselling strategies, to ensure that every child or young person is correctly, fully and regularly informed of the realities of smoking and its harmful effects, and of the carcinogenic effects of exposure to environmental tobacco smoke (ETS) <sup>(3)</sup>.

1.4 The Committee recognises that a considerable number of jobs will be at risk EU-wide in all sectors along the value chain of agriculture, production, packaging and retail of tobacco and related products. The EESC calls for the necessary attention to be paid to preventing these labour market risks and strongly recommends that all available forms of transitional and restructuring measures be used, in particular training schemes for workers together with scientific, technical and innovation support enabling enterprises and farms to move towards new kinds of products, in order to maintain jobs. It should be noted

<sup>(1)</sup> Article 114 TFEU reads as follows:

"1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."

<sup>(2)</sup> See case C-491/01 *The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd*.

<sup>(3)</sup> OJ C 128, 18.5.2010, pp. 89-93.



that tobacco cultivation contributes to rural employment. The cohesion and structural funds, regional funds and funds for research and innovation should be used effectively in Member States impacted most by this possible restructuring, particularly in the current context of economic crisis.

1.5 There is a risk that tax revenues will fall sharply, not only because of an increase in illicit trade, but also due to falling sales and prices. About EUR 100 billion in tobacco taxes are currently collected in the European Union.

1.6 There will be a sharp increase in illicit trade (i.e. smuggling and counterfeiting) by criminal networks, leading to a reduction in sales of legal tobacco, a fall in tax revenues from tobacco products, a threat to consumer safety as a result of the absence of health and quality controls and easier access to tobacco for minors. EUR 10 billion in tax receipts are lost every year in the European Union as a result of illicit trade <sup>(4)</sup> (source: OLAF). Smuggled tobacco currently accounts for 10 % of sales in the EU <sup>(5)</sup>. The EESC can only welcome the recent signature, under the WHO Framework Convention on Tobacco Control, of a protocol to eliminate illicit trade in tobacco products in which stakeholders are asked to implement effective measures to eliminate the illicit production of and trade in tobacco <sup>(6)</sup>.

1.7 The current proposal will significantly alter the conditions for market entry, competition and the necessary functioning of free trade in a legal, albeit exceptionally highly regulated product. The EESC acknowledges concerns raised in this regard by some impact assessments at EU and international level. However, the EESC also calls for consideration to be given to the benefits that can be expected, in terms of both reduced health care costs and improved public health bearing in mind that European citizens are entitled to a high level of protection of their health from the European Union, in accordance with Article 35 of the Charter of Fundamental Rights.

1.8 The grant of wide powers to the Commission to further develop essential aspects of the directive by means of delegated acts will encroach on the sovereignty of the Member States and thus breach the principle of subsidiarity. The EESC cannot accept delegated acts that go beyond what is expressly permitted in Article 290 TFEU. Furthermore, in the context of subsidiarity monitoring, eight national parliaments have given 14 votes against the Commission's proposal on the grounds that it does not comply with the principle of subsidiarity <sup>(7)</sup>.

1.9 The EESC supports the concept of risk reduction and therefore requests the Commission to provide a clear definition

and an appropriate legal framework for "reduced-risk products" for which there is clear scientific evidence of reduced risk in comparison with normal cigarettes. That is particularly relevant for products that contain tobacco rather than chemical nicotine, and that are therefore subject to the directive.

## 2. Introduction

2.1 The EESC is fully aware of the risks that tobacco poses to public health. As mentioned in point 1 of the explanatory memorandum for the proposed directive, tobacco is the most significant cause of premature death in the EU, responsible for almost 700 000 deaths every year. In that context, the proposal focuses on laudable objectives which the EESC fully shares, such as preventing people, particularly the young, from taking up tobacco consumption, given that 70 % of smokers start before the age of 18 and 94 % before the age of 25, reinforcing the need to adopt measures in relation to children and young people <sup>(8)</sup>.

2.2 Against that background, the EESC believes that revision of the directive is absolutely essential and should be carried out without delay. In fact, it is years behind schedule, even though the Charter of Fundamental Rights of the European Union stipulates that a high level of human health protection shall be ensured in the definition and implementation of all policies and actions of the Union. It is clear that the right to health must take priority over all economic considerations. It should also be borne in mind that the level of tobacco consumption has hardly changed in countries that have adopted very strict anti-tobacco laws. That is the case, for example, in Spain, where according to the European Commission's recently-published report on smoke-free environments, the level of consumption has fallen by only two percentage points in the last three years despite the strict laws that have been adopted <sup>(9)</sup>. In addition to the measure under consideration, the EESC is therefore strongly in favour of promoting public education and awareness-raising plans and campaigns concerning the serious health effects of smoking. Those will strengthen the long-term effectiveness of the measures proposed in terms of public health, as scepticism remains as to whether these will help with the necessarily gradual process of quitting smoking.

2.3 However, the draft proposal for revision of the Tobacco Products Directive (2001/37/EC) presented by the European Commission on 19 December 2012 could have serious consequences for jobs, the economy and tax revenues in the European Union, thereby breaching other fundamental EU objectives such as full employment and economic growth (Article 3 TEU), if no accompanying measure is put into place. The tobacco sector employs almost 1.5 million people in the EU. Of those, 400 000 are farmers growing tobacco leaf, while 956 000 jobs depend on retail sales of tobacco <sup>(10)</sup>. In addition, almost EUR 100 billion in taxes on tobacco products

<sup>(4)</sup> [http://europa.eu/rapid/press-release\\_OLAF-11-5\\_en.htm?locale=EN](http://europa.eu/rapid/press-release_OLAF-11-5_en.htm?locale=EN).

<sup>(5)</sup> Nomisma, The European Tobacco Sector. An analysis of the socio-economic footprint and the Commission's own press release of 16 November 2012.

<sup>(6)</sup> Ibid.

<sup>(7)</sup> <http://www.ipex.eu/IPEXL-WEB/dossier/dossier.do?code=COD&year=2012&number=0366&appLng=EN>.

<sup>(8)</sup> OJ C 351, 15.11.2012, pp. 6-11.

<sup>(9)</sup> Report on the implementation of the Council Recommendation of 30 November 2009 on Smoke-free Environments.

<sup>(10)</sup> Nomisma, The European Tobacco Sector. An analysis of the socio-economic footprint.

are collected every year. The sector is also very important in terms of exports, being one of the few sectors that still have a positive balance, both at European level and in many Member States. Total exports of tobacco products from the European Union were some 55 000 tonnes in 2010. The largest amounts came from Bulgaria (13 200), Greece (11 200) and France (8 000). In addition, tobacco is an agricultural product that provides 400 000 jobs in the EU, mainly in deprived areas where there are no alternatives. Statistics from UNITAB and COPA show that 96 % of agricultural holdings devoted to tobacco are family holdings, with an average cultivated area of between 0.5 and 3 hectares <sup>(11)</sup>.

### 3. General observations

3.1 The European Commission's proposal for a directive on tobacco products focuses on six policy areas:

- labelling and packaging;
- ingredients;
- formats;
- traceability and security features;
- cross-border distance sales; and
- smokeless tobacco products and extension of the scope of the products regulated.

Three of these six areas would have a huge impact on employment and tax revenues in the Member States of the European Union. As regards labelling, packaging and ingredients, the proposal requires expanded health warnings that are out of all proportion to those that currently exist, limiting the format, taste and content of tobacco products. For example, all packs will have to include health warnings in the form of text and images covering 75 % of the packaging, to which will be added new information texts on the sides of packs (50 % of each side), in addition to the excise stamp that is required in some Member States, the text on prohibition of sale to minors and the space reserved for the new measures for the monitoring and traceability of tobacco products. In practice, that means a huge reduction in the space available to display duly registered trade marks. There will also be minimum requirements for the height and width of packs, which will mean that some types of pack will disappear. That includes the "casket" format that is very popular in certain countries, including Greece. The most popular type of pack in

Portugal has also disappeared. In addition, this change in packaging, which is not based on scientific evidence, may threaten jobs in the packaging industry, which is of great importance in several European countries, including Germany, Poland, France, the United Kingdom and Austria. It is important to note that the minimum requirements for the height and width of tobacco products were not included in the public consultation or the impact assessment report. There is also a prohibition on the sale of cigarettes with characterising flavours and a new definition of "cigarillo" which conflicts with tax legislation that has been in force in the EU for just over a year <sup>(12)</sup>.

3.2 As a result, and since all packs will have the same format and all products the same flavour, price will be the only differentiating factor between brands, leading to a loss of value for the whole value chain in the sector. With price as the only competitive factor, prices will fall, leading on the one hand to a fall in income for operators in the sector and in tax receipts for governments and, on the other, to destruction of jobs in the sector.

3.3 Allowing differentiation only on the basis of price will mean, for example, that the high-quality tobacco grown in the European Union will no longer be attractive for companies that have factories in the EU, since quality will no longer be a criterion for the purchase of tobacco leaf. Contrary to what the Commission states in its impact assessment, that involves a major risk to the jobs that depend on its cultivation. The current tobacco leaf harvest in the European Union amounts to 250 000 tonnes of tobacco per year. Italy is the largest producer with 89 000 tonnes, followed by Bulgaria with 41 056, Spain with 38 400 and Greece with 24 240. This link in the chain provides employment for 400 000 people, led by Bulgaria with 110 000 people involved in tobacco cultivation, followed by Poland with 75 100 and Italy with 59 300 <sup>(13)</sup>.

3.4 Standardising format and taste could also possibly lead to an increase in tobacco smuggling. If all products end up being almost the same, it is mafias that will benefit, since it will be all too easy for them to design contraband products with the original format and taste to which consumers are accustomed, satisfying this demand through unregulated channels and without paying a cent to Member State tax authorities. In addition, the absence of any quality control of such products will severely compromise consumer safety.

3.5 According to the latest available figures, EUR 10 billion in revenues from taxes on tobacco products are lost every year as a result of illicit trade. Sales of smuggled tobacco currently account for 10 % of the EU total <sup>(14)</sup>. Therefore, the EESC cannot but welcome the signature on 12 November 2012, under the WHO Framework Convention on Tobacco Control, of a protocol on the elimination of the illicit trade in tobacco products. Negotiated by the European Commission on behalf of

<sup>(11)</sup> DIVTOB: Diversification for Tobacco Growing Regions in the Southern European Union. Hohenheim University. Sixth Framework Programme funded European Research and Technological Development.

<sup>(12)</sup> Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, pp. 24-36.

<sup>(13)</sup> See footnote 10.

<sup>(14)</sup> See footnote 5.

the Union and its Member States, it calls on stakeholders to take effective measures to eliminate the manufacturing of and illicit trade in tobacco <sup>(15)</sup>.

3.6 Besides the loss of tax revenues, the increase in illicit trade will lead to a fall in tobacco sales, which will affect the whole value chain but may hit tobacco retailers particularly hard. Almost a million jobs in the European Union depend, directly or indirectly, on retail sale of tobacco, whether through convenience stores, kiosks or specialised stores such as those in France, Italy, Spain and, very recently, Hungary, where networks of licensed tobacco and stamp outlets are regulated and controlled by the states concerned. In Greece alone, 40 000 jobs depend on retail sales of tobacco <sup>(16)</sup>.

3.7 The EESC recognises the threat that may be caused to employment in all sectors along the value chain of production, packaging and retail of tobacco and related products, and agricultural areas where no other alternatives have been developed and where CAP subsidies are no longer available. It should be noted that tobacco cultivation contributes to rural employment. The EESC calls for the requisite attention to be paid to minimising these labour market risks and strongly recommends that here all available forms of transitional and restructuring measures should be used, in particular training schemes for workers together with scientific, technical and innovation support enabling enterprises and farms to move towards new kinds of products, in order to maintain jobs. The cohesion and structural funds, regional funds and funds for research and innovation should be used effectively in Member States impacted most by this possible restructuring, particularly in the current context of economic crisis.

3.8 To sum up, the EESC recognises that the Proposal for a Directive may contain considerable risks. However, the EESC asks that the expected improvements be taken into consideration, as regards both the reduction in health expenses and the improvement of the standard of health, given that European citizens are entitled to expect from the European Union an increased level of protection of human health, in accordance with Article 35 of the Charter of Fundamental Rights.

3.9 The proposal for a directive also includes 16 delegated acts giving the European Commission the power to amend and take decisions on essential aspects of the directive, something which is expressly prohibited by Article 290 of the Treaty on the Functioning of the European Union <sup>(17)</sup>. That leaves the Council, the European Parliament and the national parliaments with almost no power over changes to key aspects of the directive.

#### 4. Specific comments

4.1 The measures set out in the proposal for a directive are highly restrictive and are based on criteria aimed at reducing the "attractiveness" of tobacco in order to achieve their health objectives. Furthermore, the EESC draws attention to the necessity of implementing plans and educational campaigns aimed specifically at young people in Europe. In this respect, it is important to note that the European Commission's own estimate as to the health effects of its measures may appear extremely unambitious (2 %). This progressiveness will nevertheless prevent the causing of severe, and therefore potentially disproportionate, economic harm.

4.1.1 The inclusion of health warnings covering 75 % of both faces of the pack, together with the new information texts covering 50 % of the sides (Article 9), are not based on definitive scientific evidence. While a study by Hammond <sup>(18)</sup> has shown such warnings to be effective, other studies, such as those carried out by the University of Maastricht <sup>(19)</sup> and the US FDA <sup>(20)</sup> have shown the contrary, namely that pictorial health warnings are not effective in reducing the number of smokers. In this context, according to the European Commission's own Eurobarometer <sup>(21)</sup>, nine out of ten smokers admit that large warnings do not encourage them to stop smoking and seven out of ten believe that this type of measure does not help reduce consumption by minors. A recent judgment of the United States Court of Appeals also concluded that there was insufficient evidence in relation to such large pictorial health warnings. It stated that there was "no evidence showing that such warnings have directly caused a material decrease in smoking rates in any of the countries that now require them," adding that "the strength of the evidence is underwhelming" <sup>(22)</sup>.

4.2 Such a disproportionate increase in the size of health warnings will also lead to:

- unilateral expropriation of producers' legitimate intellectual and industrial property rights, since they will not be able to use their registered trade marks. According to the European

<sup>(18)</sup> Hammond D. "Health warning messages on tobacco products: a review." Tobacco Control 2011; 20:327-3. Sambrook Research International, "A review of the science base to support the development of health warnings for tobacco packages", Newport: Sambrook Research International; 2009 (report prepared for the European Commission).

<sup>(19)</sup> <http://www.maastrichtuniversity.nl/web/Main/Sitewide/News1/SmokersWillNotBePutOff1.htm>.

<sup>(20)</sup> Nonnemaker, J., et al., Experimental Study of Graphic Cigarette Warning Labels: Final Results Report Prepared for Center for Tobacco Products, Food and Drug Administration, Contract No. HHSF-223-2009-10135G, Dec. 2010.

<sup>(21)</sup> [http://ec.europa.eu/health/tobacco/docs/eurobaro\\_attitudes\\_towards\\_tobacco\\_2012\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf).

<sup>(22)</sup> RJ Reynolds Tobacco Company v Food & Drug Administration, United States Court of Appeals for the District of Columbia Circuit, August 2012.

<sup>(15)</sup> See footnote 5.

<sup>(16)</sup> See footnote 10.

<sup>(17)</sup> OJ C 115, 9.5.2008, p. 172

Court of Justice<sup>(23)</sup>, manufacturers have the right to use their registered trade marks and to continue to distinguish their products;

- a further restriction of competition in a sector where there are already very few differentiating factors available;
- violation of the basic commercial rights inherent in any legal commercial activity;
- holding back the introduction of new products to the market; and
- the end of research and possible improvement of the quality of the products supplied. Arbitrary restrictions are being placed on bringing new-generation products to market, without allowing for a clear regulatory framework to be put in place under which the ability of such products to reduce the risk to the public could be assessed. That could also hold back the wealth- and job-creation that are linked to innovation and research in relation to these products. In addition, such new, potentially lower-risk products should not be subject to the same restrictions as are normal products.

4.3 The same applies to the restrictions on ingredients requiring the removal of characterising flavours (Article 6), which are not based on scientific evidence such as reduction of the toxicity or addictiveness of those ingredients, but on the subjective criterion of reducing the attractiveness of tobacco and on subjective stereotypes as to the type of tobacco smoked by different age groups or sexes. The same subjective approach appears in the arbitrary prohibition, without any justification, of certain formats, such as slim cigarettes (a prohibition that was not included in either the public consultation or the impact assessment report), short cigarettes and the whole category of menthol cigarettes, the setting of a minimum weight for bags of roll-your-own tobacco and the standardisation of the format of tins of tobacco and, in particular, the invention of a new category of "cigarillo" in breach of Directive 2011/64/EU<sup>(24)</sup>, which came into force on 1 January 2011. The prohibition of slim and menthol cigarettes, which are popular in several European countries, would deny consumers access to such cigarettes, requiring them to resort to the market in smuggled cigarettes in order to obtain them. Furthermore, these tobacco products are primarily consumed by adult smokers, meaning that the argument that this is designed to prevent minors from having access to tobacco does not apply in this specific case. In the particular case of menthol, for example, it should be pointed out that this type of tobacco is essentially consumed by adults and that, furthermore, it has not been prohibited by countries such as the United States and Canada that have highly developed anti-tobacco legislation containing very

specific provisions on the prohibition of certain ingredients. The EESC therefore proposes that the prohibition on menthol be removed from the proposal for a directive.

4.3.1 In conclusion, we fully agree with the Commission's proposal to prohibit new so-called "candy-flavoured cigarettes" with flavours such as chewing gum, pina colada or mojito, which may essentially be aimed at young consumers.

4.3.2 Excessive restrictions on ingredients would lead to standardisation of taste, making it impossible for competitors to differentiate themselves and limiting investment and the possibility of launching new products, which will harm consumers by denying them choice.

4.4 The EESC requests that the Commission provide a clear definition and an appropriate legal framework for "reduced-risk products" for which there is clear scientific evidence of reduced risk in comparison with normal cigarettes. The concept of reduced risk relates to products that can take the place of normal cigarettes but that involve much less risk to health, rather than to smoking cessation products. Those products that contain tobacco rather than chemical nicotine, and that are therefore subject to the directive, should be clearly defined and regulated so as to make it possible to inform consumers of their characteristics.

4.5 The European Commission's proposal for a directive also includes measures aimed at reducing illicit trade in tobacco. For example, in Article 14 of the proposal, the European Commission sets out a system of monitoring and tracing, as well as various additional security measures, so that only products that comply with the provisions of the directive will be sold in the European Union. These measures will involve a disproportionate economic and administrative burden that many small and medium-sized enterprises will be unable to bear and, far from reducing illicit trade, will impose a greater administrative burden on Member States when carrying out inspections. Nor will the system reduce smuggling and illicit trade, which will, on the contrary, be encouraged by the other provisions of the proposal for a directive. The EESC therefore considers that the provisions of Article 14 of the proposal for a directive should be exactly the same as the monitoring and traceability clauses included in the Protocol on Illicit Trade agreed at the end of last year by the WHO Conference of the Parties<sup>(25)</sup>.

4.6 Finally, the directive will allow the European Commission to use a sheaf of delegated acts to adjust and amend essential aspects, such as the level of additives and the wording, size and location of health warnings. That leaves states with almost no power over changes to the directive, involving an extraordinary degree of interventionism which the European Union has rarely seen before and which breaches the principles of subsidiarity and proportionality, as the national parliaments of eight Member States (Italy, the Czech Republic, Greece,

<sup>(23)</sup> Judgment of the CJEU of 17 October 1990 in Case C-10/89.

<sup>(24)</sup> Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, pp. 24-36.

<sup>(25)</sup> [http://apps.who.int/gb/fctc/PDF/cop5/FCTC\\_COP5\(1\)-en.pdf](http://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5(1)-en.pdf).



Bulgaria, Denmark, Portugal, Romania and Sweden) are already claiming <sup>(26)</sup>. The Italian parliament has not only indicated that the proposal breaches those principles, but has also emphasised that some of the types of cigarette that are to be prohibited, such as slim and low-tar cigarettes, may be useful tools of a policy whose aim is for smokers to cut back or quit <sup>(27)</sup>.

4.6.1 For example, Articles 8, 9 and 11 of the proposal for a directive allow the European Commission to amend the wording, design, layout, format and location of health warnings using delegated acts. Similarly, Article 6 allows the Commission to decide on the content and maximum levels of additives by way of delegated acts.

4.6.2 In relation to **cigars, cigarillos and pipe tobacco**, the proposal for a directive also provides for the automatic power

to withdraw certain exemptions set out in the text if there is a "**substantial change of circumstances**", which is linked to an increase in sales volume of at least 10 % in at least 10 Member States, or of 5 % among smokers under the age of 25. The Commission does not realise that the market for these products in 10 of the 27 current Member States is extremely small and that a 10 % change could easily occur, meaning that this provision makes no sense and creates major legal uncertainty in this sub-sector.

4.7 Although Article 290 of the Treaty on the Functioning of the European Union provides for the delegation of powers by way of delegated acts, such acts must comply with a series of requirements. Delegated acts can only be used in relation to non-essential elements of a legislative act. That is not the case with this proposal.

Brussels, 11 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(26)</sup> <http://www.ipex.eu/IPEXL-WEB/dossier/dossier.do?code=COD&year=2012&number=0366&appLng=EN>.

<sup>(27)</sup> Opinion of the Social Affairs Committee of the Italian parliament on European Commission document COM(2012) 788 final.



## APPENDIX

**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:

**Counter-opinion**

Replace the entire text of the opinion as follows:

**1. Conclusions**

1.1 The legal basis for the Commission's proposed directive is Article 114 of the Treaty on the Functioning of the European Union (TFEU) <sup>(1)</sup>. The objective of the proposal is to approximate the laws and other regulatory provisions applicable to the manufacture, presentation and sale of tobacco products in order to ensure the proper functioning of the internal market. Point 3.9.1 of the explanatory memorandum notes that this choice of legal basis was confirmed by the Court of Justice of the European Union in relation to Directive 2001/37/EC <sup>(2)</sup> and that the same legal basis is therefore appropriate for this proposal. The 2001 directive and this proposed revision therefore both seek to ensure the proper functioning of the internal market with a high level of public health protection in relation to the risks of tobacco.

1.2 The European Economic and Social Committee (EESC) considers that the aim of improving the functioning of the internal market warrants its strong support: it also gives the Member States an additional incentive for taking the steps that are necessary and desirable to protect human health and allows the Member States to adopt stricter measures than those contained in the proposal.

1.3 The EESC, in line with its many previous opinions on health and related topics, fully agrees with the European Commission that the right to health must take priority over all economic considerations. The EESC is therefore strongly in favour of promoting public education and awareness-raising plans and campaigns concerning the serious health effects of smoking. These should run alongside the various measures proposed here to reduce incentives for young people to start smoking and to assist those already addicted to nicotine to stop. The Committee recommends that this point be extended to stress the importance at EU level of school-based educational and counselling strategies, to ensure that every child and young person is correctly, fully and regularly informed of the realities of smoking and its harmful effects, the addictive and other health-related problems associated with nicotine, and the carcinogenic and other health effects of exposure to direct and environmental tobacco smoke (ETS) <sup>(3)</sup>

1.4 The EESC also recognises that specific jobs may be at risk in agricultural areas where no alternative forms of employment have been developed and where CAP production-related tobacco subsidies are no longer available. Here, as a matter of urgency, transitional aid should be made available, together with scientific and technical support to develop alternative, equally profitable, more sustainable, more socially acceptable and less harmful crops, and, wherever possible, better quality jobs. The same applies to any other jobs at risk in the supply chain as a direct consequence of this proposal; if this is in the best interests of public health, then public support for better quality jobs is fully justified and should be encouraged.

1.5 In all cases the main benefit must, however, be taken into account – preventing the deaths and tobacco-related illnesses of managers, workers and consumers alike who already smoke and of potential smokers at all ages and from all walks of life who will, from now on, if these measures are adopted, be under less direct commercial pressure to start smoking. According to the Commission's impact assessment there will be a net benefit to the EU economy of around EUR 4 million, healthcare savings will be achieved of EUR 506 million and 16.8 million life-years will be saved <sup>(4)</sup>. Through appropriate measures new jobs should be created by re-allocating funds within the EU and by making better use of tax revenues at national level.

1.6 The EESC notes that around EUR 100 billion in tobacco taxes are currently collected in the European Union. Taxing tobacco products is the most effective and economical way of reducing tobacco consumption, especially among young people and low-income groups (i.e., the most vulnerable members of our society) <sup>(5)</sup>. Studies have shown that the

<sup>(1)</sup> Article 114 TFEU reads as follows:

"1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."

<sup>(2)</sup> See case C-491/01 *The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd*.

<sup>(3)</sup> OJ C 128, 18.5.2010, pp. 89-93.

<sup>(4)</sup> Impact assessment ([http://ec.europa.eu/health/tobacco/docs/com\\_2012\\_788\\_ia\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf)).

<sup>(5)</sup> Stefan Callan, *Smoke Free Partnership, Making Tobacco Tax Trendy Toolkit*, 2012, p. 5., [http://www.smokefreepartnership.eu/sites/sfp.ttp.eu/files/LV%20-%20Tax%20Toolkit\\_4.pdf](http://www.smokefreepartnership.eu/sites/sfp.ttp.eu/files/LV%20-%20Tax%20Toolkit_4.pdf).

price of tobacco products is the third most common reason given by smokers for giving up. <sup>(6)</sup> The money saved by no longer spending on tobacco products can be used to buy other goods on which tax is also paid. It should also be noted that the taxes collected now pay for the health care of individuals who started smoking 50 years ago; those starting smoking today will need that same care in 50 years' time. Current experience suggests that Member States' governments are fully aware of this and have been able to continue to raise the tax take despite falling tobacco usage and sales across Europe. There is no reason why this proposal should change this.

1.7 In order to prevent further increases in illicit trade (i.e. smuggling, counterfeiting, bootlegging and illegal manufacturing) by criminal networks, which represents the single biggest threat to both employment and the collection of taxes in the EU, the EESC calls for all necessary measures to be taken to ensure that relevant legislation is applied rapidly and effectively across the Member States. Further proposals should be brought forward, in agreement with the tobacco industry, for other measures likely to limit counterfeiting and smuggling and to make identification easier, for instance by the incorporation of hard-to-reproduce identifying marks or electronic tagging in packaging. The EESC recognises that it is relatively easy, with modern technology, to counterfeit almost any goods or packaging; devoting additional space to appropriate health warnings is unlikely to have any significant impact either way.

1.8 In addition to wide powers granted to the Commission to further develop essential aspects of the directive by means of delegated acts, it must be ensured that decision-making is conducted in an open manner and in keeping with the interests of the Member States. The EESC emphasises that binding actions must comply with Article 290 TFEU.

1.9 The EESC strongly supports the concept of risk reduction and therefore requests that the Commission provide a clear definition and an appropriate legal framework for "reduced-risk products". This comment is particularly relevant to products that contain tobacco, but with reduced nicotine, or contain nicotine, but no tobacco, that are subject to the directive. The EESC recognises that some of these may represent a way forward, under careful controls still be developed, to reduce the long-term negative effects of tobacco smoking as a consequence of addiction to nicotine.

