

Official Journal of the European Union



English edition

C 125

Information and Notices

Volume 60

21 April 2017

Contents

I *Resolutions, recommendations and opinions*

OPINIONS

European Economic and Social Committee

522th EESC plenary session of 25 and 26 January 2017

2017/C 125/01	Opinion of the European Economic and Social Committee on 'Threats and obstacles to the single market' (own-initiative opinion)	1
2017/C 125/02	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 launching a consultation on a European Pillar of Social Rights (COM (2016) 127 final)	10

III *Preparatory acts*

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

522th EESC plenary session of 25 and 26 January 2017

2017/C 125/03	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market' (COM(2016) 593 final — 2016/0280 (COD)), on the 'Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes' (COM(2016) 594 final — 2016/0284 (COD)) and on the 'Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society' (COM(2016) 596 final — 2016/0278 (COD))	27
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EN

2017/C 125/04	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing a Union certification system for aviation security screening equipment' (COM(2016) 491 <i>final</i> — 2016/0236 (COD))	34
2017/C 125/05	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council' (COM(2016) 468 <i>final</i> — 2016/0225 COD)	40
2017/C 125/06	Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)' (COM(2016) 411 <i>final</i> — 2016/0190 (CNS))	46
2017/C 125/07	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: Connectivity for a Competitive Digital Single Market — Towards a European Gigabit Society' (COM(2016) 587 <i>final</i>)	51
2017/C 125/08	Opinion of the European Economic and Social Committee on the proposal for a directive of the European Parliament and of the Council establishing the European electronic communications code (Recast) (COM(2016) 590 <i>final</i> — 2016/0288 (COD))	56
2017/C 125/09	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and the Council establishing the Body of European Regulators for Electronic Communications' (COM(2016) 591 <i>final</i> — 2016/0286 (COD))	65
2017/C 125/10	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities' (COM(2016) 589 <i>final</i> — 2016/0287 (COD))	69
2017/C 125/11	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 — 5G for Europe: An action plan' (COM(2016) 588 <i>final</i>)	74
2017/C 125/12	Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on the participation of the Union in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA) jointly undertaken by several Member States' (COM(2016) 662 <i>final</i> — 2016/0325 (COD))	80

I

(*Resolutions, recommendations and opinions*)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

522TH EESC PLENARY SESSION OF 25 AND 26 JANUARY 2017

Opinion of the European Economic and Social Committee on ‘Threats and obstacles to the single market’

(**own-initiative opinion**)

(2017/C 125/01)

Rapporteur: **Oliver RÖPKE**

Plenary Assembly decision	21.1.2016
Legal basis	Rule 29(2) of the Rules of Procedure
Section responsible	Own-initiative opinion
Adopted in section	Single Market, Production and Consumption
Adopted at plenary	13.1.2017
Plenary session No	25.1.2017
Outcome of vote (for/against/abstentions)	522
	166/62/8

1. Conclusions and recommendations

1.1 The single market is a major achievement and a key element of the European integration process. It should represent the cornerstone of prosperity in Europe. The introduction of the euro and the Schengen agreement were critical junctures on the path towards completing the single market. However, both are coming under growing pressure, partly due to short-sighted national interests, with a significant part of the population increasingly calling them into question, partly because of real concerns of the European citizens.

1.2 The EESC has always championed moves to bolster the free movement of goods, services, capital, payments and people and to maintain the necessary balance between economic, social and environmental policy. It is essential to keep to the path of economic and social convergence among the Member States.

1.3 With a view to further developing the single market, unnecessary obstacles must be removed to ensure growth, jobs, long-term prosperity and a highly competitive social market economy. Of particular relevance here are market barriers such as insufficient recognition of qualifications and diplomas, technical constraints at local level, regulatory obstacles due to differences in national legislation and inadequate coordination of e-government solutions at EU level.

1.4 The EESC is concerned that the EU's single market has barely grown since the financial crisis. The economy of the euro area actually shrank by 1,6 % between 2008 and 2015. By contrast, other economic regions such as the USA, Australia and Japan have far outpaced the EU in terms of domestic demand and growth. Active steps are therefore needed to steer Europe back towards the policy objectives of the Europe 2020 strategy.

1.5 The EESC stresses once again the importance of cross-border mobility for businesses and workers. However, the fact that single market principles enjoy much less support among a significant proportion of the population should not be overlooked. One reason for this is the growing risk of continuing unfair and illegal practices associated with the cross-border provision of services. The high risk of abuse severely undermines workers' and honest companies' trust in the single market.

1.6 Decisive action must be taken to counter these trends and it is important to ensure fair competition in the interests of business too. A well-functioning single market requires compliance with European and national legislation when carrying out cross-border activities. This is the reason why the majority of the EESC members therefore supports all efforts to ensure that, in practice, the same work at the same place is remunerated in the same way in the EU, as called for by Commission president Jean-Claude Juncker.

1.7 Although the single market has a strong social basis in the TFEU and EU secondary legislation, consideration should be given to striking a better balance between market freedoms and basic social rights in primary law. The aim of such a move would be to address the discontent of the many people who feel that, increasingly, their social interests and requirements are not properly safeguarded in the single market.

1.8 In principle, the EESC welcomes efforts to check EU law for efficiency. This initiative could have an important role to play in cutting unnecessary regulatory costs which are applied when the same area is subject to different national or regional rules. Harmonised legislation should thus be checked for necessity, specifically in the interests of SMEs. However, the EESC reiterates its opinion that high consumer standards are not an unnecessary burden.

1.9 The EESC underlines its view that the digital single market should be a policy priority given its huge growth potential. Existing legal uncertainties in the areas of employment, the economy and consumer affairs need to be examined and removed without delay. The Commission should implement a clear legal framework for new forms of economy and new business models in the single market, including various forms of the sharing economy, with a view to closing regulatory gaps. Applicable legislation must be fully respected here, with specific efforts to safeguard consumer and worker rights as well as fair competition.

1.10 The creation of a Capital Markets Union should also remain high on the agenda in that the more efficient capital allocation that is associated with it can have a positive impact on the economy and employment, as well as on consumers. Certain recent developments such as Brexit must not unduly delay or compromise the implementation of these plans.

1.11 The EESC reiterates its view that regulatory gaps in taxation policy lead to unfair competition in the single market. It therefore supports moves towards a common consolidated corporate tax base, country-by-country reporting as well as ongoing efforts to tackle tax avoidance and tax havens. The introduction of a common minimum corporate tax rate could provide a useful complement to these initiatives and put an end to the race for the lowest tax rate.

1.12 Public services — also known as services of general interest — play a key role in the social market economy and are essential for the general public. Services of general interest have a place among the EU's shared values, playing a part in fostering social and territorial cohesion.

1.13 This role of promoting social and territorial cohesion should be taken into account as part of the 'principles and conditions' which the EU can establish for these services. In connection with the planned reform of the Services Directive, the EESC highlights protocol No 26 on services of general interest of the EU Treaty, according to which Member States' national, regional and local authorities are given wide discretion in services of general economic interest.

1.14 A variety of measures are needed to tackle unfair practices in public procurement, which push tenders below a fair standard, sometimes fail to comply with minimum-wage requirements in force in the respective national legal provisions and practices and, in many cases, result in high cost overruns. In particular, there must be transparency on the best tender price and service and any cost overruns that may occur at a later stage. The aim must be to apply the best tender principle, not that of the lowest bid.

2. Challenges for the single market

2.1 European integration must follow the goal of achieving the necessary balance between economic, social and environmental policies. The free movement of goods, services, capital and payments, and of people, must be complemented by respect for the fundamental social rights incorporated into the EU Treaties through the Charter of Fundamental Rights. Fundamental social rights need to be enforced in the internal market in practice. At the same time, any unnecessary obstacles still present in the single market should be removed to ensure long-term prosperity and a highly competitive social market economy.

2.2 The EESC has repeatedly stated, most recently in its opinion on upgrading the single market⁽¹⁾, that the single market is a centrepiece of European integration, with the potential to deliver directly-felt benefits and to generate sustainable growth for Europe's economies.

2.3 The single market is a major achievement and should provide the cornerstone of Europe's prosperity. The launch of the euro in the euro area and the Schengen Agreement were critical junctures on the path towards creating a common single market. However, they are now under severe pressure, illustrating how different the interests of EU Member States are. To some extent, decision-making and oversight still take place at national level.

2.4 The EESC notes that there are still significant market barriers in the form of inadequate recognition of qualifications and diplomas, splitting of curricula, technical local restrictions, regulatory barriers resulting mainly from fragmentation of the single market due to different national legal frameworks, administrative burdens such as compliance with national taxation and customs rules, and a lack of e-government facilities and of coordination of e-government solutions at European level.

2.5 The Commission seeks to implement full harmonisation in some areas, which may result in reducing the existing level of protection in some Member States. The EESC underlines that it has opposed such measures in a number of opinions. Full harmonisation, where it is pursued by the Commission, must be achieved while preserving the level of protection already in place.

2.6 Citizens in the Member States increasingly feel that Europe does little to protect social standards and income or to achieve fair taxation and fair social charges. The single market has a solid social dimension based on TFEU and secondary EU legislation, but a better balance between economic market freedoms and fundamental social rights should be considered.

2.7 Measures presented under the European pillar of social rights should reflect the Union's founding principles and build on the conviction that economic development should result in greater social progress and cohesion and that, while ensuring appropriate safety nets in line with European values, social policy should also be regarded as a productive factor.

2.8 In spite of the many achievements of the EU cohesion policy, real economic and social convergence between Member States is still a long way off, and there are big differences in wages and social standards. The lower wages currently in place in some Member States are due to historical developments and the natural diversity of the extensive internal European market, and reflect local productivity levels and many other factors including the interests of investors. Despite that, more attention should be given to social dumping, which should be defined as an unfair and illegal practice of not abiding by the rules with regard to work remuneration or the payment of social and health insurance, and thus acquiring an unfair advantage over competitors⁽²⁾.

⁽¹⁾ OJ C 177, 18.5.2016, p. 1.

⁽²⁾ *Social dumping: political catchphrase or threat to labour standards?* — Magdalena Bernaciak Working Paper 2012, European Trade Union Institute.

2.9 Since the onset of the financial crisis, i.e. in the period from 2008 to 2015, the single market's growth amounted to 0,4 % — almost zero growth in real terms. In the euro area the single market even shrank by 1,6 %. Most other economic regions have left the European Union far behind in terms of domestic demand (for example, the USA + 8,8 %, Australia + 17,9 %, Japan + 3,8 %) ⁽³⁾. Measures to revive demand in the single market, such as the European plan for investment with the European Fund for Strategic Investment, have still not had the required effect.

2.10 The EESC is worried that the employment and social objectives of the Europe 2020 strategy based on smart, sustainable and inclusive growth cannot be achieved ⁽⁴⁾. The economic slowdown, the slow implementation of meaningful structural reforms and lack of demand in the single market have so far produced the opposite effect: the employment rate fell from 70,3 % in 2008 to 69,2 % in 2014. It should, however, be 75 % by 2020. Instead of the number of people affected by poverty and social exclusion falling by 20 million by 2020, it had risen by 4,9 million in 2014. In addition, by late 2015, over 6 million more people were unemployed in the European Union than before the crisis.

2.11 Another important aspect in the Europe 2020 strategy is education. The EESC welcomes the fact that the proportion of the population leaving education and training early was reduced from 14,2 % in 2008 to 11 %. Tertiary educational attainment also improved, rising from 31,3 % to 38,7 % between 2008 and 2015. The EESC welcomes the European Commission's skills strategy and points out that a high qualification level is indispensable in order to attract companies and to create new jobs.

2.12 The United Kingdom's decision to leave the European Union represents a major challenge to the European single market. The EESC recommends basing the future negotiations on the respect of all the founding principles and values of the single market.

3. Specific comments

3.1 Self-employment and workers' mobility in the single market

3.1.1 Labour mobility can be important for companies to have access to skilled labour, for the self-employed, and for workers to have the opportunity for good jobs, access to new skills and good working conditions. However, barriers still exist.

3.1.2 A study examining barriers and costs ⁽⁵⁾ points out that in addition to cost savings for administrative services, citizens and businesses, interoperable e-government services are expected to have a particularly large impact on labour mobility. Improving the recognition of professional degrees is crucial for both companies and workers to move across borders.

3.1.3 In its opinion on the 'Abuse of the status of self-employed' ⁽⁶⁾, the EESC stressed that bogus self-employment could lead to evasion of social security contributions, tax evasion and abuse of labour rights and to undeclared work and should therefore be eliminated. In this respect the EESC welcomes the already established European platform for undeclared work as a step in the right direction ⁽⁷⁾.

3.1.4 The aim of this platform is to prevent and deter undeclared work through improved cooperation between Member States' enforcement authorities, such as labour inspectorates, tax and social security authorities. This cooperation includes the sharing of best practices on prevention and deterrence measures, identifying common principles for inspections of employers, promoting staff exchanges and joint training and facilitating joint control actions.

⁽³⁾ European Commission, DG ECFIN, Ameco database.

⁽⁴⁾ Communication from the European Commission 'Europe 2020 — A strategy for smart, sustainable and inclusive growth', 3 March 2010, COM(2010) 2020 final.

⁽⁵⁾ 'Reducing costs and barriers for businesses in the single market', study for the EP's IMCO committee, DG for Internal Policies.

⁽⁶⁾ OJ C 161, 6.6.2013, p. 14.

⁽⁷⁾ COM(2014) 221 final, Decision of the European Parliament and Council on establishing a European platform to enhance cooperation in the prevention and deterrence of undeclared work.

3.1.5 Many workers nowadays are taken on as ‘self-employed service providers’ rather than employees, as was previously the case. These people do not have an employment contract because they work for themselves in line with their self-employed status. In such an employment relationship, in most cases there is no need to comply with national labour law. Clear and binding criteria must be used to assess whether someone is in fact employed or genuinely self-employed. For this reason, the EESC has criticised the Commission’s proposal for a directive on single-member private limited liability companies as being ‘in need of further development’⁽⁸⁾. It puts micro-enterprises, SMEs and the genuine self-employed particularly under pressure.

3.2 Single market and the posting of workers

3.2.1 The 1996 Directive sets the EU regulatory framework for establishing a right and fair balance between the objectives of promoting and facilitating the cross-border provision of services, providing protection to posted workers and ensuring a level playing field between foreign and local competitors.

3.2.2 The 2014 Enforcement Directive⁽⁹⁾ provides for new and strengthened instruments to fight and sanction circumventions, fraud and abuses, complementing Directive 96/71/EC and contributing to a more effective complex framework for the posting of workers.

3.2.3 The EESC has recently adopted a separate opinion concerning the Commission’s proposal for a targeted revision of the Posting of Workers Directive and commenting on the main changes and proposals⁽¹⁰⁾ based on the call made by President Juncker in his political guidelines for the next Commission: ‘In our Union, the same work at the same place should be remunerated in the same manner⁽¹¹⁾’.

3.2.4 In its opinion on ‘Fairer Labour Mobility within the EU’⁽¹²⁾, the EESC urged the Commission to address unfair practices that lead to social dumping. This problem is becoming increasingly urgent, as practical examples from the Member States show that the risk of wage and social dumping rises sharply in cross-border contexts. Checks by BUAK⁽¹³⁾ in Austria revealed that, of the 7 238 Austrian enterprises inspected in 2015, 38 were suspected of underpaying their employees under the law on tackling wage and social dumping. This means that 0,53 % of businesses were suspected of underpaying their employees. In the same period, checks were carried out on 1 481 businesses operating in Austria but based in other EU countries. Of these businesses, 398 were suspected of underpaying their employees, i.e. wage dumping. This amounts to a figure of 26,87 %.

3.2.5 In the case of foreign companies operating on a cross-border basis and using posted workers, the likelihood of wage dumping is 50 times higher than for local suppliers. This is a wake-up call for the (non-)functioning of the single market. The high risk of abuse undermines European workers’ confidence in the internal market enormously.

3.2.6 Another problem is the bogus posting of workers. Cases involving bogus posted workers, i.e. abuse through fake A1 posting certificates, are indicative of the problems caused by attestations, certificates or similar documents issued officially or by public bodies. This makes it increasingly difficult for micro-enterprises, SMEs and skilled workers to hold their own against competitors who act unfairly. The bogus posting of workers must therefore be eliminated.

3.2.7 The Commission has recently proposed a modification to Regulation (EC) No 883/04 on the coordination of social security systems. The EESC will adopt a separate opinion in line with the European Commission’s request expecting the development of a modernised system of social security coordination that responds to the social and economic reality in Member States and respecting the principles of EU law, in particular concerning equal treatment and non-discrimination.

⁽⁸⁾ OJ C 458, 19.12.2014, p. 19.

⁽⁹⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) (OJ L 159, 28.5.2014, p. 11).

⁽¹⁰⁾ OJ C 75, 10.3.2017, p. 81.

⁽¹¹⁾ Opening statement in the European Parliament plenary session in Strasbourg, 15 July 2014.

⁽¹²⁾ OJ C 264, 20.7.2016, p. 11.

⁽¹³⁾ Austrian Construction Workers Leave and Severance Pay Fund, Annual statistics 2015.

3.2.8 The EESC takes note of the proposal for the services passport (or services ID card), which should eliminate the need for multiple requests for information and documentation already provided to the home Member State, by creating a common electronic repository of documents. The EESC opposes any undermining of the principle of the country of destination. It will develop a separate opinion on this.

3.3 **REFIT and 'Better law-making'**

3.3.1 In principle, measures to check whether EU law is effective are to be welcomed. An interinstitutional agreement between the Commission, the Council and the European Parliament can provide a useful arrangement to make it easier to achieve the goal of simpler and more effective EU law. In terms of cooperation, however, it must be ensured that EU legal standards offering social or economic policy benefits are protected and not called into question.

3.3.2 SMEs are affected just as much as consumers and workers. According to the principle 'Think small first' it is particularly important to avoid unnecessary burdens for SMEs. A consumer protection policy, based on a high level of protection in accordance with Article 169 TFEU, is needed for the proper functioning of the internal market.

3.3.3 REFIT could also have an important role to play in cutting regulatory costs which are applied when the same area is subject to different regional rules. Harmonising legislation could result in significant cost savings and promote growth in EU regions by removing these barriers. It should therefore be examined to see whether it is feasible.

3.3.4 Many of the legislative acts to be reviewed under the REFIT programme to reduce bureaucracy concern legal rules that protect employee and consumer standards and are therefore of considerable socio-political and economic benefit. The EESC reaffirms its view that high consumer standards are not an unnecessary burden.

3.3.5 The EESC refers to its opinion of 14 December 2014 (¹⁴) and reiterates its position that smart regulation does not remove the obligation to observe rules on protecting the public, consumers and workers as well as the standards for gender equality or environmental protection rules. In addition, the 'Think small first' principle must not result in micro-enterprises and SMEs being exempt from legislation, though the legislation should take their interests and needs into consideration.

3.3.6 The Commission's refusal to continue with the planned legislative initiative on hairdressers, even though there is agreement among the European social partners on this matter, is completely incomprehensible. The Commission's approach is at odds with the principles and values of social dialogue, respecting the principle of representativeness, and is extremely short-sighted, because a lack of regulation in the area of occupational health can result in occupational diseases and thus considerable costs for both businesses and the public sector.

3.3.7 The EESC draws attention to the joint declaration of the European social partners on a new start for social dialogue, based on the outcomes of the thematic groups, which mentions the interaction between the EU social dialogue and the better regulation approach.

3.3.8 The EESC welcomes the launch of dialogue in the newly created REFIT platform. In addition to the objective of making it easier to do business and safeguarding standards for workers, both the Commission and the platform's experts must ensure that consumer rights are protected in their efforts to simplify EU law.

3.4 **The digital economy, new forms of economy and new business models**

3.4.1 The digital single market should be one of the priorities, given the benefits that can be expected if the single market in this area can be completed. Potential GDP gains from completing the DSM are estimated at EUR 415 billion per year (¹⁵).

(¹⁴) OJ C 230, 14.7.2015, p. 66.

(¹⁵) Study 'Reducing Costs and Barriers for Businesses in the Single Market'.

3.4.2 The EESC agrees with the European Commission that existing legal uncertainties in the employment, economic and consumer fields need to be analysed and addressed. Consideration should be given here to safeguarding existing labour, social and consumer protection standards and ensuring a reliable legal framework for business. There should not be different rules for the 'all-digital' world and the 'non-digital' world in the digital single market. The Commission should provide legal standards that could be used for the digital and the non-digital single market.

3.4.3 In its opinion on 'unjustified geo-blocking'⁽¹⁶⁾, the EESC welcomed the proposal for a regulation on geo-blocking, both for companies and for consumers, as an indispensable element of the Digital Single Market Strategy. It is, however, a small step, not a game-changer. The practice of geo-blocking, i.e. discrimination against consumers in terms of their access to online services on the grounds of residence or their geographical internet address or nationality, must come to an end. Redirecting consumers to a local website with higher prices also constitutes discrimination in the single market. The EESC will deal with the conclusions reached by COMPET in November 2016 on the general approach to the proposed text, stressing clearly the need to distinguish between price discrimination and price differentiation.

3.4.4 In areas such as geo-blocking, cross-border parcel delivery, cross-border insurance, copyright licensing and financial markets, it must be considered that the European Union and Member States are mainly responsible for removing barriers to cross-border trade and ensuring a better functioning of the market.

3.4.5 The free flow of data calls for greater protection of personal data and privacy which will be crucial in the future, and consideration should be given to a coherent policy on big data, cloud services and the Internet of things.

3.4.6 The increasing digitalisation of the economy generates new business models opens up new opportunities, but it also poses new challenges. The EESC has had in-depth discussions about this new phenomenon, resulting in a number of opinions⁽¹⁷⁾.

3.4.7 The Commission should also move forward with its proposal for the Single Digital Gateway, to make this instrument truly effective.

3.4.8 Social and collaborative entrepreneurship is crucial to social cohesion, in order to guarantee Europeans more efficient and sustainable economic growth. The EESC once again urges the Commission to undertake a whole raft of indispensable policy measures in order to ensure that the numerous variations of the sharing economy and the different ways it operates are supported, implemented, and gain credibility and trust at EU level and in the various Member States⁽¹⁸⁾.

3.5 The creation of a single capital market

3.5.1 In 2015, the Commission announced an action plan on building a European Capital Markets Union. The Committee⁽¹⁹⁾ believes that this union should prioritise economic and financial stability in the EU and lead to better and more efficient capital allocation, with a positive impact on investment and growth, as well as on employment and consumers. At that time, the Committee⁽²⁰⁾ also expressed its concern that it would take time to achieve the end result, and in the light of certain recent developments such as Brexit and others mentioned above (see point 2), this concern will only increase further.

3.5.2 The action plan comprises at least 33 measures to be implemented in various areas in the short and medium term. Several of these measures make additional funding available, particularly for SMEs and households. The Committee considers⁽²¹⁾ that these proposals should be implemented in the short term, taking into account the principles of safety, transparency and enforcement. With a similar concern for safety and stability, the Committee⁽²²⁾ has on a number of occasions stated that shadow banks should be addressed and regulated.

⁽¹⁶⁾ OJ C 34, 2.2.2017, p. 93.

⁽¹⁷⁾ OJ C 264, 20.7.2016, p. 57; OJ C 303, 19.8.2016, p. 28; OJ C 303, 19.8.2016, p. 36; OJ C 264, 20.7.2016, p. 86; OJ C 389, 21.10.2016, p. 50.

⁽¹⁸⁾ OJ C 303, 19.8.2016, p. 36.

⁽¹⁹⁾ OJ C 133, 14.4.2016, p. 17 (points 1.2, 1.3 and 1.7).

⁽²⁰⁾ OJ C 133, 14.4.2016, p. 17 (point 1.12).

⁽²¹⁾ OJ C 82, 3.3.2016, p. 1 (points 1.2, 1.6 and 1.7).

⁽²²⁾ OJ C 133, 14.4.2016, p. 17 (points 1.9 and 3.8); OJ C 251, 31.7.2015, p. 33 (point 4.2).

3.5.3 The EU's regulation of financial markets and the enforcement thereof were not sufficient to prevent the speculative operations, over-indebtedness and irresponsible risk-taking which led to the financial crisis, with serious consequences for the whole of society. The EESC reminds the Commission to bring forward a proposal concerning the debt overload of private households.

3.6 Tax policy

3.6.1 As the EESC argued back in 2012 in its report on 'Obstacles to the European single market', regulatory gaps in taxation policy lead to unfair competition. The European Commission's plans for a common consolidated corporate tax base are to be welcomed. The EESC set up a study group on this issue. In order to end the race to the bottom on corporate tax and to achieve a fairer tax policy, the introduction of a minimum corporate tax rate could also be envisaged.