## 2. Introduction

2.1 The EESC is fully aware of the risks that tobacco in all its forms poses to public health. It is the most significant cause of premature death in the EU, responsible for almost 700 000 deaths every year. The proposal therefore focuses on preventing people, particularly the young and other vulnerable groups, from taking up tobacco consumption. The proposal notes that 70 % of smokers start before the age of 18 and 94 % before the age of 25, reinforcing the need to adopt measures in relation to children and young people <sup>(7)</sup>

2.2 Against this background, the EESC believes that the revision of the directive is absolutely essential and should be carried out without delay. It notes that in some countries the level of tobacco consumption remains stubbornly high, even where strict anti-tobacco laws have been adopted. It is also clear that existing controls have brought significant reductions in most Member States. In Spain, a reduction of 2 % has been reported over a short period. The current proposal hopes to replicate similar reductions across the whole of Europe. The EESC also strongly favours promoting public education and awareness-raising plans and campaigns highlighting the serious health effects of smoking.

2.3 The EESC notes that the proposal has raised concerns for jobs, taxes and the economy as a whole in the European Union. The tobacco industry has indicated that it employs up to 1.5 million people in the EU, of whom around 400 000 are involved in growing tobacco leaf. Figures from the Commission and elsewhere suggest that these include those who are involved in the supply chain for tobacco products seasonally or on a temporary or part-time basis. The number of people directly and solely employed in tobacco farming, for instance, is believed to be fewer than 100 000. Production by these farmers accounts for around one quarter of the tobacco used for production and sales in the EU, the balance being imported, primarily from the US. Other jobs in packaging, marketing, sales, legal services, research and distribution should not be affected. It is unclear, therefore, why the proposed changes to the packaging of the finished products should have any major impact on current levels of employment. It is even less clear how the proposed measures can be described as being both 'unproven and unlikely to succeed' - as well as 'potentially catastrophic' - for the tobacco industry. The EESC believes that the reverse is true in both cases; that these measures will have a useful, valuable and proportionate effect on human health with only a small effect on the overall growth and profitability of the industry. Indeed any losses of new sales to young people should be more than compensated for by the reduction in the much greater illicit sales which benefit no-one except the criminal gangs involved.

<sup>(6)</sup> European Commission, Attitudes of Europeans Towards Tobacco, [http://ec.europa.eu/health/tobacco/docs/eurobaro\\_attitudes\\_towards\\_tobacco\\_2012\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf), p. 84.

<sup>(7)</sup> OJ C 351, 15.11.2012, pp. 6-11.

2.4 Tobacco growing in the EU does, however, provide jobs, mainly in deprived areas where few alternatives have so far been developed. Now that CAP subsidies for the production of tobacco leaf are no longer available, transitional technical and financial support is urgently required to support a change to less harmful and longer-term, more sustainable sources of income. Similar comments apply to other jobs in the supply chain; if these are lost in the public interest, public support is clearly appropriate.

2.5 Nearly EUR 100 billion in taxes on tobacco products are collected every year. The EESC notes that, whilst this helps offset the health costs of those who started smoking 50 or more years ago, the same level of taxes will be required in 50 years' time to care of those starting to purchase and consume tobacco products today. Tax rises will therefore be essential to balance any drop in sales. So far, the evidence suggests that Member States' governments are aware of this and can successfully maintain or even raise their overall tax take despite the decline in sales over recent years. In the UK, for instance, according to a recently published 'All Party Parliamentary Group Report on Smoking and Health' (2013) <sup>(8)</sup>, with steadily increasing prices between 1992 and 2011, and with tax set at or above 75 % of the overall retail price, cigarette sales declined by 51 % whilst tax revenue for the government increased by 44 %. Adult smoking dropped from 27 % to 20 % over a similar period.

2.6 Although the bulk of tobacco products produced in the EU are delivered to customers in the EU, a certain quantity is exported. Industry figures showed total exports of tobacco products of around 55 000 tonnes in 2010, mostly to countries in Africa and Asia where life expectancy is, sadly, at present too low for any specific negative impacts on health to be visible. In due course, and as other problems are solved and life expectancy increases as intended, the impact of nicotine addiction and tobacco usage, as with other exported illnesses, will become more evident.

2.7 The EESC specifically notes, that, in contrast to the above, in the more developed countries of the EU, as life expectancy and working life continue to increase, the consequences of tobacco smoking will become increasingly evident in the workplace and for society as a whole, and therefore become a growing and more visible problem and responsibility for employers and employer and employee organisations alike. In the current recession, the early (and avoidable) deaths of salary and wage-earners and the loss of their incomes or pensions will add to the problems of families already struggling for economic survival.

2.8 The EESC notes that although the induction period for cancers related to smoking remains constant, overall life expectancy for non-smokers continues to increase. The loss of life expectancy due to the use of tobacco is therefore increasing, from 2-3 years at the start of the 20th century to 20-30 years for those starting to smoke tobacco today or during the period covered by this proposal.

### **3. General observations**

3.1 The European Commission's proposal for a directive on tobacco products focuses on a series of measures to ensure the proper functioning of the internal market, including actions to reduce illicit trade, and to achieve a high level of public health protection in relation to the risks of smoking tobacco. These are as follows:

- labelling and packaging;
- ingredients;
- traceability and security features;
- cross-border distance sales; and
- smokeless tobacco products and extension of the scope of the products regulated.

3.2 As regards labelling, packaging and ingredients, the proposal requires expanded health warnings in view of the serious health risks posed by tobacco use.

3.3 The proposal allows manufacturers to retain flavourings essential to their current brands but limits the use of new non-tobacco related additives intended to increase markets, in particular amongst young people. All packs will have to include health warnings in the form of text and images covering 75 % of the packaging, to which will be added new information texts on the sides of packs (50 % of each side), in addition to the excise stamp that is required in some Member States, the text on prohibition of sale to minors and the space reserved for the new measures for the monitoring and traceability of tobacco products. This means a reduction in the space available to display duly registered trade-marks and other marketing-related images. Member States may introduce completely plain packaging if they wish, but this is not required under this proposal. There will also be minimum requirements on the height and width of packs, which will

<sup>(8)</sup> <http://www.ash.org.uk/APPGillicit2013>.

mean that some types of pack, in particular those designed to attract young persons, will disappear. Similar rulings were introduced in the US in 2009 to reduce the targeting of children and young people. The EESC supports all these measures.

3.4 This will require changes in packaging designs but it is hard to see why this should have any significant impact on packaging jobs in countries such as Germany, Poland, France, the Czech Republic and Austria. Base sales of finished tobacco products in all forms are expected to continue broadly as now to a truly captive market of around 150 000 000 nicotine-addicted existing users across the EU. The potential for significant public health gains – both economically and, above all, in terms of reducing human suffering – should, however, be emphasised, together with the fact that ex-smokers will spend money in other areas and thus generate opportunities for new jobs. It is estimated that the annual burden of tobacco consumption to the EU is EUR 517 billion<sup>(9)</sup>. At Member State level, the total costs are estimated at around 4.6 % of EU GDP<sup>(10)</sup>. At present, the EU loses EUR 25.3 billion in healthcare costs for diseases associated with tobacco consumption and EUR 8.3 billion in productivity losses<sup>(11)</sup>. This almost matches the tobacco industry's revenue throughout the supply chain (excluding taxes), which amounts to EUR 35 billion.

3.5 The EESC notes that the costs attributed directly to diseases resulting from the use of nicotine and tobacco-related products are the current best estimates of the real costs to Member States. These are significantly lower than the theoretical 'value of a human life' (EUR 1 million for every life lost or curtailed) that the Commission has used in previous impact assessments to justify legislation and to balance the anticipated costs for business and others. If this much larger number were used here, this would increase the perceived incentives to adopt this proposal to EUR 700 billion, which would dwarf all other considerations.

3.6 It should also be noted that smoking and related habits bring no actual social or economic benefits to their users other than to relieve the consequences of their addiction to nicotine. Giving up is indeed hard and slow, as a result of this addiction. Sadly, even the awareness that almost a half of all users ('customers', 'citizens' and 'vulnerable individuals') will eventually die prematurely as a result of the habit is insufficient in itself to overcome this addiction; hence the need to reduce all incentives to starting smoking.

3.7 The measures introduced here are not intended to, and indeed are highly unlikely to, impact the behaviour of existing adult smokers but should, according to experiences from around the world, further reduce incentives for young people to start smoking. Above all, reducing the number of smokers will significantly reduce healthcare costs, and over time will save many lives and lessen human suffering.

3.8 The EESC notes that this proposal does not go as far as introducing fully standardised packaging, with standardised colours and fonts, as in Australia. Individual brands will remain, distinguished by their manufacturers' names and specific tobacco flavourings. The product quality requirement will continue to be relevant since the consumer will still be informed about the manufacturer of the product being purchased.

3.9 There is little compelling evidence that these changes to packaging rules will lead to an increase in tobacco counterfeiting or smuggling. On the contrary, smokers' use of illicit tobacco is closely related to price and availability<sup>(12)</sup>. According to the latest figures from the industry, EUR 10 billion in revenues from taxes on tobacco products are lost every year as a result of such illicit trading. Sales of smuggled tobacco currently account for 10 % of the EU total<sup>(13)</sup>. Supplies from outside the EU, primarily from Russia and China are readily available. Demand is high in countries suffering from economic constraints and/or high taxation on tobacco products. Illicit sales put jobs at risk in the EU, reduce the tax take for governments and reduce the profitability of legitimate sales. As a result, every possible effort should be made to limit tobacco smuggling, by improving security, implementing surveillance and prevention measures and subjecting tobacco products to more stringent quality controls, to give just a few examples. The use of embossed identifying marks or electronic tagging should be considered along with other measures already agreed with the tobacco industry.

<sup>(9)</sup> Impact assessment, p. 15.

<sup>(10)</sup> "A study on liability and the health costs of smoking" carried out by the European Commission estimates the total costs for 2009 (in terms of healthcare, production losses and human lives) at EUR 544 billion. ([http://ec.europa.eu/health/tobacco/docs/tobacco\\_liability\\_final\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/tobacco_liability_final_en.pdf), p. 2).

<sup>(11)</sup> Commission impact assessment.

<sup>(12)</sup> Moodie C, Hastings G, Joossens L. Young adult smokers' perceptions of illicit tobacco and the possible impact of plain packaging on illicit tobacco purchasing behaviour. Eur J Public health, first published online on 26 March 2011. DOI:10.1093/eurpub/ckr038. in Claims that Standardised Packaging Would Increase Illicit Trade are Untrue, Smoke Free Partnership, 10 September 2012, <http://www.smokefreepartnership.eu/response-to-tobacco-retailers>.

<sup>(13)</sup> See footnote 5.

3.10 Whatever the costs are to implement these proposals, it must be borne in mind that the potential global benefits of improved public health if tobacco consumption is reduced are much higher. Studies have shown that governments and employers who have taken action to ban workplace smoking noted immediate positive effects (higher productivity, lower absenteeism, less expenditure for the upkeep and maintenance of facilities and lower costs for health care and health insurance).<sup>(14)</sup>

3.11 The proposal also includes 16 delegated acts giving the European Commission the power to amend and take decisions on specific aspects of the directive, in accordance with Article 290 of the Treaty on the Functioning of the European Union<sup>(15)</sup>.

#### **4. Specific comments**

4.1 The directive should continue to focus on achieving both the internal market and public health goals which it sets out, implementing both long-term and short-term measures. In this respect, it is important to note that the European Commission's own estimate as to the health effects of its measures is a 2 % reduction in the number of those currently or likely to smoke. The directive is intended primarily to restrict growth rather than to reduce the levels of current usage. Although this percentage may seem low, there is a clearly positive impact in a number of different areas.

4.2 People of working age who stop smoking (as well as potential smokers who avoid starting) live longer and consequently have a longer working life. It is estimated that at present smokers die 14 years earlier than people who have never smoked, as a result of smoking-related disease or attendant complications. As overall life expectancy increases, especially for non-smokers, so will this difference. A 2 % reduction in tobacco consumption equates to 2.4 million smokers stopping and 16.8 million life-years gained. This would represent a gain for society of EUR 10.3 billion annually and would reduce healthcare expenditure by EUR 506 million per year. The benefits accruing from higher productivity as a result of less absenteeism, premature retirement and similar occurrences would total EUR 165 million per year<sup>(16)</sup>.

4.3 The inclusion of health warnings covering 75 % of both faces of the pack, together with the new information texts covering 50 % of the sides (Article 9), are part of a package of measures that help cut overall numbers of smokers. Tobacco packaging must be designed in such a way that the information it provides about product content is not misleading. It must therefore include a clear indication of the health risks involved, not least among them being premature death. Warnings should be shown at points of sale. Advertising at points of sale should, of course, be banned.

4.4 The restrictions on ingredients requiring the removal of deliberately introduced characterising flavours (Article 6), and the visual presentation of packs, are particularly important. One of the objective criteria, such as making tobacco less attractive, is particularly relevant to some age groups or a certain sex, specifically young women and girls, who are now one of the fastest growing markets in the EU and therefore under the most intense advertising pressure to take up the smoking habit.

4.5 The EESC therefore fully agrees with the Commission's proposal to prohibit new so-called "candy-flavoured cigarettes" with flavours such as "chewing gum", "pina colada" or "mojito", aimed specifically at young and mostly female potential consumers. "Slim" packages are also targeted specifically at young women, in an attempt to link body shape, weight and glamour to a habit that will eventually bring about the early death of half of them. Given that the long-term, inevitable dangers of nicotine-induced tobacco smoking are now understood and accepted by all concerned, the EESC finds it impossible to imagine how these marketing strategies could have been developed, let alone put in place, by responsible manufacturers.

4.6 The EESC requests that the Commission provide a clear definition and appropriate legal framework for "reduced-risk products" for which there is clear scientific evidence of reduced risk in comparison with normal cigarettes. The concept of reduced risk relates to products that can take the place of normal cigarettes but that involve much less risk to health, rather than to smoking cessation products. Those products that contain tobacco with reduced nicotine, or, better, nicotine with no tobacco ("electronic cigarettes") and that are subject to the directive should be clearly defined and regulated so as to make it possible to inform consumers of their long-term risks or benefits compared with conventional tobacco products.

<sup>(14)</sup> Carin Hakansta, International Labour Organisation, Working Paper "Workplace smoking: A Review of National and Local Practical and Regulatory Measures", March 2004, p. 6.  
[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/publication/wcms\\_108424.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_108424.pdf).

<sup>(15)</sup> OJ C 115, 9.5.2008, p. 172.

<sup>(16)</sup> Commission Staff Working Document Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products: [http://ec.europa.eu/health/tobacco/docs/com\\_2012\\_788\\_ia\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf), pp.116.



4.7 The proposal also includes measures aimed at reducing illicit trade in tobacco. For example, in Article 14 of the proposal, the European Commission sets out a system of monitoring and tracing, as well as various additional security measures, so that only products that comply with the provisions of the directive will be sold in the European Union. These measures will involve a an economic and administrative burden that small and medium-sized enterprises (as opposed to the 4-5 major multinational companies that dominate the global trade in tobacco and nicotine related products) may find difficult to bear and will impose a greater administrative burden on Member States when carrying out inspections. Hopefully the system will reduce smuggling and illicit trade. The EESC therefore considers that the provisions of Article 14 of the proposal should be exactly the same as the monitoring and traceability clauses included in the Protocol on Illicit Trade agreed at the end of last year by the WHO Conference of the Parties <sup>(17)</sup>.

4.8 In relation to cigars, cigarillos and pipe tobacco, the proposal provides for the automatic power to withdraw certain exemptions set out in the text if there is a "substantial change of circumstances", which is linked to an increase in sales volume of at least 10 % in at least 10 Member States, or of 5 % among smokers under the age of 25. The market for these products in 10 of the 27 current Member States is, however, extremely small and a 10 % change could easily occur without significant impact on employment or tax revenues.

4.9 The EESC notes that Article 290 of the Treaty on the Functioning of the European Union provides for the delegation of powers by means of delegated acts which comply with a series of requirements. Delegated acts may only be used in relation to non-essential elements of a legislative act.

#### Voting

For:	89
Against:	162
Abstentions:	17

#### New point 1.4

New text:

Underscoring the importance of a healthy population and the manifold advantages of this, the EESC proposes that the Member States should encourage the extension of smoke-free environments where people can find moral and medical support, intended in particular for young people, teaching establishments, businesses, etc. Similarly, support should be given to setting up and maintaining various forms of support and a range of cooperation networks, putting the emphasis on innovative and educational features.

#### Voting

For:	69
Against:	157
Abstentions:	29

#### Point 1.5

Amend as follows:

There is a risk that tax revenues will fall sharply, not only because of an increase in illicit trade, but also due to falling sales and prices. About EUR 100 billion in tobacco taxes are currently collected in the European Union. Taxing tobacco products is the most effective and economical way of reducing tobacco consumption, especially among young people and low-income groups <sup>(18)</sup>. Studies have shown that the price of tobacco products is the third most common reason given by smokers for quitting <sup>(19)</sup>. The point should also be made that the money saved by no longer spending it on tobacco products is used to buy other goods on which tax is also paid.

#### Voting

For:	69
Against:	157
Abstentions:	29

<sup>(17)</sup> [http://apps.who.int/gb/ctc/PDF/cop5/FTC\\_COP5\(1\)-en.pdf](http://apps.who.int/gb/ctc/PDF/cop5/FTC_COP5(1)-en.pdf).

<sup>(18)</sup> Stefan Callan, Smoke Free Partnership, Making Tobacco Tax Trendy Toolkit, 2012, p. 5., [http://www.smokefreepartnership.eu/sites/sfp.eu/files/LV%20-%20Tax%20Toolkit\\_4.pdf](http://www.smokefreepartnership.eu/sites/sfp.eu/files/LV%20-%20Tax%20Toolkit_4.pdf).

<sup>(19)</sup> European Commission, Attitudes of Europeans Towards Tobacco, [http://ec.europa.eu/health/tobacco/docs/eurobaro\\_attitudes\\_towards\\_tobacco\\_2012\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf), p. 84.

**Point 1.8**

Amend as follows:

~~In addition to the grant of wide powers granted to the Commission to further develop essential aspects of the directive by means of delegated acts, it must be ensured that decision-making is conducted in an open manner and in keeping with the interests will encroach on the sovereignty of the Member States and thus breach the principle of subsidiarity. The EESC cannot accept delegated acts that go beyond what is expressly permitted in~~ emphasises that binding actions must comply with Article 290 TFEU. Furthermore, in the context of subsidiarity monitoring, eight national parliaments have given 14 votes against the Commission's proposal on the grounds that it does not comply with the principle of subsidiarity<sup>(20)</sup>.

**Voting**

For: 69  
Against: 157  
Abstentions: 29

**Point 1.9**

Amend as follows:

~~The EESC supports the concept of risk reduction and therefore requests the Commission to provide a clear definition and an appropriate legal framework for "reduced-risk products" for which there is clear scientific evidence of reduced risk in comparison with normal cigarettes; this comment~~ That is particularly relevant for products that contain tobacco rather than chemical nicotine, and that are therefore subject to the directive.

**Voting**

For: 69  
Against: 157  
Abstentions: 29

**Point 3.1**

Amend as follows:

(...)

Three of these six areas would have ~~an huge~~ an impact on employment and tax revenues in the Member States of the European Union. As regards labelling, packaging and ingredients, the proposal requires expanded, more highly visible health warnings ~~that are out of all proportion to those that currently exist~~, limiting the format, taste and content of tobacco products. For example, all packs will have to include health warnings in the form of text and images covering 75 % of the packaging, to which will be added new information texts on the sides of packs (50 % of each side), in addition to the excise stamp that is required in some Member States, the text on prohibition of sale to minors and the space reserved for the new measures for the monitoring and traceability of tobacco products. ~~In practice, that means a huge reduction in the space available to display duly registered trade marks. There will also be minimum requirements for the height and width of packs, which will mean that some types of pack will disappear. That includes the "casket" format that is very popular in certain countries, including Greece. The most popular type of pack in Portugal has also disappeared. In addition, this change in packaging, which is not based on scientific evidence, may threaten jobs in the packaging industry, which is of great importance in several European countries, including Germany, Poland, France, the United Kingdom and Austria. It is important to note that the minimum requirements for the height and width of tobacco products were not included in the public consultation or the impact assessment report. There is also a prohibition on the sale of cigarettes with characterising flavours and a new definition of "cigarillo" which conflicts with tax legislation that has been in force in the EU for just over a year<sup>(21)</sup>. The new visual presentation of packets, together with the associated minimum length and width requirements, will have positive effects, especially in terms of not tempting the at risk group represented by children and young people. Studies have decisively demonstrated that packaging is a marketing tool to sell goods. At present, tobacco product packaging is often designed strategically to attract a specific audience: studies show for example that in Latvia, women think that by choosing a product with light-coloured packaging they are choosing one with lower~~

<sup>(20)</sup> [http://www.ipex.eu/IPEX1\\_WEB/dossier/dossier.do?code=COD&year=2012&number=0366&apLng=EN](http://www.ipex.eu/IPEX1_WEB/dossier/dossier.do?code=COD&year=2012&number=0366&apLng=EN).

<sup>(21)</sup> Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, pp. 24-36.

tar content and which is therefore less damaging to health. Child audiences consider that colourful packaging means that the product has no harmful health effects <sup>(22)</sup>. It follows that a standardised presentation, preferably of simplified appearance, will not mislead consumers about the product's real effects – on the contrary, studies show that plain packs arouse feelings such as "boring and smelly, disgusting, old" etc <sup>(23)</sup>.

#### Voting

For: 69  
Against: 157  
Abstentions: 29

#### Point 3.2

Amend as follows:

As a result, and since all packs will have the same format and all products the same flavour, price will be the only differentiating factor between brands, leading to a loss of value for the whole value chain in the sector. With price as the only competitive factor, prices will fall, leading on the one hand to a fall in income for operators in the sector and in tax receipts for governments and, on the other, to destruction of jobs in the sector although the Member States will be able to apply higher excise duties and increase their revenue.

#### Voting

For: 69  
Against: 157  
Abstentions: 29

#### New point 3.3

New text:

Although tobacco packaging will be standardised, thus reducing the distinguishing features of the different manufacturers, a designated area on the packaging will indicate the name of the company and the product, using a standardised size, colour and font. The quality criterion of the product will retain its relevance since the consumer will still be informed about the manufacturer of the product being purchased.

#### Voting

For: 69  
Against: 157  
Abstentions: 29

#### Point 3.3

Amend as follows:

Allowing differentiation only on the basis of price will mean, for example, that the high quality tobacco grown in the European Union will no longer be attractive for companies that have factories in the EU, since quality will no longer be a criterion for the purchase of tobacco leaf. Contrary to what the Commission states in its impact assessment, that involves a major risk to the jobs that depend on its cultivation. The current tobacco leaf harvest in the European Union amounts to 250 000 tonnes of tobacco per year. Italy is the largest producer with 89 000 tonnes, followed by Bulgaria with 41 056, Spain with 38 400 and Greece with 24 240. This link in the chain provides employment for 400 000 people, led by Bulgaria with 110 000 people involved in tobacco cultivation, followed by Poland with 75 100 and Italy with 59 300 <sup>(24)</sup>.

#### Voting

For: 69  
Against: 157  
Abstentions: 29

<sup>(22)</sup> <http://www.cancercampaigns.org.uk/ourcampaigns/theanswerisplain/moreinformation/>.

<sup>(23)</sup> The Packaging of Tobacco Products, March 2012, The Centre for Tobacco Control Research Core funded by Cancer Research UK, [http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@new/@pre/documents/generalcontent/cr\\_086687.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@new/@pre/documents/generalcontent/cr_086687.pdf), pp.4

<sup>(24)</sup> See footnote 11.

**Point 3.7**

Amend as follows:

*The proposal for a directive also includes 16 delegated acts giving the European Commission the power to amend and take decisions on ~~essential-specific~~ aspects of the directive, ~~something which is expressly prohibited by in accordance with Article 290 of the Treaty on the Functioning of the European Union~~ <sup>(25)</sup>. ~~That leaves the Council, the European Parliament and the national parliaments with almost no power over changes to key aspects of the directive.~~*

**Voting**

For: 69  
Against: 157  
Abstentions: 29

**New point 4.1.1**

New text:

*In countries hit by the economic crisis of recent years, such as Latvia, the health and economic costs arising from tobacco consumption are strikingly high: deaths related to tobacco consumption stand at 25 % for men and 4 % for women, while in the same country, 12 % of illnesses are linked to the consequences of consumption. The approximate costs of their treatment have reached EUR 29 million, or 3.27 % of the total healthcare budget. Production losses related to absenteeism due to smoking-related problems amount to 29.5 %, which amounts, still in Latvia, to a loss of EUR 12 million. Moreover, premature mortality due to smoking entails a high cost, amounting to around EUR 2.5 billion, or 9.38 % of GDP* <sup>(26)</sup>.

**Voting**

For: 69  
Against: 157  
Abstentions: 29

**Point 4.2**

Amend as follows:

*~~Such a disproportionate increase in the size of~~ These health warnings will ~~also lead to~~ have the following effects:*

- ~~— unilateral expropriation~~ preservation of producers' legitimate intellectual and industrial property rights, since they will not be able to use their registered trade marks. ~~According to the~~ The European Court of Justice <sup>(27)</sup> considers that these rights can be limited as they are not absolute, manufacturers have the right to use their registered trade marks and to continue to distinguish their products;*
- ~~— a further restriction of competition in a sector where there are already very few differentiating factors available;~~*
- ~~— recognition that public health and the related advantages are a fundamental value, which has priority over trade in tobacco~~ violation of the basic commercial rights inherent in any legal commercial activity;*
- ~~— holding back the introduction of new products to the market~~ of new products which are particularly harmful to public health and thus to economic growth;*
- ~~— and the end of research and possible improvement of the quality of the products supplied. Arbitrary restrictions are being placed on bringing new generation products to market, without allowing for a clear regulatory framework to be put in place under which the ability of such products to reduce the risk to the public could be assessed. That could also hold back the wealth and job creation that are linked to innovation and research in relation to these products. In addition, such new, potentially lower risk products should not be subject to the same restrictions as are normal products.~~*

<sup>(25)</sup> OJ C 115, 9.5.2008, p. 172.

<sup>(26)</sup> [http://ec.europa.eu/health/tobacco/docs/tobacco\\_liability\\_final\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/tobacco_liability_final_en.pdf).

<sup>(27)</sup> Judgment of the CJEU of 17 October 1990 in Case C-10/89.

**Voting**

For: 69  
 Against: 157  
 Abstentions: 29

**Point 4.3**

Amend as follows:

~~The same applies to the~~The restrictions on ingredients requiring the removal of characterising flavours (Article 6), and the visual presentation of packs, are particularly important. One of the objective criteria, such as making tobacco less attractive, is particularly relevant to some age groups or a certain sex, which are not based on scientific evidence such as reduction of the toxicity or addictiveness of those ingredients, but on the subjective criterion of reducing the attractiveness of tobacco and on subjective stereotypes as to the type of tobacco smoked by different age groups or sexes. The same subjective approach appears in the arbitrary prohibition, without any justification, of certain formats, such as slim cigarettes (a prohibition that was not included in either the public consultation or the impact assessment report), short cigarettes and the whole category of menthol cigarettes, the setting of a minimum weight for bags of roll-your-own tobacco and the standardisation of the format of tins of tobacco and, in particular, the invention of a new category of "cigarillo" in breach of Directive 2011/64/EU<sup>(28)</sup>, which came into force on 1 January 2011. The prohibition of slim and menthol cigarettes, which are popular in several European countries, would deny consumers access to such cigarettes, requiring them to resort to the market in smuggled cigarettes in order to obtain them. Furthermore, these tobacco products are primarily consumed by adult smokers, meaning that the argument that this is designed to prevent minors from having access to tobacco does not apply in this specific case. In the particular case of menthol, for example, it should be pointed out that this type of tobacco is essentially consumed by adults and that, furthermore, it has not been prohibited by countries such as the United States and Canada that have highly developed anti-tobacco legislation containing very specific provisions on the prohibition of certain ingredients. The EESC therefore proposes that the prohibition on menthol be removed from the proposal for a directive.