3.6.2 The exchange of tax-related information between Member States and legal steps to block the most common methods used to avoid paying tax should be welcomed. A key demand here is to introduce in each country a reporting requirement for businesses operating across borders without increasing unnecessary administrative burdens.

3.6.3 Action should also be taken against tax havens. At a European Parliament hearing, Joseph Stiglitz, the economist and Nobel prize winner, called for worldwide action against such tax evasion systems⁽²³⁾. The French academic Gabriel Zucman has estimated that financial assets of around EUR 5 800 billion are located in tax havens around the world, 80 % of which are untaxed⁽²⁴⁾. The Commission is now suggesting measures at international level to deal with tax havens.

3.6.4 As a first step, it must be ensured that mutual assistance agreements are implemented and the automatic exchange of information between individual countries is carried out. An international network of tax audits should be considered for multinational companies. In the case of asset and capital transfers to countries classified as tax havens, obliging the financial institutions to report the transfers they are making is a possible starting point⁽²⁵⁾.

3.7 Services of general interest, Services Directive

3.7.1 The EESC has already highlighted existing barriers in the services sector in its 2012 report on obstacles to the single market. The Commission has found that many Member States are not meeting their obligation to notify the EU authorities of regulatory measures, making it difficult for the Commission to assess whether a new rule is justified and proportionate.

3.7.2 The Commission is therefore planning to reform the notification procedure, which should now also apply to the services currently excluded from the scope of the Services Directive. The Commission has to take care that the proposals are not set up such that they bring the sovereignty or the democratic principle of the Member States into question.

3.7.3 Services of general interest play a key role in the social market economy. The availability of housing, water and energy, waste and sewage disposal services, public transport, healthcare, social services, youth and family services, culture and communication is vital for the public. Services of general interest have a place among the EU's shared values, and play a part in fostering social and territorial cohesion. This role of promoting social and territorial cohesion should be taken into account as part of the 'principles and conditions'.

3.7.4 In connection with the planned reform of the Services Directive, the EESC highlights protocol No 26 of the EU Treaty concerning services of general interest, that is, the legally binding interpretation of Article 14 TFEU: Member States' national, regional and local authorities have wide discretion in services of general economic interest because of their cultural, social and geographical differences. As regards these services, which are to be made available according to the needs of the users, a high level of quality, safety, affordability and equal treatment should be ensured and universal access and users' rights promoted, ensuring their efficiency and proper management at the same time.

⁽²³⁾ See the European Parliament newsroom, ref. 20161114STO51063 of 17.11.2016.

⁽²⁴⁾ See *Steueroasen: wo der Wohlstand der Nationen versteckt wird* (Tax havens: where the wealth of nations is hidden), Gabriel Zucman, 2014, Suhrkamp-Verlag.

⁽²⁵⁾ OJ C 264, 20.7.2016, p. 93.

3.8 Public procurement

3.8.1 As regards public procurement, there are no statistics on the actual costs compared with the costs submitted by the best tenderer in the tendering process. In many cases, there are significant cost overruns⁽²⁶⁾.

3.8.2 Time and time again, the winners are tenderers operating unfairly, who lower the costs of their tenders below a fair price and use unreliable subcontractors. Subsequently, there are often follow-up costs, which exceed the price of the second or third best tenderer.

3.8.3 In order to curb this practice, several measures are required: the introduction of an electronic procurement process should create a statistical collection capability that should make it possible to identify low bidders and encourage those responsible to behave positively. Within the framework of the statistical survey, the best tender price and the subsequent actual costs incurred must be recorded centrally in order to create transparency with regard to possible cost overruns. Bids based on prices that do not meet minimum requirements as set out in the respective national provisions and practices must be excluded from the tender in order to avoid a possible rush to reduce costs and quality standards.

Brussels, 25 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

⁽²⁶⁾ The case of Berlin airport, the Vienna airport Skylink project or Stuttgart railway station.

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 launching a consultation on a European Pillar of Social Rights

(COM(2016) 127 final)

(2017/C 125/02)

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Consultation	European Commission, 8.3.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	10.1.2017
Adopted at plenary	25.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	247/1/2

Foreword

Article 3 TEU: ‘... [The Union] ... shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. [...].’

This opinion sets out the European Economic and Social Committee’s initial contribution to shaping what may eventually be a European Pillar of Social Rights. It draws from the rich and diverse discussions during the 28 national debates organised by the Committee, which it believes provides the added value of this opinion. The Committee emphasises that the Pillar must be developed with the strong involvement of civil society, including the social partners, at all levels. It stresses the need for more clarity regarding what the Pillar is ultimately intended to be and in defining its scope.

The Committee is of the opinion that the Pillar must offer a positive project for all and should apply to all EU Member States, while acknowledging that the euro area may need particular instruments/mechanisms. The Committee believes that the future of work — with all the opportunities and challenges this presents — should be a key priority in the debates regarding the Pillar.

1. Introduction

1.1 Following the request from the President of the European Commission to the European Economic and Social Committee (EESC) for an EESC contribution to the consultation on a European Pillar of Social Rights ('EPSR')⁽¹⁾, the Committee engaged in broad civil society⁽²⁾ consultations in the 28 Member States. In total, some 116 EESC Members and close to 1 800 other representatives of civil society organisations participated in these national debates.

1.2 The EESC's opinion on the *European Pillar of Social Rights* reflects and has integrated the principal conclusions and recommendations of these national debates. The Committee notes the Commission's intention to ‘... express a number of essential principles to support well-functioning and fair labour markets and welfare systems’⁽³⁾ and considers the EPSR to be a very important initiative for the sustainability of the EU. Within this context, this EESC Opinion constitutes a first step in the

⁽¹⁾ Letter from Mr Juncker, President of the European Commission to Mr Dassis, President of the EESC, dated 8 March 2016.

⁽²⁾ According to EESC terminology, the term ‘civil society’ refers to ‘organised and representative civil society’. See opinions OJ C 329, 17.11.1999, p. 30 and OJ C 193, 10.7.2001, p. 117.

⁽³⁾ See footnote 1.

ongoing process towards the establishment of an EPSR. The Committee states its intention to continue contributing to discussions on this topic, notably subsequent to the adoption of the Commission's White Paper in 2017.

2. Challenges and priorities

2.1 In 2017, the European Union will mark the 60th anniversary of the signing of the Treaty of Rome. This landmark anniversary offers an occasion to celebrate the EU's achievements, but must also be the occasion to address Europe's major political, economic and social challenges. Citizens' trust in the European Union has diminished in many Member States. For the first time in its history, the Union will probably see a Member State breaking away.

2.2 Since the shock of the 2008 financial crisis, the European Union has continued to experience a series of subsequent crises. Although situations vary among Member States and there have been different policy responses, today the EU is facing numerous challenges which include: a prolonged period of high unemployment, unacceptable levels of youth unemployment, economic instability and deterioration in the social situation including increased poverty and inequality levels. To this can be added globalisation, demographic developments and digitalisation. The inability of the Union to deal adequately with the influx of asylum-seekers and migrants has added to the general sentiment that the EU can no longer provide both political and practical solutions that work in the interests of all. Eurosceptic, populist and nationalist parties seek to capitalise on these fears by offering simplistic solutions to complex problems, pointing a finger at certain sections of our communities and creating dangerous divisions in society.

2.3 Some of the challenges and divergences among and within the Member States were made worse by the crisis. They result from or are exacerbated by, *inter alia*, a lack of growth and structural weaknesses in our labour markets and social protection systems, which to a large extent predated the crisis. What will make the difference is the collective capacity of the EU and its Member States to create the conditions for sustainable growth and employment.

2.4 The EESC welcomes the Commission's initiative of launching a public consultation on a European Pillar of Social Rights, as part of the effort to secure 'a fair and truly pan-European labour market' to achieve a 'triple-A social Europe' and to serve as a compass for renewed convergence within the euro area. However, there is much uncertainty about what this 'Pillar' is ultimately intended to be. Above all, the EESC stresses that the European Pillar of Social Rights must result in a positive project for all. This way it can contribute to regaining trust in the EU's ability to improve life prospects for current and future generations.

2.5 To this end, the Pillar must also address the specific challenges occurring in the labour market and social protection systems with a view to achieving a fair balance between the economic and social dimension, as well as contributing to the fight against poverty, social exclusion and inequalities.

2.6 The EESC acknowledges that the European economic and social model is based on the shared understanding of the importance of increasing employment, social progress and productivity, as the underlying key factors for sustainable economic growth, which benefits everyone in a fair manner. The process of preparing the Pillar is an opportunity to reaffirm our shared commitment to the European social model, while ensuring that national welfare systems and labour markets are adaptable and fit for the future⁽⁴⁾. The EESC emphasises the need for growth and competitiveness in the whole of the EU. In this context, the EESC stresses the necessary interlinkage between economic, employment and social policy⁽⁵⁾.

2.7 The EESC is convinced that EU and national policies and actions aiming to achieve economic success and social progress need to become more central in the EU policy debates. Moreover, achieving coherent and mutually reinforcing EU and national policymaking is important. As part of these efforts, a new mindset towards change is necessary.

2.8 Whereas the European Semester process continues, the Europe 2020 Strategy aiming at 'smart, sustainable, inclusive growth' has become marginalised and the hopes for achieving its social targets, notably of the objectives of achieving 75 % employment participation rates, or lifting 20 million people out of poverty, have faded away. Similarly, the 2008 Active Inclusion Recommendation⁽⁶⁾ has had a limited impact.

⁽⁴⁾ National debates in Ireland, Latvia, Portugal and Spain.

⁽⁵⁾ Article 3 TEU: '... [The Union] ... shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.'

⁽⁶⁾ OJ L 307, 18.11.2008, p. 11.

2.9 As a starting point, the Pillar should promote the existing EU social *acquis* and its full and proper enforcement. Where new binding legislative initiatives and instruments are considered, this must be done in line with existing legal bases and procedures. The legal status of the Pillar is yet to be determined, as is also its relationship to the core international human rights instruments⁽⁷⁾. However, the EESC stresses that social rights must apply to everyone living in the EU and in all EU Member States, while acknowledging that particular instruments/mechanisms may be needed for the euro area.

2.10 Investment in the future is crucial but Europe continues to suffer from a lack of public and productive private investment. The EESC recognises the efforts made by the 'Juncker Plan' for investment⁽⁸⁾ and welcomes its extension. In the second phase, greater investment must be targeted towards the countries and regions which need it the most, to boost their economies and growth and avoid even greater divergence between and within Member States. Investment projects in social infrastructure should also be supported sufficiently through the Juncker Plan.

2.11 The discussions on the Pillar are taking place in parallel with other key debates at EU and global level, notably on the future of Europe and the future of work. The discussions on the future of Europe at the Rome Summit in 2017 should take into account the debates surrounding the European Pillar of Social Rights. The EESC emphasises the need for synergy and coherence in these discussions which will shape our common future. The development of the Pillar should take account of the Europe 2020 Strategy and learn from its problematic implementation. It should also be linked to an overarching EU strategy⁽⁹⁾ to implement the 2030 Agenda for Sustainable Development adopted by the United Nations in 2015, with its Sustainable Development Goals. These set out an agenda for global transformational change to end poverty, protect the planet, ensure protection of human rights including the human rights of persons with disabilities as enshrined in the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which EU and Member States are obliged to implement, and guarantee prosperity for all⁽¹⁰⁾. At EU level, effort must also be made to ensure that all EU anti-discrimination and gender legislation⁽¹¹⁾ is implemented.

2.12 In parallel with the Commission's public consultation, the EESC launched a series of national debates in the 28 Member States to raise awareness about the initiative beyond Brussels, stimulate debate and openly discuss how the Pillar should be developed. Many of the outcomes of these national debates are reflected in this opinion.

2.13 It is imperative to better define the scope of the Pillar. The EESC is of the view that this initiative should include all citizens, covering all phases of the life-cycle. The EESC is concerned about the lack of reference to asylum-seekers and migrants in the Commission's communication on the Pillar.

2.14 The role of civil society must be better recognised and reinforced. Civil dialogue needs to be strengthened to ensure that people, including young people⁽¹²⁾ and those in vulnerable situations or facing discrimination, feel that they are able to participate in the design, implementation and review of policymaking processes. The social partners have a specific role to play in the elaboration and implementation of policies directly or indirectly affecting employment and labour markets. Social dialogue must be promoted and supported, while respecting the autonomy of the social partners and collective bargaining and increasing the social partners' capacity to engage in social dialogue. The proper involvement of social partners and civil society in the discussions concerning the Pillar was underlined in many national debates⁽¹³⁾. In three debates, the importance of creating a consensual approach and ownership was underlined⁽¹⁴⁾.

⁽⁷⁾ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

⁽⁸⁾ https://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan_en

⁽⁹⁾ OJ C 34, 2.2.2017, p. 58.

⁽¹⁰⁾ <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

⁽¹¹⁾ Directive on equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC) (OJ L 180, 19.7.2000, p. 22). General Framework for Equal Treatment in Employment and Occupation Directive (2000/78/EC) (OJ L 303, 2.12.2000, p. 16).

Directive on equal treatment between men and women in the access to and supply of goods and services (2004/113/EC) (OJ L 373, 21.12.2004, p. 37).

Directive on equal opportunities and equal treatment of men and women in matters of employment and occupation (2006/54/EC) (OJ L 204, 26.7.2006, p. 23).

⁽¹²⁾ The importance of engaging young people in the dialogue was raised in several national debates in Slovenia, for example.

⁽¹³⁾ National debates in Ireland, the Netherlands, Portugal, Finland, Belgium, Greece, Slovakia, Slovenia and Croatia.

⁽¹⁴⁾ National debates in Cyprus, Belgium and the Netherlands, for example.

3. Future of work

3.1 The EESC is convinced that the future of work should be a key priority within the debates about the Pillar, in order to address the major changes taking place in the world of work. The EESC believes that a more consistent and integrated approach is now needed and therefore calls for a coherent European Employment Strategy on, inter alia, the work of the future, addressing:

- investment and innovation,
- employment and quality job creation,
- fair working conditions for all,
- fair and smooth transitions supported by active labour market policies,
- the involvement of all stakeholders, especially the social partners⁽¹⁵⁾.

3.2 The task of shaping and managing the transformations taking place in the world of work is shared among several institutional actors. All relevant stakeholders must work together to ensure that the future of work is fair and inclusive, offering employment opportunities for all and leading to social progress. The EESC is convinced that a well-educated, well-skilled and motivated workforce with a decent income and access to quality jobs is in everyone's interest. Securing positive future outcomes will depend on the necessary investment to provide people with the tools needed to adapt to these changes, provide adequate safety nets and foster innovation, not least social innovation.

3.3 The changes in the world of work should be used to 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'⁽¹⁶⁾. This goal should be addressed by the EU, the Member States and the social partners in their different roles. Civil society organisations representing people distanced from the labour market should also be involved. The preconditions for the creation of more and quality jobs are unevenly distributed among and within the Member States. The EESC urges the institutional actors of the Member States to move rapidly towards a 'high-road' strategy combined with an active labour market policy. This should be supported by a revamped and inclusive European Employment Strategy and a coherent and ambitious European Industrial Strategy.

3.4 The EESC has already appreciated rooting the EU agenda for new skills and jobs⁽¹⁷⁾ in the notion of flexicurity and has underscored the need to strike the right balance between internal and external flexicurity in the interests of both a more efficient labour market and the protection of workers. It has also underlined the importance of actively involving the social partners in monitoring and evaluating the implementation of flexicurity policies⁽¹⁸⁾. Moreover, the EESC has underlined that sound macroeconomic policies fostering employment growth as well as a favourable business environment realising and supporting the full growth potential, are important pre-conditions for flexicurity to work. The EESC has also encouraged Member States and the EU to create and maintain a legal framework conducive to adaptability, which is simple, transparent and predictable, as well as to strengthen and uphold employees' rights and the justiciability, and to promote through the EU a stable legal framework for collective bargaining and social dialogue when implementing flexicurity. It has also underlined that it is important for the social partners to be actively involved in the debate and the decision-making process on flexicurity⁽¹⁹⁾. Balancing flexibility and security⁽²⁰⁾, as well as the labour market's ability to adapt to new challenges, was addressed and emphasised in the national debates in a number of Member States⁽²¹⁾.

3.5 The framework conditions in labour markets need to support new and more diverse career paths. Different forms of sourcing labour and different forms of working are needed in working life. This requires providing a suitable employment protection legislation environment to provide a framework for fair working conditions and to stimulate recruitment under all employment contracts.

⁽¹⁵⁾ National debates in Finland and Hungary, for example.

⁽¹⁶⁾ Sustainable Development Goal 8.

⁽¹⁷⁾ An Agenda for new skills and jobs, COM(2010) 682 final.

⁽¹⁸⁾ OJ C 318, 29.10.2011, p. 142.

⁽¹⁹⁾ OJ C 211, 19.8.2008, p. 48.

⁽²⁰⁾ National debates in Denmark, Finland and Hungary.

⁽²¹⁾ National debates in Bulgaria, Latvia, Poland, Romania, Slovakia and Slovenia, for example.

3.6 The changes occurring in the world of work are many and multi-faceted. We must find ways to ensure secure transitions between jobs, statuses and from unemployment to employment, as well as from education to work, for the whole workforce. People's ability to make the necessary transitions at different stages of their lives and the availability of the frameworks and support mechanisms to enable them to do so will determine the society we live in and our economic prosperity. The EESC proposes to discuss in a holistic manner the frameworks and support mechanisms to support these transitions.

3.7 Rapid technological advances are also shaping the way we live and work. Pro-active policymaking at the EU and national levels can and must ensure that the opportunities provided by digitalisation can be unlocked while the pitfalls are avoided or mitigated⁽²²⁾. In the national debates, digitalisation, along with frequent references to the need for the necessary investment in training and infrastructure⁽²³⁾, was widely identified as one of the main challenges that should be reflected in the Pillar⁽²⁴⁾. The impact of these developments on the labour market and standards, economy, tax and social security systems and on the living wage must, therefore, be carefully assessed⁽²⁵⁾.

3.8 The Digital Agenda and the Digital Single Market initiative should be connected to a new overarching approach to the future of work. This must address the economic, employment and social challenges, including the objective of providing the necessary skills and a level playing field. The EESC believes this can best be achieved in accordance with the Treaties through a rights-based approach at the appropriate level, supporting access to, among others, education and social protection and better EU coordination in areas where it has no legislative competence.

3.9 As the EESC has already emphasised, 'cooperation is key'⁽²⁶⁾ when addressing the challenges of digitalisation. In this context, the EESC addresses, in particular, the European Commission and the European governance level as a whole, national governments, the social partners and wider civil society as a whole. The EESC has already recommended that the European Commission, the OECD and the ILO should work together with the social partners at all appropriate levels and wider civil society organisations, to develop appropriate provisions on decent working conditions and the protection required to take account of new forms of work (such as online work, the gig and sharing economies)⁽²⁷⁾.

3.10 Particular attention should be paid to increasing youth employment levels. As already stated in previous EESC opinions, specific measures to combat youth unemployment should be taken within the national reform programmes⁽²⁸⁾. Well-functioning apprenticeships and other quality forms of work-based learning (WBL) systems can help young people to make a smoother transition from school to employment⁽²⁹⁾. The EESC has supported the idea of the establishment of youth guarantee schemes in the Member States being funded through a specific Youth Employment Initiative Fund, within the Multiannual Financial Framework and appreciated its creation⁽³⁰⁾.

3.11 The role of social dialogue was emphasised in many of the national debates⁽³¹⁾. The EESC is concerned that there are a number of countries without an adequate social dialogue⁽³²⁾, as well as countries/sectors where employers and employees are not represented in the social dialogue and not involved in collective bargaining. This should be taken into consideration⁽³³⁾, as well as the need to foster a solution-oriented social dialogue contributing positively to worker protection and the competitiveness of enterprises. Collective bargaining should be promoted at all appropriate levels; and to monitor this, the EESC recommends collecting data on the coverage of collective bargaining throughout Europe, through indicators in the European Semester, while fully respecting national practices and industrial relations systems.

⁽²²⁾ OJ C 13, 15.1.2016, p. 161.

⁽²³⁾ National debates in Austria, Bulgaria, Czech Republic, Croatia, Denmark, Germany, Finland, Hungary, Luxembourg, Poland Slovakia and Spain.

⁽²⁴⁾ National debates in Bulgaria, for example.

⁽²⁵⁾ OJ C 303, 19.8.2016, p. 54.

⁽²⁶⁾ OJ C 389, 21.10.2016, p. 50.

⁽²⁷⁾ See footnote 25.

⁽²⁸⁾ OJ C 161, 6.6.2013, p. 67.

⁽²⁹⁾ OJ C 13, 15.1.2016, p. 57.

⁽³⁰⁾ See footnote 28.

⁽³¹⁾ National debates in Cyprus, Estonia, Finland, Hungary, Ireland, Latvia, Romania, Slovenia and Slovakia.

⁽³²⁾ National debates in Hungary, for example.

⁽³³⁾ See footnote 25.

3.12 Technological progress is creating new job opportunities, but jobs will also be destroyed. The extent to which this will occur is disputed and recent outlook studies differ⁽³⁴⁾.

3.13 In any case, investment in people must be at the core of any future of work strategy. The level of competences and skills, notably digital skills, will be instrumental in equipping citizens and workers for the future. The introduction of a 'skills guarantee'⁽³⁵⁾, supported by the necessary investment, could provide the framework to empower people to acquire the necessary skills, throughout their lives. Access to quality education which is inclusive of all EU citizens, including vocational education, life-long learning, and opportunities for re-skilling and up-skilling will be the foundation for this.

3.14 Technological change can enhance skills development, but may also have the potential to speed up the process of skills obsolescence for workers in many occupations. In addition to educational actors, business, working with trade unions, Cedefop and governments must also play their part in ensuring that competences and skills are developed to match demands in the changing world of work⁽³⁶⁾, also by increasing the responsiveness of national education and training systems to changing skills needs. This must be done in a coherent way. The development of competence takes time and needs sufficient resources and greater and more efficient investment in education and training is urgently required. The different impacts/outcomes that education and welfare systems have in European countries and regions must also be taken into consideration.

3.15 New forms of work are developing so rapidly that contractual arrangements cannot keep pace, which is why their legal status must be looked at. The EESC has called for urgent clarification of the status of labour market intermediaries and online platforms, as well as an investigation into the contractual status of crowd workers and other new forms of work and employment relationships. Guidelines are also necessary to clarify possible grey zones linked to employment status in relation to taxation and social insurance⁽³⁷⁾. The overall objective must be guaranteeing fair working conditions for all and aiming to ensure that all workers are covered by fundamental labour standards and adequate social protection.

3.16 The social partners, in particular, are in focus when it comes to promoting negotiated flexibility and stability of work at all appropriate levels, but this needs a commitment of governments and the European governance-level, in addition to improving cooperation between EU institutions, governments and social partners. The EESC has already stated that the EU and Member States, in consultation with the social partners, should consider strategies for adjusting the scope of social and labour standards so that they reflect the conditions of a digitalised working environment⁽³⁸⁾.

3.17 The 'sharing economy' and other new employment models should not be used as a means of avoiding decent wages, or meeting tax and social security obligations⁽³⁹⁾. The EESC has also already suggested that the EU should consider ways in which the development of EU platforms can be encouraged in such a way that the value created remains in local economies⁽⁴⁰⁾.

3.18 Convergence of wages and establishing minimum wages in the Member States were raised by participants in some of the national debates⁽⁴¹⁾. The EESC believes that further efforts are needed in this direction. The ILO study *Building a Social Pillar for European convergence*⁽⁴²⁾ is a useful reference point. It highlights that a range of indicators can be used to compare minimum wage levels, which take into account national circumstances, but the most popular is the ratio of minimum to median (or mean) wages. Further, it states that the adoption of a common approach to minimum wage policy

⁽³⁴⁾ See for example Frey and Osborne 2013, *The future of employment: How susceptible are jobs to computerisation*, and Breugel 2014, *The computerisation of European jobs*.

⁽³⁵⁾ On 21 and 22 November 2016, the Council reached a political agreement on a recommendation on 'Upskilling pathways: new opportunities for adults' (formerly 'Skills Guarantee').

⁽³⁶⁾ See footnote 25.

⁽³⁷⁾ See footnote 25.

⁽³⁸⁾ See footnote 22.

⁽³⁹⁾ See footnote 22.

⁽⁴⁰⁾ See footnote 22.

⁽⁴¹⁾ Addressed in eastern and central European countries such as Bulgaria, Czech Republic and Slovakia, but also in France.