**Voting**

For: 69  
 Against: 157  
 Abstentions: 29

**Point 4.3.1**

Amend as follows:

~~In conclusion, We~~ fully agree with the Commission's proposal to prohibit new so-called "candy-flavoured cigarettes" with flavours such as chewing gum, piña colada or mojito, which may essentially be aimed at young consumers.

**Voting**

For: 69  
 Against: 157  
 Abstentions: 29

**Point 4.3.2**

Amend as follows:

~~Excessive~~ Restrictions on ingredients would lead to standardisation of taste, making it impossible for competitors to differentiate themselves and limiting investment and the possibility of launching new products, which will harm consumers by denying them choice which would constitute an added incentive for current and potential consumers of tobacco products to learn about the products they consume or avoid using those products, so that they improve their health, productivity and all other factors that have a major influence on quality of life.

**Voting**

For: 69  
 Against: 157  
 Abstentions: 29

<sup>(28)</sup> Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, pp. 24-36.



**Point 4.5**

Amend as follows:

*The European Commission's proposal for a directive also includes measures aimed at reducing illicit trade in tobacco. For example, in Article 14 of the proposal, the European Commission sets out a system of monitoring and tracing, as well as various additional security measures, so that only products that comply with the provisions of the directive will be sold in the European Union. ~~These measures will involve a disproportionate economic and administrative burden that many small and medium-sized enterprises will be unable to bear and, far from reducing illicit trade, will impose a greater administrative burden on Member States when carrying out inspections. Nor will the system reduce smuggling and illicit trade, which will, on the contrary, be encouraged by the other provisions of the proposal for a directive.~~ The EESC therefore considers that the provisions of Article 14 of the proposal for a directive should be exactly the same as the monitoring and traceability clauses included in the Protocol on Illicit Trade agreed at the end of last year by the WHO Conference of the Parties <sup>(29)</sup>.*

**Voting**

For: 69  
Against: 157  
Abstentions: 29

**Point 4.6**

Amend as follows:

*Finally, the directive will allow the European Commission to use a sheaf of delegated acts to adjust and amend essential aspects, such as the level of additives and the wording, size and location of health warnings. ~~That leaves states with almost no power over changes to the directive, involving an extraordinary degree of interventionism which the European Union has rarely seen before and which breaches the principles of subsidiarity and proportionality, as the national parliaments of eight Member States (Italy, the Czech Republic, Greece, Bulgaria, Denmark, Portugal, Romania and Sweden) are already claiming <sup>(30)</sup>. The Italian parliament has not only indicated that the proposal breaches those principles, but has also emphasised that some of the types of cigarette that are to be prohibited, such as slim and low tar cigarettes, may be useful tools of a policy whose aim is for smokers to cut back or quit <sup>(31)</sup>.~~*

**Voting**

For: 69  
Against: 157  
Abstentions: 29

---

<sup>(29)</sup> [http://apps.who.int/gb/inct/PDF/cop5/FTCT\\_COP5\(1\)-en.pdf](http://apps.who.int/gb/inct/PDF/cop5/FTCT_COP5(1)-en.pdf).

<sup>(30)</sup> [http://www.ipex.eu/IPEXL\\_WEB/dossier/dossier.do?code=COD&year=2012&number=0366&appLang=EN](http://www.ipex.eu/IPEXL_WEB/dossier/dossier.do?code=COD&year=2012&number=0366&appLang=EN).

<sup>(31)</sup> Opinion of the Social Affairs Committee of the Italian parliament on European Commission document COM(2012) 788 final.

**Opinion of the European Economic and Social Committee on ‘A Stronger European Industry for Growth and Economic Recovery — Industrial Policy Communication Update’**

COM(2012) 582 final

(2013/C 327/14)

Rapporteur: **Mr VAN IERSEL**

Co-rapporteur: **Mr GIBELLIERI**

On 10 October 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

*A Stronger European Industry for Growth and Economic Recovery - Industrial Policy Communication Update*

COM(2012) 582 final.

The Consultative Commission on Industrial Change (CCMI), which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), the European Economic and Social Committee adopted the following opinion by 132 votes to 1 with 3 abstentions.

**1. Conclusions and recommendations**

1.1 The EESC welcomes very much the focused attention to Europe's industry – manufacturing and services – as expressed in the Commission's update on industrial policy of October 2012, including the Annexes with articulate analyses about industrial policies and deficiencies in Member States (MS). Many elements are in line with standing views expressed by the EESC <sup>(1)</sup>. The real proof will be in the implementation.

1.2 Industrial policy, one of the seven flagships of the Europe 2020 strategy, should be a building block of an EU Growth Initiative of which there is much talk, but too little effective action. A right mindset and coherent approaches are needed. The political impact is self-evident. The EESC urges the Commission, the Council, and the EP to intensify (coherent!) initiatives and transversal policies that meet the huge challenge of enhancing industrial production across Europe.

1.3 The European Council should take the lead in setting the agenda on industrial policy. The Commission should be fully engaged. A targeted and shared focus is needed in the various Councils – Competitiveness, Research, Environment, Social – in the Commission, and in the EP in mapping and promoting state-of-the-art policies across Europe.

1.4 In order to become a driving strategy for Europe, decisions on industrial policy concerning actions, roadmaps and deadlines must be widely communicated, which is badly missing at the moment.

1.5 Moreover, the EU needs an optimal European convergence of 27 national and EU industrial policies which, according to a broad range of analyses, is no reality today. Diversity is an asset, fragmentation is damaging. Geopolitical imbalances should be addressed.

1.6 Better framework conditions mean, before all, the completion of the EU internal market within a social market economy, ensured by accurate assessments, regulations, and implementation across the Union. Public investments in cross-border links as roads, waterways, ports, airports, railways must support the internal market.

1.7 With unemployment rising to over 26 million people, low growth, and shrinking budgets industry and innovation need stimulating prospects and conditions. The right balance must be struck between fiscal consolidation – austerity measures – national reform programmes and industrial policy to generate investments and job creation, boosting confidence.

1.8 Any EU initiative should underpin Europe's position in global dynamics as competitor and partner. The very ambitious goal of 20 % manufacturing industry by 2020 requires extensive investments and substantial policy adjustments. Improving productivity is very much needed.

<sup>(1)</sup> See, amongst others, OJ C 218, 23.7.2011, p. 38, an EESC reaction to the previous EC Communication on Industrial policy of 2010.

1.9 Smart conditions for industry go far beyond technical provisions and adjustments. They relate to the whole environment of the industry, notably a coherent and predictable long-term climate and energy policy in support of a competitive industrial base. Conditions should underpin outstanding performances as well as foster newly emerging industries.

1.10 EU policies must be tailor-made and sector-specific, based on bottom-up assessments which address the technical-economic capabilities and challenges best. These principles should also be applied in carrying out the objectives of the Resource efficiency flagship which aim at increasing efficiency in using raw materials while, at the same time, they are intending to promote innovation and to foster the resilience of European companies.

1.11 Industrial policy has a strong social dimension that affects all layers of society: regions and municipalities, any business, workforces in fast-changing patterns of workplaces – digitisation, robotisation, service-related manufacturing, ICT – the education sector and universities, consumers and citizens. Industrial policy relates both to restructuring and anticipation. It should provide up-to-date education, training and information, and foster technology, innovation, creativity, and entrepreneurship. Demographic change must also be anticipated and reacted to appropriately.

1.12 Ambitious regions are boosting industrial performance. EU and MS should encourage their self-reliant practices, including specialisation and corresponding research, qualifications, and clusters. Here is a world to win.

1.13 Initiatives and projects as well as successful national and regional examples fostering confidence of people and socio-economic actors, must be highlighted. EU-MS Partnerships agreements and networking among MS and regions must be intensified. The annual European Semester yields plenty opportunities for continuous monitoring.

1.14 EU Industrial policy should a process of sharing EU's and national visions and competences, as well as shared actions, in which business circles and trade unions are full partners. Other stakeholders like the education sector, universities (research), NGOs, consumers, and others, wherever appropriate, should be equally committed

1.15 Despite substantial differences in economic output among MS, all should benefit from best practices and supporting views and approaches.

1.16 The EESC continuously presents proposals on sectors and on industrial policy, see Annex. The present opinion is

rather about the coherence of important themes, and effective governance by coordination and fine-tuning.

## 2. Context

### – A/Worldwide

2.1 In the Commission's analysis "labour costs seem to be becoming a diminishing part of total production costs" <sup>(2)</sup>. Productivity is an important factor. Some production comes back to Europe but competition is rising in other fields like improvement of the economic infrastructure in the BRICS countries, the appreciation of the euro, and energy prices, which stimulate investments abroad.

2.2 Moreover, Europe is lagging behind the US and Japan in innovative performance and technology specialisation. Europe is more strongly represented than the US in the medium-high and medium-low technology industries, but the traditional gap between the two continents in the high-tech segment has substantially increased in recent years.

2.3 The White House and Congress show a strong commitment to manufacturing renaissance with a national competitiveness strategy for 2014 - 2018 <sup>(3)</sup>. A central issue is the role and value of manufacturing in the economy, security and global leadership of the US.

2.4 Public-private partnerships reinforce the technological and innovative infrastructure. The Ministries of Defence, Energy, and Commerce are directly involved, as are the National Science Foundation and NASA, giving impetus to a great number of national research institutes and universities.

2.5 This is a remarkable development in a country that, until recently, was preaching the post-industrial economy. The rising competitiveness of China and others works as a wake-up call. Perceptions are changing. It is forecasted that China will take over as the foremost economic power in the world by 2030 while the US will maintain global leadership, and Japan and Europe will follow a long way behind <sup>(4)</sup>.

2.6 New oil exploration and, above all, shale gas is expected to result in American energy independence. This exploration is being considered as an energetic revolution entailing industrial renaissance in the US as well as geopolitical shifts. Environmental and health concerns have still to be addressed <sup>(5)</sup>.

<sup>(2)</sup> Commission Staff Working Document, SWD(2012) 297 final, page 10.

<sup>(3)</sup> American Manufacturing Competitiveness Act of 2012.

<sup>(4)</sup> *Global Trends: Alternative Worlds*, National Security Council, Washington December 2012.

<sup>(5)</sup> US EPA, Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources: Progress Report, December 2012 (<http://www2.epa.gov/hfstudy>).

2.7 The rise of China, Brazil, and India continues. Russia is also on its way. In their slipstream other Asian and South American countries follow rapidly. For years, growth figures in the emerging world have been far above average, especially in Asia. Newly established education systems are yielding massive numbers of well-educated and qualified technicians and engineers. In parallel, huge research institutes are being set up. The quality of goods and innovative processes are improving across the board. Transport facilities and services infrastructure are catching up fast.

2.8 In China, a mixed system of state capitalism and free market mechanisms is emerging <sup>(6)</sup>. It is intimately intertwined with the existing national culture and (political) traditions. Wealth creation does not go hand in hand with democracy nor with human and workers' rights. Environmental and health conditions remain underdeveloped, although the quality of production is rising. Backlashes are far from imaginary. But it is fair to say that capitalist interventions by the state will continue to steer certain types of production that correspond with national ambitions. Investments by sovereign wealth funds may work in a similar direction, outward as well as inward.

2.9 A number of countries usually benefit from a more streamlined governance structure than the EU due to the fact that they have one main decision-making centre, a common strategy and agreed objectives in the public sector.

2.10 Parts of Africa are also in a process of rapid development. China invests heavily without paying attention to societal impact.

2.11 The world context and geopolitics are changing incessantly. Data are paramount to make public and political opinion much more sensitive. The EESC recommends an annual EU score-board of a number of socio-economic, technological and job developments in relevant parts of the world.

– B/Europe

2.12 The in-depth analyses of the Commission on European and per-country trends show an increased awareness of the need for manufacturing industry.

2.13 Situations differ greatly between countries, from Germany that has nearly 30 % of manufacturing industry in Europe to countries – bigger and smaller ones – with substantially lower to very small percentages. In some MS industrial

investment has gone down considerably over the last 20 years. In some cases this had to do with large-scale restructuring, and in others also with a degree of neglect <sup>(7)</sup>.

2.14 Among the great variety of MS to improve conditions some are obviously proving more successful than others. Employment in industry is steadily reducing. On top, in the current crisis since 2008, more than 4 million jobs in manufacturing are lost.

2.15 There is no indication that policies and instruments or best practices are discussed among MS. National concepts of industrial and innovation policy are primarily driven by national traditions and procedures, and identified by national frameworks and relations between the public and the private sector, among which business, research institutes and universities, trade unions and others.

2.16 Consequently, many policies and corresponding financial arrangements are primarily national oriented which does not favour the internal market nor cross-cutting trans-border projects.

2.17 Apart from very successful results in some countries, an undesirable fragmentation of the internal market, as the Commission rightly points out, hampers potential growth factors.

2.18 Creative diversity is a great asset in Europe, but it will only benefit to all Europeans, if convergence to common goals is ensured. An optimal balance should be struck between creative diversity among MS and transparent and convincing convergence.

2.19 As the American example illustrates, such convergence will bear in particular fruit for continental networks of SMEs with growth potential.

### 3. Europe 2020: shared vision, competences and actions

3.1 The internal market needs a renewed impetus. Although hidden protectionism has been on the rise, and renationalisation and fragmentation are still looming, the EU is succeeding in keeping the internal market intact and the principle of open markets unaffected, although implementation remains rather a weak spot.

3.2 The Europe 2020 strategy, envisaging shared competences between EU and MS, should lead the way. In

<sup>(6)</sup> See State Capitalism, The Economist, Special report, January 2011.

<sup>(7)</sup> Commission Staff Working Document, Industrial Performance Scoreboard and Report on Member States' Competitiveness, Performance and Policies, SWD(2012) 298 final, Parts 1, 2, 3 and 4.

respecting specific national approaches and methods it provides instruments to benefit from the advantages of the overall European scale. The potential benefits of such targeted governance have systematically been underexposed.

3.3 There is also an urgent need for visible results in gearing successful innovative processes and job creation parallel to changing patterns of manufacturing, commercialisation, and services.

3.4 Deliberate anticipation of restructuring is needed. It will enhance acceptance of adjustments, favour up/re-skilling of the workforce, and help to limit precarious jobs<sup>(8)</sup>.

3.5 The EC Communication of 2010 is already giving rise to initiatives like Horizon 2020, competitiveness proofing, industrial innovation, resource efficiency, skills and education, access to finance, the interaction and blurring distinction between industry and services, and increased awareness of complications in international investments and transfer of technology.

3.6 It is astonishing that, until recently, transparent peer reviews of MS were rarely carried out. A monitoring role for the Commission should be extended.

3.7 Such peer reviews would highlight obsolete structures in industry as well as in decision-making. They would help to accelerate modernisation using successful approaches, and can be indicators for European convergence "to the top" for both the public and the private sector.

3.8 The Commission's SWDs contain per-country recommendations, related to industrial development<sup>(9)</sup>. These country-specific recommendations need to be better addressed in the NRPs as discussed by MS and the Commission as part of European Semester.

3.9 However, it would be a serious mistake to leave all this to the Commission alone. It is also a primary task for the competent departments in the MS themselves which are responsible for policies that are not covered by EU regulation or measures. Moreover, these departments must also ensure accurate implementation of EU regulation.

3.10 Financial policies within the Eurozone entail fine-tuned coordination between European Institutions and national authorities. There is no reason why a comparable coordination cannot be achieved in strengthening of framework conditions for industry, innovation and job creation, inspired by a shared vision.

3.11 The Commission's SWDs can also help MS to undertake reviews bilaterally or trilaterally among themselves on industry-related areas, like skills and education, technology and innovation, administrative burdens, tax policy, and state aid. Each country can easily draw conclusions for desirable policies at home in a common European perspective. Serious evaluation of applied measures should in any case be part of national programmes.

3.12 As these trends have to be supported by all of society, it is very important for business associations and trade unions to act as full partners in the process. This goes also for other stakeholders like the education sector, NGOs, consumers, and others, where appropriate. Consensual approaches pay off. Social dialogues at national and regional level as well as in sectors and companies will be very supportive.

#### 4. Themes to be addressed

4.1 The EESC agrees with the Commission that the "*complementarities between national and EU interventions in industrial policy are a fundamental condition for the success of European industrial policy*". They will enhance the impact of EU and national actions, and offer plenty of opportunities to shift from talk to walk.

4.1.1 An overall concept means a holistic approach and transversal policies. The EESC highlights below interlinked themes which it considers crucial for the future of European industry.

##### 4.2 Industrial innovation

4.2.1 **Industrial innovation** needs a strong European technological base, supported by cross-border coordination and cooperation between research institutes and universities, applied technology, and businesses.

4.2.2 Key Enabling Technologies and other cross-cutting technologies are crucial for EU- and national R&D programmes. Manifold downstream activities as well as public policies concerning infrastructure and sustainability benefit from them. The EU framework for public-private cooperation and consultation, notably via EU Technology platforms, is essential. Public procurement should also generate incentives for advanced innovation.

4.2.3 Technology is the battleground of the future. In promoting international (flagship) projects the Commission and the Research Council should lead the way in reinforcing the internal market for technology and cross-border projects. Successful R&D and European patents should sustain innovative investments and high quality jobs.

<sup>(8)</sup> See also the Cercas Report of the EP.

<sup>(9)</sup> See note 6: Staff Working Documents, Parts 1-4.



4.2.4 The EESC underlines the significance of EU financial resources for R&D and cross-border projects. Horizon 2020 should match rapidly expanding efforts in other countries. Although Europe is still well placed, its traditional lead is diminishing. Cutting the budget of Horizon 2020 is counterproductive.

4.2.5 The key role of higher education and related research for innovation should be self-evident. Programmes and management should be adjusted, where needed.

4.2.6 Annual information on public and private investment in key technologies is desirable.

4.2.7 Innovation affects many more areas. It is about new dynamics in business and in the workplace: redesign of existing production methods, the need to restructure obsolete operations, the development of value chains and new "sectors", the blurring of borders between industry and services. Innovation is about modernisation and creativity in society. It should be communicated as such.

4.2.8 The Commission underscores the need for technology and innovation across its services as a horizontal priority. It would be welcome for national administrations to take over this method.

### 4.3 Skills and qualifications

4.3.1 Technology, innovation, redesigned production processes, integration of industry and services, new societal requirements and spearheads all make **appropriate skills and qualifications** from top to bottom a crucial area.

4.3.2 Up-to-date education systems at all levels are key. EU attention for education, schooling and training is rightly increasing – as it is at national and regional level. Education is a basic requirement and must be within reach for everybody.

4.3.3 Any EU Growth initiative asks for ongoing emphasis on the whole spectrum of education. Given substantial differences between MS, exchange of good practices will be indispensable to address in particular youth unemployment.

4.3.4 Stakeholders play a key role. At each level – company (including with works councils), local, regional, national and EU – social dialogues should address education, apprenticeships/dual education industrial training and advanced (life-long) training to enhance competences and employability to meet labour market requirements. Cross-border recognition of competences and qualifications should be the rule to promote international mobility.

4.3.5 In line with the OECD the Commission should be mandated to carry out peer reviews of education systems and

their results in the MS. They will produce useful indicators for improvement, where appropriate, as occurs in many other fields.

4.3.6 The required level of competences in business and society is steadily rising. Technical education, and services in manufacturing are priorities, from lower-level qualifications to higher education. Technical secondary schools and the VET-systems play an essential role.

4.3.7 In higher education structural shortages of scientists, engineers and mathematicians – students and researchers – should be addressed, combating mismatches between demand and supply on the labour market.

4.3.8 Every worker should be entitled to vocational training. This is particularly necessary for workers and craftsmen with specific specialties in SMEs and handicrafts.

4.3.9 The creation of sustainable industrial employment that is based on up-to-date working conditions, and health and safety conditions, is part of the right mindset for modernisation processes in industry. Improved competitiveness should go hand in hand with appropriate working conditions and workers' rights.

4.3.10 Particular attention needs to be given to the impact of population ageing in the EU on the supply of labour in industry. The working conditions of ageing workers must be adapted in line with this, as must the structure and capacity of training and lifelong learning.

### 4.4 Access to finance

4.4.1 Access to **finance** remains a weak spot. The industrial sector has suffered a lot from the banking crisis. Banks remain reluctant in credit financing. The crisis has favoured renationalisation of operations. Traditional risk aversion is enhanced by stricter international rules on equity capital, and presumably by EU financial regulations. Fortunately, the Basel III regulations, hampering lending, will gradually be applied more leniently.

4.4.2 SMEs require more appropriate financial engineering, and new financial sources like, for instance, insurance companies and pension funds. One main objective is to spread risks or to water them down, *inter alia* through guarantee schemes or government funds. Crowd-funding must open up attractive prospects.

4.4.3 Meanwhile, private or non-bank funding must increase. Private initiatives in MS should be highlighted. The gap with the US is illustrative: 2/3 of American investments are financed outside the financial sector, against only 1/3 in Europe. EU and national legislation should encourage the trend towards more private financing and private equity, in particular to support innovation.

4.4.4 Subsidiarity entails a great diversity of tax policies as well as subsidy and loan systems across Europe. The EESC insists on an assessment and peer reviews of national instruments by the Commission in view of an effective convergence of instruments.

4.4.5 The EIB and the Commission are working on next generation EU-wide instruments with a higher impact and leverage than grants. The risk capacity of EU funds, combined with the funding capacity of the EIB, is intended to result in a mix of capacities for design and implementation of financial instruments for industrial objectives.

4.4.6 Revolving funds, coordinated between the EIB and the Commission, and to be applied in Horizon 2020, Cosme, the Multiannual framework and regional policy must yield multiplier results. Special attention must be given to visibility of who is in charge of what. The EESC underlines the need to maintain a robust well-managed EU budget, dovetailing with successful (re-)arranged national credit instruments. Project bonds and green loans must expand.

4.4.7 Current EU rules are too stringent and bureaucratic. The EESC reiterates that EU instruments must be tailored to the market and be easily implemented. They must be flexible to rapidly changing market conditions, for innovative companies as well as for small off-the-radar micro-economic projects. A new balance must be struck between reliable governance of instruments and market needs.

#### 4.5 Sustainable development

4.5.1 **Sustainable development and resource efficiency** are, despite significant differences between MS, increasingly integrated in companies' strategies, and in up- and downstream operations. Sustainable business models enhance the resilience of European companies. Public and private actors have to rely on each other.

4.5.2 A special case in point is climate change and CO<sub>2</sub> emissions. With a persisting risk of carbon and investment leakage, the EESC insists on a renewed assessment of EU policies as a basis for a sustainable transition to a low carbon economy.

4.5.3 Cost efficiency and technical feasibility to preserve competitiveness of companies are a prerequisite for sustainable economic growth and job creation in the EU. Only then synergies between environmental goals and industrial performance will be generated.

4.5.4 A technology-driven transition to a low-carbon/resource-efficient economy should also be socially fair to all generations of the workforce.

4.5.5 Population ageing means senior citizens will make up a larger proportion of consumers and industrial production will have to cater for their different consumption pattern. This also

provides new businesses opportunities and room for innovations such as functional food and in the adaptation of housing and transport, as well as new technologies in health and long-term care.

4.5.6 EU programmes and regulatory provisions should trigger sustainable innovation amongst others along the lines set out in the Resource efficiency flagship. Given the huge industrial interests involved, comparable, stable and predictable environmental conditions across the whole Union are paramount. The effectiveness of "Eco-design" <sup>(10)</sup> and an introduction of absolute caps on the use of raw materials for industry should be duly assessed.

Overregulation also affects innovation and investments and may lead to losses in market shares. Commission and Council should safeguard Europe's basic (energy-intensive) industry and eliminate competition distortions in relation to third countries.

#### 4.6 Services

4.6.1 **Services** embrace 70 % of the European economy, engaging the largest part of the workforce. They are also inextricably intertwined with industrial processes, and strengthen their basis. The implementation of the Services Directive, however, has been patchy. Moreover, business services are continuously underdeveloped in most parts of the EU.

4.6.2 The lack of an integrated services market – the white elephant in the room – has a negative effect on both internal European trade and productivity. In both fields the US are leading due to the US's much more integrated services market. There is still significant "home bias" in services, supported by barriers to cross-border services. *"With less trade comes less competition: the EU's services markets are still national, by and large, which hampers productivity growth"* <sup>(11)</sup>.

4.6.3 This poor development is a barrier to a competitive ICT sector in Europe, hampers pioneering initiatives, and raises barriers to productivity growth. Consequently, the EU should ensure free market development of services, and promote business services and corresponding job creation across Europe.

#### 4.7 Administrative barriers

4.7.1 Complaints about **administrative barriers** are common currency. However, they still result in too little systematic re-evaluation of rules and regulations of national origin for which impact assessments as applied by the Commission for its policies, would be equally highly desirable.

<sup>(10)</sup> EU Directive 2009/125, October 2009.

<sup>(11)</sup> "How to build European services markets", John Springford, Centre for European Reform, September 2012, page 4.

Coordination among Member States is usually lacking. Administrative obstacles and barriers are damaging many endeavours to create start - up and foster SMEs.

4.7.2 In this field hidden protectionism is on the rise. The EESC insists on continuous and transparent assessments. The Commission should be mandated to carry out enquiries. Peer reviews should be discussed in the Council. The Council should define goals and deadlines.

#### 4.8 SMEs

4.8.1 There are many different, often incomparable, kinds of **SMEs**. In some sectors, for instance retail, they are under heavy pressure. In others, however, they are taking over activities from bigger companies – outsourcing, value chains, etc. They are usually essential for innovation of products and services. Due to their innovative strength and market successes SMEs must visibly be integrated and highlighted as a driving force in EU industrial policy.

4.8.2 Due to their dynamics, interaction within value chains, and flexibility, SMEs are often pioneers in tailor-made solutions and renewal. They are also a valuable source of new jobs. SMEs should be supported in efforts to reduce use of scarce resources and energy. This will ultimately result in a reduction of costs which will enable them to better performances and job creation.

4.8.3 Europe needs young entrepreneurs. "Entrepreneurship" in education – including the phenomenon "entrepreneurial university" – should be highlighted. The EESC welcomes the Commission's Entrepreneurship Action Plan.

4.8.4 The number of start-ups is rising. Comparisons with the US, however, prove that too few small companies reach the level of mature growth. This has to do both with failing financial conditions and with national barriers in the European market.

#### 4.9 Energy

4.9.1 National **energy policies** lead to a fragmented energy-mix policies in the Union, affecting energy prices, technology, relations with third countries, and the internal market. The EESC insists on a Common Energy Policy. Given the deep implications of energy for the economy, a serious industrial policy cannot take shape without certain common principles across Europe.

4.9.2 The Council can no longer escape from a strategic debate on long-term energy prospects and corresponding policies, i.e. the desirable energy-mix in the EU, covering fossil raw materials, nuclear energy, and renewables. Environmental, health and safety conditions are also part of the agenda.

4.9.3 Decisions are all the more urgent now that the shale gas development in the US is currently turning the world energy picture upside down.

4.9.4 EU energy prices are substantially higher than those in the major trading partners. The American gas price is 20 % of the European one. This has huge implications for the chemical and the steel sector and can affect downstream industries. The effect on investments in Europe and the need for a coordinated response of the EU and the MS raise burning questions that ask for an effective answer.

4.9.5 Industry is contributing to renewable energies. But due to the high cost of energy it is crucial to strike the balance between competitiveness and the process of funding renewable sources which may encompass reduction from levies as well as improvement of cost efficiency support schemes.