⁽⁴²⁾ Studies on growth with equity, building a Social Pillar for European convergence, International Labour Organisation, 2016.

at the EU level could help to limit the extent of poverty in the enlarged Union and limit the proportion of people on low pay within national contexts. It suggests that that a starting point could be a tripartite analysis at the national level of minimum wage coverage, level and compliance such as referred to in ILO instruments. The ILO study also states that the findings of a number of studies highlight the importance of a balanced approach — as emphasised in Convention No 131 — with respect to the elements to be considered when determining the level of a minimum wage that, so far as possible and appropriate in relation to national practice and conditions, include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. Further discussions on these issues are needed and should be undertaken in the context of the development of the Social Pillar. The EESC stresses that the key competence and autonomy of the national social partners in regard to wage-setting processes must be fully respected, in accordance with national practices. The need to respect the division of competences and the subsidiarity principle, as well as the role of social partners in setting the level of minimum wages⁽⁴³⁾ was also referred to in some national debates. Overall, the EESC has already stated that convergence did not occur among euro area Member States, despite the expectations of an endogenous optimal currency area⁽⁴⁴⁾.

3.19 In some national debates it was recognised that demographic changes⁽⁴⁵⁾ and changing patterns in society are other factors profoundly affecting the world of work. Active labour market policies (ALMP) need to be effective and targeted in order to reach good employment outcomes. In one country, focussing on the possibility of involving private agencies to improve active assistance to job seekers was discussed⁽⁴⁶⁾. Employment and labour market policies in Europe must continue to implement tangible measures to put the principle of non-discrimination in the workplace into practice and to ensure equality of all groups of workers⁽⁴⁷⁾.

3.20 Gender equality is a central element of securing fair working conditions for all. In addition to having more women in the labour market, ageing populations and longer working lives are likely to entail increased caring responsibilities over the life cycle. Flexibility in working life, working time and a sustainable work-life balance will be of increasing significance to all workers. The EESC has already highlighted that reconciling family and work responsibilities needs coordination across a range of areas such as care provision, parental leave and family-friendly workplaces⁽⁴⁸⁾. The EESC calls for an integrated approach between legislative and non-legislative measures to be introduced at the appropriate level to promote work-life balance in the Member States. It is important that sufficient investments are targeted to accessible and affordable care facilities. This will contribute to increasing employment participation overall, notably among women and also for full-time work.

3.21 Particular attention should be paid to the labour market integration of vulnerable sectors of society and minorities. The economic, social and cultural situation of Roma people is not improving in most Member States and, as stated in an EESC report, the Roma Strategy should be consistently included in the European Semester⁽⁴⁹⁾.

3.22 Sustainable pension systems are of key importance taking into account the ageing of European societies. The Commission has stated that increasing retirement ages in line with gains in life expectancy combined with efforts to promote active ageing not only allows for a substantial reduction in pension expenditures, but also allows for accruing higher pension entitlements. However, the EESC has previously criticised the Commission's proposal that the retirement age should be indexed to increasing life expectancy and instead proposed measures that bring the actual retirement age closer to the statutory retirement age⁽⁵⁰⁾. As stated by the Social Protection Committee, reducing unemployment and encouraging people to stay in labour markets longer today, including through raising the labour market participation of women, will be

⁽⁴³⁾ National debates in Finland and Denmark for example.

⁽⁴⁴⁾ Shifting economics in the world, consequences for EU competitiveness (information report)

⁽⁴⁵⁾ National debates in Finland, Slovenia, Malta, Ireland, Poland and Estonia, for example.

⁽⁴⁶⁾ National debate in the Czech Republic.

⁽⁴⁷⁾ See footnote 18.

⁽⁴⁸⁾ OJ C 341, 21.11.2013, p. 6.

⁽⁴⁹⁾ EESC report 'Better Inclusion of the Roma community through civil society initiatives' (2014).

⁽⁵⁰⁾ OJ C 299, 4.10.2012, p. 115, OJ C 332, 8.10.2015, p. 68.

crucial for the future sustainability and adequacy of pension benefits⁽⁵¹⁾. For example, a European comparative pension sustainability and adequacy index would be a helpful benchmark to underpin Member States' efforts to reform their pension systems and to reduce poverty.

3.23 The aim of making people work longer needs to be accompanied by a life-cycle approach encompassing good working conditions, including health and safety and working-time policies, and encouraging people to pursue life-long learning opportunities. A longer working career up to retirement age with a decent income during working years, resulting in a decent pension, and policies that make a smooth transition to retirement for older workers possible is also a requisite: the evolution of the way we work is also a key factor in this respect.

3.24 The standards of social security in the EU differ greatly, depending on the different systems and traditions. The EESC has advocated clearer EU strategic priorities in social policy and to frame general social policy principles as part of a solid work programme. The EESC has also referred to the need to aspire to a binding social protection floor⁽⁵²⁾ and proposes to define high-level standards at appropriate levels while taking duly into account both sustainability and adequacy requirements. Better exchange of best practices is required for a more inclusive social security net for everyone living legally in the EU. In the context of the challenges of Work 4.0 and the advent of new forms of employment and semi-employment it is essential to reflect and decide how Member States can reform their social security systems so as to develop the unemployment insurances into inclusive employment insurances that can work as a future safety-belt and also facilitate employment and decent work. It is important to ensure that work is a more attractive option than being on benefits, by creating the right incentives for people to be better off working while securing income security for people who do not find work. Benchmarking in this area could add value for Member States to improve, where needed, eligibility conditions, benefits duration and levels.

3.25 As far back as 2009, the EESC emphasised that Europe needs to regain its position as a leader in research and innovation. It underlined that performance in the scientific and technical fields, and their application in a competitive globalised economy would ensure that Europe has a future in the global industrial arena. Furthermore, it emphasised that a social climate that is open to progress is a prerequisite for innovation⁽⁵³⁾. Creative entrepreneurship that leads to job opportunities also plays a key role in shaping an innovation-friendly environment. Civil society has a key role to play in this process.

3.26 The EESC sees a connection between the capacity for innovation in the workplace and workers' participation. Moreover, 'good' and 'sustainable' business management must be built on the internal market's tried and tested legal structures and practices of employee involvement based on information, consultation and also, where applicable, co-determination⁽⁵⁴⁾. Provisions on obligatory employee involvement should be consolidated and applied universally in EU law on the basis of standards already achieved⁽⁵⁵⁾.

3.27 Climate change presents major environmental and social challenges for Europe and the rest of the world. The future of work will also be shaped by the urgent need to transform our economies, industries and jobs to safeguard the planet. The EESC welcomes the EU's ratification of the Paris Agreement and has called for a coalition of civil society and subnational authorities to deliver on the COP21 commitments⁽⁵⁶⁾. Delivery of these commitments must be in line with EU commitments to reduce poverty. Supporting just transition, decent work and employability will require investment in resources to support communities and workers in sectors that are already being affected by this transition, as well as to anticipate and facilitate future restructuring and transition into a greener and more sustainable economy. The Investment Plan for Europe should support projects in line with the COP21 commitments.

⁽⁵¹⁾ Social Protection Committee, Social Protection Performance Monitor (SPPM) — Report on key social challenges and main messages from SPC, 12606/16.

⁽⁵²⁾ OJ C 13, 15.1.2016, p. 40.

⁽⁵³⁾ EESC position paper on research and innovation in the EU (EESC-13-19-EN).

⁽⁵⁴⁾ OJ C 161, 6.6.2013, p. 35.

⁽⁵⁵⁾ See footnote 54.

⁽⁵⁶⁾ OJ C 389, 21.10.2016, p. 20.

4. The need for social investment

4.1 Both social and economic imbalances pose a threat to the EU. They undermine social cohesion and political credibility, and hamper economic progress. The EESC has previously set out its views on the need to tackle poverty as a priority and to make the fight against poverty and social exclusion one of the Pillar's major components⁽⁵⁷⁾.

4.2 While acknowledging that poverty reduction is primarily the competence of the Member States, the EESC also urges the EU Council to reiterate the commitment to the Europe 2020 Strategy's poverty reduction target whilst pursuing a more integrated approach. This means that poverty reduction should be systematically addressed through the European Semester process and that the Europe 2020 Strategy should be linked with the 2030 Agenda⁽⁵⁸⁾. Economic growth and competitiveness are essential, therefore a macroeconomic policy that helps to create decent jobs is important to reduce inequality and poverty.

4.3 The EESC has previously stated that the longer the savings-oriented policy — primarily focussed on making spending cuts — continues without adequate measures to generate growth, social cohesion and solidarity, it will become increasingly clear that Europe's economic integration and prosperity is at risk from growing social inequalities⁽⁵⁹⁾. The EESC calls for renewed efforts to promote the concept of social investment throughout all relevant policy fields⁽⁶⁰⁾. The EESC believes that further consideration needs to be given to how to link the 'Juncker Plan 2' with the Social Investment Package objectives. Moreover, it has called for a European Social Investment Pact⁽⁶¹⁾, which would support social reforms and social investments and help to bring about renewed economic, social and territorial convergence.

4.4 The EESC welcomed the Commission's Social Investment Package, which appeared to signal a paradigm shift towards a stronger focus on social investment, viewed not as a cost but as an investment in Europe's growth and employment potential⁽⁶²⁾. The EESC regrets that more has not been done to effectively implement these objectives. Social investment offers economic and social returns over time, in terms of increased employment or labour incomes, improved health, reduced unemployment, better education, less poverty and social exclusion, etc. It also improves individuals' prosperity and well-being, while boosting the economy by ensuring a more skilled workforce, higher productivity and employment. Such investment, especially when growth-enhancing would also contribute to strengthening people's skills and qualifications, improve their opportunities in society and the labour market, as well as stimulating the economy, helping the EU to emerge from the crisis stronger and more competitive. Moreover, it would ensure more efficient and effective public spending, leading to savings in public budgets in the medium to long term.

4.5 The EESC has already welcomed the fact that the important role of the social economy, social enterprises, civil society and the Social Partners for implementing the social investment package is expressly recognised by the European Commission⁽⁶³⁾.

4.6 The EESC has already expressed its view that the establishment of a European minimum income under a framework directive would help to combat social exclusion, ensure economic and territorial cohesion, protect the fundamental rights of the individual, guarantee a balance between economic and social objectives and distribute wealth and income fairly. It reiterates its call for the Commission to examine funding possibilities for a European minimum income and the establishment of an appropriate fund⁽⁶⁴⁾.

4.7 The EESC reiterates the view that sustainable, effective and efficient social welfare systems are of the utmost importance for all societies in the EU. They are vital means to maintain social and territorial cohesion, solidarity, stability in society, as well as supporting economic growth. Welfare systems also have an important function as automatic stabilisers, as was evidenced during the crisis. While recognising that the decision on the structure and content of social policies are primarily competencies of the Member States, national and EU initiatives should aim to render more efficient and enhance

⁽⁵⁷⁾ OJ C 133, 14.4.2016, p. 9.

⁽⁵⁸⁾ See footnote 57.

⁽⁵⁹⁾ OJ C 13, 15.1.2016, p. 33.

⁽⁶⁰⁾ EESC contribution to the Commission's 2017 working programme, 14.7.2015.

⁽⁶¹⁾ OJ C 271, 19.9.2013, p. 1.

⁽⁶²⁾ OJ C 271, 19.9.2013, p. 91.

⁽⁶³⁾ See footnote 62.

⁽⁶⁴⁾ OJ C 170, 5.6.2014, p. 23 (this opinion did not receive the support of the Employers' Group; see <http://www.eesc.europa.eu/resources/docs/statement-minimum-income.pdf>).

social protection systems covering social security, social assistance and social services, healthcare and housing provision⁽⁶⁵⁾. As indicated by the Council and Social Protection Committee, Member States should maintain their efforts to improve the performance of social protection systems and ensure that they deliver better social outcomes while maximising the positive impact of employment and growth⁽⁶⁶⁾.

4.8 National social security institutions and public authorities bear the responsibility for ensuring universal, quality affordable and accessible social services. The State must accredit, invest in and supervise access to the provision of these services, which may be provided by public authorities, non-profit or for-profit actors, as is already the case in several EU countries. Representative civil society organisations, notably the social partners, social enterprises and mutuals play an important role. This role extends to the drafting, implementation, provision and surveillance of social security, health insurance and social assistance schemes. Furthermore, closer cooperation between all actors can contribute to more effective and better use of public resources in the delivery of social policies. This should also include the possibility of making use of partnerships between public authorities and private actors while respecting the features of national systems.

4.9 The EESC is of the opinion that stronger and more transparent dialogue is needed between relevant actors to make and transform social protection systems more sustainable in terms of prioritising resources into effective, efficient and relevant public investment, in the full respect of and with the aim of promoting social rights and, in particular, the fundamental principles of social security systems of the member states.

4.10 The transition to Work 4.0 must be accompanied by a parallel transition to Welfare 4.0. The crisis, slow growth and high level of unemployment, as well as a combination of a growing ageing population and a shrinking workforce, are challenging the sustainability and adequacy of social protection systems. In parallel, social services are increasingly in demand, notably as a result of ageing populations, but the resources to meet this demand are limited. Reforms are therefore essential to put in place effective and economically efficient social protection systems, social policies and services. The Pillar must not only be responsive to capturing the transformations that occur in the world of work but should also aim to support Member States in providing appropriate solutions in response to the important changes occurring regarding welfare systems, social policies and services. The key objectives should be safeguarding their quality, sustainability, accessibility, affordability and adequacy for all who depend on them, through appropriate regulatory frameworks and policies.

4.11 The EESC also recognises that continuous pressure on public budgets, demographic and societal changes and emerging new social challenges have, in many Member States, generated new and innovative forms of organisation for the financing and delivery of benefits and services. This phenomenon, called social innovation, is driven by the necessity to address unmet social needs. It is complementary to the traditional welfare provision by the State, by mobilising various social and economic actors and financial resources working in cooperation with local authorities. However, it must not replace the responsibility and role of the State and its different public components in ensuring universal access to quality, affordable, sustainable and accessible services for EU residents in accordance with national practices. Social innovation creates social capital and strengthens the role of local communities. It is recommended that the European Commission and Member States ensure that major instruments such as public procurement and the European Structural and Investment Funds are effectively employed to support social innovation and social economy enterprises.

4.12 On numerous occasions, the EESC has highlighted the particular and important role played by the social economy, including social enterprises, in delivering economic and social solutions⁽⁶⁷⁾. The sector constitutes a key element of the European social model and directly contributes to social and economic cohesion and change, to a fairer income and wealth distribution and active citizenship. More recently, the EESC has called for an EU action plan on the social economy⁽⁶⁸⁾.

⁽⁶⁵⁾ National debates in Bulgaria, Ireland, Romania and Spain for example.

⁽⁶⁶⁾ 2015 Council conclusions on social governance for an inclusive Europe (Council document 14129/15) and Social Protection Committee, Social Protection Performance Monitor (SPPM) — Report on key social challenges and main messages from SPC, (Council document 12606/16).

⁽⁶⁷⁾ See for example: OJ C 117, 26.4.2000, p. 52; OJ C 318, 23.12.2009, p. 22; OJ C 229, 31.7.2012, p. 44; OJ C 458, 19.12.2014, p. 14; project on social entrepreneurship. The important role of the social economy was also addressed in several national debates in Bulgaria, Estonia, Italy, Lithuania, Portugal and Spain for example.

⁽⁶⁸⁾ EESC contribution to the 2017 work programme of the European Commission, 15 June 2016.

4.13 In general, and within the sphere of the EU's competences, the Pillar should aim to provide a common reference framework to benchmark and monitor the necessary national legal and policy framework to secure the right to good quality provisions, in particular of social protection benefits⁽⁶⁹⁾, including the availability, affordability and accessibility of social services as well as sustainability and effectiveness. This should apply to all branches of social security⁽⁷⁰⁾, as well as to all other social (protection) services.

4.14 In the same vein, the Pillar should aim to create the necessary incentives for the Member States to secure the portability of entitlements acquired in accordance with relevant national criteria thus ensuring free movement. Such acknowledgment could allow for a more adapted support for each individual to organise their professional and private lives. It would provide more respectful and flexible means to adapt to the life cycle of any EU citizen, in particular allowing for smooth transitions into, on and out of the labour market.

4.15 Additionally, the Pillar should be used to set benchmarks concerning the provision of essential services. Implementation strategies by Member States should be developed taking into account the specific socio-economic and fiscal situation of each country. Benchmarks should not be limited to the availability of services and should drive the implementation of the essential principles enshrined in Protocol 26 (universal access, quality, safety, affordability, equal treatment and the promotion of users' rights). The voluntary European Quality Framework for social services and the European Quality Framework for early childhood education and care should be used as a reference in the development of benchmarks.

4.16 The principle of equal opportunities for all is enshrined in the European Treaties and must be fully and adequately reflected in an inclusive social pillar. As the EU *acquis* already provides for a common set of minimum standards for workers across Europe, they must be enforced. Equality and non-discrimination must be ensured for men and women and for all groups in our society, including people with disabilities, LGBTI people, people belonging to ethnic minorities and others who face discrimination.

4.17 Achieving higher levels of employment participation of diverse groups in Europe is essential in order to face demographic ageing and a shrinking working-age population. Progress is also needed in the promotion of equality and non-discrimination in other aspects of life, beyond work, such as access to goods and services, education, housing and healthcare. Within this context, it is hoped that the discussions on an EU Equal Treatment Directive on access to goods and services will be rapidly relaunched.

5. Outcomes from the debates with organised civil society

5.1 The EESC organised debates with organised civil society in all Member States between 2 September and 2 November 2016. The debates were coordinated by three EESC members ('trios') from the country concerned, often in cooperation with the European Commission (15 debates) or the national Economic and Social Council (7 debates). Participants came from a wide range of employers' organisations, trade unions and other civil society organisations, as well as, less frequently, academia. Overall, close to 1 800 representatives of civil society organisations participated in the 28 debates.

5.2 A set of key questions was used as a basis for the discussions in the majority of debates. The debates covered a wide variety of issues, reflecting the different national systems, priorities and circumstances. Following the debates, the coordinating trios prepared national reports which, in most cases, included Conclusions and/or Recommendations. The guidance questions were as follows:

- (1) What do you consider as the most urgent economic and social challenges in Europe and in your country? What is needed to address those?

- (2) Do you think a Pillar of Social Rights is needed and if so, how should it be shaped to address the key social and economic challenges in Europe and in your country?

⁽⁶⁹⁾ Including in case of disability, of long-term care and childcare.

⁽⁷⁰⁾ Healthcare and sickness benefits, unemployment benefits, old-age benefit, employment injury benefit, family benefit, maternity benefits, invalidity benefits and survivor's benefits.

- (3) How could a renewed EU labour market strategy address the needs of enterprises, workers and job-seekers for flexibility and security? How could this take into account important issues such as the new realities of the increasingly digitalised economies and labour markets, the challenge of an ageing population, and the need to facilitate labour market transitions?
- (4) How to ensure the sustainability of social protection systems and that the resources available are prioritised into effective, relevant and necessary social investments and services? What role for the different actors?
- (5) How could the European Pillar of Social Rights positively support economic and social convergence across Europe?
- (6) What do we need to promote and sustain cohesive societies in Europe?

5.3 The conclusions/recommendations of the trio Members' country reports revealed that a number of common themes/topics were raised during the various debates. These are summarised in this section of the opinion.

5.3.1 In relation to the scope and format of the European Pillar of Social Rights:

- In 18 Member States, the conclusions/recommendations show that organised civil society, or parts of it, supported the initiative of launching the EPSR (CY, DE, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, PL, PT, RO, SE, SI, SK). In 12 Member States (DE, EE, ES, FI, HR, HU, IE, IT, LU, MT, PT, SK) it was stated that the objectives, scope and/or content of the Pillar should be further clarified.
- In 13 Member States, the conclusions highlighted the interdependence between economic and social policies (BG, CY, CZ, DE, ES, FI, HR, IE, IT, RO, SE, SI, UK). Moreover, in nine Member States (DE, DK, EE, EL, ES, FI, MT, RO, SE) the importance of growth, and in six cases competitiveness (EE, ES, FI, DK, MT, SE) was stressed.
- In 12 Member States, the conclusions state that the EPSR should apply to the whole EU (BG, DE, CZ, EE, ES, FI, HR, HU, IT, PL, SK, SE).
- In nine Member States, the conclusions referred to either the implementation/enforcement of the EPSR, or implementation/enforcement of the existing *acquis* and policies (BG, DK, EE, HR, IE, LV, LT, PL, SE). In five of these, (BG, HR, IE, LV, LT) it was specifically stated that the pillar should be included in the European Semester exercise.
- In the conclusions of eight countries (DE, EL, ES, FI, HU, PT, SK, RO), the necessity to promote social cohesion and to combat increasing poverty, inequalities and exclusion was highlighted.
- In seven Member States (BE, CZ, DE, DK, FI, HR, SE), attention was drawn to the need to respect the subsidiarity principle. In this context, three Nordic Member States (FI, SE, DK) defended the national competence of collective bargaining and three Member States the division of competences (FI, SE, BE).
- The issue of convergence (including upward convergence, convergence on social policies and/or convergence between Member States in general) was referred by eight Member States (BG, DE, FR, HR, HU, IT, PT, SK).
- The conclusions/recommendations in six Member States referred to the need for investment whether public, private and/or social (CZ, EL, ES, HR, IE, SL).

5.3.2 Key themes raised in the conclusions/recommendations and linked to the European Commission's preliminary outline of the EPSR:

- The crucial role of social dialogue was mentioned in the conclusions/recommendations in 11 Member States (CY, EE, ES, FI, HU, HR, IE, LV, RO, SI, SK).
- In seven Member States (CY, EE, FI, IE, LV, RO, SI), the importance of civil dialogue was stressed (even though this issue was not included in the Commission's preliminary outline of the EPSR).

- In six Member States (CY, DK, HR, HU, PL, SI) the conclusions underlined the need to adapt to changes, notably due to digitalisation.
- The necessity to take into account the challenges and changes resulting from demographic developments were mentioned in the conclusions of three countries (BG, CY, SI).
- Issues such as integrated social benefits and services, health care and sickness benefits, pensions, unemployment benefits, minimum income and access to essential services (which are amongst the 20 principles referred to in the Commission's preliminary outline for the EPSR), as well as social security, social standards and the sustainability of social protection were the issues most often referred to in the conclusions/recommendations. One or more of these issues were mentioned in the conclusions of 22 Member States (BE, BG, CY, CZ, DE, DK, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, PT, RO, SE, SI, SK, UK).
- Employment, job creation and combatting unemployment (including youth unemployment) were mentioned in the conclusions/recommendations of seven countries (BE, CZ, EL, ES, FI, HR, RO).
- In 11 Member States (BE, BG, CY, CZ, DE, DK, FI, FR, HR, HU, SI) the conclusions focussed on education and skills (also in the context of labour market digitalisation).
- In 10 Member States (BE, CY, CZ, DK, FI, HR, HU, MT, RO, UK) the conclusions stressed the need to ensure the labour market participation of under-represented or marginalised groups and in seven of these (BE, DE, DK, FI, HU, MT, UK) gender equality was mentioned in this context.
- In eight Member States (CZ, CY, DK, FI, FR, HR, RO, SE) one or more of the following issues were referred to: the need for job stability, transitions, decent work and/or social security, sometimes also in conjunction with the digitalisation of the labour market.
- In three Member States (DK, FI, SI) the conclusions referred, respectively, to the fact that the 'flexicurity' concept would help to future-proof Europe's social model, to the need for balance between flexibility and security and that the economic needs for flexible labour should be taken into account.

5.4 The conclusions/recommendations also revealed that the principal point of divergence was whether the EPSR should foresee legislative measures. Participants within and amongst countries were divided on the issue with employers representatives (generally) not supporting the idea of further legislation and the trade union representatives (generally) taking the opposite view.

6. Governance

6.1.1 The European Pillar of Social Rights needs much more clarity concerning the content, processes, concrete initiatives for its implementation, funding and monitoring, in addition to clarity on the role for the different actors. The governance question is of utmost importance, respecting what is foreseen in the Treaties, including the principle of subsidiarity. Citizens have a right to know who is responsible and accountable for each decision.

6.1.2 As for the relevant actors and their role, the EESC emphasises that in labour market issues, a partnership between public authorities and social partners at EU and national levels is the key vehicle to improve policy progress towards broadly supported objectives. In the field of social protection, governments, public/regional/local authorities and different national institutions dealing with the organisation of social security as well as social service providers, play a central role. In addition, also the social partners often have a role and responsibilities in the elaboration and implementation of social protection schemes and in social services. Other stakeholders, such as social agencies can have expertise in particular in social assistance and can play a role and provide safety nets for a fringe of the population at risk of poverty.

6.1.3 The EESC stresses that the Pillar can become a positive project for Europe, and for all but only if its results are visible. In these times of crisis, the Pillar can be a good opportunity to demonstrate that the EU level is still capable of delivering a proper response, where appropriate, to the challenges faced by ordinary people, while fully respecting the division of competences and the principle of subsidiarity. In particular, the Pillar should serve to promote people's well-being in line with the Treaty obligation for, among other things, 'a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment' (Article 3 TEU). In addition, the Pillar should contribute to better-functioning labour markets and social protection systems. At the same time, the EESC is worried about the lack of clarity of the Pillar in regard to its scope. The EESC fears that this can create even more uncertainty and frustration by raising expectations that will not or cannot be met⁽⁷¹⁾.

6.2 Social rights for all

6.2.1 The Commission proposes that the Pillar should first apply to the euro area, as it has already started a process for further integration and consolidation towards greater convergence. However, social provisions in the EU Treaties⁽⁷²⁾ cover all EU Member States. Reflecting what was stated in numerous national debates, the EESC is of the opinion that the Pillar should apply to all 28 EU Member States.

6.2.2 In an earlier opinion the EESC noted that socially sustainable macroeconomic policies are a precondition for a stronger economic recovery and for securing social cohesion. Also, a better consideration of economic realities is an essential precondition to achieve productive employment and well-designed social policies at EU and national levels, in a fair way between generations. The Committee welcomes the emphasis placed on the use of flexibility within the rules of the SGP, whereby the Commission will take into account certain public investments when calculating the fiscal deficit, but considers it a limited and partial measure⁽⁷³⁾.

6.3 The European Semester

6.3.1 The European Semester and the National Reform Programmes — which apply equally to non-euro area countries — should become the principal vehicles for the implementation and monitoring of the Pillar. However, given the additional macroeconomic monitoring mechanisms that exist within the European Semester for the euro area countries, it is possible that they may develop additional relevant benchmarks to support national reforms. The link between the Pillar and the European Semester was referred to in a number of national debates⁽⁷⁴⁾.

6.3.2 The EESC points out that some of the economic policy goals of economic governance of recent years must be brought more into line with the EU's social policy objectives policy objectives under Article 4(2) TFEU⁽⁷⁵⁾. All measures under the European Semester — in accordance with the horizontal social clause⁽⁷⁶⁾ — must be subject to a social impact assessment. These results should be made public and discussed at national and European level⁽⁷⁷⁾.

6.3.3 The EESC has previously stated that during the European Semester, employment and social goals should be placed on an equal footing with macroeconomic considerations in the European Semester⁽⁷⁸⁾. It has also recommended that there should be comparable and common indicators, e.g. on poverty and inequality, as well as mandatory social impact assessments of all reform agendas proposed by the national reform programmes (NRPs) and the country-specific recommendations (CSRs)⁽⁷⁹⁾.

6.3.4 The EESC calls for the rebalancing of the European Semester so that the existing scoreboard of key employment and social indicators are taken into account when formulating the CSRs.

⁽⁷¹⁾ The lack of clarity was raised in many Member States, with some sections of civil society expressing concern that there could be a 'boomerang' effect. If expectations are created, but are ultimately not met, this could lead to even more distrust and frustration.

⁽⁷²⁾ Article 3 TEU, Article 9 TFEU, Title X of the TFEU and the Charter of Fundamental Rights.

⁽⁷³⁾ OJ C 268, 14.8.2015, p. 33.

⁽⁷⁴⁾ National debates in Austria, Bulgaria, Italy, the Netherlands and Romania.

⁽⁷⁵⁾ See footnote 59.

⁽⁷⁶⁾ Article 9, TFEU.

⁽⁷⁷⁾ See footnote 57.

⁽⁷⁸⁾ See footnote 61.

⁽⁷⁹⁾ See footnote 57.

6.3.5 The objective of having more convergence towards improving working and living conditions should be facilitated by specific targets, taking account of the Europe 2020 Strategy and the Sustainable Development Goals and guiding the coordination of economic, employment and social policies.

6.4 Economic and social governance

6.4.1 The EESC is extremely concerned about the stability of the EU, since the necessary reforms — with or without treaty change — always occur only at the last minute and under intense pressure. What is needed is to strengthen social, political and economic cohesion in the EU once again and to continue coherent economic and monetary integration as a basis for a properly functioning EMU. A serious debate on a well-founded architecture for the EMU, requiring consensus on economic and social objectives, as well as agreed governance, is therefore unavoidable (⁸⁰).

6.4.2 Social, political and economic cohesion must be enforced to strengthen the shock-absorption capacity of the Economic and Monetary Union. The EESC points out that divergence in the EMU economies must be given greater consideration and that balanced structural reforms in these countries must be introduced to reflect the requirements of a monetary union and in accordance with national requirements, in order to ensure the necessary convergence.

6.4.3 The EESC has already suggested how the EMU could be better designed and has submitted proposals for developing its democratic and social design, as quickly as possible within the framework of the Community method. This would bolster democratic resilience and meet the social obligations arising from the Treaties (⁸¹).

6.4.4 An economically sound EMU is of key importance. As previously stated by the EESC, in this context, the governments of the Member States have an important responsibility for the further development of a democratic and social EMU. The same applies to the social partners, both nationally and at European level, for whom the EMU provides the overarching framework for their respective systems for setting wages and organising labour market and social policy. As economic and social players, they play a key role as regards compliance with the EMU's common stability target (⁸²). Better involvement of the social partners can contribute to improved EMU governance. Their views on how to organise labour market and social policy should also be considered as part of the debates on the future of EMU (⁸³). A strengthened and structured dialogue with civil society would also help to improve democratic resilience and governance.

6.4.5 The EESC is of the opinion that tackling persisting imbalances, as well as creating trust and confidence across Europe, require more effective and democratic economic governance, notably in the euro area (⁸⁴).

6.5 Enforcing and reaffirming the existing social *acquis*

6.5.1 The European Pillar of Social Rights should aim to contribute to the effective enforcement of the existing legal social *acquis* anchored in EU primary and secondary legislation in relation to employment and social rights, including in particular social protection and the effective supervision by labour inspection, among others, and the right to an effective remedy and access to justice. International legally binding sources of rights ratified by Member States for EU citizens should be fully respected.

6.5.2 The EESC believes that the Pillar provides for the opportunity to reaffirm the existing social *acquis*. Moreover, the process of developing the Pillar also gives scope to assess what works and what does not, what is missing and what should be improved in the EU's and Member States' approach so as to foster renewed social and economic convergence, sustainable growth and employment creation in the EU.

⁽⁸⁰⁾ See footnote 59.

⁽⁸¹⁾ OJ C 332, 8.10.2015, p. 8 and OJ C 13, 15.1.2016, p. 33.

⁽⁸²⁾ See footnote 59.

⁽⁸³⁾ See, for example, the in-depth employment analysis.

⁽⁸⁴⁾ OJ C 332, 8.10.2015, p. 8.

6.6 Resources for a social stabilisation of Europe

6.6.1 The European Fund for Strategic Investment and European Structural and Investment Funds are designed to play a crucial role in creating jobs and growth and in promoting territorial and social cohesion. The EESC is of the opinion that a more effective and efficient use of these funds is needed and that EU long-term investment in high-quality social infrastructure and services, including through the European Fund for Strategic Investments and the European Investment Bank should be prioritised and coupled to the implementation of the Pillar.

6.6.2 Within the limits of the Stability and Growth Pact, the EESC has presented different options and proposals. One could be a 'golden' or, indeed, 'silver' rule⁸⁵) for public investment, including in the social sector by Members States to add to EU public investment via a system of commonly agreed parameters which, in combination with the right structural reforms, would foster private investment⁸⁶).

6.6.3 Within the context of budgets and reviews of the Multiannual Financial Framework, the EESC believes it necessary to use, as already indicated by the Commission, 25 % of the European Structural and Investment Funds, namely the European Social Fund and the European Regional Development Fund, to promote social investment in social, health, education and housing services and policies. Furthermore, some resources should be set aside at the EU level under the ESF as available funding to strengthen the social partners' capacities. The European Commission should provide guidance to Member States on how to promote social investment in practice and on how to monitor the quality and effectiveness of the projects.

6.6.4 In 2014, the EESC referred to a redistributive mechanism to be used in the event of asymmetric shocks⁸⁷) and pointed out that the Union and in particular the euro area cannot ignore the social consequences of current economic policies by leaving them entirely up to individual countries. It emphasised the need to view education and training budgets as an investment in the future⁸⁸). Participants in some national debates discussed whether EU unemployment insurance or an adjustment fund was needed and could be feasible⁸⁹). These debates showed that views on this issue differ significantly and that these discussions also need to continue⁹⁰.

6.7 Link between global and EU strategies

6.7.1 The reflections on the Pillar should also consider, where appropriate, the global dimension. The latest debates stemming from the ILO, Council of Europe, OECD and IMF are key, particularly in respect of evidence showing that inequality affects the durability of growth and that redistribution does not harm growth. Reflections should also recognise that the sustainability of the European social model is interlinked with improving the global competitiveness of Europe.

6.7.2 The 2030 Agenda for Sustainable Development was agreed by all Member States of the United Nations in 2015. As such the attainment of these goals is an obligation for the Member States of the European Union. The EESC believes that the Pillar could significantly contribute to the 2030 Sustainable Development Agenda, especially concerning the goals 1 (No poverty), 3 (Good health and well-being), 5 (Gender equality) and 8 (Decent work and economic growth).

6.8 A clear overall strategy for a better future in Europe

6.8.1 The EESC calls on the Commission to propose a clear and coherent strategy for the Pillar. The EESC agrees with the Employment Committee (EMCO) and the Social Protection Committee (SPC) which have stated that 'the European Pillar of Social Rights should build on and improve existing instruments, including the European Employment Strategy (EES) and the Open Method of Coordination in the areas of Social Protection and Social Inclusion (social OMC), and on that basis serve as a compass for the process of fostering sustainable upward convergence in terms of employment and social outcomes, while respecting national competences'⁹¹). Designing new appropriate benchmarks on a limited number of key labour market and social challenges to assess progress can be part of this process. Establishing such a framework of cooperation would

⁸⁵) See footnote 73.

⁸⁶) OJ C 451 of 16.12.2014, p. 10, on more flexibility of SGP concerning certain 'public investment'.

⁸⁷) See footnote 86.

⁸⁸) OJ C 327, 12.11.2013, p. 58, OJ C 271, 19.9.2013, p. 1.

⁸⁹) National debates in Finland and France, for example.

⁹⁰) See footnote 59.

⁹¹) The European Pillar of Social Rights Joint EMCO-SPC Opinion 12605/16, endorsed by the EPSCO Council on 13 October 2016.

help Member States to achieve positive results through reforms⁽⁹²⁾ and contribute towards increased social cohesion.

6.8.2 Despite the clear risks, the EESC nevertheless still believes that the EU is capable of delivering a better, more democratic and social EU. The EESC will do whatever is necessary to support debates in the Member States and at the EU level to engage citizens 'for a better future in Europe'. A fair globalisation, which provides a good life, sufficient employment opportunities and fair working conditions for all, can only be achieved if the EU keeps its unity and is able to act. To preserve its model of society, Europe must be able to adapt itself to changing realities to maximise opportunities for all. This is our alternative to protectionism, nationalism and populism.

Brussels, 25 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

⁽⁹²⁾ National debates in Romania, for example.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

522TH EESC PLENARY SESSION OF 25 AND 26 JANUARY 2017

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market’

(COM(2016) 593 final — 2016/0280 (COD)),

on the

‘Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes’

(COM(2016) 594 final — 2016/0284 (COD))

and on the

‘Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society’

(COM(2016) 596 final — 2016/0278 (COD))

(2017/C 125/03)

Rapporteur: Juan MENDOZA CASTRO

Consultation	European Parliament, 6.10.2016
Legal basis	Council, 26.10.2016 and 24.10.2016
Section responsible	Article 114 of the Treaty on the Functioning of the European Union
Adopted in section	Section for the Single Market, Production and Consumption
Adopted at plenary	13.1.2017
Plenary session No	25.1.2017
Outcome of vote (for/against/abstentions)	522
	144/0/2

1. Conclusions and recommendations

1.1 The EESC welcomes the package of measures to adapt copyright to the requirements of the digital economy.

1.2 The EU lacks an integrated copyright system. To establish such a system, the main objective is to eliminate fragmentation while, at the same time, enhancing protection for creators who are sometimes pitted against technological giants that dominate the markets.

1.3 The area of copyright is a highly complex one, owing to the presence of multiple stakeholders who have different interests but nevertheless need each other. Regulating copyright must serve to strike a balance between the rights of all these parties, avoiding bureaucracy and unnecessary requirements.

1.4 In view of the 'gradual' approach taken by the Commission, the EESC suggests revising and consolidating existing legislation, making amendments to other directives, considering whether it would be appropriate to propose measures covering internet search engines and the free broadcasting of content over Wi-Fi networks and regulating certain aspects by means of a regulation.

1.5 The Committee stresses that swift ratification by the EU of the Marrakesh Treaty on copyright in relation to the blind is important and necessary.

1.6 **Online transmissions of broadcasting organisations and digital retransmissions of radio and television programmes:** in the EESC's view, the Commission proposal is appropriate and will promote the distribution of European film productions. The 'country of origin' principle is not incompatible with the territoriality of law and freedom of contract.

1.7 **Adaptation of exceptions to the digital and cross-border environment:** although the Commission proposals correctly pinpoint the problems, the EESC suggests making a number of amendments to them to adjust copyright more closely to current requirements. They are as follows:

- include the null and void principle for any agreements that are contrary to exceptions and limitations of copyright ⁽¹⁾;
- text and data mining;
- in order to foster innovative enterprises, the scope of application (Article 2 of the proposal) should include researchers and businesses that operate for profit;
- the principle that mere facts and data should not be subject to copyright (mentioned in recital 8) should be included in the text;
- **copies of works for the preservation of cultural heritage** ⁽²⁾: clarify and extend the exception so that works that are not available on commercial channels or actively distributed by the rightholders can be made accessible online for non-profit purposes;
- lift the requirement to use *dedicated terminals on the premises of establishments* ⁽³⁾, making access to works and other subject-matter technologically neutral;
- include a new exception for **non-commercial cross-border provision of documents** by European libraries and archives;
- modify the exception for **scientific research for non-commercial purposes** in the InfoSoc Directive, given that it is deemed extremely difficult to apply in certain cases ⁽⁴⁾;

⁽¹⁾ As provided for in Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 (OJ L 111, 5.5.2009, pp. 16-22, Article 5) and in Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 (OJ L 77, 27.3.1996, pp. 20-28, Article 15).

⁽²⁾ Article 5 of Commission proposal COM(2016) 593 final.

⁽³⁾ Article 5(3)(n) of the InfoSoc Directive (OJ L 167, 22.6.2001, p. 10).

⁽⁴⁾ <http://libereurope.eu/blog/2016/10/14/basic-guide-eu-copyright-limitations-exceptions-libraries-educational-research-establishments/>

1.8 The judgment of the Court of Justice of the EU states that, under certain conditions, the **lending of a digital copy of a book** has similar characteristics to the lending of printed works⁽⁵⁾, satisfying repeated calls by users of libraries and educational institutions.

1.9 The proposal concerning the digitisation, distribution and cross-border use of **out-of-commerce works** (Title III, Chapter 1) should be welcomed.

1.10 The ‘**freedom of panorama**’ exception should be harmonised by means of European rules.

1.11 The Committee supports the exclusive right of publishers to authorise or prohibit the digital use of their press publications for a period of twenty years.

1.12 The Committee agrees with the obligation on information society service providers storing and giving public access to large amounts of copyright-protected works and other subject-matter uploaded by their users to take appropriate and proportionate measures to ensure the functioning of agreements concluded with rightholders or to prevent the availability on their services of such works or subject-matter (**value gap**).

1.13 In its view, the Commission proposal represents a step forward in the **protection of authors' rights**, as authors are entitled to fair remuneration for their creative endeavours, to be associated with the commercial success of their works and to benefit from a high level of protection and funding of works.

1.14 Attention should be drawn to the need for civil society institutions to help raise users' awareness of the requirement for compliance with copyright laws. The EESC supports the Commission's efforts to combat piracy and any unlawful use of content protected by law.

2. Commission proposals

2.1 The evolution of digital technologies has changed the way works and other protected subject-matter are created, produced, distributed and exploited. New uses have emerged as well as new actors and new business models. In the digital environment, cross-border uses have also intensified and new opportunities for consumers to access copyright-protected content have materialised.

2.2 Even though the objectives and principles laid down by EU legislation on copyright remain sound, there is a need to adapt the legislation to these new realities. Intervention at EU level is also needed to avoid fragmentation of the internal market.

2.3 Against this background, the Digital Single Market strategy⁽⁶⁾ adopted in May 2015 identified the need ‘to reduce the differences between national copyright regimes and allow for wider online access to works by users across the EU’, highlighting the importance of enhancing cross-border access to copyright-protected content services, and also clarifying the role of online services in the distribution of works and other subject-matter.

2.4 In December 2015, the Commission issued a communication⁽⁷⁾ outlining targeted actions and a long-term vision, and reflecting the need to press ahead with the single market in this area, update rules in accordance with digital realities, ensure that Europe’s creative industries remain competitive and strike the right balance between copyright and other public policy objectives.

2.5 Further to the recent proposal on cross-border portability⁽⁸⁾, the Commission now proposes a set of legislative measures with three objectives:

- (i) ensuring wider online access to content in the EU and reaching new audiences;

⁽⁵⁾ Case C-174/15, Vereniging Openbare Bibliotheeken v Stichting Leenrecht (OJ C 14, 16.1.2017, p. 6).

⁽⁶⁾ COM(2015) 192 final.

⁽⁷⁾ COM(2015) 626 final.

⁽⁸⁾ COM(2015) 627 final.

(ii) adapting certain exceptions to the digital and cross-border environment; and

(iii) fostering a well-functioning and fair copyright marketplace.

2.6 First, the proposal for a regulation⁽⁹⁾ aims at creating favourable conditions for new online and digital forms of cross-border distribution of television and radio programmes comparable to those applicable to the more traditional transmissions via satellite and retransmissions via cable. The new rules, inspired by those in force under the Satellite and Cable Directive⁽¹⁰⁾, will make it simpler and faster to clear the rights that are needed for certain online services provided by broadcasters and for certain retransmission services. These rules aim to facilitate market development and wider dissemination of European radio and TV productions. This will, in turn, generate more consumer choice and cultural diversity.

2.7 In parallel, the proposal for a Directive on Copyright in the Digital Single Market⁽¹¹⁾ introduces a new negotiation mechanism that will make it easier to conclude licensing agreements to make audiovisual works available on video-on-demand (VoD) platforms. It is part of a broader policy drive to address the multiplicity of factors that lie behind the limited availability of European audiovisual works, notably films, across the EU.

2.7.1 Licensing issues and related legal and contractual difficulties hampering the exploitation of European audiovisual works on VoD services will also be addressed in a structured stakeholder dialogue aimed at streamlining licensing practices and facilitating industry agreements conducive to more sustained exploitation and wider availability of European works. The Commission will report on the results of the dialogue by the end of 2018.

2.7.2 Finally, the proposal for a directive also introduces ways of making it easier for cultural heritage institutions to license rights, as required for the digitisation and dissemination of works that are out-of-commerce but hold great cultural value. Access to works in non-commercial settings, such as educational organisations, public libraries or non-theatrical venues, is also very important for nurturing cultural diversity, for educational purposes and to encourage participation in society. Furthermore, the Commission is, together with European Film Agency Directors (EFADs) and the audio-visual industry, exploring the possibility of creating and funding a catalogue of European films for educational purposes in 2017.

2.8 In parallel, two legislative proposals⁽¹²⁾ have been adopted for the implementation in EU law of the Marrakesh Treaty, which requires parties to introduce exceptions supporting people with print disabilities to access books and other print material in formats that are accessible to them. The proposal for a directive will establish a mandatory exception and ensure its functioning for the making and exchange of such accessible format copies within the Single Market. The proposal for a regulation will permit the cross-border exchange of such copies between the EU and third countries that are parties to the Treaty.

3. General comments

3.1 The EESC welcomes the package of measures to adapt copyright to the requirements of the digital economy.

3.2 European art has a leading position in the world, but film production, publishing and musical and artistic creation have to address market fragmentation, the immense richness of cultural and linguistic diversity, the digital transition and financial difficulties.

3.3 Simplifying the authorisation system should help to reduce fragmentation, facilitate cross-border access to online content and create more balanced protection of authors, particularly vis-à-vis the business giants controlling digital markets.

⁽⁹⁾ COM(2016) 594 final.

⁽¹⁰⁾ Council Directive 93/83/EEC of 27 September 1993 (OJ L 248, 6.10.1993, p. 15).

⁽¹¹⁾ COM(2016) 593 final.

⁽¹²⁾ COM(2016) 596 final, COM(2016) 595 final.

3.4 The area of copyright is a highly complex one, owing to the presence of multiple stakeholders who have different interests but nevertheless need each other. Regulating copyright must serve to strike a balance between the rights of all these parties.

3.5 The Commission is adopting a 'gradual' approach⁽¹³⁾, proposing supplements to the existing rules rather than a comprehensive review. The EESC suggests considering:

- the revision and consolidation of existing law, including amendments to other directives, such as those on the terms of protection of copyright⁽¹⁴⁾ and the authorised use of orphan works⁽¹⁵⁾;
- use of a regulation as the appropriate instrument for establishing the digital single market⁽¹⁶⁾;
- whether it is necessary or appropriate to take account of the issues of internet search engines and free broadcasting of content over Wi-Fi networks⁽¹⁷⁾.

4. Measures to guarantee wider access to content across the EU

4.1 Online transmissions of broadcasting organisations and retransmissions of radio and television programmes⁽¹⁸⁾

4.1.1 In the EU, the radio and television programming and broadcasting sector comprises almost 12 000 companies and employs 255 000 people, with a turnover of EUR 66 500 million⁽¹⁹⁾. Reform is needed because existing mechanisms to facilitate the authorisation of copyright and related rights do not cover online transmission or certain digital retransmissions.

4.1.2 The EESC agrees that the 'country of origin' principle should be included, as this is already the case with transmission by satellite⁽²⁰⁾ and as it is not incompatible with the territoriality of law and freedom of contract.

4.1.3 The EESC thinks that technologically neutral amendment of digital retransmission legislation should simplify the process of clearance of rights for new providers and hence improve access to key content for consumers.

4.1.4 Fittingly, the reform establishes that when difficulties arise in granting licenses, Member States are to ensure that an 'impartial body' facilitates agreements on access to and availability of audiovisual works on **VOD platforms**.

5. Adaptation of exceptions to digital and cross-border environments⁽²¹⁾

5.1 Europe's libraries, museums and archives offer a cultural space for people and are fundamental for transmitting knowledge and for learning and research. They also make a major financial contribution in terms of copyright⁽²²⁾.

⁽¹³⁾ Communication COM(2016) 592 final.

⁽¹⁴⁾ Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 (consolidated version) (OJ L 372, 27.12.2006, pp. 12-18).

⁽¹⁵⁾ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 (OJ L 299, 27.10.2012, pp. 5-12).

⁽¹⁶⁾ EESC Opinion (OJ C 264, 20.7.2016, p. 51).

⁽¹⁷⁾ See CJEU Judgment in Case C-484/14, *Tobias Mc Fadden v Sony Music Entertainment Germany GmbH* (OJ C 419, 14.11.2016, pp. 4-5).

⁽¹⁸⁾ See footnote 9.

⁽¹⁹⁾ Eurostat: Programming and broadcasting statistics (2015).

⁽²⁰⁾ See footnote 10.

⁽²¹⁾ See footnote 11.

⁽²²⁾ They make purchases worth EUR 4 800 million annually: Outsell report, *Library Market Size, Share, Performance, and Trends*.

5.2 Due to the lack of harmonisation, complex laws, geographical barriers and language differences, European researchers are at a disadvantage compared to their counterparts in leading countries such as the US. The reform must therefore achieve three goals: broadening the scope and adapting it to new technological realities, establishing a uniform and mandatory approach and ensuring legal security by regulating exceptions and limitations⁽²³⁾.

5.3 The Hague Declaration (2014) highlights the enormous potential of text and data mining (TDM) for innovation and research. For researchers, SMEs and large technological companies, TDM is a key instrument, one that is underutilised in the EU owing to legal, technological and contractual constraints.

5.4 The Commission is proposing to introduce mandatory exceptions in various areas:

- **TDM for the purposes of scientific research** in the case of reproductions and extractions made by not-for-profit research organisations;
- digital uses of works and other subject-matter for the sole purpose of illustration for **teaching**, to the extent justified by the non-commercial purpose to be achieved; and
- copies of works for the preservation of cultural heritage.