#### 4.10 External relations

4.10.1 **External relations** go beyond formal agreements like the WTO. In developing the external dimension of the industrial policy the EU and the MS should define common views on how to deal with complicated issues, notably to ensure a global level playing field. As open markets imply reciprocity, the EU should seriously deal with concrete and damaging distortions to European industrial interests.

4.10.2 Undisturbed supply of energy is crucial for economic as well as security reasons. This issue requires all the more an all-over European approach in light of the currently low energy prices in the US. Special attention should also focus on materials which are essential for industrial processes.

4.10.3 International environmental, climate, and social standards or corresponding sector agreements are vital for a global level playing field. They must create conditions to preserve manufacturing value chains in Europe.

4.10.4 The EESC underlines the need to protect Intellectual property rights. Access to public procurement abroad should be ensured.

4.10.5 Well-negotiated and balanced free trade agreements, especially with the US, are very welcome. Close monitoring is a prerequisite.

Brussels, 11 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products’**

COM(2013) 106 final — 2013/0063 (COD)

(2013/C 327/15)

Rapporteur: **Mr Mindaugas MACIULEVIČIUS**

On 12 March 2013 and 15 March 2013, the European Parliament and the European Commission decided to consult the European Economic and Social Committee, under Articles 43(2), 207(2) and 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 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products*

COM(2013) 106 final — 2013/0063 (COD).

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 12 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 149 votes in favour with 3 abstentions.

## 1. Conclusions and recommendations

1.1 The Committee welcomes this proposal for alignment with the Lisbon Treaty, as it did in EESC opinion 357/2011 <sup>(1)</sup> and has continued to do, consistently, in its subsequent opinions.

1.2 The EESC calls for trade rules to be modernised across-the-board, made more transparent in general, with the involvement of all relevant stakeholders, and, at the same time, consistent with the objectives of the Common Agricultural Policy, so as to promote the values of the EU across the world.

1.3 The EESC calls for effective protection tools to be provided against potential abuse in cases when Free trade agreements (FTAs) serve as a gateway to the EU market for lower standard food products which are cheaper and easier to produce.

1.4 The EESC strongly recommends that any future trade regime prevents the distortion of competition in the EU market resulting from lower environmental, food safety, animal welfare and social standards applied by third countries. This could be assured through additional, compensatory components in import duties.

1.5 The EESC calls for a revision of the system for attributing import licences, refund certificates and inward processing relief certificates, and especially for allocating quotas, in order to leave enough room for small and medium-sized producers.

1.6 The Committee calls for the introduction of e-procurement tools integrated within the customs system for the management of licences, quotas and certificates. Such a system should be able to monitor the exact situation of the market in real time and react immediately if trigger volumes or trigger prices are reached.

1.7 The Committee calls for the export refunds system to be kept on stand-by, bearing in mind that we cannot currently foresee when this safety net will be needed again.

1.8 The Committee calls upon the Commission to reinforce the role of the Advisory Group on International Aspects of Agriculture so as to have direct input from farmers, processors, consumers, commerce, etc. <sup>(2)</sup>.

## 2. Background

2.1 The purpose of the proposed Regulation is to align the current trade arrangements for processed agricultural products/non-Annex I goods, currently laid down in Regulation 1216/2009 and the common system of trade for ovalbumin and lactalbumin, currently laid down in Council Regulation (EC) No 614/2009, with the Lisbon Treaty and to merge them for reasons of rationalisation, harmonisation and simplification, in order:

— to identify the delegated and implementing powers of the Commission and establish the corresponding procedures for the adoption of these acts,

<sup>(1)</sup> OJ C 107 of 6.4.2011 p. 33-36

<sup>(2)</sup> OJ C 304 of 10.11.1993, p. 8-10.



- to align them with the new Single CMO Regulation [COM(2011) 626 final] in the context of the adaptation of the CMO to the Lisbon Treaty and to the CAP after 2013, currently subject to long and exhausting discussions at the level of the Council and the European Parliament,
- to update these regulations and to provide a clearer and more solid legal basis for the implementing rules,
- to create a solid legal framework for the management of the reduced import duties and import quotas as provided for by FTAs and of the export refund system, and to adapt the existing Regulation to the current practices in FTAs and export refunds.

### 3. General comments

3.1 The EESC welcomes the Commission's proposal to simplify, rationalise and harmonise the legislation concerning trade in processed agricultural products, and particularly the fact that both regulations (on the trade arrangements for processed agricultural products and the common organisation of agricultural markets) will be aligned with the Lisbon Treaty in a parallel manner, as both of them contain similar provisions about the import and export arrangements for agricultural products and for processed agricultural products (such as, for example, reduced import duties, additional import duties, import quotas, export refunds, export licenses and refund certificates).

3.2 At the same time, the Committee thinks that this simplification, rationalisation and harmonisation of the legislation would be a great opportunity to modernise trade rules and make them more transparent in general, with the involvement of all relevant stakeholders, so as to promote the values of the EU across the world.

3.3 The EESC appreciates that the proposed Regulation represents a "Lisbonisation" of current provisions with no substantial changes, but at the same time calls for an in-depth revision of trade policies, in order to make them consistent with the objectives of the Common Agricultural Policy as set out in article 39 of the Treaty on the Functioning of the European Union.

3.4 On a number of occasions the EESC has expressed its support for free trade agreements and preferential trade

arrangements and emphasised the importance of WTO negotiations. However, the EESC stresses that the EU, being the leading importer of food products globally, has a fundamental role to play in terms of promoting its own highest standards of food safety and quality, animal welfare, environmental protection and social values.

3.5 The EESC notes that import duties, and especially their agricultural component, should be supplemented by additional environmental, food safety, animal welfare and social components, which could be used as a tool for disseminating EU values with regard to food production to third countries. These components should be reduced only if the producer of exports to the EU respects these values. This way of sharing our societal values will in the long term improve the resilience and sustainability of the global food production system.

3.6 The EESC calls for effective protection tools to be provided against potential abuse in cases when FTAs serve as a gateway to the EU market for lower standard food products which are cheaper and easier to produce.

3.7 We call on the Commission to revise its system for attributing import licences, refund certificates and inward processing relief certificates, and especially for allocating quotas, in order to leave enough room for small and medium-sized producers and prevent a handful of operators from dominating the market.

3.8 The Committee calls upon the Commission to introduce e-procurement tools, integrated within the customs system, for the management of licences, quotas and certificates, which would significantly lower the transaction costs and reduce the risks involved in the physical handling of documents by operators.

3.9 Such a system should be able to monitor the exact situation of the market in real time and react immediately if trigger volumes or trigger prices are reached.

3.10 The Committee considers that export refunds, although currently not in use, have a very important function as a safety net, in the event of imbalances in the market. At the same time, it is very important to keep the system on stand-by, bearing in mind that currently we cannot foresee when this safety net will be needed again.

3.11 It is essential for the Commission to reinforce the role of the Advisory Group on International Aspects of Agriculture so as to have direct input from farmers, processors, consumers, commerce, etc., and thereby provide a valuable forum for consultation and information <sup>(3)</sup>.

Brussels, 10 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---

---

<sup>(3)</sup> OJ C 304 of 10.11.1993, p. 8-10.

**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 — A Blueprint to Safeguard Europe’s Water Resources’**

COM(2012) 673 final

**on the ‘Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans’**

COM(2012) 670 final

**and on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Report on the Review of the European Water Scarcity and Droughts Policy’**

COM(2012) 672 final

(2013/C 327/16)

Rapporteur: **Georges CINGAL**

Co-rapporteur: **An LE NOUAIL MARLIÈRE**

On 11 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 – A Blueprint to Safeguard Europe’s Water Resources*

COM(2012) 673 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 12 June 2013.

At its 491st plenary session, held on 10 and 11 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 128 votes to 101 with 17 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC welcomes the Commission’s communication, but feels that the document does not propose enough pro-active measures to provide solutions to the various problems identified.

1.2 The EESC therefore invites the Commission to acknowledge the need to:

- democratise water management, i.e. to give consumers their rightful place in river basin management bodies,
- set up a European water inspectorate to ensure that all regions are treated fairly,
- take account of substances of concern (chemicals, nanoelements, etc.).

1.3 The EESC welcomes the Commission’s commitment to incorporating water-related objectives into other key policies such as the CAP, the Cohesion Fund, Structural Funds and policies on renewable energy. At the same time, it notes that much more needs to be done to achieve real consistency

between policies and to remove incentives to over abstraction, morphological damage and water pollution.

1.4 The EESC invites the Commission to clarify the issue of resource sustainability. While the Water Framework Directive (WFD) <sup>(1)</sup> lays down an obligation not to damage water resources, the EU is seen to be allowing the development of projects to safeguard the energy supply. This previously marginal issue risks becoming a recurring problem with projects to extract shale gas. The EESC feels that water resources are the top priority.

1.5 The EESC advises the Commission to encourage the Member States to implement strictly Article 9 of the WFD (the polluter-pays principle) in order to achieve good water quality.

1.6 The EESC invites the Commission to clarify what it means by "water stress". If it is using the conventional definition – demand for water exceeds the available resources – we are often liable to act too late (forest mortality, etc.). It is therefore necessary, as well as defining minimum environmental

<sup>(1)</sup> OJ L 327, 22.12.2000, p. 1–73.

flows, to establish alert levels that can trigger preventative action before those minimum levels are reached, so as to avoid critical situations.

1.7 The EESC urges the Commission to use cohesion policy instruments (ERDF, ESF, European territorial cooperation, etc.) to encourage:

- local authorities to develop tertiary treatment facilities at sewage works,
- economic stakeholders to take a closer interest in their property's resilience to climate change, by promoting natural mechanisms (soil, vegetation, etc.) to protect water resources, for example using the carbon/nitrogen (C/N) ratio as a soil quality indicator,
- the best initiatives (LIFE action plan, etc.).

1.8 The EESC urges the Commission to publicise the best available techniques (BATs). The objective of closing the water cycle no longer seems unrealistic, judging by the progress made in, for example, the paper industry. In contrast, the EESC considers it necessary to establish standards and rules to reduce leakage in networks.

1.9 The EESC urges the Commission to propose a legislative instrument that gradually increases the focus on effectiveness in water management (metering, transport, treatment, etc.). Domestic use cannot be the sole focus, and nor can voluntary approaches. Integrated management relates to all river basins.

1.10 The EESC encourages the Commission to expand the list of pollutants (nanoelements and carcinogenic, mutagenic and reprotoxic chemicals) that must not be present in surface water or aquifers in the interests of public health<sup>(2)</sup>, and to draft recommendations for the re-use of treated water. It considers the European Environment Agency's report No 1/2013 – "Late lessons from early warnings II"<sup>(3)</sup> – to be extremely valuable.

1.11 The EESC reiterates its concerns regarding financial compensation for transfers, and urges the Commission to exercise the greatest possible caution. All projects must be brought to the attention of the public (see the Aarhus Convention) and be subject to open debate. The EESC notes that a transfer system would be unfair and detrimental to the most disadvantaged populations, regardless of whether or not they receive financial compensation.

## 2. Background

2.1 In 2000, the WFD established a legal framework to protect and restore clean water across Europe and to ensure

its long-term, sustainable use. The general objective of the WFD is to get all the EU's water – for example, lakes, rivers, streams and groundwater aquifers – into a healthy state by 2015.

2.2 The Commission notes that authorities have often failed to combine the objectives of effectiveness and fairness (it would therefore make sense to apply the polluter-pays principle, by eliminating counter-productive or harmful subsidies) with a view to balancing revenue against investment expenditure.

2.3 On 14 November 2012, the Commission published the "Blueprint Package", comprising:

- a communication on a blueprint to safeguard Europe's water resources,
- a report on the review of the European water scarcity and droughts policy,
- a report on the implementation of the WFD and the river basin management plans.

2.3.1 Given that water is such a vital resource, its management is an issue for EU citizens and therefore also presents challenges in terms of the necessary expertise. The executive summaries of technical evaluations and impact assessments are important enough to be worth distributing to civil society organisations (CSOs) and should therefore be available in the different EU languages.

2.3.2 The Commission's proposals are based on a variety of studies, in particular the following European Environment Agency (EEA) publications:

- *Towards efficient use of water resources in Europe*, Report No 1/2012, 68 pages,
- *European waters – assessment of status and pressures*, Report No 8/2012, 96 pages,
- *European waters – current status and future challenges – a synthesis*, 51 pages,
- *Water resources in Europe in the context of vulnerability*, Report No 11/2012, 92 pages.

2.3.3 The review of European water scarcity and droughts policy is to be welcomed inasmuch as demand is increasing while supply remains static, and, as noted in a number of United Nations reports, the drought line is moving northwards.

<sup>(2)</sup> OJ C 229, 31.7.2012, p. 116-118.

<sup>(3)</sup> <http://www.eea.europa.eu/pressroom/newsreleases/the-cost-of-ignoring-the->

2.4 The Water Blueprint sets out a three-tier strategic approach, accompanied by actions in 25 stages:

- improving implementation of current EU water policy by making full use of the opportunities provided by the current laws,
- increasing the integration of water policy objectives into other relevant policy areas such as agriculture, fisheries, renewable energy, transport and the Cohesion and Structural Funds,
- filling the gaps of the current framework, particularly in relation to the tools needed to increase water efficiency.

2.5 The Water Blueprint time horizon is closely related to the EU's 2020 Strategy and, in particular, to the Resource Efficiency Roadmap, of which the Blueprint is the water milestone.

2.6 On 22 September 2010, the EESC published an information report adopted by the REX section entitled "Decent work and sustainable development around the Mediterranean: the fresh water, sea water and sanitation sectors". This report, which was presented at the Euromed Summit of Economic and Social Councils in November 2010, set out the problems associated with increasing water scarcity around the Mediterranean, the social consequences and the funding conditions for associated projects. On 15 June 2011, the Committee adopted an exploratory opinion on the *Integration of water policy into other EU policies* <sup>(4)</sup>, in response to a request from the Hungarian Presidency; it also adopted an opinion on *Priority substances in the field of water policy* <sup>(5)</sup> on 23 May 2012, and one on the *European Innovation Partnership on Water* <sup>(6)</sup> on 13 December 2012. We would also refer to the opinions on the *Thematic strategy for soil protection* <sup>(7)</sup> and the *7th Environment Action Programme* <sup>(8)</sup>.

### 3. General comments

3.1 The EESC agrees with the Commission that the Water Framework Directive (WFD) is the right tool for improving the ecological status of Europe's waters, but this objective can only be achieved if the databases are managed by independent bodies and if implementation of the directive is rigorously strengthened. 47 % of the EU's waters will not have achieved good status by 2015, even though the blueprint assesses progress made in water management and proposes certain measures to be implemented by 2020.

<sup>(4)</sup> OJ C 248, 25.8.2011, p. 43-48.

<sup>(5)</sup> OJ C 229, 31.7.2012, p. 116-118.

<sup>(6)</sup> OJ C 44, 15.2.2013, p. 147-152.

<sup>(7)</sup> OJ C 168, 20.7.2007, p. 29-33.

<sup>(8)</sup> OJ C 161, 6.6.2013, s. 77-81.

3.2 Some Member States have been slow to implement Article 9 of the WFD since it was adopted in 2000, which is holding back efforts to achieve good water status. The EESC feels that water managers must follow the polluter-pays principle at all times and in all places in setting prices for water and sanitation services, and recommends that the blueprint should apply both to regions with water shortages and to regions with surpluses.

3.2.1 The EESC finds it highly regrettable that the Member States are delaying the implementation of the WFD and denying the public access to better quality water, and will therefore support the Commission tirelessly in its efforts to make all Member States comply with the WFD.

3.3 However, the EESC is concerned to note that the Commission is not proposing enough innovative measures to improve the effectiveness of water management. Demand is expected to outstrip supply by up to 40 % by 2030, which means that shortages will affect the majority of Member States. The Commission's approach is highly risky in that it is based solely on existing instruments and does not, apart from the Ecodesign Directive, propose a "per-product" management policy to meet the requirements of households, industry (including quarries) and farming. In these circumstances, there is a risk of more and more watercourses running dry or becoming polluted. The EESC is concerned that the public are still paying to subsidise production systems that do not take a sustainable approach. Integrated water resource management (IWRM) is only a general reference point, and the circumstances in which it should apply to all river basins need to be clarified.

3.4 The EESC welcomes the measures to protect ecosystems, and supports efforts to preserve natural aquifers. These efforts will be beneficial in terms of the resilience of species and ecosystems to climate change, particularly if they are accompanied by appropriate actions under the common agricultural policy and rural development policy. Unfortunately, the Commission has not put enough emphasis on the interface between water and the climate. Actions need to be identified to ensure that meteoric water is retained in soil and percolates into groundwater.

### 4. Specific comments

4.1 Water is a fundamental issue, as it is essential for human life and natural ecosystems, as well as being part of mankind's shared natural heritage.

4.2 Water and sanitation policy must be embedded in a sustainable development policy ensuring that this resource meets people's current needs and is preserved for future generations. In Europe and across the world, many people do not have access to this vital resource. The United Nations' recognition that access to sufficient safe drinking water and to sanitation is a universal human right will allow more than a million



people in Europe without access to clean, safe and affordable water and several million European citizens without sanitation systems to exercise a fundamental right <sup>(9)</sup>.

4.3 To this end, the EESC urges the European Commission to propose legislation establishing access to water and sanitation as a human right as set out by the United Nations, and to promote the provision of water and sanitation as vital public services for all. European law should require governments to provide the population with guaranteed sanitation and sufficient safe drinking water. The EESC recommends that:

- the European institutions and the Member States should be required to ensure that all residents can exercise their right to water and sanitation,
- water supply and management of water resources should not be subject solely to "internal market rules", and water services should be exempted from liberalisation and from the scope of the directive on concessions <sup>(10)</sup>,
- the EU should step up efforts to achieve universal access to water and sanitation within its territory.

4.4 Access to water is a fundamental right that is closely linked to the provision of water-related services and to water pricing. In this connection, the EESC notes that the Commission launched an investigation into the French water market in January 2012, which is still ongoing. Three of the leading multinational groups in the global water market are French. The Committee supports the scope of these formal antitrust proceedings, which follow on from investigations at the

companies in question in Spring 2010. The proceedings will help the Commission establish whether the three companies, "together with their trade association *Fédération Professionnelle des Entreprises de l'Eau* (FP2E)", have coordinated their behaviour on French water and waste water markets, in breach of EU antitrust rules, and whether they colluded with respect to elements of the price invoiced to end consumers. The EESC is keen to see the result of these proceedings.

4.5 Transfers from one body of water to another entail considerable investment, can present significant environmental risks, do not encourage the judicious use of resources, and exacerbate inequality because it is the richest economic operators who can afford to pay the most for scarce resources.

4.6 The communication simply suggests using BATs to reduce leakages from networks. This issue should be dealt with by establishing standards and improving regulation for each river basin. Setting standards has proved valuable in improving services and productivity. The Commission could consider developing a plan for reducing leakages.

4.7 When project promoters are planning infrastructure projects that change conditions in a body of water, they absolutely must respect the biodiversity preservation objectives. The EESC points out that a number of Ramsar sites have been sacrificed on the altar of irrigation. It stresses that the blueprint does not envisage repairing damage that has already been done, and that the proposals are inadequate as only fish ladders or fish lifts are mentioned. It is regrettable that the blueprint does not mention the imperative need to protect headwaters and small bodies of water (pools, ponds, peat bogs, etc.).

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(9)</sup> OJ C 44, 15.2.2013, p. 147-152.

<sup>(10)</sup> O.J. C 191, 29.6.2012, pp. 84-96.

## APPENDIX I

**to the Committee opinion**

The following counter opinion, which received at least a quarter of the votes cast, was rejected during the discussion:

Replace the entire text of the opinion with the following new text:

**1. Conclusions and recommendations**

1.1 Water is essential for human life, nature and the economy. It is permanently renewed but it is also finite and cannot be made or replaced with other resources.

1.2 In recent decades, considerable success has been achieved in reducing the discharge of pollutants to Europe's waters, leading to water quality improvements. However, information indicates that more than half of the surface water bodies in Europe are in less than good ecological status or potential and will need additional measures to meet the WFD objective.

1.3 The Blueprint recognises that aquatic environments differ greatly across the EU and therefore it does not propose any "one size fits all" solutions, in line with the principle of subsidiarity and proportionality.

1.4 The Committee highly appreciates the extent and quality of work done in the preparatory stage of the Water Blueprint. The document is based on a thorough assessment of experience with water issues from the River Basin Management Plans (RBMP), as well as on information from expert studies.

1.5 All four fundamental principles of environmental legislation have been employed appropriately in order to tackle the multitude of problems and support the humanitarian principle of access to safe drinking water and to basic sanitation services on a global scale.

1.6 The EESC highly appreciates the concept of river basins as the building blocks of the EU water policy, facilitating cooperation among Member States in solving key problems in the most efficient manner.

1.7 Though the EESC considers the Blueprint and all background documents exceptionally well done, it is necessary to pay even greater attention to implementation of the planned actions.

1.8 In the implementation of the existing regulatory measures (strand 1), attention should be paid to the reduction of diffuse sources of pollution. Implementation should be properly incentivised in line with the specific conditions in each river basin.

1.9 Employing the "polluter pays" principle requires appropriate measurements and monitoring to establish a solid basis for any additional actions. Nonetheless, such requirements should be proportional to the locality and the severity of the problems to be solved.

1.10 The Blueprint rightly requires the water accounts to be further developed with the Member States and the EEA. Such accounts will allow river basin managers to calculate how much water can be used, and how much should be set aside to maintain ecosystem functions (ecological flows).

1.11 Illegal abstraction is a serious problem in some water-stressed regions. Studies to test COPERNICUS/GMES data would allow Member States to identify illegal abstraction.

1.12 The Committee highlights the need to coordinate the water agenda with the CAP at this moment of exceptional opportunity when Parliament, the Council and the Commission are setting the agenda for the next seven years. This chance should not be missed.

1.13 Flood protection measures (very topical nowadays in Central Europe) would require coordinated financing, including from structural/cohesion funds. In addition, some of the measures planned (in response to earlier floods) have not been completed because of a variety of administrative hurdles.

1.14 The Committee has already expressed its appreciation of the Innovation Partnerships on Water and on Agricultural Productivity and Sustainability. It should be stressed that these initiatives have developed bottom-up.

1.15 Policy interventions outside the fresh water area can also play a role in strengthening the prevention of water pollution. For instance, legislation on the sustainable use of pesticides, on industrial emissions and pharmaceuticals as well as the REACH Regulation should be coordinated with the WFD.

1.16 Filling gaps in the existing framework rightly focuses on enhancing water use efficiency, including the crucial aspect of increasing the potential for water re-use. First of all, criteria for safe water re-use must be established in order to achieve the desired and expected results.

1.17 Finally, the Committee notes the important aspects of soil and forest management closely related to water issues.

1.18 The EESC warns that there will be obstacles to accomplishing the goals set in the Blueprint. All parties involved throughout the Blueprint process should be aware of the risks involved and, at their level of responsibility, they should do their best to remove as many of them as possible. Civil society should be closely involved in this demanding process by obtaining adequate information, exercising its powers in policy decisions and adapting its behaviour to the water challenges.

## 2. Background information - the Commission documents

2.1 Water is essential for human life, nature and the economy. It is permanently renewed but it is also finite and cannot be made or replaced with other resources. Fresh water constitutes only about 2 % of the water on the planet and competing demands may lead to an estimated 40 % global water supply shortage by 2030.

2.2 The documents presented in the package consist of two important reports and a plan of the key actions needed:

— Report on the Implementation of the Water Framework Directive (2000/60/EC) - River Basin Management Plans

— Report on the Review of the European Water Scarcity and Droughts Policy

— A Blueprint to Safeguard Europe's Water Resources

2.3 In addition, a multitude of studies is available, showing the multifaceted nature of water problems. As far as can be discerned from the documents submitted, the key issues have been addressed in the Water Blueprint.

2.4 In order to provide clarity and implementation support, 26 guidance documents on various aspects of implementation of the WFD have been developed within the framework of the WFD Common Implementation Strategy (CIS), in an open and participatory process involving a wide group of stakeholders.

2.5 The public consultation considered that the CIS had fully or partially addressed the right issues and that the guidance produced had been useful in the practical implementation of EU water policy. However, on some issues (e.g. cost-benefit analysis, objective setting) further clarity is needed and the usefulness of the guidance would have been greater had it been produced earlier in the implementation timetable.

2.6 The advance made by taking a holistic ecosystems approach to water objectives may still not be sufficient. In the future, it may be necessary to revisit the definition of good status in order to ensure that it is sufficiently ambitious to prevent further deterioration. Furthermore, the importance of protecting ecosystem services is now taken into account to a much greater extent.

2.7 The Fitness Check study has identified the most important problems to be addressed:

— **Water quality:** The information reported in the first (2009) RBMP indicates that over half of all surface water bodies in Europe do not meet the criteria for good ecological status. In addition to the measures established under older (Nitrates, Urban Waste Water, Industrial Emissions) Directives, further action will be necessary to meet the WFD objectives.

— **Water scarcity** is spreading in Europe. Large areas, particularly in the South of Europe, are affected by water **scarcity**, while competing uses are increasing demand across the continent. In a number of European regions, water scarcity presents an immediate and long-term threat to ecosystems and water supply for agriculture, industry and domestic users.

- **The frequency and intensity of floods and droughts** and their environmental and economic damage appear to have increased over the past thirty years. This can be attributed both to climate change and other anthropogenic pressures (i.e. land use changes). Since 1998, floods in Europe have caused some 700 deaths, the displacement of about half a million people and an (insured) economic cost of at least EUR 25 billion.
- **Other significant pressures on EU waters** derive from the discharge of pollutants, hydro-morphological alterations and water abstraction, which are mainly due to demographic growth, land use and economic activities.

2.8 In recent decades, considerable success has been achieved in reducing the discharge of pollutants to Europe's waters, leading to water quality improvements. However, information reported in the first RBMP indicates that more than half of the surface water bodies in Europe are in less than good ecological status or potential, and will need additional measures to meet the WFD objective. The pressures reported to affect most surface water bodies are **pollution from diffuse sources** causing nutrient enrichment and **hydro morphological pressures** altering habitats.

2.9 The Blueprint recognises that the aquatic environments differ greatly across the EU and therefore does not propose any "one size fits all" solutions, in line with the principle of subsidiarity. It emphasises key themes which include: improving land use, addressing water pollution, increasing water efficiency and resilience, and improving governance by those involved in managing water resources.

2.10 Numerous specific measures/programmes/actions are presented in the Blueprint to address the outstanding problems on various levels, and they are presented in three strands of work:

- implementation
- integration of water policy objectives into other EU policies
- filling gaps in the existing framework.

The actions have been initiated already, and they are planned to be completed by 2016, except the long-term actions/programmes to be completed by 2021.

### 3. General comments

3.1 The Committee highly appreciates the extent and quality of work done in the preparatory stage of the Blueprint. The document is based on a thorough assessment of experience with water issues from the RBMP, as well as on information from expert studies. In addition, it is good to note that water rights have always been an important part of the legal structure in European countries, so that there is long experience in this field.

3.2 All four fundamental principles of environmental legislation have been employed appropriately in order to tackle the multitude of problems and to support the principle of access to safe drinking water and basic sanitation services on a global scale.

3.3 The Blueprint not only formally accepts the great variability of natural conditions with regard to water throughout the EU, but puts forward practical actions focusing on the key specific problems in individual regions/river basins. The EESC highly appreciates the concept of river basins as the building blocks of the EU water policy, facilitating cooperation among Member States in solving the key problems in the most efficient manner.