5.5 Although in its view the Commission proposals correctly pinpoint the problems, the EESC is proposing amendments to adjust the rules more closely to current requirements (see the conclusions). Amongst other things, it is important that the established exceptions to copyright are not rendered void by contractual agreements or technological tools. On the other hand, the copyright exception for **scientific research for non-commercial purposes** (Article 5(3)(a)) should be revised as it is deemed extremely difficult to apply⁽²⁴⁾.

5.6 The EESC also calls for harmonisation of the exception of '**freedom of panorama**', allowing private individuals to take and share online pictures of works such as buildings or sculptures located in public areas. Even though it confirms the need for the exception, the Commission has decided to leave the possibility of implementation, on an optional basis, to the Member States.

5.7 Copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise disabled

5.7.1 The Committee stresses that swift ratification by the EU of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which entered into force on 30 September 2016, is important and necessary. The Treaty will enable many European citizens who are blind or visually impaired to access more accessible works and thus open the door for them to culture, education and employment, hence ensuring effective social inclusion.

5.7.2 The proposals for a regulation⁽²⁵⁾ and directive⁽²⁶⁾ will allow the EU to fulfil an international obligation incumbent upon it under the Marrakesh Treaty. This is also consistent with the EU's obligations under the UN Convention of the rights of persons with disabilities.

5.8 **Licensing and wider access to content.** As is appropriate, it will be possible to digitise and distribute **out-of-commerce works** first published in the EU (Article 7) and a licence granted in one Member State will be applicable throughout the EU (Article 8).

5.9 New related right for press publishers

5.9.1 According to Article 11(1) and Article 11(4) of the proposed directive⁽²⁷⁾, Member States must provide press publishers — for twenty years — with the exclusive right to authorise or prohibit the digital use of their press publications.

⁽²³⁾ See *Towards a modern, more European Copyright Framework*. EBLIDA (European Bureau of Library, Information and Documentation Associations); Europeana; Association of European Research Libraries (LIBER); Public Libraries 2020; International Federation of Library Associations and Institutions (IFLA).

⁽²⁴⁾ See footnote 4.

⁽²⁵⁾ COM(2016) 595 final.

⁽²⁶⁾ COM(2016) 596 final.

⁽²⁷⁾ See footnote 11.

5.9.2 The EESC supports this measure as a way of ensuring fair and equitable distribution of value between press publishers producing such information and the online platforms using it.

5.9.3 The EESC points out that while many press publishers — essential for democracy — are experiencing a financial crisis resulting in the closure of publications and huge job losses, the revenue of those who use their information is increasing (²⁸).

5.10 Use of protected content on line

5.10.1 Information society service providers that store and provide public access to large amounts of copyright-protected works or other subject-matter uploaded by their users will, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter identified by rightholders in cooperation with the service providers. On the one hand, there will be measures such as ‘effective content recognition technologies’; on the other, these providers will provide rightholders with ‘adequate information’ and put in place complaints and redress mechanisms. Member States will facilitate cooperation between the parties (²⁹).

5.10.2 The measure — one that the EESC considers adequate — aims to close the **value gap** which currently exists between rightholders and information society service providers, enabling such rightholders to take better decisions on the use of their products. There are examples of advertising-based services which do not provide sufficient reward for the use of copyright-protected material, while subscription-based online services do (³⁰).

6. Better functioning of the copyright market

6.1 The EESC agrees with the Commission’s assertion that copyright infringements on a commercial scale, with infringers free-riding on the work and investment of others, are today a serious threat for European creators. Without an effective and balanced enforcement system, copyright and other intellectual property rights (IPR) are ill-protected and investment in creativity and innovation is throttled (³¹).

6.2 Authors are entitled to fair remuneration for their creative endeavours, to be associated with the commercial success of their works, and to benefit from a high level of protection and funding of works (³²).

6.3 The proposal — which the EESC deems adequate — establishes measures designed to strengthen authors’ contractual powers. While Member States will have to guarantee the obligation of transparency, alongside contract adjustment and alternative dispute resolution mechanisms, the reform strengthens the negotiating capacity of authors and artists (³³).

6.4 It is worth pointing out the need for public and private civil society organisations to contribute in the relevant areas to raising users’ awareness of the fact that authors must be remunerated for their work under the framework established by law.

Brussels, 25 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

⁽²⁸⁾ In 2015 internet platforms’ revenue amounted to USD 153 650 million, and is expected to reach USD 260 360 million in 2020. See <https://www.statista.com/statistics/237800/global-internet-advertising-revenue/>

⁽²⁹⁾ See Article 13.

⁽³⁰⁾ According to Jan Hückmann & Dora Grunwald, YouTube has nearly 1 billion users and paid USD 630 million to rightholders in 2015; Spotify has over 10 million users and paid rightholders USD 2 billion. See Google’s arguments against this measure at: <https://europe.googleblog.com/2016/09/european-copyright-theres-better-way.html>

⁽³¹⁾ See footnote 13.

⁽³²⁾ See footnote 16.

⁽³³⁾ Currently covered by Directive 2014/26/EU (OJ L 84, 20.3.2014, p. 72).

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a Union certification system for aviation security screening equipment’

(COM(2016) 491 final — 2016/0236 (COD))

(2017/C 125/04)

Rapporteur: **Stefan BACK**

Consultation	European Parliament, 15.9.2016
	Council, 24.10.2016
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	13.1.2017
Adopted at plenary	25.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	138/1/3

1. Conclusions and recommendations

1.1 The EESC reiterates its support for the 2012 Action Plan for an innovative and competitive Security Industry (the Action Plan) ⁽¹⁾.

1.2 The EESC also draws attention to the European Agenda on Security (the Security Agenda) ⁽²⁾ and once again voices its support for the action plan against illicit trafficking and use of firearms and explosives, as well as for the Proposal for a directive on combating terrorism ⁽³⁾ ⁽⁴⁾.

1.3 Subject to the remarks below, the EESC now also welcomes the objective of the Commission Proposal for a Regulation establishing a Union certification system for aviation security screening equipment ⁽⁵⁾ (the Proposal) as a first step in implementing the Action Plan. It commends the Proposal’s aim to put in place a type approval system for screening equipment with a one-stop shop certification in order to simplify the introduction of products on the market, reduce costs, increase market volume and improve the competitiveness of the European security product industry.

1.4 The EESC regrets, however, that the Proposal does not introduce a single EU approval authority with an integrated technical service, as this would have made for optimal efficiency and cost reduction. The EESC has serious doubts about the resource efficiency of the proposed option of splitting the technical services and approval authorities.

⁽¹⁾ COM(2012) 417 final (OJ C 76, 14.3.2013, p. 37).

⁽²⁾ COM(2015) 185 final.

⁽³⁾ COM(2015) 624 final: Implementing the European Agenda on Security: EU action plan against illicit trafficking in and use of firearms and explosives and COM(2015) 625 final: Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism.

⁽⁴⁾ OJ C 177, 18.5.2016, p. 51.

⁽⁵⁾ COM(2016) 491 final.

1.5 The EESC further regrets that the possibility provided in Article 6 of Regulation (EC) 300/2008⁽⁶⁾ on common rules in the field of civil aviation security of prescribing more stringent requirements at national level than the basic level provided for under that regulation, which was expressly welcomed by the EESC in its opinion⁽⁷⁾ on the proposal for that regulation, is not reflected in the Proposal.

1.6 The EESC deplores the fact that internal market considerations seem to have taken precedence over security concerns, to the point where not even the possibility of allowing additional national security requirements to safeguard vital national interests in accordance with Article 114(10) TFEU has been granted.

1.7 In this respect, the EESC also regrets that the TFEU does not allow dedicated national action to protect essential national interests against terrorist acts, in line with what applies with regard to military equipment under Article 346 TFEU or to public procurement under Article 15 of Directive 2014/24 on public procurement⁽⁸⁾.

1.8 The EESC questions the adequacy of the provision in Article 24(3) of the Proposal specifying that the Commission shall chair the coordination committee of the technical services, considering the highly technical and complex nature of the questions that will have to be dealt with by its services.

1.9 In this respect, the EESC also expresses its regret that no consideration seems to have been given to the possibility of including in the Proposal a system for exchange of information and coordination between the different national approval authorities.

1.10 The EESC questions whether the extent to which the proposal authorises the use of delegated acts to modify technical provisions goes beyond the scope of what is authorised under Article 290(1) TFEU. This is in particular the case with respect to Article 27(a) of the Proposal, which sets no limits to the scope or character of the new performance requirements that may be included in Annex I to the Proposal through delegated acts.

1.11 In any case, the EESC points out that if it is to legislate in this field, the Commission will need the technical competence required to ensure the quality of the legislative acts.

1.12 The EESC welcomes in principle the Proposal that the EU should seek to become a full member of the European Civil Aviation Conference (ECAC). However, in view of the fact that the current ECAC Constitution only authorises states as members, that ECAC membership is wider than the EU Member States and that the outcome of any such membership negotiation cannot be taken for granted, it might be more realistic to state that the EU should take the appropriate steps with a view to obtaining membership of ECAC.

1.13 The EESC has taken note of the provision in the Proposal for a maximum average time of six months between submitting a request for a test by technical services and the delivery of the test results to the relevant authorisation authority. The EESC suggests that a better option would be for the technical service to make an initial assessment of a request in order to define the amount of time needed for testing and to inform the applicant within a fixed time limit. If the deadline for testing is subsequently not met, the applicant should be informed and the reasons for the delay explained.

1.14 The EESC notes that the ECAC system for product assessment now works well and that the added value of an EU type-approval system, for operational purposes, may therefore be open to question. This observation is without prejudice to the Internal Market objectives set out in the Proposal.

1.15 For the reasons indicated, the EESC has doubts about the added value of the Proposal as it now stands and would therefore ask the Commission to reconsider its content with a view to taking on board the observations made in this opinion.

⁽⁶⁾ OJ L 97, 9.4.2008, p. 72.

⁽⁷⁾ OJ C 185, 8.8.2006, p. 17.

⁽⁸⁾ See also the Interpretative Communication on the application of Article 296 of the Treaty (current Article 346 TFEU) in the field of defence procurement (COM(2006) 779 final) (OJ L 94, 28.3.2014, p. 65).

2. Introduction

2.1 The Proposal is a step towards implementing the Action Plan⁽⁹⁾. The objectives of the Action Plan are:

- to overcome market fragmentation through the creation of EU-wide certification/international standards, harmonisation of EU certification/conformity assessment procedures and exploitation of synergies between security and defence technologies;
- to reduce the gap from research to market;
- to improve integration of the social dimension by early testing of the social impact, including possible effects on fundamental rights.

2.2 One important aim of the Action Plan is to end the fragmentation of the security market by introducing EU-wide certification systems for security technologies, starting with airport screening equipment and alarm systems, to be achieved by setting up a one-stop shop system to obtain certification granting market access for the certified product across the entire EU. This would result in simplification, reduced certification costs, increased domestic market volumes and therefore improved competitiveness compared to US and Chinese products that have the advantage of higher volumes on large domestic markets.

2.3 The Security Agenda⁽¹⁰⁾ approves the Action Plan when addressing support actions such as training, funding, research and innovation.

2.4 The Security Agenda contains a wide range of measures comprising counteracting financing of terrorism, illicit trafficking in and use of firearms and explosives and further measures to protect citizens and critical infrastructure, including an action plan against illicit trafficking and use of firearms and explosives and a Proposal for a directive on combating terrorism⁽¹¹⁾.

2.5 The Proposal introduces a certification system built on common performance requirements, common testing methods and accreditation of testing laboratories (technical services).

2.6 The performance requirements are those laid down under Regulation (EC) 300/2008⁽¹²⁾ on common rules in the field of aviation security and its implementation acts (Article 4 and Annex I to the Proposal).

2.7 The evaluation methods are those developed in the Common Evaluation Process (CEP) approved by the ECAC.

2.8 Each Member State is to have an approval authority with competence for all aspects of approval of equipment (Article 6 of the Proposal). No Member State may make additional requirements on certified equipment (Article 4 of the Proposal).

2.9 The Proposal lays down procedures for dealing with equipment that presents a risk at national level or that is not in conformity with certification (Articles 17-19 of the Proposal).

3. General comments

3.1 The EESC has already welcomed the Action Plan⁽¹³⁾, the European Agenda on Security, the action plan against illicit trafficking and use of firearms and explosives, and the Proposal for a directive on combating terrorism⁽¹⁴⁾.

⁽⁹⁾ COM(2012) 417 final.

⁽¹⁰⁾ COM(2015) 185 final.

⁽¹¹⁾ COM(2015) 624 final: Implementing the European Agenda on Security: EU action plan against illicit trafficking in and use of firearms and explosives and COM(2015) 625 final: Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism.

⁽¹²⁾ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008, p. 72).

⁽¹³⁾ See footnote 1.

⁽¹⁴⁾ See footnote 4.

3.2 The EESC now also welcomes the intention of the Proposal to implement the Action Plan through strengthening the European security industry sector by creating a larger domestic market and improving the competitiveness of this industry.

3.3 The EESC welcomes the Proposal's aims to enhance the competitiveness of the EU security industry and simplify administrative procedures by introducing a one-stop shop for certification to reduce costs and create a larger domestic market. The EESC notes the strong focus on the Internal Market and competitiveness, and the fact that security matters are dealt with mainly from the perspective that increasing the industry's competitiveness may improve its possibilities for innovation and new product development.

3.4 The EESC approves the approach taken by the Proposal to legislate on performance requirements and make use of the Common Testing Methods developed by ECAC, and agrees that the classified character of much of the legal material makes this approach necessary. Nevertheless, the EESC is of the opinion that the Proposal could be improved on in a number of important respects.

3.5 The EESC thus regrets that the possibility contained in Article 6 of Regulation (EC) 300/2008 for a Member State to apply more stringent measures than the common basic standards referred to in the Proposal is not included in the Proposal. Neither the procedures for dealing with equipment presenting a risk at national level nor the union safeguard procedure are suitable for tackling this kind of problem.

3.6 The EESC recalls here that it specifically approved the possibility allowing Member States to take more stringent measures under Article 6 of Regulation (EC) 300/2008 in its Opinion on the Proposal for that regulation⁽¹⁵⁾.

3.7 The EESC is aware of the difficulties involved in authorising additional national requirements on products covered by harmonised criteria, but nevertheless draws attention to the possibility offered under Article 114(10) TFEU of authorising national requirements based on the need to protect national security interests, for instance, although only for a limited period of time.

3.8 The EESC takes note of the fact that the parliaments of at least two Member States have, in proposals for reasoned opinions on the question of subsidiarity, one of which has been submitted, referred to the need to be able to adapt security requirements in line with the varying levels of risk exposure in the different Member States⁽¹⁶⁾. This means that it may be necessary to heighten security requirements by introducing additional characteristics and improved performance of equipment, including screening equipment at airports, compared to standard EU requirements.

3.9 The EESC takes the view that, when implementing a policy that seeks to improve protection against terrorist acts, this aim must be seen as the essential element of any measure proposed. An industrial policy agenda related to this aim must be seen as subordinate to the aim of counteracting terrorism.

3.10 There must therefore be clear scope for separate action by Member States to deal with terrorist threats, including by making additional demands on screening equipment at airports over and above the standard certification requirements. Articles 17 and 18 of the Proposal are not related to this problem and do not give sufficient freedom of discretion to Member States to enable them to protect themselves against terrorist threats. The EESC is aware that the TFEU as it now stands contains no specific rules allowing security equipment to be exempt from internal market rules on the grounds of safeguarding vital national interests, since Article 346 TFEU provides for such a possibility only with respect to military equipment and the provisions of Directive 2014/24/EU (Article 15) relate only to public procurement⁽¹⁷⁾.

⁽¹⁵⁾ See footnote 6.

⁽¹⁶⁾ Reasoned Opinion of the House of Commons of the United Kingdom Parliament 1 November 2016 in Council document 14180/16 and Assemblée Nationale of France, No 4060 rect. Proposition de Résolution Européenne.

⁽¹⁷⁾ Interpretative Communication on the application of Article 296 of the Treaty (Article 346 TFEU) in the field of defence procurement, page 6, footnote 10. Directive 2004/18/EC has since been replaced by Directive 2014/24/EU — COM(2006) 779 final.

3.11 The EESC takes note of the fact that the Proposal enables the Commission to adopt delegated acts to amend Annex I to reflect the introduction of new performance requirements for aviation security screening equipment (Article 27(a)) and to amend the annexes to the Regulation to adapt them to the development of scientific and technical knowledge (Article 27(b)). Article 290(1) TFEU limits delegation to non-essential elements of the legal act in question, including updates due to technical developments. The delegation in Article 27(a) of the Proposal appears to go beyond that limit. The EESC therefore questions the compatibility of the delegation proposed in Article 27(a) of the Proposal with the TFEU.

3.12 In any case, if it is to legislate in this field, the Commission will need the technical competence required to ensure the quality of the legislative acts.

3.13 The Proposal provides for an approval authority in each Member State. The EESC questions both the capacity of all Member States to set up such an authority at the time of the entry into force of the Proposal as well as the resource efficiency of such a requirement and its added value, bearing in mind that currently only five Member States have the capacity to test equipment and issue a type-approval. The EESC considers that a single EU approval authority would have been a more efficient solution, in line with the one-stop shop approach.

3.14 In this connection, the EESC also questions the usefulness of splitting the testing and certification functions between the technical services and the approval authorities, meaning that the actual testing of a product's performance is to be carried out by a technical service, which has been certified as to its competence level, while the decision to issue certification (type-approval) is to be taken by the approval authority, which clearly does not need to fulfil any specific criteria of technical competence but will rely entirely on the assessments made by the technical service. Should the reason for this two-tier system be that adequate technical competence is not available in all Member States, the EESC would suggest integrating the two functions in a reduced number of approval authorities or, ideally, as already suggested, setting up one common approval authority for the entire EU.

3.15 The EESC also takes note of the fact that the ECAC common certification test methodology is now working adequately. This brings into question the added value of the system to be created by the Proposal, since the ECAC framework ensures free movement for the products concerned among the ECAC Member States. This observation is without prejudice to the Internal Market objectives of the Proposal.

3.16 The EESC takes note that Article 10 of the Proposal stipulates that the EU shall become a full member of the body responsible for the elaboration of the common testing methodologies, i.e. ECAC. The EESC points out that EU membership of ECAC would require a prior amendment to the ECAC Constitution, as it currently allows only states as full members. Since membership would be the outcome of a negotiation process, the EESC would suggest that the provision be changed to stipulate that the EU should be mandated to start negotiations with a view to obtaining full membership of ECAC.

4. Specific remarks

4.1 The Proposal specifies that the Commission shall establish and chair a sectoral group of technical services to ensure cooperation and coordination between technical services. Bearing in mind that this group is likely to be dealing with highly complex technical matters, the EESC questions the adequacy of this solution.

4.2 The EESC is surprised that no need has been seen to propose an exchange of information and coordination between the various national approval authorities, and between the approval authorities and the Commission, bearing in mind that such a system has been considered useful for the technical services and in other contexts where national authorities exercise decision-making competence that is of relevance for the application of EU law, for instance in the field of competition.

4.3 While the Proposal provides for one approval authority for each Member State, no such requirement applies to the technical services which, as pointed out above, will hold a key role in the planned certification system. This again supports the view that the requirement of one approval authority in each Member State has a merely symbolic value, bearing in mind that type-approval certification and the certificates of conformity issued based on that certification are valid across the whole of the EU. The procedure for dealing with equipment presenting a risk at national level (Article 17 of the Proposal) could be dealt with by a national authority competent in security matters.

4.4 The Proposal specifies that the technical services shall ensure that the average time between a request for a test of equipment and delivery of the results to the approval authority shall at most be six months, except in exceptional circumstances or at the specific request of the manufacturers. The EESC takes the view that a fixed time period of this kind is neither desirable nor realistic. A better option might be an obligation for the technical service to immediately assess the time needed to deal with a request and inform the applicant within a fixed period of time, for example fifteen working days. If the deadline set cannot subsequently be met, the technical service should give a reasoned explanation.

Brussels, 25 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council'

(COM(2016) 468 final — 2016/0225 COD)

(2017/C 125/05)

Rapporteur: **Christian MOOS**

Consultation	Council of the European Union, 7.9.2016
Legal basis	European Parliament, 12.9.2016
Section responsible	Article 304 of the Treaty on the Functioning of the European Union
Adopted in section	Section for Employment, Social Affairs and Citizenship
Adopted at plenary	10.1.2017
Plenary session No	25.1.2017
Outcome of vote (for/against/abstentions)	522 177/8/9

1. Conclusions and recommendations

The EESC

1.1 calls for a genuine common asylum policy that respects European values. It welcomes the creation of a Union Resettlement Framework;

1.2 calls on the Union to take more responsibility for people in need of international protection, to make more of an effort to take them in than has hitherto been the case, and to show more solidarity with third countries — as well as with EU Member States such as Greece — with regard to the issue of refugees;

1.3 emphasises its call to construct robust integration systems in the Member States;

1.4 calls for the common criteria for resettlement to focus mainly on people's need for protection, not only on the third country's effective cooperation on asylum. They must also be non-discriminatory;

1.5 considers the 'first country of asylum' and 'safe third country' concepts to be open to question due to the current unsafe and unstable situation in the third countries and regions concerned. The EESC is of the opinion that the EU-Turkey Statement is of utmost importance in the current situation. It is in the interest of both the EU and Turkey that the human rights situation is monitored in its implementation;

1.6 calls for the resettlement programme to be uncoupled from partnership agreements that aim to encourage third countries to prevent refugees from fleeing, as this carries the risk of infringing international law and fundamental rights. It emphasises that return agreements or other similar cooperation agreements with third countries must not place conditions on measures undertaken neither in partnership with third countries, nor on development aid more generally;

1.7 calls for UNHCR to play a key role in identifying third-country nationals or stateless persons to be resettled and questions special rights enabling third countries to make a selection;

1.8 welcomes the emphasis on the vulnerability of women as well as children and adolescents, but has reservations about the category of 'persons with socio-economic vulnerability'. The Commission proposal blends together a variety of legal ways to enter the EU, which in general risks lowering the quantity and quality of resettlement;

1.9 questions, according to the 1951 Geneva Convention, the blanket exclusion of people who have irregularly stayed in, entered, or attempted to enter the territory of the Member States during the 5 years prior to resettlement, as well as of people who have been rejected by Member States during the 5 years prior to resettlement, despite the fact that they otherwise fulfil the eligibility criteria;

1.10 underlines that resettlement must not impinge upon the right to asylum. In general, it must be ensured that fundamental rights under the 1951 Geneva Convention, the Charter of Fundamental Rights of the European Union (Charter) and the European Convention on Human Rights (ECHR) are upheld;

1.11 is in favour of ambitious goals when it comes to deciding on the annual number of people to be resettled, and recommends treating the figure to be determined by the high-level committee as a minimum number;

1.12 expects to be involved in the High-Level Resettlement Committee that is to be set up;

1.13 also calls for UNHCR to be permanently involved in the High-Level Resettlement Committee. Broadly speaking, the Commission proposal is not clear as to how, and by means of what procedures, people in need of international protection are to be identified (by UNHCR or by the Member States), nor what role the EU Agency for Asylum will play in these procedures;

1.14 calls for complementary, alternative reception and funding programmes to be examined, along the lines of Canada's Private Sponsorship of Refugees Program⁽¹⁾. Institutionalising a tripartite approach — one that involves the Member States, UNHCR and private/civil society actors — would be broadly beneficial to an EU Resettlement Framework. However, this must not bring down the quality or quantity of resettlement. Calls on Member States to ensure that civil society is properly informed of resettlement plans and given supports to assist their participation in the process;

1.15 recommends that the EU and its Member States should have a stronger institutional presence in particularly hard-hit countries of origin and transit, and that these countries should be helped by increasing their capacity for local reception and protection.

2. Assessment of the specific provisions of the proposal

2.1 Union Resettlement Framework

2.1.1 The EESC welcomes the resettlement of people in need of international protection in the Union. As in its opinion on 'A European Agenda on Migration'⁽²⁾, the EESC stresses the call for robust integration systems to be established in the Member States to support resettlement, and for access to the labour market, recognition of qualifications and the provision of professional and language training to be facilitated.

2.1.2 The EESC supports the measures set out in the *Action Plan on the integration of third country nationals*⁽³⁾ of 7 June 2016 aimed at the early, effective and successful integration of resettled persons. However, these measures are at odds with subsidiary protection status, as Member States must re-examine a person's protection status, which might lead to this person's refugee status not being recognised. This means that a person in need of international protection risks being removed or returned to the third country or country of origin.

⁽¹⁾ <http://www.cic.gc.ca/english/resources/publications/ref-sponsor/>

⁽²⁾ OJ C 71, 24.2.2016, p. 46.

⁽³⁾ COM(2016) 377 final.

2.2 Regions or third countries from which resettlement is to occur

2.2.1 The EESC supports the flexibility set out in Articles 7 and 8 in determining common criteria to select the regions or third countries from which resettlement is to take place. However, these should not be too exclusive and should not depend on the quality of a third country or region's effective cooperation in the area of migration and asylum, but rather on people's vulnerability. The EESC rejects any discrimination based on refugee route, country of origin, race, or religion (Article 3 of the 1951 Geneva Convention).

2.2.2 In terms of creating the conditions for using the 'first country of asylum' and 'safe third country' concepts in relation to returning asylum seekers, the EESC argued — as early as its opinion on '*Establishing an EU common list of safe countries of origin*'⁽⁴⁾ — that it was still too early for an inclusive list and that it was necessary to agree on a list of safe countries of origin ultimately based on common criteria, as in Directive 2013/32/EU, and to draw on specific, practical and precise indicators, particularly from sources such as UNHCR, the EASO, Council of Europe, ECHR and other human rights organisations when assessing a country. The EESC points out that these concepts may under no circumstances be applied to countries where human rights and the rule of law are being violated. In addition, a third country can only be considered as 'safe' when it is ensured that the country complies with the principle of non-refoulement and, more broadly, has fully recognised and implemented the 1951 Geneva Convention, the New York Protocol of 31 January 1967 Relating to the Status of Refugees and other relevant treaties.

2.2.3 However, from the EESC's point of view, the European Union is attempting to use these partnerships to shift the issue of refugees and its responsibility for persons seeking protection onto third countries, as well as attempting to use material incentives to get third countries to stop refugees at their external borders. In this connection, the increased rate of readmission of third-country nationals and stateless persons irregularly staying in the territory of the Member States that results from new agreements should also be examined. Efforts to reduce the number of refugees harbour the risk of third countries impeding, turning away or deporting persons arriving at their borders in search of protection, thereby breaching the prohibitions on refoulement in the Charter, the 1951 Geneva Convention and the ECHR. The EESC therefore calls for a strict application of the principles of international law and the creation of effective control mechanisms.

2.3 Criteria for determining regions or third countries from which resettlement is to occur (Article 4)

2.3.1 The EESC calls for the resettlement programme to be uncoupled from partnership agreements; thus the phrase in Article 4(a) ('and any onward movement of those persons to the territory of the Member States') should be deleted. The EESC believes that the criteria set out in Article 4(c) and (d) (with the exception of (iii)) jeopardise the right to asylum and protection against refoulement provided for in Articles 18 and 19 of the Charter and, therefore, that they should also be deleted.

2.3.2 In line with UNHCR, the EESC calls for readmission provisions to include a guarantee that the third country or region has fully recognised and implemented the 1951 Geneva Convention, thereby guaranteeing access to a procedure for assessing applications for protection in line with the Convention.

2.3.3 The EESC notes with concern that the return mechanism under the EU-Turkey Statement could turn the hot-spots into detention centres. This would violate the right to freedom and protection against arbitrary detention (Article 5 ECHR and Article 6 of the Charter). The EESC therefore expresses its alarm over the arrests and returns under the EU-Turkey Statement and considers that the current return mechanism must be urgently reviewed in order to ensure proper protection in this and in new partnership agreements.

2.3.4 The EESC strongly supports closer diplomatic relations as well as financial and technical measures in the framework of partnerships with third countries — such as building local capacity for the reception and protection of persons in need of international protection — that help meet the challenges posed by refugees in third countries and regions. Such measures must respect the 1951 Geneva Convention, the ECHR and the Charter. Return agreements or other similar cooperation agreements with third countries must not place conditions on resettlement measures, nor on development aid more generally. Such agreements run counter to the humanitarian goals of these measures.

⁽⁴⁾ OJ C 71, 24.2.2016, p. 82.

2.4 Eligibility criteria (Article 5)

2.4.1 The EESC welcomes the special emphasis that is placed on the vulnerability of women and girls as well as children and adolescents, including unaccompanied minors, and welcomes the inclusion of people with family links as an extension of the classical resettlement categories. The EESC particularly welcomes the concern for family unity which means that consideration is given to siblings, as 'family members'. However, these criteria should only apply in cases when existing family reunification measures, such as the 2003 Family Reunification Directive, do not permit family reunification. The EESC underlines that the principles of equality and non-discrimination must be upheld and should be applied without prejudice to (a), (b), (c) or (d).

2.4.2 However, the EESC has reservations about expanding the categories to cover 'persons with socio-economic vulnerability' if these people have either a low income, low professional status or a poor level of school education etc. This category does not require protection under the 1951 Geneva Convention, potentially leading to discrimination against those in need of international protection. However, it is imperative that other legal ways to enter the EU and measures are established that cater for persons with socio-economic vulnerability.

2.4.3 Overall, the EESC recommends adopting UNHCR's long-standing recognition criteria, thereby reinforcing its central role in the identification of people in need of international protection.

2.5 Grounds for exclusion (Article 6)

2.5.1 The EESC rejects the blanket exclusion of persons under Article 6(1)(d) and (f), since these points conflict with the fundamental right to asylum. Both must be deleted in order to safeguard the integrity and credibility of the institution of asylum.

2.5.2 It is also necessary to ensure that Article 6(1)(c) is only applied in accordance with the principle of proportionality. In addition, vague terms and phrases such as 'have committed a serious crime' in Article 6(1)(a)(ii) should be avoided in the context of eligibility and exclusion criteria, due to states' differing legal systems and interpretations, or else they should be clearly defined.

2.5.3 There must be clear and reasonable evidence to invoke the optional exclusion ground (Article 6(2)), which enables Member States to refuse resettlement of third-country nationals or stateless persons to whom one of the grounds for exclusion in Article 6(1)(a) or (b) applies '*prima facie*'. Otherwise, this should be deleted. A Member State acting on the basis of mere suspicion would be infringing the principle of non-discrimination.

2.6 Resettlement plan and targeted resettlement schemes (Articles 7 and 8)

2.6.1 The EESC welcomes the possibility of finding a flexible response to shifting migration flows and evolving international circumstances. However, in accord with UNHCR and other civil society organisations⁽⁵⁾, it urges — in contrast to Article 7 — that the number of people to be resettled be treated as a minimum, and calls for the UNHCR annual report⁽⁶⁾ to be used as the basis of a forecast of the number of people to be resettled. The EESC believes that a level of at least 25 % of the number of people that UNHCR considers to be in need of resettlement internationally is appropriate for Europe.

2.6.2 The EESC has reservations about the Member States' involvement in implementing the annual resettlement plan. These doubts are justified by the state of implementation of the Council conclusions of 20 July 2015 to date, and also by the infringement proceedings launched by the Commission for failure to implement the Common European Asylum System⁽⁷⁾ and the Commission's reports on progress made in the implementation of the EU-Turkey Statement⁽⁸⁾.

⁽⁵⁾ Joint Comments Paper by Caritas Europe, CCME, ECRE, ICMC Europe, IRC, Red Cross EU Office, 14.11.2016.

⁽⁶⁾ UNHCR Projected Global Resettlement Needs 2016.

⁽⁷⁾ IP/15/6228.

⁽⁸⁾ COM(2016) 349 final.

2.6.3 Article 8 should draw a clearer distinction between the UNHCR resettlement framework on the one hand and resettlement measures and other legal entry routes pertaining to the EU, its Member States or other stakeholders on the other hand. The EESC broadly welcomes a formalised tripartite approach under the EU Resettlement Framework, allowing UNHCR, the EU and its Member States, and private/civil society actors to carry out resettlement.

2.7 **Consent (Article 9)**

2.7.1 While the resettlement procedures under Articles 10 and 11 must be based on the consent of third-country nationals or stateless persons, third-country nationals or stateless persons who have refused resettlement in a particular Member State, e.g. for family, social or cultural reasons, should not be excluded from being resettled in another Member State.

2.8 **Ordinary and expedited procedures (Articles 10 and 11)**

2.8.1 The EESC accords a key role to UNHCR in identifying third-country nationals and stateless persons. UNHCR can be supported by a Union Agency for Asylum, the purpose and remit of which the Commission has not yet set out in detail, or by relevant international bodies. The EESC questions special rights — such as in the case of the EU-Turkey Statement — that enable the third country, rather than UNHCR, to choose among those departing; otherwise, it cannot be guaranteed that the fundamental rights under the 1951 Geneva Convention, the Charter and the ECHR are being upheld.

2.8.2 According to the proposal, resettlement should be the preferred avenue to international protection in the territory of the Member States and should not lead to another asylum procedure. Such restrictions may impinge upon the right to asylum of a person in need of protection. There must be a guaranteed option of applying for asylum in a different way in the territory of the Member States, otherwise this could run counter to the right and obligation of those seeking protection to apply for asylum in the first host country in the EU.

2.8.3 The EESC warns that a conflict arises between the integration of resettled persons in a Member State and the granting of subsidiary protection status under the expedited procedure (Article 11). An individual's refugee status must be re-examined in the Member State in which he or she is to be resettled and may therefore potentially be rejected. Subsidiary protection status should not be granted because the expedited procedure arises due to urgent situations, e.g. an urgent need for medical care. The conditions for fully granting refugee status should be verified under both procedures⁽⁹⁾.

2.9 **High-Level Committee (Article 13)**

2.9.1 The EESC recommends that, beyond just consultation, the Commission's annual resettlement plan should be drawn up in conjunction with the high-level committee, and its implementation should be mandatory. This committee should be jointly chaired by the Commission and the Parliament, working in close cooperation with civil society. As the voice of civil society, the EESC should also be represented as a member of the high-level committee, or at the very least as a permanent participant with observer or advisory status.

2.9.2 The EESC calls for a Union Agency for Asylum, UNHCR and the IOM to be permanent members of the high-level committee.

2.10 **Exercise of the delegation**

The EESC supports giving the Parliament and the Council the right to veto and revoke Commission delegated acts, adopted pursuant to Article 10(9).

2.11 **Association with Iceland, Liechtenstein, Norway, and Switzerland**

The EESC strongly supports the participation of associated states in implementing resettlement plans and in the high-level committee. The EESC recommends inviting the United Kingdom, Ireland and Denmark to participate.

⁽⁹⁾ OJ C 34, 2.2.2017, p. 144; SOC/547 on Common European Asylum System Reform Package II, Brussels, 14 December 2016, and the 1951 Geneva Convention (see page ... of this Official Journal).

3. Specific recommendations

3.1 *Involvement of the Member States in implementing the annual resettlement plans*

3.1.1 The EESC again calls on the EU Member States and the international community to take more responsibility for people in need of international protection, to show more solidarity with third countries and regions where people have been displaced, and to redouble their efforts to resettle and voluntarily admit people on humanitarian grounds.

3.1.2 The Committee calls on the EU and the Member States to fulfil the relocation and resettlement commitments previously made in the Council Decisions of July and September 2015, to pay more attention to the limited capacity of a Member State such as Greece to take in people, and to step up their efforts to establish a solidarity-based Union Resettlement Framework and a Common European Asylum System. In the light of the 65,3 million people seeking international protection worldwide (UNHCR figures), the EESC recommends demonstrating greater commitment and resettling far more than 20 000 persons in need of protection per year.

3.1.3 The EESC recommends that Member States should immediately expand their institutional presence in countries of origin and transit and should enable embassies and consulates, or as yet unbuilt migration centres, to rapidly confirm vulnerability on the basis of UNHCR referrals and to allow resettlement in the Member States. This would represent an additional contribution to building up the infrastructure necessary for the EU's resettlement plans.

3.2 *Cooperation*

3.2.1 The EESC recommends formally entering into a close partnership with UNHCR, due to its internationally acknowledged expertise. Additionally, similar partnerships can be formed with the IOM and other certified civil society organisations such as the Churches' Commission for Migrants in Europe (CCME) or the European Council on Refugees and Exiles (ECRE). The Committee wishes to encourage the Member States to include citizens and civil society organisations at early stages at the local level to gain the support of the local community, thus increasing the prospect of successful integration of resettled refugees.

3.2.2 Alternative admission and funding schemes should also be considered — e.g. those involving individuals, non-governmental organisations, civil society organisations, including social organisations, or other interested parties — so as to create legal ways into the EU. While these schemes can usefully complement the European resettlement plan, they must under no circumstances replace it. In this regard, the EESC would like to single out Canada's Private Sponsorship of Refugees Program for praise. Civil society, social partners and local authorities play an important role and foster cohesion after a person is resettled; they should therefore be involved at as early a stage as possible in planning and decision-making processes under the Resettlement Framework.

3.2.3 Member States should regularly evaluate private admission schemes to ensure that the fundamental rights set out in the Charter, the ECHR, and the 1951 Geneva Convention are being upheld and that these schemes are not pursuing other aims. Persons to be resettled under private admission schemes must meet the conditions for refugee status. They receive the same legal status in the host country as refugees who have entered under government schemes.

Brussels, 25 January 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)’

(COM(2016) 411 final — 2016/0190 (CNS))

(2017/C 125/06)

Rapporteur: **Christian BÄUMLER**

Consultation	Council of the European Union, 20.7.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	10.1.2017
Adopted at plenary	26.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	116/0/1

1. Conclusions and recommendations

1.1 In the EESC’s view, the Juncker Commission’s political guidelines are right to emphasise that judicial cooperation between EU Member States must be gradually improved and must keep pace with the fact that there is an increasing number of mobile citizens in the EU, who are getting married and having children.

1.2 The EESC welcomes the fact that the Commission proposal aims to take greater account of the best interests of children with regard to decisions about returns. The EESC supports children’s rights and stresses that it is of the utmost importance to uphold these rights in all policy areas relating to children. The best interests of children must be paramount.

1.3 The EESC welcomes the fact that the Commission is proposing several significant changes with the aim of making the procedure of returning an abducted child more efficient. In the EESC’s view, this could include the adoption of common minimum standards, including a uniform enforcement procedure.

1.4 The EESC is of the view that cooperation between central authorities in cases specifically relating to parental responsibility — set out in Article 55 — is essential and supports the reformulation of these provisions.

1.5 The EESC welcomes the fact that Member States are obliged to concentrate jurisdiction in a limited number of courts, in line with the structure of each country’s legal system.

1.6 The EESC welcomes the fact that the proposal specifies the time limits for issuing an enforceable return order and shortens return proceedings to 18 weeks in total.

1.7 The EESC believes that it is reasonable to allow only one appeal in return proceedings.

1.8 The EESC welcomes the fact that the court of origin could declare a decision provisionally enforceable even if this possibility does not exist in its national law.

1.9 The EESC believes that minimum standards for the hearing of a child could help to enhance acceptance of the decision.

1.10 The EESC also supports the abolition of exequatur. In the EESC's view, however, safeguards should be maintained.

1.11 The EESC welcomes the fact that it should be possible for the court of the Member State of refuge to order urgent protective measures required if the child might be at a grave risk of harm.

1.12 The EESC welcomes the fact that the draft stipulates that the placement of the child in a foster family or institutional care in another Member State shall in every case be conditional on the host country's consent.

1.13 The EESC considers that the scope of application of the Brussels IIa Regulation needs to be clarified. Even if marriage is defined according to 'national' criteria, Member States are required to comply with Article 21 of the EU Charter of Fundamental Rights. The EESC proposes that compliance with Article 21 be mentioned in one of the recitals of the Regulation.

1.14 The EESC considers that there is a need for regulation in cases where one parent does not come from the European Union and encourages bilateral agreements to be signed, in particular with countries that are not parties to the Hague Convention on Child Abduction.

2. General comments

2.1 On 30 June 2016, the European Commission put forward proposals for a reform of the Brussels IIa Regulation, which is the cornerstone of judicial cooperation in family matters in the European Union. It establishes uniform jurisdiction rules for divorce, separation and the annulment of marriage as well as for disputes about parental responsibility in cross-border situations. It facilitates the free circulation of judgments, authentic instruments and agreements in the Union by laying down provisions on their recognition and enforcement in other Member States. It has applied since 1 March 2005 to all Member States except Denmark.

2.2 The part of the regulation that deals with legal matters pertaining to parent-child relationships settles international jurisdiction questions relating to parent-child matters within the European Union, and also regulates the recognition and enforcement of judgments on parent-child relationships that have been handed down in other Member States. The regulation also sets out arrangements for the return of children wrongfully removed to, or being wrongfully retained in, another Member State. In this regard, the regulation reinforces the return mechanism under the Hague Convention on Child Abduction.

2.3 Several aspects of the regulation — which has already been the subject of 24 judgments of the European Court of Justice — are now to be reformed. This Commission proposal intends to make the regulation even more effective: it focuses on the part of the regulation that deals with legal matters pertaining to parent-child relationships and does not go into the rules relating to divorce procedures.

2.4 In the EESC's view, the Juncker Commission's political guidelines are right to emphasise that judicial cooperation between EU Member States must be gradually improved and must keep pace with the fact that there is an increasing number of mobile citizens in the EU, who are getting married and having children.

2.5 In previous opinions⁽¹⁾, the EESC has stressed that the Treaties and the Charter of Fundamental Rights of the European Union guarantee the right to access justice and respect for fundamental rights, namely: the right to property, equality before the law, the principle of non-discrimination, the right to private and family life, the right to marry and to found a family and the right to a fair trial.

2.6 The Commission has assessed the operation of the regulation in practice and considered necessary amendments to the instrument in its application report (COM(2014) 225)⁽²⁾ adopted in April 2014. This assessment took place as part of the Regulatory Fitness Programme (REFIT).

2.7 The objective of the recast is to further develop the European area of Justice and Fundamental Rights based on Mutual Trust by removing the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition, and to better protect the best interests of children by simplifying procedures and enhancing their efficiency.

⁽¹⁾ OJ C 376, 22.12.2011, p. 87.

⁽²⁾ COM(2014) 225 final.

2.8 The EESC welcomes the fact that the Commission proposal aims to take greater account of the best interests of children with regard to decisions about returns. Increasing migration means that more cooperation channels and structures are needed so that children can be protected beyond national borders.

2.9 The EESC welcomes the fact that the Commission is proposing several significant changes with the aim of making the procedure of returning an abducted child more efficient. In cases of parental child abduction, timing is key to the successful operation of the child return procedure established in the regulation.

2.10 The EESC is of the view that cooperation between central authorities in cases specifically relating to parental responsibility — set out in Article 55 — is essential to effectively support parents and children involved in cross-border proceedings relating to child matters.

2.11 In the EESC's opinion, the unclear drafting of the article setting out the assistance to be provided by central authorities in cases specifically relating to parental responsibility is a crucial problem. For the national authorities of some Member States, this does not provide a sufficient legal basis on which to act.

2.12 The EESC welcomes the fact that the proposal clarifies who can ask for what assistance or information from whom and under which conditions. It is also made clear that courts and child welfare authorities can request the assistance of central authorities. The recast provides a legal basis for child welfare authorities to obtain the necessary information from other Member States via central authorities.

2.13 The EESC welcomes the fact that Member States are obliged to concentrate jurisdiction in a limited number of courts, in line with the structure of each country's legal system. Delays in handling cases are caused by a lack of specialisation of the courts dealing with return applications in several Member States. As a result judges are less familiar with the procedures and provisions involved and have less opportunity to regularly liaise with other EU jurisdictions in a way that allows mutual trust to be fostered.

2.14 The EESC welcomes the fact that the proposal specifies the time limits for issuing an enforceable return order and shortens return proceedings to 18 weeks in total.

2.15 The proposal would oblige central authorities to work to a 6-week time limit to receive and process the application, locate the respondent and the child, and promote mediation while making sure that this does not delay the proceedings. Currently, no time limit exists for central authorities.

2.16 A separate 6-week time limit is stipulated to apply to the proceedings before the first instance court and the appellate court. In the EESC's view, this renders the time limit for courts more realistic with a view to protecting the right of the defendant to a fair trial. The EESC points out that each legal system's compliance with these time limits must be guaranteed.

2.17 The EESC believes that it is reasonable to allow only one appeal in return proceedings. Most Member States' constitutions allow only one appeal against public-law decisions.

2.18 The EESC welcomes the fact that the court of origin could declare a decision provisionally enforceable even if this possibility does not exist in its national law. This is useful in systems where the decision is not yet enforceable while it is still subject to appeal. As a result, a parent would be able to have access to the child based on a decision declared provisionally enforceable while the appeal proceedings concerning that decision are being carried out on request of the other parent.

2.19 The EESC supports explicitly inviting judges to consider whether a return order should be provisionally enforceable. Delays after a return decision have a negative impact on parent-child relationships and the best interests of children. The EESC welcomes the fact that the proposal contains a number of clarifications to better implement the current rules. It obliges the Member State where the child was habitually resident immediately before the wrongful removal or retention to conduct a thorough examination of the best interests of the child before a final custody decision, possibly implying return of the child, is given. In this context, when conducting this examination of the best interests of the child, any child who is capable of forming his or her own views has the right to be heard, even if not physically present, using alternative means such as videoconferencing as appropriate.

2.20 The EESC believes that minimum standards for the hearing of a child could help to avoid refusal of recognition, enforcement or ‘exequatur’ of a decision handed down in another EU country and thus could enhance EU citizens’ acceptance (of the decision). Examples include the minimum age at which a child can be the subject of a hearing, but not procedural questions that go beyond this, such as who is to question the child. This ought to continue to be a matter for the Member States. The EESC recommends that judges involved in hearings of children should receive additional socio-educational training.

2.21 The EESC also supports the abolition of exequatur for all decisions taken in a Member State (and for authentic instruments and agreements) on parental responsibility. With regard to enforcement, which as such is a matter for the Member States, the case law of the European Court of Justice holds that the application of national rules for enforcement should not prejudice the useful effect of the regulation.

2.22 In addition, the requirement of exequatur generated average delays of several months per case and costs reaching up to EUR 4 000 for citizens⁽³⁾.

2.23 In the EESC’s view, however, certain safeguards should be maintained. These certainly include the proper service of documents, the right of the parties and of the child to be heard, especially with regard to contradictory decisions, as well as compliance with certain procedural provisions regarding the placement of a child in another EU country, based on the existing Article 56 of the Brussels IIa Regulation.

2.24 The EESC welcomes the fact that it should be possible for the court of the Member State of refuge to order urgent protective measures required if the child might be at a grave risk of harm or might otherwise be placed in an intolerable situation. For example, the court before which return proceedings are pending can grant access rights to one of the parents which will also be enforceable in the Member State of habitual residence of the child until the court of that country takes a final decision with respect to the access to a child.

2.25 The EESC welcomes the fact that the Commission proposal stipulates that the placement of the child in a foster family or institutional care in another Member State shall in every case be conditional on the host country’s consent. The requirement for consent ensures that the child will receive targeted care in the host country. The EESC also recommends that accommodating the child within his or her family should be a priority, if this is not possible or not in line with the best interest of the child, alternative foster family or community-based care should be provided.

2.26 The EESC notes that it sometimes takes several months after the application report until it has been established whether, in a given case, consent is required. If consent is required, the consultation procedure must be followed, which is also lengthy as no deadline is set for the response of the authorities receiving the application. As a result, many authorities making applications order placement of the child and send it to the host country while the consultation procedure is still ongoing or even before it is launched, because they consider placement to be urgent and are aware of the length of the procedure. This places the child in a situation of legal uncertainty.

2.27 The EESC considers that the proposal should provide for the introduction of a period of 8 weeks within which the Member State in question must take a decision on the application. Speeding up the procedure will serve the best interests of the child.

2.28 The EESC accepts that, under the Hague Convention, the court of the State in which the child is located has jurisdiction. The EESC points out, however, that in most child abduction cases the competent court will be that of the abductor. The EESC draws attention to the fact that the Brussels IIa Regulation already provides for free counselling arrangements for parents who come from a country other than the child’s current country of residence.

2.29 The EESC voices its overall support for the adoption of common minimum standards including a uniform enforcement procedure, in order to make return proceedings faster.

⁽³⁾ COM(2016) 411/2, p. 8.

3. Specific comments

3.1 The EESC considers that there is a need for regulation in cases where one parent does not come from the European Union. Migration and the global exchange of goods and services are leading to an increase in these cases. The EESC considers that it is particularly crucial to sign bilateral agreements with countries that are not parties to the Hague Convention on Child Abduction.

3.2 The EESC considers that the scope of application of the Brussels IIa Regulation needs to be clarified. It is not clear from the Commission's proposal whether new forms of marriage and divorce are covered by the Regulation. What is meant by marriage is not defined, but assumed. Even if marriage is defined according to 'national' criteria, Member States are required to comply with Article 21 of the EU Charter of Fundamental Rights, which prohibits discrimination on grounds of sexual orientation. The EESC proposes that compliance with Article 21 be mentioned in one of the recitals of the Regulation.