3.4 The Committee also acknowledges the Fitness Check document, which is one of the first of its kind and provides a valuable assessment of water policy in its own right, as well as in the context of the entire body of legislation in related policy fields.

3.5 Though the EESC considers the Blueprint and all background documents exceptionally well done, it is necessary to pay even greater attention to the implementation of the planned actions. As always, in this case implementation will be difficult, and it must now become the number one priority. All possible political efforts, incentives and system/project management methods should be employed to ensure the ultimate success of this plan.

#### 4. Specific comments

4.1 In the implementation of the existing regulatory measures (strand 1), attention should be paid to reduction of diffuse sources of pollution by strengthening/reinforcing nitrate action programmes. The reasons for lagging behind should be thoroughly analysed and the required improvements should be properly incentivised in line with the specific conditions in particular river basins.

4.2 The "polluter pays" principle also applies in this case; nevertheless, such an obligation must be well defined and based on realistic assumptions/assessments of the water cycle. The polluter should be obliged to pay for the proven real pollution he is responsible for.

4.3 The efforts to further curb industrial point source pollution are based on the implementation of the Industrial Emissions Directive. The proportionality principle must apply together with the "polluter pays" principle, which is clearly identified in the case of point sources.

4.4 Employing the "polluter pays" principle requires appropriate measurements (volumes) and possibly monitoring (pollutants) to establish a solid basis for any additional actions. Such requirements should be proportionate to the locality and severity of problems to be solved.

4.5 Unfortunately, in many parts of Europe, a full picture of water flows is still not available. The Blueprint rightly requires the development of water accounts with Member States based on the work carried out with the EEA. Such accounts will allow river basin managers to calculate how much water can be used and how much should be set aside to maintain ecosystem function (ecological flows). The Committee strongly recommends that this action be accomplished as soon as possible.

4.6 In many parts of Europe over-abstraction for irrigation makes it impossible to achieve good water status. Illegal abstraction is a serious problem in some water-stressed regions. Studies to test COPERNICUS/GMES data would allow Member States to identify illegal abstraction, and such tasks should provide further justification for GMES as a project of EU-wide importance.

4.7 The Committee considers it important to develop a common methodology for cost-recovery, which allows for comparable results throughout the Union. It would ensure that all water users have adequate incentives to use water efficiently.

4.8 The EESC points to several examples of initiatives and approaches in water stressed areas presented at the public hearing on the subject held the Committee. In addition, a few studies on efficient use of water have been published under the concept of "more crop per drop." The findings of this work could be used for bridging the needs of agriculture and available water resources in water-stressed regions. Again, the proportionality principle should be applied in tackling such sensitive issues.

4.9 Strand 2, the integration of water policy objectives into other EU policies, also requires numerous actions listed in the Blueprint's action plan.

4.10 The Committee highlights the need to coordinate the water agenda with the CAP at this moment of exceptional opportunity when the Parliament, the Council and the Commission are setting the agenda for the next seven years. This chance should not be missed in the following areas:

- Inclusion of WFD basic measures in cross-compliance
- Greening of pillar 1, especially in ecological focus areas,
- Designing rural development programmes to address water issues,
- Funding in CAP pillar 2 for improved efficient irrigation systems (with environmental conditionality attached, e.g. metering),
- Encouraging natural water retention measures – floodplains, wetlands or buffer strips along river banks – the key measures needed to restore ecosystem function. Funding under pillar 2, targeting areas of need is critical. The aim should also be to encourage actions under LIFE+, Horizon 2020, etc.



4.11 Flood protection measures (very topical nowadays in Central Europe) would require coordinated financing as well, perhaps from the Structural Funds. In addition, some of the measures planned (in response to earlier floods) have not been completed because of a variety of administrative hurdles. Such emergency issues would require appropriate emergency administrative treatment, too.

4.12 The Committee appreciates the Innovation Partnerships on Water and on Agricultural Productivity and Sustainability. It should be stressed that these initiatives have developed bottom-up in the Member States, with the Commission playing a coordination role. The chances of success are enhanced by this involvement of actors in their respective fields of activity.

4.13 Policy interventions outside the fresh water area may also play a role in the prevention of water pollution. For instance, legislation on the sustainable use of pesticides, and on industrial emissions, pharmaceuticals and the REACH Regulation must be compliant with the planned actions within the Blueprint.

4.14 Strand 3, filling the gaps in the existing framework, rightly focuses on enhancing water-use efficiency, including the crucial aspect of increasing the potential for water re-use. First of all, criteria for safe water re-use must be established in order to achieve the desired and expected results. Water could be re-used naturally in the same/similar facilities, but cascading reclaimed water from one user/facility for re-use by a different user/facility would require proper balancing of both the volumes and the quality needed.

4.15 For instance, closing water circuits totally, even within a single operation, is nearly impossible because of the ever increasing content of inorganic salts in those circuits. Thus, a safe balance must be established to allow processes to operate without disturbance.

4.16 Finally, the Committee draws attention to important aspects of soil and forest management closely related to water issues. As a result of the sometimes conflicting requirements of different policies, forest resources come under serious strain in performing their non-productive services, such as their role as primary natural retention reservoir of fresh water and carbon sink, and in relation to biodiversity conservation, etc. The life cycle analysis should show all aspects and also indicate balanced measures tailored to the roles of forests in the EU.

4.17 Water issues cannot be separated from soil. The Committee calls for appropriate attention to be paid to soil, although we recognise that the soil agenda is subject to subsidiarity. Common features should be addressed in greater detail in the further work on the Blueprint.

4.18 The EESC warns that accomplishing the goals set in the Blueprint will encounter obstacles in the following areas:

- market failures (loss of revenues, distribution of costs and benefits)
- lack of financing, harmful subsidies
- regulation barriers
- lack of coordination
- lack of political will
- integration of water policy objectives into other sectoral policies remains rhetoric.

All parties involved throughout the Blueprint process should be aware of the risks involved and, at their level of responsibility, do their best to remove as many of them as possible. Civil society should be closely involved in this demanding process by obtaining adequate information, exercising its powers in policy decisions and adapting its behaviour to the water challenges.

#### **Result of the vote**

For	112
Against	129
Abstentions	12

---

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks’**

COM(2013) 147 final — 2013/0080 (COD)

(2013/C 327/17)

Rapporteur: **Mr McDONOGH**

On 12 and 16 April 2013, respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 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 measures to reduce the cost of deploying high-speed electronic communications networks*

COM(2013) 147 final — 2013/0080 (COD).

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 20 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 10 July 2013), the European Economic and Social Committee adopted the following opinion by 180 votes to 1 with 3 abstentions.

## **1. Conclusions and recommendations**

1.1 The Committee believes that universal access to high-speed electronic communications networks is key to promoting growth in Europe, creating jobs and strengthening cohesion. The EESC strongly supports the broadband targets in the Digital Agenda <sup>(1)</sup>; however, the targets will be difficult to achieve without special efforts by Member States and the Commission to improve the environment for both the supply and the demand for broadband across the Union.

1.2 The Committee was extremely disappointed by the recent decision of the European Council to reduce the part of the 2014-20 Multiannual Financial Framework (MFF) budget for digital infrastructure from EUR 9.2bn to only EUR 1bn. This cut will remove MFF support for broadband rollout, and hurt the poorer and less advantaged regions of the EU most.

1.3 The Committee welcomes the proposed regulation from the Commission. The measures proposed are particularly important to bridging the digital divide and facilitating the rollout of broadband in rural areas.

1.4 The EESC would like the Commission to advise how access to high-speed broadband can be recognised as a universal right of all citizens regardless of location. The Commission raised the question re inclusion of broadband in the Universal Service Obligation in 2010 <sup>(2)</sup>. An answer to this question is urgently needed to promote citizen welfare, employment and digital inclusion.

1.5 The Committee calls on MSs to complete their national broadband plans without further delay.

1.6 The Commission and MSs should consider what financial incentives and supports could be given to the Private Sector to encourage investment in high-speed broadband for areas with low population density.

1.7 In addition to substantial investment by the private sector in the rollout of high-speed broadband, the Committee estimates that up to EUR 60bn in public funding will also be needed to meet the Digital Agenda 2020 targets. The EESC calls on the Commission and MSs to include this critical funding in budgets.

1.8 The Committee would like the Commission to address the problem of broadband service providers who are not providing customers with the Internet connection speeds promised in their contracts. This contractual "non-conformity" and false advertising undermines trust in the digital market, hurts demand and must be tackled by strong measures.

1.9 The Committee calls on the Commission to build on the proposed regulation and develop a pan-European wholesale market for broadband infrastructure.

1.10 The EESC asks the Commission, the NRAs and the MSs to ensure that a competitive market for broadband infrastructure is developed in all areas of the Union.

<sup>(1)</sup> COM(2010) 245 final.

<sup>(2)</sup> COM(2008) 572 final.

1.11 The Committee notes that the proposed regulation will offer new business opportunities for the utility and transport undertakings to participate in the broadband infrastructure market. The Commission and MSs should make special efforts to encourage these firms to take advantage of this opportunity.

1.12 The Committee draws the attention of the Commission to previous recent opinions dealing with the rollout of high-speed broadband and reducing the digital divide: *A Digital Agenda for Europe* <sup>(3)</sup>, *The first radio spectrum policy programme* <sup>(4)</sup> and *The Digital Agenda for Europe - Driving European growth digitally* (CES959-2013, not yet published).

## 2. Gist of the Commission proposal

### 2.1 Purpose

2.1.1 The Communication "Single Market Act II: Together for new growth identified cost reduction of broadband rollout as one of 12 key actions that will boost growth.

2.1.2 Provision of high-speed broadband has slowed down, especially in non-urban areas, because of a patchwork of rules and administrative practices at national and sub-national levels.

### 2.2 Objectives

2.2.1 The regulation aims to:

- Reduce costs and investment risk by streamlining efficient planning and investment processes for broadband provision.
- Remove barriers to the functioning of the Single Market caused by the patchwork of rules and administrative practices at national and sub-national levels required to provide broadband infrastructure.
- Stimulate ubiquitous broadband coverage.
- Ensure equal treatment and non-discrimination of undertakings and investors providing broadband.

### 2.3 The proposed regulation

2.3.1 To achieve the intended cost and efficiency objectives, the regulation defines a number of directly applicable rights and obligations for network operators and infrastructure providers, applicable across the various steps of infrastructure deployment.

2.3.2 The regulation proposes the following legal rules to achieve its aims:

<sup>(3)</sup> OJ C 54, 19.2.2011, pp. 58-64.

<sup>(4)</sup> OJ C 107, 6.4.2011, pp. 53-57.

— **Access to existing physical infrastructure:** Every network operator (telecoms or non-telecoms infrastructure owner - In the regulation, "network operator" means an electronic communications network provider as well as an undertaking providing a physical infrastructure intended to provide: a service of production, transport or distribution of gas, electricity, including public lighting, heating, water, including disposal or treatment of waste water and sewage; transport services, including railways, roads, ports and airports) has the right to offer, and an obligation to meet, all reasonable requests for access to its physical infrastructure for the deployment of high-speed electronic communications networks, whether fixed or wireless.

— **Information on existing infrastructure:** Broadband providers will have the right to access, via a single information point, a set of minimum information concerning the existing physical infrastructure, and the right to carry-out in-site surveys of existing infrastructure.

— **Coordination of civil works:** Every network operator can negotiate agreements to coordinate civil works with entities authorised to provide elements of high-speed broadband networks. In order to enable better coordination of works, any network operator shall make available on request minimum information concerning on-going or planned civil works related to its physical infrastructure.

— **Permit granting:** Every broadband networks provider can access by electronic means via a single information point, any information concerning the conditions and procedures for granting permits for civil works, and submit its application electronically via the same single information point. The competent authorities shall grant or refuse permits within six months from receiving a request.

— **In-building equipment:** All newly-constructed buildings and buildings undergoing major renovation shall be equipped with high-speed-ready in-building physical infrastructure, up to the network termination points.

2.3.3 Any disputes between network operators and broadband service providers concerning their rights and obligations, will be mediated if necessary by a competent national dispute settlement body: the NRA or another competent authority.

2.3.4 The regulation would become directly applicable across the EU after agreement by the European Parliament and the Council.

### 3. General comments

#### 3.1 Broadband is essential

3.1.1 Broadband is the essential enabling infrastructure for the Digital Agenda and the completion of the Digital Single Market. The economic importance of broadband services cannot be overstated. The availability of broadband has a multiplier effect on economic growth: the World Bank estimates that every 10 % increase in broadband take-up results in up to 1.5 % growth in GDP growth. High-speed, ubiquitous connectivity is essential to the rollout of new transformative technologies and services like cloud computing and smart grids.

3.1.2 Broadband's importance to growth and jobs is recognised in the Digital Agenda which set-out to provide basic broadband for all Europeans by 2013, and by 2020 (i) access to download rates of 30 Mbps for all Europeans, and (ii) subscription to internet connections above 100 Mbps by 50 % or more of European households. These goals will only be achieved if the infrastructure deployment costs are lowered across the EU and extraordinary measures taken to provide broadband in rural and less advantaged areas of the Union.

#### 3.2 Low cost and world class

3.2.1 Low-cost, world-class broadband infrastructure is a fundamental component of a vibrant 21st century economy. Knowledge-based businesses will grow where the skills and infrastructure exist to support them. And an increasing amount of advanced services in health, education and social services will depend on fast and ultrafast broadband availability.

3.2.2 The quality of networks, their cost of provision, and competitive end-user prices are important management criteria in build-out programmes. As up to 80 % of the cost of network infrastructure is due to civil engineering works, it is vital that national and local authorities work to significantly reduce costs by efficient coordination of infrastructure projects.

#### 3.3 Universal service right

3.3.1 The EESC has asked the Commission in numerous opinions, most recently in its opinion on driving European growth digitally<sup>(5)</sup>, to advise how access to high-speed broadband can be recognised as a universal right of all citizens, regardless of location. An answer to this question is now urgently needed.

#### 3.4 Ultrafast broadband is necessary

3.4.1 The targets set in the Digital Agenda for 2020 broadband availability will be overtaken in the not-so-distant future by the rapid advances taking place in broadband technology and Internet-based services (e.g. high definition video conferencing). Ultrafast Networks providing connectivity of up to 1Gbps (1 000Mbps) are already being rolled-out in some urban areas (<http://arstechnica.com/tech-policy/2012/07/tokyo-seoul-and-paris-get-faster-cheaper-broadband-than-us-cities/>) and video-based services are developing to use these higher bit-rates.

3.4.2 Substantial investment in high-speed connectivity will be needed throughout the EU to keep-up with the global development of the Internet economy.

#### 3.5 EU falling behind

3.5.1 As was recognised by the Commission in its recent Communication on the importance of the Digital Agenda for driving economic growth<sup>(6)</sup>, Europe is falling further behind its global competitors in the delivery of broadband infrastructure.

3.5.2 Investments in high-speed broadband are taking place more quickly in parts of Asia and in the United States, leading to significantly better coverage and higher speeds. As of December 2011, South Korea, with 20.6 % of subscriptions per 100 inhabitants, had the highest take-up of fibre worldwide, i.e. double that of Sweden (Staff working document accompanying the proposal for a regulation to reduce deployment costs of broadband: SWD(2013) 0073(part 1).

#### 3.6 Digital divide

3.6.1 The Digital Agenda for Europe Scoreboard (<https://ec.europa.eu/digital-agenda/en/scoreboard>) and the latest figures from Eurostat ([http://epp.eurostat.ec.europa.eu/portal/page/portal/information\\_society/data/main\\_tables](http://epp.eurostat.ec.europa.eu/portal/page/portal/information_society/data/main_tables)) show that the digital divide is growing wider, and the differences between MS are big. In 2012, 28% of the households in EU27 are without broadband connectivity. Furthermore, 90 % of households without broadband are located in rural areas. 35 million homes in rural areas are still waiting for high-speed connectivity, and unless proper attention is given to citizens living outside urban centres they will suffer increasing social and economic disadvantage.

3.6.2 The measures included in the proposed regulation from the Commission will provide a basis for reform of national and local government planning regulations, and smart infrastructure planning, investment incentives and innovative technologies can help to bridge the broadband gap.

<sup>(5)</sup> Digital Growth - Interim Review, OJ C 271, 19.9.2013, p. 127-132

<sup>(6)</sup> COM(2012) 784 final.

### 3.7 Investment needed

3.7.1 The Committee was extremely disappointed by the decision of the Council in February to reduce the 2014-20 budget in the Multiannual Financial Framework (MFF) for digital infrastructure and services under the Connecting Europe Facility, from EUR 9.2bn to only EUR 1bn. This cut would remove MFF support for broadband rollout, and hurt the poorer and less advantaged regions of the EU most, exacerbating the growing digital divide.

3.7.2 The money included in the MFF to support broadband roll-out was intended to be used by the Commission to stimulate the broadband market, but it represents only a small portion of the funds actually needed to achieve the broadband targets in the Digital Agenda. The consultants engaged by the Commission to study the funding gap estimate that up to EUR 62bn additional public funding will be needed to meet the 2020 targets (Study on the socio-economic impact of bandwidth by Analysys Mason for the European Commission, 2012).

3.7.3 The funding for this large investment will have to come primarily from the private sector, but special measures will be needed to support private investment in rural areas where population density is too low to attract investment. The European Investment Bank has already provided funding for a number of such projects and will need to provide much more of this type of support. The Commission should put special effort into considering how European institutions and the MS could better facilitate the private sector funding of broadband rollout.

3.7.4 Action 48 of the Digital Agenda earmarked the use of structural funds to finance the roll-out of high-speed networks. The Cohesion Fund should also be considered.

### 3.8 Stimulate supply

3.8.1 Local government and municipal authorities can play an important role in promoting the provision of broadband connectivity in their regions by leading PPP initiatives and by implementing the measures in the proposed regulations as quickly and efficiently as possible.

3.8.2 The regulation offers the opportunity to open the market for the provision of broadband connectivity and services to more new entrants. In particular, non-telecommunications companies that have extensive infrastructure that could be used for the provision of high-speed networks. MSs and the Commission should make a special effort to encourage these new entrants.

3.8.3 The regulation also offers the potential to open-up the market to cross-border investment in infrastructure provision by firms across Europe. The Commission should consider how this single market in infrastructure could be developed by increasing Pan-European awareness of investment opportunities, reducing the risk of these investments to non-national investors, and perhaps by developing some special financial instruments (bonds) that would increase the attractiveness of investing in the most challenging regions.

3.8.4 Innovative technology solutions, including greater use of wireless technologies, must be deployed as soon as possible to speed-up broadband deployment and to address the growing digital divide between urban and rural areas.

3.8.4.1 In particular, fully implementing the European Radio Spectrum Policy Programme (RSPP) <sup>(7)</sup> in MSs is vital to ensure that sufficient and appropriate spectrum for both the coverage and the capacity needs of wireless broadband technologies will be designated and made available to achieve the targets set for 2020.

3.8.4.2 Satellite technology will provide broadband to the most remote areas of the Union. However, capacity, cost and speed issues will make it a marginal solution, perhaps only catering for less than 10 % of European 30Mbps broadband in 2020.

### 3.9 Stimulate demand

3.9.1 Weak demand for broadband, especially in less densely populated areas, adversely affects investment in networks; notwithstanding that there is always substantial latent demand in areas without availability to high speed connectivity.

3.9.2 The Commission and MSs must focus on broadband demand stimulation by a range of methods, including targeted public information campaigns, public WiFi hotspots, the further development of e-Government services, and by promoting digital literacy and skills training. Demand stimulation efforts should especially target rural areas.

3.9.3 Broadband costs and price transparency is critical to ensure that the citizens take-up broadband. Existing broadband consumers across Europe are complaining that their service providers are not providing them with the Internet connection speeds promised in their contracts. This contractual "non-conformity" and false advertising undermines trust in the digital market and hurts demand and must be tackled by strong measures.

<sup>(7)</sup> COM(2010) 471 final.



#### 4. Specific comments

##### 4.1 *Need for a regulation*

4.1.1 Commercially-driven electronic communications companies lack sufficient financial incentive to invest in broadband infrastructure in many areas of the EU where population density is too low. Thus, the Committee is pleased that the proposed regulation will introduce measures to substantially reduce the costs and risks of broadband provision, and improve the investment business case for network providers.

4.1.2 To ensure that there is proper digital inclusion and to maximise the economic benefits from universal high-speed broadband, MSs and local governments need to assert stronger influence over the supply of and the demand for broadband infrastructure, by implementing broadband plans that balance the high economic returns to be earned from infrastructure investment in areas with high population density with the much less financially attractive investment required in underdeveloped regions. This proposed regulation will give them better means to achieve this.

4.1.3 In many markets there is a single dominant infrastructure provider. The Committee hopes that the effective implementation of this regulation will create better conditions for new network providers to enter the market and provide competitive offerings.

##### 4.2 *Cutting costs and improving cooperation*

4.2.1 According to the Communication, civil engineering works can amount to 80 % of broadband deployment costs. The capex savings to network operators expected from the implementation of the proposed regulation is estimated in the range of 20–30 % of total investment costs, i.e. up to EUR 63 billion by 2020. The EUR 63 billion in savings can then be invested in other areas of the economy.

4.2.2 Cooperation and sharing by private infrastructure providers is essential for efficiency, speed of implementation, environmental sustainability and the availability of competitive prices for end-users. The Committee is pleased to see that the regulation will oblige private infrastructure providers to publish good information on existing and planned infrastructure, and that network providers will have obligations to cooperate, so that good planning, cooperation and efficient use of resources is facilitated.

##### 4.3 *Natural monopolies*

4.3.1 In areas with low levels of population density the economics dictate that only one core broadband infrastructure provider can be supported; in other words, a natural monopoly exists.

4.3.2 Such natural monopoly conditions make the case for an "Open Access" model of broadband provision whereby a

single provider, perhaps a PPP, would roll-out the core infrastructure and then open-up the network facilities by leasing capacity to smaller service providers on fair and equal terms. Perhaps the Commission should consider how this Open Access model could be developed and regulated in Europe, taking care not to distort normal competition.

##### 4.4 *Wholesale market*

4.4.1 The proposed regulation would provide enabling legislation for the development of a wholesale market in broadband infrastructure. Perhaps the Commission should investigate how the regulation could be leveraged to stimulate such a market, particularly in the hard-to-reach regions of the Union.

4.4.2 A wholesale market in dark fibre or wireless bearer infrastructure could be cross-border and pan-European, if there was good quality information on consumer demand and existing infrastructure. The Commission should investigate how such a market could be stimulated and supported.

##### 4.5 *National Broadband Plans*

4.5.1 The build-out of infrastructure, in rural areas in particular, demands an effective national strategy and implementation plan. All MSs now have a broadband strategy, but many are still lacking plans to deliver on the Digital Agenda targets. The national strategies need to be updated soon to include the approach to delivering ultrafast networks, with concrete targets and identified implementation measures.

4.5.2 Action 46 of the Digital Agenda requires MSs to develop their national broadband plans, but a number of MSs have not completed their plans and this action is flagged as delayed by the Commission. This delay adversely impacts the broadband rollout and funding plans of industry. The EESC calls on MSs to revise their plans in the light of this proposed regulation and complete the work as soon as possible.

4.5.3 A comprehensive National Broadband Plan, which included PPP initiatives and special incentives to facilitate rollout in rural areas, would make it much easier to draw-down European and EIB funding.

##### 4.6 *Utility companies*

4.6.1 The proposed regulation will clear the way for infrastructure owners that are not electronic communications companies – i.e. energy companies, water companies, transport companies and waste disposal companies – to make their infrastructure available on commercial terms for the provision of broadband services. This will help those companies to earn new revenues, lower their costs of essential infrastructure by sharing the cost with broadband providers, and leverage synergies as they develop their own core services, for example in the development of smart grids for energy providers.

4.6.2 Efforts should be made by the Commission and MSs to alert these companies to the opportunities provided by the essential rollout of broadband infrastructure, and the potential positive impact of the proposed regulation on their business.

Brussels, 10 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on the Proposal on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and to marine pollution caused by oil and gas installations’**

COM(2013) 174 final — 2013/0092 COD

(2013/C 327/18)

Rapporteur: **Dr BREDIMA**

On 16 April and 18 April 2013, the European Parliament and the Council of the European Union respectively 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 on the Proposal on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and to marine pollution caused by oil and gas installations*

COM(2013) 174 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 20 June 2013.

At its 491th plenary session, held on 10 and 11 July 2013 (meeting of 10 July), the European Economic and Social Committee adopted the following opinion by 179 votes to 1, with 3 abstentions.

## 1. Conclusions

1.1 The EESC supports the budget increase of EMSA under the proposed Regulation from EUR 154 million to EUR 160.5 million for the period from 2014 to 2020. It reiterates its support for the extension of competence of EMSA under Regulation 100/2013.

1.2 Adoption of the proposed Regulation comes at a critical moment regarding the discovery of oil and gas fields in the Eastern Mediterranean Sea and consequent initiatives for their speedy exploitation through offshore drilling. These activities will pose a challenge to EMSA's capabilities in responding to the potential hazards of offshore drilling and transportation of oil and gas.

1.3 Whilst supporting the financial envelope proposed, the EESC believes that it may prove insufficient to meet the actions required in the seven year period in view of the following challenges: increased traffic flows (more oil tankers and gas carriers at sea), increased drilling activities for oil and gas exploitation in the seas surrounding the EU, more coastal and island states have become EU Member States. The limited emergency response capacity may result in increased external costs in case of major incidents.

1.4 The EESC believes that the deployment of the current 19 vessels may be insufficient for the entire EU coastal areas to assist Member States capability to clean up pollution at sea. The funding may also prove insufficient in further developing the satellite images to detect, and help recovering pollutants emitted by ships in the entire EU area.

1.5 The EESC prompts EMSA to deploy its newly acquired competence to contribute to the fight against maritime piracy. EMSA satellite surveillance instruments will be most useful in detecting pirate ships.

1.6 The EESC wonders if EU Member States and neighbouring countries are still properly equipped to respond to major accidents of the magnitude of Erika and Prestige, or disasters similar to the Deepwater Horizon.

1.7 The EESC invites the EU, its Member States and the new neighbouring coastal states to strengthen the implementation of the following regional Conventions enumerated in the explanatory Memorandum of the proposed Regulation: the Helsinki Convention, the Barcelona Convention, the Bonn Agreement, the OSPAR Convention, the Lisbon Agreement (which has still to enter into force) and the Bucharest Convention.

1.8 The EESC invites EMSA action to trace down inadequate reception facilities for oil residues to EU ports as well as to ports of neighbouring states.

## 2. The European Commission's proposal

2.1 On 3 April 2013 the European Commission submitted a proposal for a Regulation of the European Parliament and of the Council on multiannual funding for the action of the European Maritime Safety Agency (EMSA) in the field of response to pollution caused by ships and to marine pollution caused by oil and gas installations <sup>(1)</sup>.

<sup>(1)</sup> COM(2013) 174 final.

2.2 Regulation 2038/2006<sup>(2)</sup> (18 December 2006) established a multiannual funding for the action of EMSA in response to pollution caused by ships from 1 January 2007–31 December 2013.

2.3 Regulation 100/2013 (15 January 2013) assigned to EMSA new "core" tasks: to respond to pollution caused by oil and gas installations and extended EMSA's services to countries covered by the enlargement policy and by the European Neighbourhood Policy<sup>(3)</sup>. The present opinion is mainly assessing the adjusting of the EMSA financing to its new duties. The proposed funding amounts to EUR 160.5 million for a seven year period (1 January 2014–31 December 2020).

### 3. General comments

3.1 The EESC supports the budget increase of EMSA under the proposed Regulation from EUR 154 million to EUR 160.5 million for the period from 2014 to 2020. It reiterates its support for the extension of competence of EMSA under Regulation 100/2013. This support is in line with a series of EESC opinions<sup>(4)</sup> regarding the role of EMSA.

3.2 Regulation 100/2003 gives EMSA the competence to intervene with regard to oil spills caused by offshore oil and gas platforms, apart from ship generated pollution. This competence was given in the wake of the Deepwater Horizon drilling platform oil spill and explosion in the Gulf of Mexico (April 2010). The EESC understands that the general objective of the Commission's proposal is to ensure effective EU assistance for response to pollution caused by ships and to pollution caused by oil and gas installations by EMSA providing sustainable pollution response services to affected States. Member States can therefore take such support into consideration when elaborating/reviewing their national plans for marine pollution response.

3.3 The EESC understands that the proposed budget is destined to enable EMSA to maintain its network of Stand-by Oil Spill Response divided among EU maritime areas and that a limited amount of new combating vessels will be deployed to fight pollution caused by ships and offshore installations. It is also expected that funding will not be available for enhanced oil recovery equipment which may potentially become sub-optimal in the period 2014 to 2020.

3.4 The EESC understands that CleanSeaNet monitoring of oil offshore installations for illegal discharges will be mainly performed by co-utilising satellite images as ordered for ship pollution monitoring. The EESC recalls a past opinion<sup>(5)</sup> stating that "given the high costs entailed in a satellite imagery service, the EESC believes that use of resources needs to be optimised and, in particular, that the use of images needs to be coordinated between Member States; this could lead to considerable cost-savings. At the same time, there are grounds for investment to improve image-gathering in all European maritime areas, as current coverage is not genuinely comprehensive, particularly in the Mediterranean area."

3.5 The EESC understands that the funding will not be destined to provide technical assistance and or capacity building in partner countries of the European Neighbourhood Policy.

3.6 Adoption of the proposed Regulation comes at a critical moment regarding the discovery of new sources of energy for the EU. In the Eastern Mediterranean Sea, in particular, the discovery of new oil and gas deposits underwater and the consequent drilling for their speedy exploitation will pose a challenge to EMSA's capabilities in responding to the potential hazards involved. More resources should be made available to EMSA in order to play its full role in that respect. The increase in the traffic of ships and in particular tankers/LNG's, the discovery of new deposits of oil and gas and the concomitant drilling activities will require many more vessels in the Mediterranean Sea and Black Sea. Nineteen vessels for the entire EU coastline for the period 2014–2020 is a very optimistic estimate which may prove extremely modest in the circumstances.

3.7 The extension of EMSA's competence in the above area will require further development of the satellite imagery service for surveillance, the early detection of pollution and identification of responsible ships or oil and gas installations. The availability of data and effectiveness of the response to pollution should be improved.

3.8 The EESC wonders if EU Member States and neighbouring countries are still properly equipped to respond to major accidents of the magnitude of Erika and Prestige, or disasters similar to the Deepwater Horizon.

3.9 In light of the above considerations, the EESC believes that more resources should be earmarked in order to: replace oil pollution response equipment on board contracted vessels, provide additional stand-by oil recovery vessels to cover areas with offshore installations which are not currently within

<sup>(2)</sup> OJ L 394, 30.12.2006, p. 1.

<sup>(3)</sup> OJ L 39, 9.2.2013, p. 30.

<sup>(4)</sup> OJ C 76, 14.3.2013, p. 15.

OJ C 299, 4.10.2012, p. 153.

OJ C 48, 15.2.2011, p. 81.

OJ C 44, 11.2.2011, p. 173.

OJ C 255, 22.9.2010, p. 103.

OJ C 277, 17.11.2009, p. 20.

OJ C 211, 19.8.2008, p. 31.

OJ C 28, 3.2.2006, p. 16.

OJ C 108, 30.4.2004, p. 52.

<sup>(5)</sup> OJ C 28, 3.2.2006, p. 16.

reasonable geographical range (e.g., the Arctic), buy additional dispersant capabilities and equipment for offshore spills, extend CleanSeaNet services to areas with offshore installations, and cover support to assist European Neighbourhood Policy countries.

3.10 The EESC prompts EMSA to deploy its newly acquired competence to contribute to the fight against maritime piracy. The EMSA instruments and data, especially the satellite surveillance, will be useful in detecting pirate ships. The provision of ship positioning data should become one of EMSA's key tasks, but always at the request of national authorities. The EESC reiterates the need for assistance by EMSA in the fight against piracy as per its opinion on *Piracy at sea: strengthening the EU response* (16 January 2013) and relevant Public Hearing (24 January 2013).

#### 4. Specific comments

##### 4.1 Article 2: Definitions

The definition of "oil" under the proposed Regulation refers to the definition of the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990. The EESC invites the EU and its Member States to strengthen the implementation of this Convention.

##### 4.2 Article 2: Definitions

The definition of "hazardous and noxious substances" refers to the definition of the Protocol of Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances 2000. The EESC invites the EU and its Member States that have not done so to accede and implement the above Protocol.

##### 4.3 Article 4: Union Funding

4.3.1 The EESC understands that EMSA's support to countries covered by the enlargement policy and the EU Neighbourhood Policy should be financed through existing EU programmes for these countries and not be part of this multi-annual financial framework.

4.3.2 Whilst supporting the financial envelope proposed, the EESC doubts whether it will be sufficient to meet the actions required in the seven year period in view of challenges looming: increased traffic flows (more oil tankers and gas carriers), and

increased drilling activities for oil and gas exploitation in the seas surrounding the EU. The reduced emergency response capacity may result in increased external costs in case of major incidents.

##### 4.4 Article 5: Monitoring Existing Capabilities

Regarding the list of public and private pollution response mechanisms in the EU, the EESC urges action to include similar mechanisms of the neighbouring non EU coastal states, since maritime pollution has no frontiers. Moreover, although the present opinion is confined to accidental pollution, the EESC would invite EMSA action to trace down inadequate reception facilities to EU ports as well as to ports of neighbouring coastal states. Operational pollution – as contrasted to accidental pollution – is much less mediagenic and sensational but has a much larger share of the overall pollution of the seas.

4.5 The EESC invites the EU, its Member States and the new neighbouring coastal states to strengthen the implementation of the following regional Conventions enumerated in the explanatory Memorandum of the proposed Regulation: the Helsinki Convention, the Barcelona Convention, the Bonn Agreement, the OSPAR Convention, the Lisbon Agreement (which has still to enter into force) and the Bucharest Convention. The EESC believes that pollution combating exercises (jointly) organised by these Conventions should be further promoted and exchange of experts in the field of marine pollution is felt to be essential. The EMSA programme EMPOLLEX (Marine Pollution Expert Exchange Programme) should therefore facilitate an increased number of such exchanges between Member States.

4.6 The EESC reiterates the need for neighbouring coastal states to fully implement the "mother" of maritime Conventions, the U.N. Convention on the Law of the Sea (UNCLOS) (1982) providing the legal basis for action on maritime pollution, drilling of the seabed and environmentally safe transportation by sea.

4.7 The contracted vessels have large recovered oil storage capacities and a choice of oil recovery systems. The EESC believes that contracted vessels by EMSA should be allowed to be used for lightering operations, ship to ship transfer, to store recovered oil at sea.

Brussels, 10 July 2013.

The President  
of the European Economic and Social Committee  
Henri MALOSSE



**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports'**

COM(2013) 296 final — 2013/0157 (COD)

(2013/C 327/19)

Rapporteur-general: **Mr SIMONS**

On 19 June 2013 the Council, and on 10 June the European Parliament, decided to consult the European Economic and Social Committee, under Article 100(2) 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 a framework on market access to port services and financial transparency of ports*

COM(2013) 296 final — 2013/0157 (COD).

On 21 May 2013 the European Economic and Social Committee decided to instruct the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work (Rule 59 RP), the Committee appointed Mr Simons as rapporteur-general at its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), and adopted the following opinion by 81 votes to 2.

## **1. Conclusions and recommendations**

1.1 The Committee endorses the combination of a "soft law" approach with legislation, where there is no alternative.

1.2 The Committee supports the Commission's approach of applying the proposals to all 319 TEN-T ports, with Member States having the opportunity to apply the provisions of the regulation to other ports.

1.3 Given their low impact at present, the Committee approves the Commission proposal to leave passenger transport and cargo handling services outside the scope of the regulation. Nevertheless, in terms of implementation, the Committee recommends that particular attention be paid to pilotage, mooring and towage, taking due account of their different impacts, so these can be exercised under independent judgement, free of any commercial pressure that could prejudice the safety, security and environmental protection of the port community and the general public.

1.4 The Committee is pleased that the regulation includes safeguards for employee rights but wonders why the application of Directive 2001/23/EC is made optional. As regards the social aspects that should be included in public and concession contracts, the Committee refers to its opinion on procurement by entities operating in the water, energy, transport and postal services sectors adopted on 26 April 2012 <sup>(1)</sup>. The Committee's long-standing wish to see independent social dialogue in the ports sector has also recently been fulfilled.

1.5 The Commission's basic idea of increasing financial transparency in the ports sector has the Committee's support, as this makes it possible to obtain information on any public funding at an earlier stage.

1.6 The commercial freedom of the port managing body to set port charges is rather undermined by the list of criteria and the powers conferred on the Commission to adopt delegated acts. A solution is proposed in point 5.5.

1.7 The Committee considers the independent supervisory body referred to in Article 17, which is to be responsible for monitoring and supervising the application of the regulation, to be superfluous. Competition law is usually sufficient, and where this is not the case specific action should be taken.

1.8 The Commission proposes that the regulation be evaluated and, if appropriate, measures proposed three years after its entry into force. The Committee considers this period to be too short and suggests a mid-term review with comments within three years, and a final evaluation with conclusions only after six years.

## **2. Introduction**

2.1 Third time lucky! This is now the third time that the European Commission has put forward proposals on the EU's seaports; this time against a different backdrop and adopting a different approach.

<sup>(1)</sup> OJ C 191, 29.6.2012, p. 84.

2.2 What is new here is the inclusion of 319 seaports in the Trans-European Transport Network (TEN-T) and the Connecting Europe Facility (CEF) in order to improve seaports and their hinterland connections. As a result, these seaports now, by definition, become a European interest but also each other's competitors, at least potentially.

2.3 Past "soft" measures have had virtually no effect on fair market access and transparency. This is why there is now, in addition to a number of actions, a proposal for a "hard" measure - a regulation - on these two issues, to enable EU ports to become an engine for growth and multimodal transport.

### 3. The Commission documents

3.1 Following a long and detailed consultation, as described in the impact assessment, the Commission proposes in its communication entitled "Ports: an engine for growth" a set of eight additional, "soft" actions that it believes are necessary to develop opportunities for 319 ports, 83 of which form part of the TEN-T core network, in the coming years.

3.2 The Commission proposes that the basic principle of the EU's strategy should be that no unnecessary action should be taken at ports that perform well, but that support should be provided at ports whose performance is lagging behind, by introducing "best practices" and an approach based on sound management, while respecting the diversity and specific circumstances of the different ports.

3.3 Port activities contribute directly to employment. Currently 2 200 port operators directly employ 110 000 port workers, while the ports in 22 maritime Member States directly or indirectly employ some 3 million workers. These represent a major source of tax revenues for governments.

3.4 The Proposal for a Regulation establishing a framework on market access to port services and financial transparency of ports explicitly states that the principle of freedom to provide services applies to all forms of service provision in all TEN-T ports.

3.5 However, the section on market access (Chapter II) and the transitional measures (Article 24) of the draft regulation will not apply to passenger and cargo handling services.

3.6 This gives the port managing body the freedom to impose quality and availability requirements on service providers, under which the managing body may limit the number of providers of a specific service in the case of space constraints, provided that this is clearly documented in a formal port development plan, or that the operator has a public service obligation, the intention of which must be clear and publicly available.

3.7 The Commission proposes that the rights of workers be safeguarded and that Member States have the opportunity to

further strengthen these rights in the event of a transfer of the operating company and the relevant staff working for the previous operator.

3.8 The proposal states that the financial relations between public authorities and the managing body of a port should be transparent, especially if the port managing body receives public funds.

3.9 The port managing bodies can set the charges for the use of port infrastructure independently and in line with their own commercial and investment strategy. Charges may vary in accordance with frequency of use of the port, or in order to promote a more efficient use of the port infrastructure, short sea shipping or energy or carbon-efficient performance of transport operations.

3.10 Under the proposal, Member States are required to have an independent national body to supervise the application of this regulation.

3.11 This should be a legally independent body, functionally independent of port operators and port service providers. It would handle complaints, would have the right to require port managing bodies, port service providers and port users to submit information needed to ensure effective monitoring and supervision, and would take binding decisions, which would be subject to judicial review.

### 4. General comments

4.1 The Committee considers that, with the publication of this communication, the impact assessment and the proposal for a regulation, the Commission has taken a step towards opening up market access to port services and greater financial transparency of ports. The Committee points to the importance of improving the quality of services and increasing investment in ports, which is so essential for the smooth operation of the market. Safety, security, the environment and the EU's coordinating role are also given due attention.

4.2 The proposals published contain both a "soft law" approach consisting of the eight actions laid down in the communication, and a "hard" approach in the form of a proposal for a regulation. Broadly speaking, the Committee believes that, where possible, the "soft law" approach should be adopted and that legislation should only be used where there is no alternative. This is an idea previously put forward by the Committee in its opinion on the European ports policy <sup>(2)</sup>.

4.3 The proposal for a regulation applies to all 319 TEN-T ports, as by their nature they play an important role in the European transport system. The Member States remain free to apply the provisions of the proposal for a regulation to other ports. The Committee agrees with the Commission's approach, which it considers to be pragmatic.

<sup>(2)</sup> OJ C 27, 3.2.2009, p. 45.

4.4 The Committee notes that cargo handling services and passenger terminals remain outside the scope of the regulation (Article 11). The argument used by the Commission is that a large part of cargo handling services and passenger transport by cruise lines is operated on the basis of concessions, while passenger ferry services are usually a public service obligation. The Committee accepts the Commission's argument.

4.5 The principle of freedom to provide port services is at the forefront of the regulation. Four ways in which this freedom can be restricted are listed, i.e.

- the ability to impose minimum requirements on the provision of port services
- limitation of the number of port service providers
- public service obligations
- internal operator.

The Committee endorses this statement of the implementation of the principle of freedom to provide services, coupled with the possibility of applying a number of specific restrictions tailored to ports. Nevertheless, in terms of implementation, the Committee recommends that particular attention be paid to pilotage, mooring and towage, taking due account of their different impacts, so these can be exercised under independent judgement, free of any commercial pressure that could prejudice the safety, security and environmental protection of the port community and the general public.

4.5.1 It is unclear why the "internal operator" (Article 9) is limited to public service obligations. There can be purely commercial reasons, such as ensuring the continuity and availability of a service, why a port managing body might decide to provide a service itself without that service being specifically defined as a public service; lack of space or reserved use of available space could also require restrictions on the number of suppliers. This last scenario should also be included.

4.6 The Committee is pleased that the text of the regulation includes Article 10, which is intended to safeguard port workers' rights. The Committee wonders, however, why the application of Directive 2001/23/EC is made optional. As regards the social aspects that should be included in public and concession contracts, the Committee refers to its opinion on procurement by entities operating in the water, energy, transport and postal services sectors adopted on 26 April 2012 <sup>(3)</sup>.

4.7 The Commission has incorporated a number of articles into the regulation (Article 12 onwards) which promote financial transparency and autonomy. These provisions include requiring port authorities to provide information on public funding received and to maintain separate accounts for this where the managing body of the port provides port services itself. The Committee is an advocate of the greatest possible transparency and endorses the proposals in this area.

4.8 The Committee considers the independent supervisory body referred to in Article 17, which is to be responsible for monitoring and supervising the application of the regulation, to be superfluous, because it is not needed and bucks the trend for ports to develop as commercial operators providing market-orientated quality. Current national and European competition laws are usually sufficient, and where this is not the case, the Commission should take action specific to the Member State.

## 5. Specific comments

5.1 The need for sectoral social dialogue in ports is underlined by the estimate that in 2030 15 % more port workers will be needed than today. The Committee considers that a favourable social climate and the willingness of all of the parties concerned to enter into dialogue are one of the main conditions for efficient operation of ports.

5.2 The Committee therefore welcomes the announcement that an EU social dialogue committee was set up on 19 June 2013 in which the social partners will, in full autonomy, discuss working conditions, among other things.

5.3 The Committee agrees with the proposal that charges for the use of port infrastructure should be set on the basis of consultation with port users. The Committee believes that this method of setting charges is transparent.

5.4 One advantage of the regulation is, the Committee believes, the fact that port authorities are required to provide information on public funding received and on the way this funding is reflected in their cost price. This will make it possible to evaluate public funding at an earlier stage, which will be conducive to financial transparency.

5.5 One aspect which the Committee considers very important, the commercial freedom of the port managing body to set port charges (Article 14(1), (2) and (3)), is rather undermined by criteria listed in the following paragraphs and the powers conferred on the Commission to adopt delegated acts. This freedom can be preserved by simply dropping these paragraphs and adding the words "and competition" at the end of Article 14(3), thus: "... and in accordance with State aid and competition rules".

5.6 The Commission proposes to publish a report on the impact of this legislation within three years of the regulation's entry into force. The Committee believes that this report should be regarded as an interim report, because the timespan is too short to be able to issue a definitive conclusion. This would be justified after six years.

<sup>(3)</sup> OJ C 191, 29.6.2012, p. 84.

5.7 Lastly, the Committee reiterates that further steps should be taken to ensure fair competition between EU and neighbouring non-EU ports.

Brussels, 11 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---

**Opinion of the European Economic and Social Committee on the 'Common rules on compensation and assistance to air passengers (rolling programme)'**

COM(2013) 130 final

(2013/C 327/20)

Rapporteur: **Ms ANGELOVA**

Co-rapporteur: **Mr HENCKS**

On 16 April and 16 July 2013 respectively the European Parliament and the Council of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*Common rules on compensation and assistance to air passengers (rolling programme)*

COM(2013) 130 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 20 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July), the European Economic and Social Committee adopted the following opinion by 136 votes to 6 with 7 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the additional legal certainty that the current proposal brings for both passengers and air carriers by offering more precise definitions of the relevant concepts used by the regulation, thus reflecting the principles of the Court of Justice of the European Union (CJEU) decisions and providing a sound legal framework. But the EESC regrets that the Commission's proposal does not contain a high level of consumer protection.

1.2 The EESC approves in principle of the measures that air carriers must take under different conditions to compensate passengers in the event of long delays, rerouting and rescheduling, and increase their overall comfort when flights are delayed or missed. But the EESC disagrees in particular with the planned compensation for delays, long delays to flights and to short-haul flights, where the proposal moves away from the relevant case-law of the CJEU.

1.3 The EESC appreciates that the proposal is made after an extensive impact assessment and reminds that the effective and timely implementation of the SES II+ legislation package is an important tool which should decrease air carriers' costs.

1.4 The EESC rejects the Commission's proposal to increase the time threshold after which the right to compensation arises, deviating from the three consecutive rulings of the CJEU.

1.5 The EESC understands the reasons for increasing substantially the threshold for delay compensation for long-haul journeys, but urges the Commission to continue its efforts to find incentives for air carriers to actually perform considerably below these thresholds. The above delay times should be reduced further for people with disabilities or reduced mobility to take into account the particular costs to these people of any long delay.

1.6 The EESC appreciates that a deadline is introduced and that if the air carrier cannot reroute the passenger on its own services, it must consider other carriers or other transport modes. But in the Committee's view, 12 hours before being able to use other services or carriers is too long. Moreover, the passenger should have the right to refuse travel by another mode of transport (e.g. bus, train or ship). To cover the additional costs of transferring to another carrier as swiftly as possible, the EESC reiterates its proposal of creating a "shared liability" fund for repatriating or rerouting passengers with other carriers.

1.7 Regarding the definition of "extraordinary circumstances", in the EESC's view it should be clearly stated that delays, changes of schedule or cancellations are only to be considered extraordinary if these circumstances:

1. are not by their nature or origin inherent in the normal exercise of the activity of the air carrier,



2. are beyond the control of the carrier, and
3. could not have been avoided even if all reasonable measures had been taken.

It will then have to be checked each time extraordinary circumstances are invoked, if they really meet all three conditions, which will not always necessarily be the case for some of the circumstances listed in Annex 1 of the proposal for a regulation (e.g. health or safety risks, weather conditions or labour disputes).

1.8 The EESC urges the Commission to prepare a regulation that is neutral with regard to other modes of transport, in order not to break with the principle of equal treatment or give rise to favouritism to the detriment of other modes of transport.

## 2. Introduction

2.1 The improvement of air transport in Europe has remained high on the agenda of the European Commission in recent years. Compliance with increasingly rigorous Community rules on the Single European Sky safety, efficiency and the environmental impact of aviation<sup>(1)</sup> have improved the operation of air services and strengthened the established rights of people travelling by air. The EESC has drawn up opinions on all of the relevant texts<sup>(2)</sup>, and encouraged the Commission to continue its efforts along the same course, on the understanding that more work is needed.

2.2 In view of the fact that travelling by air is no longer a luxury, but a necessity to meet business needs and allow European citizens to exercise their self-evident right to free movement, the EESC believes that there are still areas that need to be further explored in order both to guarantee passengers' rights and to provide air carriers with a sound legal and business environment which will allow them to be successful in a highly competitive market. The areas where improvement of the legal framework and more effective application of existing legislation are required include rules on compensation and assistance to air passengers.

## 3. Gist of the Commission proposal

3.1 This proposal amends the current act, Regulation No 261/2004, and is motivated by a number of developments:

- air carriers often fail to offer passengers the rights to which they are entitled in instances of denied boarding, long delays, cancellation or mishandled baggage;

- the Commission noted in 2011 that grey areas and gaps in the current rules meant that they were not being applied uniformly in all the Member States and by the various air transport operators;

- the case law of the CJEU has played a crucial role, e.g. in establishing what constitutes an "extraordinary circumstance" and on the rights of compensation in the case of long delays.

3.2 The main goal of the proposal is to guarantee the basic rights of passengers travelling by air – namely the right to information, reimbursement, rerouting, assistance while waiting to travel, and compensation under certain conditions<sup>(3)</sup>, while taking into account the financial implications for the air transport sector and ensuring that air carriers operate under harmonised conditions in liberalised market.

3.3 The proposal addresses the three main areas where the Commission considers that measures are still needed to improve application of the regulation i.e. the effectively harmonised enforcement of EU rights, the facilitation of their enjoyment in practice, and the raising of the public's awareness of these rights. It meets the EP's recommendation for "enhanced legal certainty, more interpretative clarity and uniform application of the regulations across the EU"<sup>(4)</sup>.

3.4 The legislative reform of Regulation No 261/2004 proposed by the European Commission thus:

- incorporates the principles of case-law laid down by the CJEU;
- defines the scope and precise meaning of "extraordinary circumstances" under which the air carrier is exempted from paying compensation in the event of cancellation, a long delay or missed connection;
- sets out passengers' rights in the case of a missed connection due to a delay or change of schedule to a preceding flight;
- sets a uniform delay limit beyond which the passenger is entitled to refreshments and meals;
- covers other aspects such as information for passengers, the right to correct spelling mistakes, acknowledging at the same time the right of the air carrier to seek compensation from third parties when they bear the responsibility for any disruptions.

<sup>(1)</sup> COM(2012) 573 final.

<sup>(2)</sup> OJ C 24, 28.1.2012, p. 125-130, OJ C 376, 22.12.2011, p. 38-43, OJ C 198, 10.7.2013, p. 9-13.

<sup>(3)</sup> COM(2011) 174 final.

<sup>(4)</sup> EP Resolution of 29 March 2012 on the functioning and application of established rights of people travelling by air (2011/2150 (INI)).

#### 4. General comments

4.1 The EESC regrets that the proposal does not follow the case law of the CJEU in its entirety, departing from it on one of the most important points in terms of passengers' rights. However, it acknowledges that in the areas in which the Commission has incorporated CJEU case law the proposal improves the current regulation.

4.2 The EESC expresses its satisfaction that the current proposal seems to have corrected most of the shortcomings of the previous version identified by both the industry and passengers<sup>(5)</sup> and at the same time clarified a number of definitions.

4.2.1 For the industry the added value of the proposal compared with the existing rules could be found in the way it:

- limits the liability to provide care in the event of extraordinary circumstances beyond the carrier's control;
- outlines in a non-exhaustive manner what are considered to be "extraordinary circumstances";
- clarifies the possibility of claiming costs from a responsible third party and establishing a shared liability;
- extends the longer delay times after which the carrier must pay compensation;
- limits the obligation to provide accommodation to passengers to a maximum of three nights and EUR 100 per passenger under "extraordinary circumstances". This limit does not apply for people with reduced mobility, unaccompanied children, pregnant women or people requiring specific medical assistance;
- removes any obligation to provide accommodation for flights of 250 km or less in aircraft with a maximum capacity of 80 seats, except where the flight is a connecting flight.

4.2.2 For the passengers the added value of the proposal could be found in the way it:

- clarifies the conditions for application of the regulation;
- specifies how to deal with cases of denied boarding, cancellation and long delays, missed connecting flights, and states in clearer terms the rules regarding the right to compensation, reimbursement, re-routing and care;
- provides details regarding enforcement;

— introduces compensation for long delays;

— sets a uniform delay of two hours beyond which the carrier must provide refreshments and meals;

— substantially tightens the obligation for the carrier to inform passengers of their rights, as well as passenger compensation and complaint procedures, and oversight by the authorities to ensure that the rules are properly enforced.

4.2.3 The EESC recognises that it is very challenging to satisfy at the same time the requirements of all the stakeholders, so the added value offered to one party could mean less satisfaction for the other.

4.3 The EESC sees the Commission's actions aimed at improving passenger protection in the event of airline insolvency<sup>(6)</sup> as a step in the right direction, but underlines that these measures are not sufficient to ensure a comprehensive and effective passenger protection in case of insolvency of the airline; considers that a mechanism should be established to guarantee that the air carriers comply with the proposed Regulation in case of insolvency.

4.4 The proposal draws a demarcation line between itself and Council Directive 90/314/EEC, giving passengers the right to choose under which law they introduce their claim, but not giving them the right to cumulate compensation for the same problem under both legal acts.

4.5 In its previous opinions on air passenger rights, the EESC made various proposals that would strengthen those rights<sup>(7)</sup>, many of which have been incorporated into this draft regulation. The EESC regrets to note, however, that the following proposals were not considered:

- Incorporating all solutions contained in CJEU judgments into the future regulation.
- For certain exceptional cases, establishing the extent and limits of the right to assistance, defining how the legitimate rights of passengers may be safeguarded through alternative mechanisms, by means of decisions that are binding on the parties and are taken within a reasonable period of time.
- Regulating situations currently arising in connection with flight rescheduling.
- Regulating the obligation to provide care at connection points.

<sup>(5)</sup> SEC(2011) 428.

<sup>(6)</sup> COM(2013) 129 final.

<sup>(7)</sup> OJ C 24, 28.01.2012, p. 125-130 and OJ C 229, 31.07.2012, p. 122-125.