Brussels, 26 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

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: Connectivity for a Competitive Digital Single Market — Towards a European Gigabit Society’

(COM(2016) 587 final)

(2017/C 125/07)

Rapporteur working alone: **Ulrich SAMM**

Consultation	European Commission, 24.11.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	11.1.2017
Adopted at plenary	26.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	163/2/1

1. Conclusions and recommendations

1.1 The EESC would like to emphasise the fact that digital technology is playing an increasingly important role in our economy and social life. Significant investment in digital infrastructure must be a high priority to remain competitive and allow for new businesses and new jobs, particularly in light of investments by Europe’s main competitors: the USA and Asia.

1.2 The EESC welcomes the communication and the related EU initiatives regarding the European Electronic Communications Code, the Body of European Regulators for Electronic Communications (BEREC), the 5G action plan and the support scheme for public authorities wanting to offer free wifi access (WiFi4EU).

1.3 The fragmentation of network providers in Europe means that EU guidelines are required to achieve coherent, pan-European modernisation in support of the Digital Single Market.

1.4 The EESC notes that the Strategic Objectives for 2025 are ambitious but realistic, although they are largely dependent on national funding (private and public) with EU funding triggering and coordinating projects. In this context, the EESC welcomes the establishment of and support for the EU network of Broadband Competence Offices at regional/national level which will help local administrations to apply and use the Structural Funds.

1.5 The EESC also welcomes the introduction of a voucher system, intended to reduce administrative costs and burdens, particularly for small communities and SMEs.

1.6 The EESC is pleased to note that the European Structural and Investment Funds (ESIF) are providing considerable funding for high-speed broadband networks. The European Fund for Strategic Investment (EFSI) also plays an important role. The EESC recommends that this role be strengthened by supporting large-scale European projects for high-speed broadband networks, including along the Trans-European Transport Core Network, as well as by defining the appropriate financial and regulatory framework.

1.7 The full economic and social benefits of this transformation to Gigabit connectivity will only be delivered if Europe can provide high-capacity networks in urban and rural areas and across all of society. There is a need for public investments since, on its own, the market will not cover all remote areas and guarantee minimum digital access for the vulnerable members of our society.

1.8 The EESC recognises the positive momentum in the Member States with regard to the broadband targets set by the Digital Agenda for Europe in 2010, which serve as a reference for policy and national or regional broadband plans.

1.9 The EESC is pleased to note the free 'WIFI4EU' initiative for all Europeans in public places, public administrations, libraries and hospitals, as well as outdoor spaces. This initiative should offer everyone the option of a free internet connection which has the same digital identity throughout the EU. In particular, the EESC recommends following the eIDAS regulation ⁽¹⁾ on digital identity, which offers guarantees for data protection and public security against improper use of the service (i.e. terrorism).

2. Introduction

2.1 Very high-capacity internet connectivity is a key infrastructure for the transport of data, similar to the way that roads, railways, harbours and airports are essential for the transport of goods and people. Since the transport of data is increasingly important in our economy and social life, it is crucial for our society that we invest in this infrastructure in order to remain competitive and allow for new businesses and new jobs.

2.2 Internet connectivity is important for the Digital Single Market. The Commission's Digital Single Market Strategy of May 2015 created the right environment and conditions for the deployment of advanced digital networks. The EESC has addressed the importance of these issues in several opinions ⁽²⁾, ⁽³⁾.

2.3 The expectations that the quality of service of internet connectivity will improve by 2025 are well documented (for instance in the European Commission's public consultation).

2.4 The basic broadband available today to almost every European is no longer good enough. Over the next 10 years, very high-capacity broadband networks (Gigabit) will be needed for a large variety of applications, such as the Internet of Things (mostly wireless), cloud computing, high-performance computing and big data, next generation TV or virtual and augmented reality.

2.5 The quality of data transfer is characterised not just by speed but also by latency and reliability. Much lower latency than is currently possible and high reliability will open the door to new applications requiring fast feedback control, such as connected and automated driving, remote surgery, tactile internet or precision navigation.

2.6 The COM(2016) 587 communication accompanied by the staff working document SWD(2016) 300 sets out a vision for a European Gigabit society with three strategic objectives for 2025:

- Gigabit connectivity driving socio-economic development,
- 5G (wireless) coverage for all urban areas and all major terrestrial transport paths,
- Access for all European households to internet connectivity offering at least 100 Mbps.

All three objectives are key for Europe's growth and jobs, competitiveness and cohesion.

⁽¹⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

⁽²⁾ OJ C 487, 28.12.2016, p. 92.

⁽³⁾ TEN/601 Online Platforms (see page ... of this Official Journal).

3. The need for EU coordination

3.1 Europe has to cope with the ongoing modernisation of the digital infrastructure of its main competitors in the USA and Asia. Europe has the advantage of lower consumer prices for internet services due to higher competition within its internal market, along with the disadvantage of much more fragmented network providers. There is therefore a clear need for EU guidelines to achieve coherent, pan-European modernisation in support of the Digital Single Market.

3.2 In this context, the EESC welcomes the communication and the related EU initiatives, which the EESC has addressed in specific opinions⁽⁴⁾,⁽⁵⁾,⁽⁶⁾,⁽⁷⁾:

- A new rule book for providers of internet access and communication services — the European Electronic Communications Code,
- Body of European Regulators for Electronic Communications (BEREC),
- 5G action plan.

A support scheme for public authorities wanting to offer free wifi access.

3.3 The EESC recognises that to date, broadband targets set by the Digital Agenda for Europe in 2010 have been accepted in Member States and serve as a reference for policy in Member States. Many Member States have in fact aligned their national or regional broadband plans with the objectives.

3.4 The EESC is also pleased that the objectives were taken up as reference points under the rules and guidelines of both the European Structural and Investment Funds and the Connecting Europe Facility (CEF Broadband), as well as under the Broadband State Aid guidelines.

3.5 The Strategic Objectives for 2025, as presented in the communication, set a timetable for developing the European high-capacity broadband infrastructure. They are derived by assuming an accelerated investment rate to ambitious but still realistic values:

- Gigabit connectivity for all main socio-economic drivers,
- All urban areas and all major terrestrial transport paths to have uninterrupted 5G coverage,
- 5G connectivity to be available by 2020 as a fully-fledged commercial service in at least one major city in each Member State,
- All European households, rural or urban, will have access to internet connectivity offering a downlink of at least 100 Mbps, upgradable to Gigabit speed,
- Member States should efficiently combine their public support via grants and financial instruments to achieve the long-term objectives,
- Launch of a Broadband Fund by the end of the year, building on the CEF and EFSI,
- Weigh up the need for adequate budgetary resources for efficient broadband financing in underserved areas under CEF financial programming beyond 2020,
- Dedicated ESI funds support, possibly with an indicative share, for the digital transformation,
- Set up a public wifi voucher scheme for public authorities to offer free wifi connections in town centres,

⁽⁴⁾ TEN/612 European Electronic Communications Code (recast) (see page ... of this Official Journal).

⁽⁵⁾ TEN/613 Body of European Regulators of Electronic Communications (BEREC) (see page ... of this Official Journal).

⁽⁶⁾ TEN/614 Internet connectivity in local communities (see page ... of this Official Journal).

⁽⁷⁾ TEN/615 5G for Europe (see page ... of this Official Journal).

- Call on Member States to review progress on their National Broadband Plans and update them by the end of 2017,
- Set up a participatory broadband platform by the end of 2016, ensuring a high level of engagement and cooperation between relevant public and private entities for broadband investment and progress in implementing national broadband plans,
- Establish and support the EU network of Broadband Competence Offices at regional/national level.

By 1 July 2018, assess the impact on the cost of EU-funded broadband projects and issue guidelines on promoting best practice.

3.6 The full economic and social benefits of this digital transformation will only be delivered if Europe can ensure widespread deployment and take-up of very high-capacity networks in rural as well as urban areas and across all of society. However, the market will not solve all problems. Specifically, it will not:

- cover remote areas, and/or
- bridge large gaps between implementation of advanced technology and first applications and customers for new services,
- guarantee minimum digital access for the vulnerable members of our society.

Therefore, public support schemes have to be implemented to achieve the goals for the entire EU and for all Europeans.

4. New initiatives for Europe

4.1 The EESC welcomes the establishment of and support for the EU network of Broadband Competence Offices at regional/national level. This will be key for rural areas and small communities. It will help local administrations to apply and use the Structural Funds, by providing best practice and advising local administrations. This will be a big step forward for developing rural areas as well.

4.2 EU strategies and instruments are technology neutral. However, it is well known that eventually only optical fibre can provide optimal performance. The old monopolies (such as German Telekom) should not hinder the installation of optical fibre while continuing to invest in their copper cable infrastructure.

4.3 Only some countries, such as Malta, Lithuania, Belgium and the Netherlands, already have nearly comprehensive coverage by Next Generation Access (NGA) networks. Elsewhere, NGA coverage is less advanced. Some Member States with currently less developed infrastructure have even been able to leapfrog technology steps. The installation of optical fibre gives them an advantage.

4.4 'EDUROAM' is the biggest and most successful roaming system for free wifi worldwide, developed in the EU for academics. It gives millions of students and other academics free access to wifi. The EESC is pleased to note that this success story could serve as a role model for the free 'WIFI4EU' initiative for all Europeans in public places, public administrations, libraries and hospitals, as well as freely accessible outdoor spaces. This initiative should offer everyone the option of a free internet connection which has the same digital identity throughout the EU. In particular, the EESC recommends following the eIDAS regulation on digital identity, which offers guarantees for data protection and public security against improper use of the service (i.e. terrorism).

4.5 Designed to support SMEs, vouchers will be used by local authorities to pay for installations (cables, antennas, etc.). Companies installing the material will send the vouchers to the EU in order to be paid. Apart from reducing administrative costs and burdens, the system will allow easy monitoring and good quality objectives.

4.6 The EESC welcomes the goal of upload-download symmetry for all socio-economic drivers as this will be essential for many future applications.

4.7 The EESC asks for a scheme to ensure that vulnerable end-users have access to reasonable and adequate connectivity allowing them to participate socially and economically in modern society. WiFi4EU could be one element of this.

4.8 Regulatory incentives for network providers to support the COM(2016) 587 objectives should not conflict with other important objectives, such as network neutrality.

4.9 In the long term, people in rural areas should also be able to benefit from healthy competition and freedom to choose their internet access provider. Regulatory measures should therefore also provide incentives for such competition.

4.10 5G technology will not only enable new mobile applications, it will also serve as a bridge technology bringing high-speed connectivity to rural areas more rapidly. Nevertheless, only a fibre-based infrastructure will provide the stability and reliable bandwidth required by many new applications.

5. Financing

5.1 The EESC is pleased to note a sharp increase in funding from the European Structural and Investment Funds (ESIF) for high-speed broadband networks from EUR 2,7 billion in 2007-2013 to around EUR 6 billion for 2014-2020. Most of this investment is expected to take the form of grants. With the leverage effects on national and/or regional co-funding and private co-funding, it is expected that EUR 9-10 billion will be invested in broadband during the 2014-2020 programming period. This will be key for commercial investments to provide high-speed connectivity for the rural population.

5.2 The European Fund for Strategic Investment (EFSI) also plays an important role. This role could be strengthened by supporting large-scale European projects for high speed broadband networks, including along the Trans-European Transport Network, Industrial Gigabytes, and Industry 4.0, as well as by having DG CONNECT represented on the EFSI Steering Committee. The Commission should also be proactive in defining the appropriate financial and regulatory framework.

5.3 The Connecting Europe Facility (CEF) in the digital area has a budget of EUR 150 million to support deployment of state-of-the-art broadband infrastructure, based on the provision of financial instruments via the European Investment Bank (EIB). The broadband component of the CEF is expected to mobilise at least EUR 1 billion of additional investment through a dedicated fund for broadband network infrastructure, which could be further supplemented by the EFSI.

Brussels, 26 January 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the proposal for a directive of the European Parliament and of the Council establishing the European electronic communications code (Recast)

(COM(2016) 590 final — 2016/0288 (COD))

(2017/C 125/08)

Rapporteur working alone: **Jorge PEGADO LIZ**

Referral	European Parliament, 24.10.2016
	Council, 9.11.2016
Legal basis	Articles 114 and 304 TFEU
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	11.1.2017
Adopted at plenary	26.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	162/3/23

1. Conclusions and recommendations

1.1 The EESC endorses the general thinking underlying the Commission's proposal on the European electronic communications code, as well as its timing, the way it has approached the subject and the manner in which it has tackled the codification and horizontal recasting of the four existing directives (Framework Directive, Authorisation Directive, Access Directive and Universal Service Directive), bringing them together in a single directive and simplifying the current structure, aimed at making the legislation more consistent and accessible, in line with the aim of regulatory fitness (REFIT).

1.2 The EESC would in particular highlight the difficulty of recasting the various directives concerned, stressing the excellent legal work carried out the first time, but it would draw attention to the need for the various language versions to be carefully reviewed so as to sort out a few minor problems in the wording.

1.3 It agrees with the main objectives of the proposal, aimed at securing better internet connectivity for everyone and all businesses in the bundle of initiatives designed to make it more attractive for firms to invest in new, high-quality infrastructures throughout the EU, both at local level and beyond national frontiers.

1.4 The EESC does, however, express regret at the decision to leave the directive on privacy out of this move, as it should be a shining example for citizens of the positive action taken by the EU for their benefit. The directive is deprived of one of the most important pillars guaranteeing the main interests of network users. This is therefore one of the weak points of the proposal.

1.5 It also deplores the fact that the Commission has opted for a directive with a variety of harmonisation arrangements, leaving many of the important matters to the Member States to decide upon, doing nothing to prevent market fragmentation, rather than opting for a regulation which would be directly applicable and legislating for a higher level of consumer protection, thus contributing to greater integration in the single market.

1.6 The EESC supports the proposal, highlighting the following aspects:

- (a) concern about accessibility of services for 'users with disabilities', as well as the need to 'lay down the [...] end-user rights' better, with particular emphasis on the application of EU standards on consumer protection, in particular Directives 93/13/EEC, 97/7/EC and 2011/83/EU;

- (b) relevance of the wording of new concepts and definitions, important for clarifying and interpreting the legal framework;
- (c) the change to the procedures for analysing the market and codifying current best practice, so as to ensure that access requirements are imposed where and when necessary to offset retail market shortcomings and secure results for the end-user, all the while ensuring competitive outcomes;
- (d) facilitating the sharing of the 5G network spectrum and promoting access for end-users to basic WiFi connectivity; shared use of the spectrum, based on general authorisation or individual rights of use, can allow intensive, more efficient exploitation of this scarce resource;
- (e) greater independence for national regulatory and other authorities responsible for this area stands out amongst the special guarantees granted in the selection, limitation of mandates, independent management and dismissal of members of the respective management bodies.

1.7 On the other hand, the EESC has serious misgivings and strong doubts about the following points:

- (a) some innovation introduced into the ‘universal service’ provisions which, on the pretext of the declared aim of modernising the regime for this service, in practice involves replacing services and even abolishing a series of requirements such as public payphones, comprehensive directories and directory enquiry services, making the desired outcome redundant;
- (b) the definition of functional broadband, since this might be likely to create just an arbitrary list of accessible internet services, unlike a neutral minimum quality link, and may thus in the future give rise to discriminatory practices detrimental to end-users;
- (c) reference to social assistance and welfare, i.e. to the national budget through taxes: ‘support is provided to low-income or special social needs end-users in view of ensuring affordability of functional internet access and voice communications services at least at a fixed location’. This removes such requirements from the sphere of service providers and enables them to only provide coverage for profitable sectors, which protects their interests and reduces both the scope of universal service and consumer rights; in the same vein, it is public funds which are being called upon to cover the costs of public service, since the possibility of pooling costs, which was previously available, has now been removed;
- (d) the express choice of the maximum harmonisation method as regards end-users’ rights, at a low level of protection, which ends up curtailing users’ rights out of a desire for simplification and runs counter to the stance systematically defended by the Committee;
- (e) the removal of some regulatory requirements or a reduction in earlier rights and guarantees on the pretext (not demonstrated) that they are no longer necessary or are covered by general consumer rights. One example thereof is the revocation of national regulators’ powers to impose retail price regulation directly on operators with significant market power (SMP) or certain provisions on contracts, transparency, equivalence of access for users with disabilities, directory services and the interoperability of digital television equipment;
- (f) shortcomings in the regulation of certain practices reported as unfair in contracts with users, such as upper limits on the length of contracts or termination of contracts, contract renewal in the event of bundled offers, the lack of sanctions for ensuring efficiency of the process of changing supplier for end-users, maintenance of the requirement for compensation by the end-user ‘for the pro rata temporis value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a pro rata temporis reimbursement for any other promotional advantages marked as such at the moment of the contract conclusion’;

- (g) lastly, this proposal does not respond to the Council's express wish that there be a European code of rights for users of electronic communications services, the aim of which would be to 'have at EU level a simple, user-friendly tool bringing together all the rights of users of electronic communications services in the areas of ICT (information and communications technology) and consumer protection'.

2. Key elements of the Commission proposal

2.1 *Proposal for a directive*

2.1.1 As part of the Digital Single Market (DSM)⁽¹⁾ strategy, and given the recent rapid and profound structural changes in the electronic communications market and the arrival of formerly unknown types of market players now competing with traditional telecom operators, combined with the rise in the number and popularity of online content services, a review and update of the regulatory framework for electronic communications is required. This framework dates from 2009 and should be reviewed so that individuals and businesses can seamlessly access and conduct online activities under conditions of fair competition. The main objective set by the Commission in its proposal of 14 September 2016⁽²⁾ is to ensure better connectivity for all individuals and businesses.

2.1.2 The present proposal is part of a package aimed at making investment in new, high-quality infrastructure throughout the EU — both locally and beyond national borders — more attractive to all businesses. The package also contains a proposal for a regulation on the Body of European Regulators for Electronic Communications (BEREC) and a communication from the Commission on *Connectivity for a competitive Digital Single Market — Towards a European gigabit society*. An action plan to introduce 5G services across the EU from 2018 and a proposal for a regulation to promote internet connectivity in local communities and public spaces (WiFi4EU) are likewise part of the package.

2.1.3 All these instruments pursue the three main strategic connectivity objectives for 2025:

- (a) all the main socio-economic drivers should have access to extremely high — gigabit — connectivity;
- (b) all European households, rural or urban, should have access to connectivity offering a download speed of at least 100 Mbps, which can be upgraded to Gbps speeds;
- (c) all urban areas as well as major roads and railways should have uninterrupted 5G coverage. As an interim target, 5G should be commercially available in at least one major city in each EU Member State by 2020.

2.1.4 The proposal is based on Article 114 of the Treaty on the Functioning of the European Union, aiming to 'achieve the internal market for electronic communications and ensure its functioning'. It opts for a horizontal recasting of the four existing directives (Framework Directive, Authorisation Directive, Access Directive and Universal Service Directive), bringing them together in a single directive and simplifying the current structure, aimed at making the legislation more consistent and accessible, in line with the aim of regulatory fitness (REFIT) and taking the form of a fully-fledged European electronic communications code.

2.1.5 Depending on the areas addressed, the proposal adopts different forms of legislative harmonisation, ranging from full targeted or selective harmonisation, for example where end-user protection rules are concerned, to minimum harmonisation of national regulatory authorities' (NRA) competences at a high level, or maximum harmonisation in spectrum matters.

2.1.6 The proposal was based on wide-ranging public consultation with stakeholders over a 12-week period and on external expert advice from the EP and the Council, together with a number of studies that were examined and reviewed in detail in the impact assessment, and by a high-level expert panel set up under the SMART 2015/0005 study.

⁽¹⁾ COM(2015) 192 final.

⁽²⁾ COM(2016) 590 final.

2.1.7 The Commission's intention with this present proposal is to achieve the following objectives:

- (a) increased competition and predictability for investments;
- (b) better use of radio-frequencies;
- (c) stronger consumer protection, in areas where general consumer protection rules do not adequately address sector-specific needs;
- (d) a safer online environment for users and fairer rules for all players.

2.1.8 In short, several of the proposed changes, particularly those concerning spectrum, universal service, access, end-users, numbering and governance policy, aim to introduce clear rules, allow parties to easily understand their rights and obligations, and avoid overregulation and administrative burdens.

2.1.9 The proposed changes include specifically: streamlining and geographic targeting of access regulation; the use (wherever possible) of general authorisation in preference to individual licences for spectrum; fostering secondary markets for spectrum; the removal of redundant universal service obligations such as requirements to ensure the provision of payphones and physical directories; narrowing of the scope of universal service; clarifying the scope of the regulatory framework and the removal of redundant consumer protection obligations where these are already addressed through horizontal legislation or met by the market; harmonisation and clarification of rules and governance of numbering in the machine-to-machine (M2M) context.

2.1.10 The Commission also proposes to strengthen the role of national regulators and BEREC to ensure consistent and predictable application of the rules throughout the Digital Single Market, limiting current fragmentation and inconsistencies with the aim of enhancing the efficient governance of new bodies⁽³⁾.

2.2 *The recast method*

2.2.1 The Commission has gone beyond simple codification, bringing together the content of the different previous directives into a harmonious, coherent text without, however, amending their content, as it does in most cases. Instead, it has used the possibility granted to it under the Interinstitutional Agreement signed on 28 November 2001⁽⁴⁾ to make deep and substantial changes ('substantive amendments') to the current regime, in tandem with the horizontal merger of several previous acts into a single legislative act.

2.2.2 When carrying out any legislative simplification, codification or substantive amendment of the legal content of a legislative act, 'The Community's normal legislative process shall be complied with in full' (Article 5 of the Agreement). More specifically, it must be referred to the EESC for an opinion, and the recast proposal must comply with a series of criteria and rules clearly set out in Articles 6 and 7 of the Agreement.

3. General comments

3.1 *Aspects not covered in the present opinion*

3.1.1 On account of both the limits on the length of its opinions and the nature of the proposal itself, the EESC does not consider that it should comment again on content carried over unchanged from previous legislative acts into the present proposal, except insofar as this is absolutely necessary for understanding one or another of the points addressed.

3.1.2 The EESC has commented in detail in previous opinions on all such content and would simply confirm its positions in this regard.

3.1.3 Neither will it comment in detail in the present opinion on aspects concerning the structure and functioning of BEREC, which are to be analysed in detail in the opinion being drawn up in parallel with the present one.

⁽³⁾ COM(2016) 591 final.

⁽⁴⁾ OJ C 77, 28.3.2002 p. 1.

3.2 Consideration of the general thrust of the proposal

3.2.1 Firstly, the Commission would congratulate the Commission on the good timing of its initiative, which is fully warranted on the grounds of market developments, technological progress and the legal protection of users of electronic communications users. The legal framework needs to be recast so as ensure that individuals can seamlessly access and conduct online activities and that businesses can develop these activities under conditions of fair competition. It also welcomes the fact that Commission has opted for the recast method, which is a highly appropriate instrument within the general REFIT framework; its only regret is that the Commission makes little use of it.

3.2.2 The EESC acknowledges in particular how the Commission has correctly conducted this difficult recast exercise, complying strictly with the established rules, and regrets only that the Commission has not simultaneously published a 'clean', more readable version, as the EESC has suggested on a number of occasions.

3.2.3 It also agrees in general terms with the new rules introduced in the proposed new directive and the way in which these legal provisions are made compatible with other Community policies: the specific rules in force in the sector, and more particularly the principles of competition law and horizontal consumer protection legislation.

3.2.4 The EESC considers, however, that legal simplicity and certainty would have been increased if, instead of choosing a directive — a choice which is not entirely justified — that is so all-embracing and wide-ranging and leaves so many aspects up to national rules, the option had been for a framework directive to be applied directly, immediately and uniformly in all the Member States, as in fact proposed by the Commission itself, in the form of specific directives for some of the areas covered, entailing different levels of harmonisation depending on market conditions and the nature of the subject matter. The time required for adoption (a minimum of 18 months), transposition (no less than 2 years) and implementation means that the new system cannot come into effect before 2021/2022.

3.2.5 On the other hand, that fact that the proposed directive on privacy (COM(2017) 10 final) published on 10 January 2017 — one of the most important aspects of the package — has been left out, while understandable on grounds of the legislative timetable, inevitably constitutes a weak point in the proposal. The proposal is thus deprived of one of the most important pillars guaranteeing the main interests of network users. The effect of this is to push back steps for bringing current rules into line with what will be the future privacy instrument into the distant future, making transposition and implementation of all the measures more difficult.

3.2.6 The Regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union⁽⁵⁾ and certain aspects of the Communication from the Commission on promoting the shared use of radio spectrum resources in the internal market⁽⁶⁾, which were worth including in the Code, have also been left out.