- Including ground-handling agents, who work on behalf of airlines in providing the services set out in the Regulation.
- Specifying which authority is competent to deal with users' complaints and enforcing compliance with the Regulation.
- Monitoring and publishing, at Community and Member State level, complaints regarding non-compliance with the Regulation, broken down by company and type, and providing for companies which have been granted an air operator's certificate to be audited in each Member State in this regard.
- Correcting the inconsistency in the wording of paragraphs 1 and 2 of Article 14 of the Regulation.
- Making passenger compensation compulsory if an airline declares bankruptcy, under the principle of "shared liability" for repatriating passengers by other airlines that have seats available, and setting up a fund to compensate passengers based on the "market player pays" principle.
- Introducing the possibility of transferring the travel contract to a third person.
- Prohibiting the current practice by airlines of cancelling the return flight if a passenger has not used the outward flight on the same ticket.

4.6 The EESC welcomes all improvements concerning the enforcement of the rights of disabled passengers and passengers with reduced mobility because they allow for the alignment with the provisions of the Convention on the Rights of Persons with Disabilities. In that frame the EESC proposes the following amendments:

4.6.1 The term "disabled person or person with reduced mobility", as mentioned in the Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, has to replace the general term "person with reduced mobility" used in the text of the Proposal.

4.6.2 The term "mobility equipment" used in proposed Article 6b shall be replaced by the term "mobility equipment or assistive devices".

4.6.2.1 The EESC strongly recommends more professional handling of mobility equipment and assistive devices during air travel. To this end, all staff handling such equipment should be further informed and trained. EU legislation touching upon the rights of passengers with disabilities should be amended accordingly. Increased professionalism would be to the advantage of handling companies, airlines, airports and passengers alike.

4.6.3 In the new Article 6 of the Proposal it has to be clarified that in case of long delay caused by any reason disabled passengers or passengers with reduced mobility shall be offered the same assistance as specified in Annexes I and II of the Regulation (EC) No 1107/2006.

4.6.4 It has to be strictly clarified that the provided accommodation, the transportation to it, the information about the arrangements and the means (including the websites and other electronic ones) used to disseminate it as well as the complaints procedures and declarations of interest if required shall be accessible to disabled persons and the needs of guide and assistance dogs should be equally met. In this frame, provisions of the proposed Article 14 concerning the obligations to inform passengers shall be extended to all categories of disabled persons and not only cover blind and visually impaired persons (relevant Article 14.3).

4.6.5 The Regulation establishes that boarding may not be denied on the grounds of a passenger's disability or reduced mobility, but its article 4 provides for a derogation from the principle in order to meet safety requirements or if the size of the aircraft or its doors make the embarkation or transport of the person with a disability or reduced mobility impossible.

The minimum needed in this area would be a policy of transparency regarding the possibilities of access to aircraft by means of clear and transparent information when booking tickets, which is not the current practice.

## 5. Specific comments on the amended rules

5.1 The EESC approves the principle of the measures that air carriers must take under different conditions to compensate passengers in the event of long delays, provide better care, rerouting and rescheduling and increase passengers' overall comfort when flights are delayed or missed.

5.2 The EESC considers that the Commission's proposal to increase the time threshold after which the right to compensation arises from three to five hours for all journeys within the EU is not acceptable. The EESC does not understand why the reduction of the threshold to receive compensation would reduce the rate of cancelled flights as in the case of cancellation airlines have to pay compensation anyway.

5.3 It is understandable that journeys to/from third countries should be subject to thresholds that depend on the journey distance, taking into account the practical problems encountered by air carriers when addressing the causes of delays at remote airports. The EESC nevertheless considers the proposed times of nine or 12 hours to be too long and believes the Commission should continue its efforts to find incentives for air carriers to actually perform considerably below these thresholds. The above delay times should be reduced further

for people with disabilities or reduced mobility to take into account the particular costs to these people of a long delay. The EESC sees the effective and timely implementation of the SES II+ legislation package as an important tool for decreasing air carriers' costs, allowing them more flexibility in financing the reduction of the thresholds.

5.4 The EESC appreciates that a deadline is introduced and that if the air carrier cannot reroute the passenger on its own services within this deadline, it must consider other carriers or other transport modes (subject to seat availability). But in its view 12 hours before being able to use other services or carriers is too long. Moreover, the passenger should have the right to refuse travel by another mode of transport (e.g. bus, train or ship). To cover the additional costs of transferring to another carrier as swiftly as possible, the EESC reiterates its proposal of creating a "shared liability" fund for repatriating or rerouting passengers with other carriers, in close discussion with all the stakeholders.

5.5 The EESC believes it is necessary to more clearly define airports' responsibilities to assist passengers in the case of multiple flight cancellations, caused by airport authorities' failure to provide the needed conditions for smooth flight service provision.

5.6 The EESC supports the second test of the application of the "extraordinary circumstances" clause in Article 1(4)(b) of the proposal and recommends that the National Enforcement Bodies (NEBs) ensure it is thoroughly performed.

5.7 The EESC supports the proposal to introduce a single time threshold of 2 hours for flights of all distances to replace the current thresholds for care, which now depend on flight distances. This is greatly in the interest of passengers and provides them with fair and comfortable conditions while waiting.

5.8 EESC welcomes the proposal that passengers who miss a flight connection because of a delayed previous flight have a right to care and, under certain circumstances, a right to compensation, because it also improves the position of passengers.

5.9 A step towards better guaranteeing passengers' rights is the proposal that passengers on flights rescheduled with advance notice of less than two weeks should have rights similar to those of delayed passengers.

5.10 The EESC strongly recommends to the Commission to find measures for improving the cooperation between the

airports and the air carriers as to significantly decrease the time passengers should spend when their aircraft is delayed on the tarmac.

5.11 The EESC calls on the Commission to prohibit the current airline practice of cancelling the return flight if a passenger has not used the outward flight on the same ticket<sup>(8)</sup>. The Committee agrees with strengthening the right of passengers to information about flight disruptions (as soon as this information becomes available) as this will also improve passengers' ability to plan their next course of action when their final destination is reached.

5.12 The EESC understands the need to limit the time during which the air carriers should take care for the accommodation of passengers in the event of extraordinary circumstances and accepts the proposed limit of 3 overnights. However, the Committee strongly advises the Commission to let the NEBs set a price limit for these overnights for each Member State. The price limit should not be applied for persons with reduced mobility (PRMs).

## 6. Enforcement

6.1 The proposal for an amendment to Regulation No 261/2004 clarifies the role of NEBs by allocating them the role of general enforcement. The out-of-court handling of individual complaints will become a job for complaint-handling bodies (Alternative Dispute Resolution Bodies); as suggested earlier by the EESC<sup>(9)</sup>. These provisions give more power to the bodies responsible for the proper sanctioning of carriers' non-compliance with the provisions of Regulation 261/2004 and provide passengers with a more reliable means of pressing for proper application of their rights.

6.2 The proposed exchange of information and the coordination between the NEBs themselves and between the NEBs and the Commission brought about by enhanced reporting obligations and formal coordination procedures will allow a fast reaction to all identified compliance problems.

## 7. Definition of "extraordinary circumstances"

7.1 The EESC welcomes the fact that the proposed regulation:

— is based on the definition of "extraordinary circumstances" accepted by the CJEU in case C-549/07 (Wallentin-Hermann) and

<sup>(8)</sup> OJ C 24, 28.1.2012, p. 127.

<sup>(9)</sup> OJ C 24, 28.1.2012, p. 130.

— stipulates that delays or cancellations can only be considered as extraordinary circumstances when these circumstances:

1. by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned (Article 1(1)(e)),
2. are beyond its actual control (Article 1(1)(e)); and
3. if the cancellation, change of schedule or delay could not have been avoided even if all reasonable measures had been taken (Articles 1(4)(b) and 1(5)(4)).

These clarifications will benefit both passengers and carriers, allowing the former to determine their rights in this area and the latter their responsibilities.

7.2 The proposed non-exhaustive list of circumstances to be regarded as extraordinary and of circumstances to be regarded as non-extraordinary (set out in Annex I to the proposed regulation) will also help reduce the risk of unnecessary arguments between passengers and airlines.

7.3 Consequently, in the EESC's view it should be clearly stated in the proposal for a regulation that whenever extraordinary circumstances are invoked, it will have to be considered whether they really do meet this triple condition, which will not always necessarily be the case for some of the circumstances listed in Annex 1 (e.g. health and safety risks, weather conditions or labour disputes).

Brussels, 11 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---



## 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:

**New point 4.1.3** (Amendment 7)

The EESC regrets that the proposal has upset the existing balance between all stakeholders, giving protection of the rights of carriers precedence over protection of the rights of passengers.

**Outcome of the vote:**

For: 52  
Against: 70  
Abstentions: 14

**Point 5.3** (Amendment 11)

Amend as follows:

~~It is understandable/incomprehensible that journeys to/from third countries should be subject to thresholds that depend on the journey distance, taking into account the practical problems encountered by air carriers when addressing the causes of delays at remote airports. The EESC nevertheless considers the proposed times of nine or 12 hours to be too long and believes the Commission should maintain the current time of three hours for all scenarios continue its efforts to find incentives for air carriers to actually perform considerably below these thresholds. The above delay times should be reduced further for people with disabilities or reduced mobility to take into account the particular costs to these people of a long delay. The EESC sees the effective and timely implementation of the SES II+ legislation package as an important tool for decreasing air carriers' costs, allowing them more flexibility in financing the reduction of the thresholds.~~

**Outcome of the vote:**

For: 50  
Against: 81  
Abstentions: 12

**Point 5.12** (Amendment 12)

Amend as follows:

~~The EESC regrets that the new proposal dilutes the current Regulation which ensures passengers are taken care of while waiting in case of disruptions, thus deviating again from a Court of Justice ruling as regards the right to accommodation (case Denise McDonagh v Ryanair, 31 January 2013). The EESC considers that the right to accommodation is justified all the more in situations which persist over a long time and where passengers are particularly vulnerable; moreover air transport unlike other means of transport, involves mostly long distances and often passengers affected by disruptions are far away from their homes and the often long distances involved do not allow passengers to find alternative means to arrive to their final destination. understands the need to limit the time during which the air carriers should take care for the accommodation of passengers in the event of extraordinary circumstances and accepts the proposed limit of 3 overnights<sup>(1)</sup>. However, the Committee strongly advises the Commission to let the NEBs set a price limit for these overnights for each Member State. The price limit should not be applied for persons with reduced mobility (PRMs).~~

**Outcome of the vote:**

For: 56  
Against: 78  
Abstentions: 7

---

<sup>(1)</sup> ~~Article 8 (9) of the Proposal Article 9 of the amended Regulation (EC) No. 261/2004.~~

**Opinion of the European Economic and Social Committee on the ‘Fourth Railway Package’, comprising the following seven documents: ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “The Fourth Railway Package — completing the Single European Railway Area to foster European competitiveness and growth”’**

COM(2013) 25 *final*,

**‘Proposal for a Regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings’**

COM(2013) 26 *final* — 2013/0013 (COD),

**‘Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004’**

COM(2013) 27 *final* — 2013/0014 (COD),

**‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail’**

COM(2013) 28 *final* — 2013/0028 (COD),

**‘Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure’**

COM(2013) 29 *final* — 2013/0029 (COD),

**‘Proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union’**

COM(2013) 30 *final* — 2013/0015 (COD), and

**‘Proposal for a Directive of the European Parliament and of the Council on railway safety’**

COM(2013) 31 *final* — 2013/0016 (COD)

(2013/C 327/21)

Rapporteur: **Mr MORDANT**

On 19 February 2013, 21 and 22 February 2013 and 7 February 2013 respectively, the Commission, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Articles 91, 91(1), 109, 170, 171 and 304 of the Treaty on the Functioning of the European Union, on the

*Fourth Railway Package*

*comprising the following seven documents:*

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "The Fourth Railway Package – completing the Single European Railway Area to foster European competitiveness and growth"*

COM(2013) 25 *final*;

*Proposal for a Regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings*

COM(2013) 26 *final* — 2013/0013 (COD);

*Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004*

COM(2013) 27 final — 2013/0014 (COD);

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail*

COM(2013) 28 final — 2013/0028 (COD);

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure*

COM(2013) 29 final — 2013/0029 (COD);

*Proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (Recast)*

COM(2013) 30 final — 2013/0015 (COD);

*Proposal for a Directive of the European Parliament and of the Council on railway safety (Recast)*

COM(2013) 31 final — 2013/0016 (COD).

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 20 June 2013.

At its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July), the European Economic and Social Committee adopted the following opinion by 82 votes to 20 with 8 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC calls on the Commission to have an assessment drawn up, overseen by all of the stakeholders concerned, of the consequences of the railway packages in relation to meeting the needs of the public, the modal shift, regional planning, development of cross-border connections, factual measures of the quality of rail services, accessibility, improvement of passenger rights and so on.

1.2 The EESC calls for the new "railway package" legislative initiative to be based on the contribution that the railways can make to the European project, economically, socially and environmentally.

1.3 The aim of this legislative initiative should be to eliminate "border effects" between Member States. It should allow the development of cross-border connections between neighbouring countries, by taking action in the fields of sustainable development and regional planning; putting infrastructure in place between Member States where such infrastructure is inadequate or non-existent.

1.4 The EESC calls on the European Union to provide for the possibility of creating cross-border bodies and of establishing the arrangements for them to intervene in the regions

they cover, allowing for the tasks of services of general interest, as provided for by Article 14 and Protocol No 26 of the Treaty, to be defined and organised.

1.5 The EESC calls for the Member States to retain the power to organise their national rail systems and open their domestic markets to competition in line with their geographical, demographic and historical situation and the prevailing economic, social and environmental conditions.

1.6 The EESC calls for the power to decide whether to award public service tasks directly to an operator or to use a tender procedure, as currently provided for in Regulation 1370/2007/EC, to be left to the competent authorities, and for these authorities to be given free rein in organising the procedure.

1.7 In connection with the obligation to draw up the public transport plans required by the Commission, the EESC opposes any restriction on the definition of public service tasks by the competent authorities and calls for the adoption of clear targets on improving accessibility for disabled people and on passenger involvement, by way of consultation and monitoring of service quality levels.

1.8 The EESC also calls for operators to retain control of the industrial aspects of railway operations, allowing them to own their rolling stock and other equipment, in order to encourage the research and innovation efforts that are essential if the sector is to improve safety and quality.

1.9 The EESC recommends that the Commission launch an initiative to monitor rail safety, which is essential to the development of the railways, by setting up national monitoring centres or joint safety committees. The Committee suggests ensuring that railway operating conditions are transparent, making the public authorities' approach to safety more democratic and complying with Article 91 of the Treaty, which requires the EU to achieve certain results in relation to transport safety.

1.10 The EESC proposes that the European Railways Agency be tasked with incorporating the question of workers' health and safety, which is essential in order to maintain a high level of operating safety for passengers, workers and those living near railway installations.

1.11 Furthermore, the EESC believes it is crucial that the agency be liable for all of its decisions.

1.12 The EESC considers that the package's technical chapter should be prioritised, in order to boost the modal shift towards rail.

1.13 The EESC calls for employers and public authorities to take account of the onerous and dangerous nature of railway work through specific social protection, collective agreements, salaries and career development, as well as by keeping their promises on pensions.

1.14 The EESC also calls for a system of continuing education and recognition of experience, to allow workers to benefit from acquiring and maintaining skills.

1.15 The EESC would like each Member State, when selecting the organisation or opening up a market to competition, to uphold job numbers for their traditional operators, collective agreements for employees and their pay and working conditions. When the operator does change, the aim should be to retain the staff concerned and their collective guarantees.

## 2. General observations

2.1 This opinion draws on the following opinions and their recommendations:

— TEN/432-433 of 16 March 2011 on a Single European Railway Area <sup>(1)</sup>;

— TEN/445 of 15 June 2011 on social aspects of EU transport policy <sup>(2)</sup>;

— TEN/454 of 25 October 2011 on the Roadmap to a Single European Transport Area <sup>(3)</sup>; and

— TEN/495 of 13 December 2012 on the quality of rail services in the EU <sup>(4)</sup>.

2.2 The fourth railway package involves the amendment, recasting or (in one case) repeal of six legislative texts, presented by a general communication and accompanied by a number of reports and impact assessments.

2.3 The review of the proposal focuses on the four pillars of the fourth railway package, which deal with governance and opening of long-distance passenger traffic; revision of Regulation 1370/2007/EC on public service obligations; the role of the European Railway Agency and interactions with interoperability and safety; and social provisions.

2.4 The current situation is taken as the starting point for these thoughts and proposals, taking into account foreseeable developments in the sector and in connection with the Lisbon Treaty. To check whether the proposed solutions are appropriate, the results of the EU policies that have been in place for more than 20 years should be evaluated, perspectives for the future should be drawn from that evaluation and objectives should be set for the role that the rail transport mode can and should play in relation to regional planning and equality, regional development, the service provided to loaders and the public and the accessibility of this transport mode.

2.5 More broadly, the preparation of the new legislation should be based on the contribution that this mode of transport can make to European integration – which is in need of a project – from an economic, social and environmental point of view.

2.6 It should allow the development of cross-border connections between neighbouring Member States that lack common infrastructure, providing the people of those countries with easy connections by putting that infrastructure in place, especially for people with a disability or with reduced mobility.

<sup>(1)</sup> OJ, C 132 – 3.5.2011, p. 99-107.

<sup>(2)</sup> OJ, C 248 – 25.8.2011, p. 22-30.

<sup>(3)</sup> OJ, C 24 – 28.1.2012, p. 146-153.

<sup>(4)</sup> OJ, C 44 – 15.2.2013, p. 49-52.

2.7 In that respect, close attention should be paid to the results of EU policies in terms of developing cross-border connections to eliminate a persistent "border effect", which is holding back European integration, free movement and the modal shift to rail.

2.8 Attention should be drawn to the level of operational safety in this network industry, whose development depends on the level of public trust in it and on the transparency that must be applied to the conditions of production in the sector.

2.9 The review should address compliance with Article 10(3) of the Treaty on citizens' right to participate in the democratic life of the Union. Decisions must be taken as openly and as closely as possible to the citizen.

2.10 A projection should be produced concerning social developments in the rail sector, in view of the restructuring that is under way, the redefinition of the scope of its activities, the transfer of responsibilities at a period of high turnover of railway workers and their social and working conditions in relation to the goal of protecting workers' health and safety.

### 3. Governance and opening of domestic passenger services to competition

3.1 The Commission aims to use this legislative proposal to revitalise the railways by introducing competition for domestic passenger traffic. The Commission believes that such competition should be stimulated by means of EU legislation that provides for separation between the functions of infrastructure managers – which are extended to include the tasks of traffic management and network maintenance and investment – and those of carriers. It also intends to strengthen the regulatory bodies that are to govern the rail market.

3.2 To that end, the Commission proposes to amend Directive 2012/34/EU of 21 November 2012, which is to be transposed into national law by 16 June 2015. It is worth noting that this initiative is being taken without waiting to see how effective the measures taken in the context of that recast are.

3.3 Similarly, it has not been possible to measure the full effects of the provisions adopted in terms of managing the operation of major corridors.

3.4 The Commission makes a certain number of observations in the impact assessments connected with the fourth railway package, while acknowledging that some of them are

recent or ambiguous. Nevertheless, it presents several points as arguments in favour of the proposed solutions.

3.5 A number of studies present highly divergent conclusions as regards the consequences of separating rail infrastructure and business. A review of the statistical data provided by the Commission, however, shows that there is no automatic correlation between this separation, the opening-up of the market and improved railway results, but the latter would appear to be linked directly to funding levels and toll prices. Furthermore, the McNulty report provides a very mixed picture of the situation in the United Kingdom, recognising that the UK rail system is proving to be more costly both for the State and for the user, and suffers as a result of the various stakeholders not being aligned, which requires greater State involvement in bringing the different aspects into line (such as charges, distribution, timetabling, etc.), which is essential. To solve this problem, Sir Roy McNulty made three recommendations, to be implemented gradually: a sharing of costs and revenues between the infrastructure manager and railway operators, the creation of a joint venture between them and also experiments re-incorporating certain franchises.

3.6 Certain national studies that have looked at the quality of rail services, such as the one carried out by the British consumer organisation *Which?*, have shown a mixed picture in terms of users' view of rail services, with user satisfaction levels of 50 % or less for half of all operators and only 22 % of passengers considering that the system is improving (<http://which.co.uk/home-and-garden/leisure/reviews-ns/best-and-worst-uk-train-companies/best-train-companies-overall/>)

3.7 Furthermore, the Commission's proposal does nothing to improve accessibility for disabled people. The various parties involved should consult and listen to passengers in that respect.

3.8 The Commission refers to a satisfaction survey on passenger rail services carried out in 2012, which the EESC considered, in point 1.6 of opinion TEN/495 of 13 December 2012, to be inadequate.

3.9 The Commission also highlights the scale of the public subsidies paid to the sector and the call for public contributions to reduce the indebtedness of the system, the possibility of which was included and recommended in Directive 91/440 and in the April 2008 state aid guidelines. Such a grant of public aid is not unique in view of the volume of physical capital that needs to be made available to meet environmental targets or for general interest or public policy purposes. Other operators – public and private – in other sectors benefit from the same arrangements.



3.10 To establish the necessary conditions for market opening, the Commission proposes strict separation between the functions of infrastructure managers – the scope of which is extended – and those of carriers. The proposal aims to avoid conflicts of interest and discriminatory practices and to help with the identification and prevention of cross-subsidies but it does not provide evidence that such practices exist, or it uses data which are disputed by the parties concerned and by the ECJ. For this reason, among others, the ECJ rejected in their entirety the infringement proceedings brought by the Commission against Germany and Austria. The EESC stresses that whereas freight shippers and logistics operators generally, and new rail operators especially, are in favour of a separated and deregulated EU border free rail market, more integrated with normal business practices of other modes of transport, other actors on the rail market like incumbent rail operators, rail consumer organizations, public transport authorities etc. have a more cautious view, caring for upholding current service quality.

3.11 Under Article 63(1) of Directive 2012/34 establishing a single European railway area, the two co-legislators asked the Commission to draw up reports *"on the implementation of Chapter II [of the Directive]"*. This chapter essentially concerns the autonomy and structures of the EU's railways, concerning *"the development of the market, including the state of preparation of a further opening-up of the rail market"*, and *"shall also analyse the different models for organising this market and the impact of this [recast] on public service contracts and their financing"*. In order to achieve this, the Commission should also have taken *"into account the implementation of Regulation (EC) No 1307/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance)"*. That debate revealed the need to give Member States the power to organise their national systems and, if they consider it appropriate, to continue to organise production in an integrated way that allows pooling to take place, thus reducing interfaces, which are harmful both economically and from the point of view of safety.

3.12 Separating infrastructure management in a single-degree-of-freedom guided transport system usually brings more problems than benefits by complicating operations a great deal, leading to an increase in costs and a reduction in service quality. This particularly applies to networks where there is intensive mixed-traffic use.

3.13 Technical developments are integrated more slowly and with greater difficulty. Innovation – which usually involves both fixed elements (infrastructure) and mobile elements (rolling stock) at the same time – is held back. Bureaucracy and unnecessary interfaces increase significantly, leading to higher operating costs and inertia in the decision-making process.

3.14 Separating the functions of infrastructure managers and carriers also takes network or infrastructure managers further away from end users (passengers and loaders) and their service quality requirements (particularly in terms of punctuality). There should therefore continue to be a role for a pivotal player in the railway system, while preserving the independence of the core functions of infrastructure managers.

3.15 In relation to service facilities, recommendation 1.7 of EESC opinion TEN/432-433 of 16 March 2011 states that: "As regards conditions of access to railway service facilities, the EESC cannot endorse any requirement of legal, organisational and decision-making independence that would jeopardise current structures which cannot be replaced." No new facts have come up in the analysis that would require it to revise that recommendation.

3.16 The Commission however acknowledges that pooling certain functions would allow the system to improve its performance and the quality of its service to passengers. The EESC supports this view.

3.17 As regards the liberalisation of international passenger rail transport in the EU, which has been in force since January 2010, it can hardly be claimed that this liberalisation has to date systematically led to any steep fall in the prices charged for this type of service or to spectacular growth of this segment.

3.18 European high-speed rail began long before 2010, thanks to substantial public investment in some Member States, and competition in the field is likely to remain much more intermodal than intramodal for some time to come. One particular development after the 2010 liberalisation was the withdrawal of several existing connections using traditional (not high-speed) equipment and operating conditions and by the termination of long-standing cooperation arrangements. The EESC regrets these developments and strongly urges the Commission to take the necessary steps to improve and expand cross-border passenger rail transport services.

3.19 As for rail freight, the situation here in a number of Member States is disastrous. The main reason is that the modernisation and expansion of the railways has not kept pace with the modernisation of the road network and that rail traffic is subject to mandatory track access charges. In addition, competition for the most profitable connections does bring improvements for a number of block trains.

However, this is partially at the expense of single wagon load services, whose systems are more and more stretched. This can turn certain areas into industrial deserts and bring thousands of lorries onto the roads. Furthermore, many players willingly admit that in a number of Member States, not a single tonne of goods has been transferred to rail as a result of liberalisation.

3.20 The above observations lead the EESC, despite the obvious need for market reform, to suggest that the Commission adopt a prudent approach to the liberalisation of domestic passenger traffic, in the light of the current experience of the liberalisation of international traffic. In any event, the Commission acknowledges the difficulty of revitalising international rail activities, which are too disconnected from the national connections that would allow them to benefit from clear network effects.

3.21 On this point, the EESC agrees that there has been little growth in international passenger rail traffic, despite the European Commission's unquestionably activist approach in terms of the legal framework.

3.22 That means that the inadequacy of the results of the proposed solutions is clear, particularly because in the absence of adequate investment and a suitable political impetus, the market cannot address the issues raised. However, ensuring that areas on the fringes of national territories are served by modern, environmentally-friendly means of transport is a particular issue here.

3.23 That objective should be a priority for the EU, with the aim of creating a homogeneous European area by eliminating border effects and bringing coherence in economic, social and development terms to whole areas that have so far been fossilised by the confrontation between them.

3.24 The European Union must provide for the possibility of creating cross-border bodies and of establishing the arrangements for them to intervene in the regions they cover, allowing for the tasks of services of general interest, as provided for by Article 14 and Protocol No 26 of the Treaty, to be defined and organised.

3.25 Only a political initiative involving significant public sector support will make it possible to create an area and connections that a mature market can move into. The EESC urges the Commission to focus strongly on the actual development of the quality and of the safety of the services on the EU rail market, especially cross-border, and also taking account of the development in other modes of transport. Growing rail market shares and customer satisfaction must be the overall aim; the tools to reach this goal might however be different in different member states.

#### **4. Revision of Regulation 1370/2007 on public service obligations**

4.1 The amendment of Regulation 1370/2007/EC involves mandatory tendering for rail transport, the organisation of such tendering procedures, the preparation of public transport plans and the provision of rolling stock to new entrants.

4.2 In recommendation 1.7 of its opinion TEN/495 of 13 December 2012, the EESC expressed major concerns about the revision of the PSO regulation. The review provided for clearly falls short of expectations in view of the results presented in the impact assessments.

4.3 Several studies – some of which, including the "Study on Regulatory Options on Further Market Opening in Rail Passenger Transport", were carried out for the Commission – have produced disparate and conflicting data that do not allow for a uniform solution to issues related to traffic levels, service frequency, developments in relation to state aid and productivity.

4.4 Very similar results were obtained in relation to networks governed by different legal frameworks (i.e. open or closed to competition), which should lead us to steer clear of an excessively general approach that fails to take account of national aspects of transport arrangements, such as geography, weather and the location of production and living areas, some of which, as noted in opinion TEN/495 of 13 December 2012, are still very far from rail services.

4.5 These elements should lead the EU to ensure that the resources used can make it possible to meet the proposed aims for action, provided they cannot be achieved at the national, regional or local level, and do not go further than what is necessary to meet these goals.

4.6 A careful assessment of compliance with this objective should also be made in relation to the Commission's proposal to set upper limits for direct awards, this provision restricts the administrative freedom of public authorities in a way that is open to question.

4.7 Simply setting a threshold limiting the size of franchise that can be offered to operators will inevitably lead to threshold effects, which are liable to harm the coherence of the service and which, by preventing cross-subsidy, will mean that the overall competitiveness gains expected as a result of market opening will be lost. That implies that, as currently provided by Regulation 1370/2007/EC, the decision on whether to award one or more lots directly to an operator or through a tender procedure should be left to the competent authorities, along with the responsibility for structuring such procedures, including any necessary division into lots, to avoid threshold effects.

4.8 The benefit of so many details concerning the preparation of public transport plans, which appears to restrict the "wide discretion of national, regional and local authorities in [...] public service obligations" as provided for in the Treaty, should be questioned.

4.9 Particular attention should be given to the conditions on which the Commission intends to make the necessary physical capital for rail operations available to new players, which do not have to invest or work on research and innovation, aspects which are, however, important for the quality and safety of the railways.

4.10 The British example shows that such leasing is carried out by banks acting through finance companies, posing considerable risks to the availability of such physical capital and raising the issue of who controls it.

## **5. Role of the European Railway Agency and railway safety and interoperability**

5.1 The second railway package set up the European Railway Agency (ERA), based at Valenciennes in France, which is responsible for the technical harmonisation of European networks and equipment, for developing interoperability through the production of common standards (Technical Specifications for Interoperability (TSIs) and Common Safety Methods (CSMs)) and for improving railway safety.

5.2 Article 91 of the Treaty requires the EU to achieve certain results in terms of transport safety, the level of which must be continuously improved.

5.3 Furthermore, it is completely inappropriate to measure the level of railway safety, and its developments in view of the institutional and technical changes that are taking place, in terms of the number of recorded victims. Rather, it must be assessed in the light of indicators that make it possible to see how it is changing and to take early action to ensure the highest possible level of safety for users and trackside dwellers.

5.4 Creating a European Railway Area requires improvements in "interoperability". Compatibility of infrastructure, rolling stock and fixed equipment must be based on simple, quick procedures which maintain their existing level of safety and ensure their development, modernisation and adaptation to new needs.

5.5 From that point of view, contrary to the presentation in the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the provisions of Directive 2007/58/EC on the opening of the market of international rail passenger transport accompanying

the Communication to the Council and the European Parliament on the fourth Railway Package, safety must not be treated as an obstacle. Recent experiences in other fields have shown how detrimental an unduly lax approach can be to public perceptions of the role of the EU. The Viareggio and more recently, Schellebelle accidents should also act as an incentive for all players in the sector to adopt the greatest possible care and rigour when it comes to rail operations.

5.6 The European Railway Agency plays a central role in that respect, in cooperation with the National Safety Authorities, which are linked together in an exchange and coordination network. Its tasks, as well as those of the National Safety Authorities, also need to expand to cover the human dimension of rail operations and to take account of aspects relating to workers' health and safety, which is unquestionably an aspect of rail safety.

5.7 In view of the growing number of players with an involvement in the railways and the consequences that inadequate working arrangements can have, the NSAs' role should also be extended to include monitoring the conditions in which rail production takes place, with the NSAs becoming genuine railway enforcement authorities, responsible for verifying that the rules in force, which constitute public social policy provisions, are being applied.

5.8 In April 2011, an evaluation of the Agency's role was carried out at the request of the Commission. That evaluation shows that the Agency could be given the task of promoting innovation aimed at improving interoperability and rail safety, especially use of the new information technologies and monitoring and tracking systems. The Agency would, however, remain liable for its decisions.

5.9 That links back to the adoption of an industrial policy based on research, innovation and investment, which requires support by the public authorities to address a major European issue which can make a contribution to economic recovery. The European industry and research project Shift2Rail may be a suitable approach for the appropriate integration of all railway businesses.

5.10 In accordance with the obligations on the EU under Article 91 of the Treaty and to improve the health and safety of workers, the Agency could be given powers to ensure that all parties apply the interoperability decisions taken.

## **6. Social aspects**

6.1 The previous point, relating to the relaunch of industrial policy at EU level, needs to be linked to the issues of the demographic profile of workers and the spread of skills in the railway and railway construction sectors.

6.2 Workers are ageing and the social profile within these sectors is changing, and management, engineers and technicians will in future account for an increasing number of employees.

6.3 In the coming years, that will lead to significant turnover of railway operating staff and large-scale turnover among new entrants, which raises the issue of the working conditions applied by such new entrants and the reduction in the specific level of social protection applying to the sector, which took account of the onerous and dangerous nature of railway work and which, before liberalisation, ensured that such work was attractive.

6.4 The attractiveness of railway work, particularly to young people and women, is therefore a major issue in terms of guaranteeing the reliability of rail operations in the Member States and at EU level, which requires new workers to enter the sector and staff loyalty to be ensured.

6.5 The twin objectives of attractiveness and loyalty mean that the commitments that have been undertaken must be kept

by the Member States, in terms of social protection (particularly pensions), collective guarantees, working conditions and long-term job and career development prospects for staff based on acquisition and recognition of skills. Specific programmes such as Erasmus could be harnessed with a view to achieving these objectives.

6.6 EESC opinion TEN/445 of 15 June 2011 on social aspects of EU transport policy makes a certain number of recommendations in this field that have the capacity to improve the attractiveness of the sector, which the Commission should include in its legislative proposals.

6.7 The EESC calls for each Member State when selecting the organisation or opening up a market to competition, to uphold job numbers for their traditional operators, collective agreements for employees and their pay and working conditions. When the operator does change, the aim should be to retain the staff concerned and their collective guarantees.

Brussels, 11 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---

## 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 1.5**

Amend as follows:

The EESC calls for the Member States to retain the power to organise their national rail systems and open their domestic markets to competition in line with their geographical, demographic and historical situation and the prevailing economic, social and environmental conditions. The EESC supports the aim of the Commission proposal to fulfil the creation of a common rail market in Europe with high transport quality and without border problems. The Committee urges the Commission to focus strongly on the actual development of the quality of the services on the EU rail market, especially cross-border, and also taking account of the development in other modes of transport. Growing rail market shares and customer satisfaction must be the overall aim; the tools to reach this goal might however be different in different Member States.

**Outcome of vote** (points 1.5 and 3.1 voted and rejected together)

Votes in favour: 30  
 Votes against: 71  
 Abstentions: 7

**Point 3.1**

Amend as follows:

The Commission in this fourth legislative rail package proposal continue its work aims to use this legislative proposal to revitalise the European railways. Like the packages before, that has already been decided on, it has its background in the fact that railways form an important part of a sustainable transport system in the EU both for passengers and freight and that market reform is deemed necessary to create a common rail market that can play the potential role that rail transport has not been able to play in the past decades. After having introduced competition in rail freight and international passenger traffic, the current proposal now also introduces by introducing competition for domestic passenger traffic. The Commission believes that such competition should be stimulated by means of EU legislation that provides for separation between the functions of infrastructure managers – which are extended to include the tasks of traffic management and network maintenance and investment – and those of rail operators/carriers. It also intends to strengthen the regulatory bodies that are to govern the rail market. The EESC supports the aim of the Commission proposal to fulfil the creation of a common rail market in Europe with high transport quality and without border problems.

**Outcome of vote** (points 1.5 and 3.1 voted and rejected together)

Votes in favour: 30  
 Votes against: 71  
 Abstentions: 7

**Point 3.5**

Amend as follows:

A number of studies present highly divergent conclusions as regards the consequences of separating rail infrastructure and business and of deregulation of rail markets. A review of the statistical data provided by the Commission however also shows that there is no automatic correlation between this separation, the opening-up of the market and improved railway results. There are also clearly different experiences in the different Member States who have carried out separation and/or deregulation of rail markets and in those markets that have not reformed. Market shares for rail transport not only seems to depend on governance models, but also on general investment levels and national geographical, demographical and industrial factors, but the latter would appear to be linked directly to funding levels and toll prices. Furthermore, the McNulty report provides a very mixed picture of the situation in the United Kingdom, recognising that the UK rail system is proving to be more costly both for the State and for the user, and suffers as a result of the various stakeholders not being aligned, which requires greater State involvement in bringing the different aspects into line (such as charges, distribution, timetabling, etc.), which is essential. To solve this problem, Sir Roy McNulty made three recommendations, to be implemented gradually: a sharing of costs and revenues between the infrastructure manager and railway operators, the creation of a joint venture between them and also experiments re-incorporating certain franchises.



**Outcome of vote** (points 3.5 and 3.6 voted and rejected together)

Votes in favour: 27

Votes against: 70

Abstentions: 7

**Point 3.6**

Delete paragraph:

~~Certain national studies that have looked at the quality of rail services, such as the one carried out by the British consumer organisation Which?, have shown a mixed picture in terms of users' view of rail services, with user satisfaction levels of 50 % or less for half of all operators and only 22 % of passengers considering that the system is improving (<http://which.co.uk/home-and-garden/leisure/reviews/ns/best-and-worst-uk-train-companies/best-train-companies-overall/>)~~

**Outcome of vote** (points 3.5 and 3.6 voted and rejected together)

Votes in favour: 27

Votes against: 70

Abstentions: 7

**Point 3.11**

Amend as follows:

~~Under Article 63(1) of Directive 2012/34 establishing a single European railway area, the two co-legislators asked the Commission to draw up reports "on the implementation of Chapter II [of the Directive]". This chapter essentially concerns the autonomy and structures of the EU's railways, concerning "the development of the market, including the state of preparation of a further opening-up of the rail market", and "shall also analyse the different models for organising this market and the impact of this [recast] on public service contracts and their financing". In order to achieve this, the Commission should also have taken "into account the implementation of Regulation (EC) No 1307/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance)". That debate revealed support for the need to give Member States the power to organise their national systems and, if they consider it appropriate, to continue to organise production in an integrated way that allows pooling to take place, ~~thus reducing interfaces, which are harmful both economically and from the point of view of safety.~~~~

**Outcome of vote** (points 3.11; 3.12; 3.13 and 3.14 voted and rejected together)

Votes in favour: 35

Votes against: 67

Abstentions: 2

**Point 3.12**

Delete the point:

~~Separating infrastructure management in a single degree of freedom guided transport system usually brings more problems than benefits by complicating operations a great deal, leading to an increase in costs and a reduction in service quality. This particularly applies to networks where there is intensive mixed traffic use.~~

**Outcome of vote** (points 3.11; 3.12; 3.13 and 3.14 voted and rejected together)

Votes in favour: 35

Votes against: 67

Abstentions: 2

**Point 3.13**

Delete the point:

~~Technical developments are integrated more slowly and with greater difficulty. Innovation — which usually involves both fixed elements (infrastructure) and mobile elements (rolling stock) at the same time — is held back. Bureaucracy and unnecessary interfaces increase significantly, leading to higher operating costs and inertia in the decision-making process.~~

**Outcome of vote** (points 3.11; 3.12; 3.13 and 3.14 voted and rejected together)

Votes in favour: 35

Votes against: 67

Abstentions: 2

**Point 3.14**

Amend as follows:

*Separating the functions of infrastructure managers and carriers ~~also takes a risk taking network~~ or infrastructure managers further away from end users (passengers and loaders) and their service quality requirements (particularly in terms of punctuality). This stresses the need for a good regulator function on such markets. ~~There should therefore continue to be a role for a pivotal player in the railway system, while preserving the independence of the core functions of infrastructure managers.~~*

**Outcome of vote** (points 3.11; 3.12; 3.13 and 3.14 voted and rejected together)

Votes in favour: 35

Votes against: 67

Abstentions: 2

**Point 3.19**

Amend as follows:

*As for rail freight, ~~the situation here in a number of the effects of deregulation vary much among Member States and markets. In some Member States, especially in Eastern Europe, the recent development is very problematic and disastrous.~~ The main reason is however not deregulation as such but that the modernisation and expansion of the railways has not kept pace with the modernisation of the road network and that rail traffic is subject to mandatory track access charges. In some other countries the service to the customers has risen significantly and consequently more goods are transported on rail than before. Generally, the growing competition especially in the block train market has been positive. However, the single wagon load business, a long standing problem area in Europe, has continued its downturn in most countries, leading to network effects and abandonment of low-traffic rail infrastructure. In addition, competition for the most profitable connections does bring improvements for a number of block trains. However, this is partially at the expense of single wagon load services, whose systems are more and more stretched. This can turn certain areas into industrial deserts and bring thousands of lorries onto the roads. Furthermore, many players willingly admit that in a number of Member States. It is clear from the Commission communication that EU rail freight deregulation has not been enough to create a new competitive rail freight market. Some operators even claim that not a single tonne of goods has been transferred to rail as a direct result of liberalisation.*

**Outcome of vote**

Votes in favour: 39

Votes against: 72

Abstentions: 3

---

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic'**

COM(2013) 195 final/2 — 2013/0105 (COD)

(2013/C 327/22)

Rapporteur-General: **Mr RANOCCHIARI**

On 13 May 2013 the Council, and on 18 April 2013 the European Parliament decided to consult the European Economic and Social Committee, under Article 91 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 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic*

COM(2013) 195 final/2 — 2013/0105 (COD).

On 21 May 2013 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Ranocchiari as rapporteur-general at its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July), and adopted the following opinion by 87 votes with 1 abstention.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the Commission proposal to revise – after 17 years – the current Directive on weights and dimensions of certain vehicles. The proposal intends to keep pace with technological progress in order to have cleaner and safer vehicles.

1.2 At the same time the EESC notes that some critical issues need to be clarified so that the revision can be coherent with the already existing legislation, avoiding any unnecessarily complexity and/or discrimination.

1.3 To this end the EESC is confident that the Expert Committee set up with the view of adopting delegated acts will help to remove any inconsistency.

1.4 In what concerns the rear flaps the EESC warmly recommends their installation to be included in the current scheme of European Type Approval, avoiding the National Type Approval that would constitute a step back respect the WVTa (Whole Vehicle Type Approval).

1.5 The weight exemption granted only to vehicles with two axles and electric or hybrid propulsion should be extended to vehicles with three axles or more and to other vehicles utilising

alternative tractions and fuels when the relevant technical solutions imply extra weight thereby reducing the payload capacity.

1.6 The on board weight devices are not mandatory but only recommended. The EESC recalls that a technical solution does not exist for all vehicle types and their installation can be very problematic on vehicles with mechanical suspension and/or with high number of axles.

At the end of the day it will be very difficult to get a system accurate enough to be used as enforcement tool. On the contrary, the same result could be obtained redoubling the WIM (the weight in motion system integrated in the road surface) already utilised in the Member States.

1.7 Finally, on the modular concept, or Longer Heavier Vehicles (LHVs), the EESC believes that the EC proposal is, for the time being, the right one as explained further in para. 4.6 of this opinion.

1.8 Nevertheless the possibility exists – with more Member States eventually allowing cross border use of LHVs – to see a domino effect, gradually admitting such vehicles right across Europe. In this case these derogations could lead what is now an exceptional practice to become a norm, contravening the driving principle of the proposal which reiterates that the modular concept does not significantly affect international competition, penalising Member States not admitting the LHVs in their territory.

1.9 If that happens the EC could not but take note, leaving the market forces decide the path to be followed. If the LHVs earn a market share in Member States with suitable infrastructure and safety requirements, it will be not the role of the EC to limit them without breaking the subsidiarity principle.

## 2. Introduction

2.1 The current Directive establishing the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic for certain road vehicles circulating within the Community <sup>(1)</sup> dates back to July 1996.

2.2 Given the more stringent necessity to reduce greenhouse gas emissions and the consumption of petroleum products and taking into account that road transport accounts for 82 % of energy consumption of the transport sector, it was time to update this legislation, making use of more recent technical evolution to reduce fuel consumption and facilitate intermodal transport operations.

2.3 As a matter of fact the 2011 White Paper on Transport <sup>(2)</sup> was already announcing the revision of the current Directive with the aim of putting on the market more energy efficient vehicles.

2.4 In view of the above the EESC warmly welcomes the Commission proposal to revise the current Directive, considering that such a revision takes into account not only the reduction of fuel consumption but also the needs of intermodal transport and containerisation and, last but not least, the road safety.

## 3. Gist of the European Commission proposal

3.1 To grant a derogation from the maximum dimensions of vehicles:

- For the addition of aerodynamic devices (rear flaps) to improve energy efficiency;
- For the modification of the cabin to improve aerodynamic performance and road safety as well as driver comfort.

3.2 To grant a weight increase of one tonne for:

- Two axle vehicles with electric or hybrid propulsion in order to provide allowances for battery weights and dual propulsion, without prejudice to the load capacity of those vehicles;

<sup>(1)</sup> For carriage of passengers: **M2** (from 8+1 seats with a max. mass ≤ 5 ton); **M3** (same as M2 seats but with a max. mass > 5 ton). For carriage of goods: **N2** (max. mass > 3.5 and ≤ 12 ton); **N3** (max. mass > 12 ton); **O2** (trailers with a max. mass > 0.75 and ≤ 3.5 ton); **O3** (trailers with a max. mass > 3.5 and ≤ 10 ton).

<sup>(2)</sup> COM(2011) 144 final.

- The same weight increase will be granted to the buses to take account of the increase of the average weight of passengers and their baggage, but also of the weight of the new on board safety devices. This will avoid reducing the number of passengers per coach.

3.3 To grant an extension of 15 cm in the length of trucks in order to make the use of 45 foot containers possible at EU level.

3.4 To better detect infringements related to overloading is recommended the introduction of "on board weight devices" which are able to communicate the weight data to the inspection authorities, assuring a level playing field among haulers.

3.5 To confirm the cross border use of the EMS or LHV when they cross only one border and provided that the two Member States concerned already allow it, respecting the limits of derogation foreseen by the Directive. This use should not have any significant impact on international competition.

3.6 The EC will draft technical characteristics, minimum performance level, manufacturing constraints and procedures concerning the above requirements.

3.7 To this end an Expert Committee was set up with the view to adopting delegated acts responding to the performance base standard principle, thus avoiding the imposition of disproportionate obligations which could penalise SMEs in particular. All the major stakeholders are involved in the Expert Committee.

## 4. EESC comments

### 4.1 Rear flaps

4.1.1 Maximum authorised length of vehicles can be exceeded up to two meters if aerodynamics (foldable/retractable) flaps are fitted at the rear.

4.1.2 The EESC supports the innovation but invites the EC to avoid any possible conflict of legislation between this proposal (2 m tolerance) and the type approval legislation (Reg. 1230/2012) which allows a rear increase of the vehicle length of 50 cm and has to be updated as soon as this proposal is adopted.

4.1.3 Furthermore the proposal states that the installation of such aerodynamic devices should be national type approved by Member State which will issue an appropriate certificate to be accepted by all the other Member States. On the contrary, the EESC with respect to the importance of those devices, also in terms of safety, strongly suggests their approval should be included in the current scheme of European Type Approval. The national approach would constitute a step back respect the WVTa.

#### 4.2 Streamlining of the cab

4.2.1 The EESC strongly suggests that both the Directive and the outcome of the Expert Committee contain specific provisions on the improvement of the driver's cabin comfort. An increasing number of drivers carrying out international journeys within the EU spend their rest time in the lorry, with the extreme case of non-resident drivers (drivers working from a country different than their country of residence) effectively live for months in their lorry. It is imperative that the driver's cabin is improved. These improvements will certainly have to be doubled by the enforcement of Regulation (EC) 561/2006 which forbids drivers to take their weekly rest time in the vehicle, as well as by measures to build new secured and affordable parking areas.

4.2.2 The EESC recalls that the design of a cabin is a costly and complex exercise which needs time to be developed. Consequently the manufacturers must dispose of an appropriate lead time before the implementation. That's why the EESC suggests a transitional period assuring a level playing field for all manufactures.

#### 4.3 Vehicles with electric or hybrid propulsion

4.3.1 The EESC supports weight exemption granted to these vehicles, both trucks and buses, but strongly suggests that the derogation could be applied to vehicles with three axles or more.

4.3.2 Moreover the EESC believes that all the green vehicles should be treated in the same way, following the principle of technological neutrality even recently confirmed by the EC in the Action Plan for a competitive and sustainable automotive industry in Europe "CARS 2020" <sup>(3)</sup>. For this reason the EESC recommends to grant the same exemption also for other tractions and alternative fuels, where the technical solutions imply extra weight that penalise the payload capacity, i.e. hydrogen, CNG and LNG (liquefied natural gas) vehicles.

#### 4.4 45 feet containers for intermodal transportation

4.4.1 The proposal to extend of 15 cm the length of the vehicles engaged in the transport of 45 feet containers is fully backed up by the EESC.

4.4.2 This type of containers, whose number increased worldwide by 86 % between 2000 and 2010, representing the 20 % of the global stock of containers, with a share market of some 3 % in Europe, will no more need a special permit, facilitating a better intermodal transport.

4.4.3 A questionable aspect of this proposal is the rationale behind the limitation of road part of transportation foreseen in Art. 11: *Less than 300 km or to the closest terminal between which there is a regular service*. Such a provision could be quite difficult

to interpret and control. In addition to that it seems also questionable the different treatment of road journeys to/from European short sea shipping where no limits are fixed and, apparently, also a longer road distance is allowed, discriminating the other combinations of intermodal transport.

#### 4.5 On board weight devices

4.5.1 It is known that checks on vehicles regarding overloading are often inefficient and insufficient in number compromising road safety, with a high number of infringements giving competitive advantage to the transporters that do not comply with the relevant rules.

4.5.2 To fit such devices on board is not an easy task, technical solutions do not exist for all vehicles types and it will be very complex and costly to get a system accurate enough to be used as an enforcement tool. Moreover this kind of devices can be fitted only on new vehicles and the risk exists that Member States could implement different systems with a fragmentation of the market.

4.5.3 The same measurements can be obtained redoubling or so the existing WIM and it seems to be a workable good solution also according to the impact assessment of this proposal where the benefits for the Member States are estimated much greater than the cost.

#### 4.6 European modular system / Modular concept

4.6.1 This topic is more sensitive and controversial since the approval of the current Directive in 1996, when the derogation related to the modular concept was accepted following the accession to the EU of Finland and Sweden, where LHV's were already operating between the two countries.

4.6.2 In short, EMS consists of a combination of the longest semi-trailer with a maximum length of 13.60 m with the longest load-carrier with a maximum length of 7.82 m allowed in the EU. The result is a vehicle of maximum 25.25 m long with a gross weight of up to 60 tonnes, while in the EU countries not permitting the EMS the maximum length is 16.50 m for the articulated vehicles and 18.75 m for the road trains with a gross weight up to 40 tonnes (up to 44 tonnes when carrying containers of 40/45 feet in intermodal transport).

4.6.3 The pros and cons of EMS are well known and are somehow reflected in the various nicknames they receive, from "eco combi" and "euro combi" to "giga-liners", "mega trucks", "super lorries" and so forth.

4.6.4 Those in favour of the EMS underline that it will improve the logistic system of the European continent. Two LHV's can replace three current heavy goods vehicles; consequently the number of trips will be reduced by around 30 % and fuel consumption reduced by 15 % with a cost saving of more than 20 %. All this will allow further advantages concerning environment, congestion, road wear and road safety.

<sup>(3)</sup> COM(2012) 636 final.



The opposite party uses more or less the same arguments but to express the contrary: EMS is a risk to road traffic safety, with a heavy impact on road infrastructure and a greater pressure on the environment. Its success could make road transport cheaper and increase road traffic, shifting goods off the rails onto the road.

4.6.5 These opposite views are not only among stakeholders but even among Member States. As already said, Finland and Sweden have permitted EMS since long time and the Netherlands did the same in 2008 after years of testing. Germany, Belgium and Denmark are still on trials while other Member States declared to be against the EMS in their territory.

4.6.6 What the EC is proposing now is no more than a clarification of the text of the current Directive which wording was considered quite ambiguous. The main points are:

- The use of EMS is a choice left to the Member States in line with the principle of subsidiarity, based on different local conditions, and in line with the transport mode neutrality of the EU;

- No Member State is obliged to the use of EMS, but they have the right to forbid the traffic of EMS in its own territory;

- The EMS can cross the border of two adjacent Member States authorising their use as long as the transport operations remain limited to those two Member States on appointed road networks.

4.6.7 The EESC believes that the EC proposal on EMS is the right one, both legally and politically.

4.6.8 The Commission could neither impose a ban nor a liberalisation on EMS without breaking the subsidiarity principle and the transport mode neutrality. In EESC's opinion is up to the Member States to decide after their own cost benefit analysis.

4.6.9 In a longer perspective, as already suggested in a previous EESC opinion <sup>(4)</sup>, it needs to be assessed whether the use of longer road vehicles operating with new fuels could be linked to the development of multimodal corridors envisaged in the road map as part of the core TEN-T network.

Brussels, 11 July 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---

<sup>(4)</sup> OJ C 24 – 28.1.2012, p. 146-153.







<u>Notice No</u>	Contents (continued)	Page
2013/C 327/13	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products' COM(2012) 788 <i>final</i> — 2012/0366 (COD) .....	65
2013/C 327/14	Opinion of the European Economic and Social Committee on 'A Stronger European Industry for Growth and Economic Recovery — Industrial Policy Communication Update' COM(2012) 582 <i>final</i> .....	82
2013/C 327/15	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products' COM(2013) 106 <i>final</i> — 2013/0063 (COD) .....	90
2013/C 327/16	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 — A Blueprint to Safeguard Europe's Water Resources' COM(2012) 673 <i>final</i> on the 'Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans' COM(2012) 670 <i>final</i> and on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Report on the Review of the European Water Scarcity and Droughts Policy' COM(2012) 672 <i>final</i> .....	93
2013/C 327/17	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks' COM(2013) 147 <i>final</i> — 2013/0080 (COD) .....	102
2013/C 327/18	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the Proposal on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and to marine pollution caused by oil and gas installations' COM(2013) 174 <i>final</i> — 2013/0092 COD .....	108
2013/C 327/19	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports' COM(2013) 296 <i>final</i> — 2013/0157 (COD) .....	111
2013/C 327/20	Opinion of the European Economic and Social Committee on the 'Common rules on compensation and assistance to air passengers (rolling programme)' COM(2013) 130 <i>final</i> .....	115





2013/C 327/21	Opinion of the European Economic and Social Committee on the 'Fourth Railway Package', comprising the following seven documents: 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "The Fourth Railway Package — completing the Single European Railway Area to foster European competitiveness and growth"' COM(2013) 25 <i>final</i> , 'Proposal for a Regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings' COM(2013) 26 <i>final</i> — 2013/0013 (COD), 'Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004' COM(2013) 27 <i>final</i> — 2013/0014 (COD), 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail' COM(2013) 28 <i>final</i> — 2013/0028 (COD), 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure' COM(2013) 29 <i>final</i> — 2013/0029 (COD), 'Proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union' COM(2013) 30 <i>final</i> — 2013/0015 (COD), and 'Proposal for a Directive of the European Parliament and of the Council on railway safety' COM(2013) 31 <i>final</i> — 2013/0016 (COD) .....	122
2013/C 327/22	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic' COM(2013) 195 <i>final</i> /2 — 2013/0105 (COD) .....	133

EUR-Lex (<http://new.eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>



Publications Office of the European Union  
2985 Luxembourg  
LUXEMBOURG

EN