3.2.7 Lastly, it is clear that this proposal does not respond to the Council's express wish that there be a European code of rights for users of electronic communications services, the aim of which would be to 'have at EU level a simple, user-friendly tool bringing together all the rights of users of electronic communications services in the areas of ICT (information and communications technology) and consumer protection'⁽⁷⁾; nor, by the same token, does it take on board the explicit intention set out in the Digital Agenda to 'issue a code of EU online rights by 2011 that summarises existing digital user rights in the EU in a clear and accessible way'⁽⁸⁾.

4. Specific comments

4.1 Subject matter and aim

The EESC welcomes the Commission's emphasis in Article 1 on the issue of the accessibility of services for 'disabled users' as well as on the need to 'lay down [...] end-user rights' in a better way. In this regard, the proviso set out in Article 1(4) is of particular importance: the provisions of this directive are to apply without prejudice to Union rules on consumer protection, in particular Directives 93/13/EEC, 97/7/EC and 2011/83/EU, and national rules in conformity with Union law. The EESC has recently issued information reports on these aspects (information reports INT/795 and 796, adopted 15 December 2016).

⁽⁵⁾ COM(2011) 402 final.

⁽⁶⁾ COM(2012) 478 final.

⁽⁷⁾ 3017th meeting, 31 May 2010.

⁽⁸⁾ COM(2010) 245 final.

4.2 Definitions

Regarding definitions, the EESC emphasises the accuracy of the definitions of new concepts such as 'very high capacity network', 'interpersonal communications service', 'number-based interpersonal communications service', 'number-independent interpersonal communications service', 'security' of networks and services, 'small-area wireless access point', 'radio local area network (RLAN)', 'shared use of radio spectrum', 'harmonised radio spectrum', 'public safety answering point (PSAP)', 'most appropriate PSAP', 'emergency communication' and 'emergency service', which are of relevance to the legal regime.

4.3 Objectives

4.3.1 Where the objectives are concerned, the EESC would draw attention to the important aspect of cooperation between national regulatory authorities and other competent authorities, as well as between the Member States and BEREC for achieving these objectives, although the Committee's preferred 'model' would adopt a different approach, as set out in its opinion on the new status of BEREC.

4.3.2 It is particularly important in this regard to emphasise the re-definition of the obligations of the national regulatory and other competent authorities, as well as those of BEREC, laid down in Article 3(2).

4.3.3 Of similar importance is cooperation between the Member States through the Radio Spectrum Policy Group, established by Commission Decision 2002/622/EC, with each other and with the Commission, and their call, together with the European Parliament and the Council, in support of strategic planning and coordination of radio spectrum policy approaches in the Union.

4.4 Aspects of particular interest

4.4.1 Since it is impossible, within the bounds of the present opinion, to analyse all the provisions in question, the EESC's intention is to concentrate on those provisions it considers to be of greatest relevance to society.

4.4.2 Regulation of access

4.4.2.1 The EESC welcomes the fact that rules on access have not been substantially amended and agrees with the Commission's streamlining of procedures and making ubiquitous connectivity and very high capacity (VHC) the core objective of the regulatory framework for the sector, along with the promotion of competition, completion of the internal market and consumer protection.

4.4.2.2 The EESC supports the specific market regulation amendments requiring regulators to identify investment plans and allowing public authorities to seek investors in areas with insufficient coverage. This should increase transparency surrounding network installation plans, provide investors with increased predictability and allow regulators to take greater account of specific geographical features in their market analyses.

4.4.2.3 It agrees with the Commission on the change to market analysis procedures and on the codification of current best practice so as to ensure that access requirements are imposed when and where necessary to offset retail market shortcomings and secure results for the end-user, all the while ensuring competitive outcomes. However the EESC does not find justification for the extension of the 3-year market review period to 5 years.

4.4.2.4 Lastly, the EESC agrees that infrastructure-based competition is one of the most effective ways of providing new or enhanced internet connectivity in areas where population density is such that it can absorb more than one network.

4.4.3 Spectrum assignment

4.4.3.1 Although the EU was the first to develop 4G wireless technologies, it is lagging behind in deployment compared to other regions. Since spectrum assignment and management is, in principle, a Member State responsibility, this has generally to be identified as the reason for market fragmentation, with a direct negative impact on wireless network coverage and penetration across Europe. If this situation persists, it will jeopardise the successful introduction of 5G services in Europe and the deployment of new, innovative services.

4.4.3.2 This is why the proposal sets out to impose a set of common rules such as, for example, a minimum licence duration to guarantee a return on investment, more scope for spectrum trading, consistency and objectivity of regulatory measures (reservations, arrangements for invitations to tender, price caps and spectrum blocks, and exceptional spectrum reservations) and peer review between national regulators to ensure the consistency of assignment practices under BEREC. On the other hand, operators must undertake to use the spectrum assigned to them effectively.

4.4.3.3 The EESC agrees with this new approach in that, in addition to speeding up the spectrum designation procedures for electronic communications, with clear deadlines for when spectrum is to be made available on the market, investors in next-generation wireless broadband enjoy greater predictability and consistency regarding future licensing models and preconditions for the allocation or renewal of national spectrum rights.

4.4.3.4 Lastly, the EESC welcomes the simplification of the steps to share the 5G network spectrum, and the moves to promote end-user access to basic WiFi connectivity. Shared use of the spectrum, based on general authorisation or individual rights of use, can effectively allow intensive, more efficient use of this scarce resource. Under the general authorisation system, users of radio frequency spectrum will enjoy better regulatory protection against harmful interference, so that barriers to the roll-out of wireless access points will be removed and end-user access to shared wireless internet connections made easier.

4.4.4 Redefining the universal service regime

4.4.4.1 The 'renewed' universal service regime and the amendments to services and the rules protecting end-users are the aspects about which the EESC has the greatest reservations. Universal service was also one of the aspects most criticised by the EESC in previous opinions.

4.4.4.2 Extension of this service to other services, such as mobile services and broadband internet access, have long been a priority. On the pretext of the declared aim of modernising the framework for this service, in practice the proposal involves replacing services and even removing a series of requirements such as public payphones, comprehensive directories and directory enquiry services from its scope, making the desired outcome redundant. The EESC is not sure that the sector will prove sufficiently mature to ensure that these services will continue to be provided in the absence of universal service requirements. Article 82 allows the Member States to 'continue to ensure the availability or affordability of other services', however this not only depends on 'the need for such services [to be] duly demonstrated in the light of national circumstances', but also opens the door for such services to be quickly abandoned due to the burdens they involve.

4.4.4.3 The EESC would question the definition of functional broadband, since this might be likely to create just an arbitrary list of accessible internet services, as opposed to a neutral minimum quality link, and may thus in future give rise to discriminatory practices detrimental to end-users.

4.4.4.4 Article 79 does indeed require Member States to ensure that 'all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available functional internet access and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location', and they may even 'require undertakings which provide such services' to 'offer ... tariff options or packages different from those provided under normal commercial conditions' to 'low-income or special social needs end-users', applying 'common tariffs, including geographic averaging, throughout the territory'.

Article 80(4) and (5), however, leaves it to social services — in other words, national budgets funded by taxes — to ensure that 'support is provided to low-income or special social needs end-users' or to 'end-users with disabilities' 'in view of ensuring affordability of functional internet access and voice communications at least at a fixed location', effectively relieving service suppliers of these obligations.

4.4.4.5 Moreover, the entire system for financing the public service where the regulatory authorities find that an undertaking is subject to an unfair burden has been limited to the introduction of 'a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds'. Yet again, the national budget, through taxation, is required to cover public service costs, particularly in the absence of providers in the non-profitable areas of the public service, since the option of sharing the costs, previously set out in Article 13(b) of the relevant revoked directive, (which reads '(b) to share the net cost of universal service obligations between providers of electronic communications networks and services'), has been removed.

4.4.5 *End-user rights*

4.4.5.1 Where the EESC has greater difficulty, however, is with the new title on end-user rights, since the general thrust of its opinions on this subject is not reflected in the solutions adopted, starting with the choice of maximum harmonisation under Article 94. The EESC has always argued that where consumer rights are concerned, minimum harmonisation directives or regulations establishing the highest level of protection for consumers should be adopted.

4.4.5.2 It deems the removal of some of the regulatory requirements or a reduction in earlier rights and guarantees, on the pretext (not demonstrated) that they are no longer necessary or are covered by general consumer rights, to be unacceptable. One example thereof is the revocation of national regulators' powers to impose retail price regulation directly on operators with SMP or certain provisions on contracts, transparency, directory services and the interoperability of analogue television equipment (Articles 95 to 98 and 103 to 105).

4.4.5.3 Neither has the Commission given any acknowledgement that certain situations that have been reported as unfair in contracts with users need better regulation, such as upper limits on the length of contracts or termination of contracts, contract renewal in the event of bundled offers, the lack of sanctions for ensuring efficiency of the process of changing supplier for end-users, and maintenance of the requirement for compensation by the end-user 'for the pro rata temporis value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a pro rata temporis reimbursement for any other promotional advantages marked as such at the moment of the contract conclusion'.

4.4.5.4 The EESC however welcomes a number of new provisions such as better readability of contracts through a contract summarising essential simplified information, the provision of consumption control tools, price and quality tools and a ban on discrimination based on nationality or country of residence.

4.5 *Regulatory and other competent authorities*

4.5.1 The rewording of Article 5(1) is particularly significant with regard to the tasks of regulatory and other competent authorities.

4.5.2 The provisions of Articles 7 to 9 concerning the independence of national regulatory and other competent authorities stand out on account of the special guarantees granted in the selection of the members of the respective management bodies, the limit on the duration of their mandates, and the independent management and dismissal of these members.

4.6 *Out-of-court dispute resolution*

4.6.1 Particular attention is drawn to the proposal's concern to establish transparent, non-discriminatory, fast, fair, simple and inexpensive out-of-court procedures for disputes that may arise between consumers and undertakings providing electronic communications networks and/or services, or publicly available electronic communications services other than number-independent interpersonal communications services, relating to the contractual conditions and/or performance of contracts for the supply of those networks and/or services.

4.6.2 The option given to the Member States to extend access to such procedures to other end-users, in particular micro and small enterprises, is even more important.

4.6.3 However, in the event of cross-border disputes, the proposal provides a solution which is undermined by the lack of EU-level mechanisms for disputes of this type, enmeshing itself in a complex procedural web offering doubtful outcomes in terms of both effectiveness and a real guarantee of a fair balancing of interests in good time, eventually terminating in court procedures.

Brussels, 26 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and the Council establishing the Body of European Regulators for Electronic Communications’

(COM(2016) 591 final — 2016/0286 (COD))

(2017/C 125/09)

Rapporteur working alone: **Jorge PEGADO LIZ**

Consultation	European Parliament, 24.10.2016
Legal basis	Council of the European Union, 25.10.2016
Section responsible	Article 114 of the Treaty on the Functioning of the European Union
Adopted in section	Section for Transport, Energy, Infrastructure and the Information Society
Adopted at plenary	11.1.2017
Plenary session No	25.1.2017
Outcome of vote (for/against/abstentions)	522
	118/0/4

1. Conclusions and recommendations

1.1 In several of its opinions, the EESC has consistently advocated increasing the responsibilities, competences and powers of the Body of European Regulators for Electronic Communications (BEREC) so as to give it the necessary capacity to perform an effective regulatory role for the sector at European level.

1.2 Broadly speaking, it thus supports the intention behind the Commission’s proposal.

1.3 However, it regrets that the Commission did not go for what it calls option 4, which it gives no reason for excluding, preferring to confine BEREC to the area — albeit reinforced — of cooperation or coordination.

1.4 As it has already stated, the EESC is of the firm opinion that only one option, that of turning BEREC into a genuine regulatory authority, will be able to take a forward-looking approach and provide proper regulation of new pan-EU or global information services, currently largely unregulated or subject to unclear regulatory frameworks (M2M, OTT and other areas of great importance to the Union, such as roaming or transnational markets), or binding pan-European assignment procedures for specific bands.

1.5 A point which specifically deserves careful consideration and review concerns the composition, organisation and functioning of the Board of Appeal, in order to ensure in all cases genuine independence and impartiality and an adequate appeal system, especially when it comes to decisions relating to cross-border disputes.

2. Very brief gist of the proposal

2.1 In its May 2015 Communication on A Digital Single Market Strategy for Europe⁽¹⁾ (the ‘DSM Strategy’), the Commission pointed out that the changing market and technological environment make it necessary to strengthen the institutional framework by enhancing the role of the Body of European Regulators for Electronic Communications (BEREC). In its Resolution on Towards a Digital Single Market Act⁽²⁾, the European Parliament called on the Commission to integrate further the digital single market by ensuring that a more efficient institutional framework is in place. It can do this by strengthening the role, capacity and decision-making powers of BEREC in order to allow it to foster the consistent

⁽¹⁾ OJ C 13, 15.1.2016, p. 176.

⁽²⁾ European Parliament Resolution of 19 January 2016 on ‘Towards a Digital Single Market Act’ (TA(2016)0009).

implementation of the regulatory framework for electronic communications, to enable efficient oversight of BEREC regarding the development of the single market and to help it to resolve cross-border disputes.

2.2 This proposal should be seen in conjunction with the Proposal for a Directive establishing the European Electronic Communications Code⁽³⁾, which entrusts BEREC with additional tasks that will help to ensure that the regulatory framework is implemented consistently and foster the development of the electronic communications market throughout the Union. Furthermore, BEREC will also contribute to the promotion of access and take-up of very high capacity data connectivity and of competition in the provision of electronic communications services and networks, and to the promotion of the interests of the citizens of the Union.

2.3 The main aim of the proposal is thus to strengthen the institutional role of BEREC and enhance its governance structure by simultaneously turning BEREC and the BEREC office into a fully fledged agency with a broader mandate making it fit to carry out its future tasks. This will make for continuity with the work accomplished by BEREC and continue the pooling of expertise from NRAs, aligning its structure and governance, operation, programming and accountability with the Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012 ('the Common Approach')⁽⁴⁾. It also incorporates into the BEREC Regulation the tasks assigned to it in the recently adopted Regulation (EU) 2015/2120, which sets out rules for ensuring open internet and abolishing roaming surcharges⁽⁵⁾. However, the revision of the Directive on privacy and electronic communications⁽⁶⁾, which the Commission promised for the end of 2016, is not included.

2.4 To achieve this objective the Commission has considered four options: (1) no change; (2) merely an enhanced advisory role and strengthened competences; (3) advisory role with certain pre-normative powers and better market review process and spectrum assignment of right of use for the radio spectrum — the preferred solution which the proposal sets out in detail; and (4) setting up an EU regulator, as a reinforced agency with the necessary resources to accommodate a transfer of implementing powers, including supervision and enforcement powers, which can act with binding powers in areas in which it is necessary to ensure the uniform implementation of EU rules — an option excluded by the Commission from the outset.

2.5 The following points set out the legal aspects of the option selected, which are discussed below.

3. General comments

3.1 In several of its opinions⁽⁷⁾, the EESC has advocated increasing the responsibilities, competences and powers of BEREC so as to give it the necessary capacity to perform an effective regulatory role for the sector at European level. Broadly speaking, it thus supports the intention behind the Commission's proposal.

⁽³⁾ COM(2016) 590 final, with regard to which the EESC issued opinion TEN/612 European Electronic Communications Code (see page ... of this Official Journal).

⁽⁴⁾ Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012.

⁽⁵⁾ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 (OJ L 310, 26.11.2015, p. 1), with regard to which proposal the EESC adopted opinion TEN/534 (OJ C 177, 11.6.2014, p. 64).

⁽⁶⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37); situation already addressed by opinion TEN/612 European Electronic Communications Code (see page ... of this Official Journal).

⁽⁷⁾ For example:

- EESC Opinion on the proposal amending Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 (COM(2016) 399 final) (OJ C 34, 2.2.2017, p. 162, point 4.7).
- EESC Opinion on the Commission's proposals on new measures on the EU single market for telecoms (COM(2013) 627 final and COM(2013) 634 final) (OJ C 177, 11.6.2014, p. 64, point 4.7.1),
- EESC Opinion on the Commission Communication on Promoting the shared use of radio spectrum resources in the internal market (COM(2012) 478 final) (OJ C 133, 9.5.2013, p. 22, point 4.10),
- EESC Opinion on an inclusive digital single market (OJ C 161, 6.6.2013, p. 8, point 3.1.1.1),
- EESC Opinion on the Commission Communication — The open internet and net neutrality in Europe (COM(2011) 222 final) (OJ C 24, 28.1.2012, p. 139, point 2.4.1),
- EESC Opinion on the Proposal for a Decision establishing the first radio spectrum policy programme (COM(2010) 471 final) and the Communication from the Commission — European Broadband: investing in digitally driven growth (COM(2010) 472 final) (OJ C 107, 6.4.2011, p. 53, points 2.13 and 2.14).

3.2 However, the EESC has focused on a solution which is closer to the Commission's option 4, insofar as it believes that mere cosmetic changes to BEREC's status are not enough to turn it into a genuine regulatory authority.

3.3 As it explicitly stated in opinion TEN/534: 'In the EESC's view, the proposed changes regarding the status of BEREC, e.g. a full-time post of chairperson of the Board of Regulators, may prove insufficient in the light of competitiveness challenges and the need to create investment incentives, particularly regarding broadband communications and the NGN/NGA network' (point 4.7.1).

3.4 Indeed, for BEREC to be able to perform tasks in an area where the lack of proper regulation is already well known, such as the new pan-EU or global information services, currently largely unregulated or subject to unclear regulatory frameworks (M2M, OTT and other areas of great importance to the Union, such as roaming or transnational markets), or binding pan-European assignment procedures for specific bands, as well as to discharge the new responsibilities conferred upon it, not only by this proposal but to an even greater extent by the proposal for a European Electronic Communications Code, it does not seem acceptable to confine BEREC's level of intervention to the area — albeit reinforced — of cooperation or coordination.

3.5 What this proposal certainly fails to provide is a forward-looking approach, in the sense of greater integration of the single digital market, in that it continues to allow regulatory fragmentation by NRAs.

3.6 This may explain the discouraging results of the evaluation of BEREC reported in the proposal in terms of relevance, effectiveness, efficiency and the added value of the approach on which it insists despite everything.

4. Specific comments

4.1 In general, in terms of defining competences, organisation and operation, the text of the regulation follows the common approach for agencies of the same type defined in the Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies and requires no particular comment.

4.2 However, some comment is called for on the Board of Appeal with regard to the guarantees of 'the impartiality and independence of its members ... on the basis of transparent and objectively verifiable criteria to be defined by agencies'; in particular, where 'recruitment of Board of Appeal's members' is 'from among the staff of the Agency and/or the Agency's Management Board', this 'should not put into question the abovementioned principles of impartiality and independence' (point 21 of the Joint Statement).

4.3 Compared with the arrangements in other, identical bodies such as the EUIPO⁽⁸⁾, the Community Plant Variety Office⁽⁹⁾, the European Aviation Safety Agency⁽¹⁰⁾ and the European Chemicals Agency⁽¹¹⁾, to name but a few, the EESC is surprised at the sketchy nature of the provisions of Articles 11 to 14 of the proposal, which define the legal framework for the Board of Appeal.

4.4 The EESC notes that effectively all the regulations on the rules of organisation and procedure of the boards of appeal of the abovementioned agencies set out in detail the procedures applied in these bodies and state that decisions issued are subject to actions for annulment before the Court of the European Union, whose judgments are then subject to appeal to the Court of Justice on points of law.

⁽⁸⁾ Commission Regulation (EC) No 216/96 of 5 February 1996 (OJ L 28, 6.2.1996, p. 11), as amended by Commission Regulation (EC) No 2082/2004 of 6 December 2004 (OJ L 360, 7.12.2004, p. 8).

⁽⁹⁾ Article 67 *et seq.* of Council Regulation (EC) No 2100/94 of 27 July 1994 (OJ L 227, 1.9.1994, p. 1).

⁽¹⁰⁾ Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 (OJ L 240, 7.9.2002, p. 1).

⁽¹¹⁾ Commission Regulation (EC) No 771/2008 of 1 August 2008 (OJ L 206, 2.8.2008, p. 5).

4.5 It transpires that, although in most cases its remit is purely advisory, there are cases where, taking the provisions of the proposal for a directive and the provisions of the present proposal together, BEREC ends up with decision-making power with legal implications for third parties; this will be the case of certain decisions listed in Article 2(1)(b) to (d) on:

- identification of transnational markets,
- contract summary templates,
- the economic model intended to assist the Commission in determining the maximum termination rates in the Union,
- opinions on the resolution of cross-border disputes,
- draft national measures on market regulatory remedies,
- draft national measures on the procedures for radio spectrum peer review,
- draft decisions and recommendations on harmonisation.

4.6 A good example is the case of cross-border disputes, where '[a]ny party may refer the dispute to the national regulatory authority or authorities concerned', which must then 'notify the dispute to BEREC in order to bring about a consistent resolution of the dispute, in accordance with the objectives set out in Article 3'. In this case, 'BEREC shall issue an opinion indicating to the national regulatory authority or authorities concerned to take specific action in order to solve the dispute or to refrain from action, in the shortest possible time frame and in any case within 4 months, except in exceptional circumstances'.

4.7 In a situation such as this, it is difficult to see any appeal against the decision to an appeal body of the kind provided for in the proposal as providing guarantees of independence and impartiality.

4.8 Irrespective of the stipulation that it is still possible to appeal to the court, the procedure at administrative level does not appear to include appeal to a genuinely independent body.

4.9 The EESC hopes that this matter will be duly reconsidered when the final version of the proposal is drawn up.

Brussels, 25 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities’

(COM(2016) 589 final — 2016/0287 (COD))

(2017/C 125/10)

Rapporteur working alone: **Emilio FATOVIC**

Consultation	European Parliament, 6.10.2016
	Council, 25.10.2016
Legal basis	Article 172 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	11.1.2017
Adopted at plenary	26.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	195/1/0

1. Conclusions and recommendations

1.1 The EESC welcomes the Commission’s Wifi4EU initiative. This scheme is aimed at rolling out free internet access in public places and will deliver benefits both in terms of accessibility, primarily for the most disadvantaged social groups, and in terms of economic growth at local level, particularly in the areas of public services, health, trade and tourism.

1.2 The Committee welcomes the fact that one of its proposals, reiterated a number of times in previous opinions, has finally become an integral part of the EU’s digitisation process ⁽¹⁾. This stems from the conviction that internet access is a fundamental right of every citizen, as well as an essential tool for social inclusion and economic growth.

1.3 The EESC would point out that the rapid progress of digital technology is likely to render obsolete all of the technologies installed within a short time. The Committee would therefore call on the Commission to establish goals for social as well as technological development, so as to make the Wifi4EU initiative more dynamic, long-term and sustainable.

1.4 The EESC supports the idea of drawing on the EDUROAM project to establish Wifi4EU, and proposes integrating the two processes so as to ensure that all citizens have a single digital identity throughout Europe, as already provided for under the eIDAS Regulation. This would also have a considerable impact in terms of strengthening the sense of European citizenship and overcoming **digital poverty**.

1.5 The EESC considers Wifi4EU to be a strategic project and feels that its EUR 120 million budget is totally inadequate to cover the needs of the whole of Europe. The Committee therefore calls for a substantial increase in the funds allocated so that we can aspire to free, very high speed WiFi access by 2025 in all public places throughout Europe, and thus to implement the scheme on the basis of **‘Quality Wifi4all’**. In this regard, it would be important to ensure greater integration between all of the existing public WiFi services so as to make the most of the available resources and avoid waste.

⁽¹⁾ OJ C 161, 6.6.2013, p. 8.

1.6 The EESC considers the criteria outlined for the allocation of funds (first come, first served basis and the geographical criterion) to be unclear and contradictory. The Committee would recommend taking into account the population and geographical size of the countries concerned, and establishing in advance the maximum amount of funding to be allocated to each country, so that all regions can access it in a balanced way.

1.7 The Committee would propose earmarking 20 % of the budget for areas that are less developed economically and digitally, with particular emphasis on islands and on mountainous, border and peripheral areas, as well as on areas that have been exposed to natural disasters, in order to invest the resources where they are most needed. The Committee recommends that the criteria for inclusion on the register of suppliers should not discriminate on the basis of company size.

1.8 The EESC supports the principle of allocating the funding to delivering free internet access where it does not currently exist. However, as part of its strategic vision, the Committee calls on the Commission to supplement the public initiative with public-private partnerships.

1.9 The EESC calls for a high-quality free WiFi service to be deployed over the period 2017-2020, with a minimum connection speed of 100 megabit/s, but anticipating from the outset that higher speeds will already have to be delivered in the medium term. There are three reasons for this:

- (a) to bring Wifi4EU into line with the Gigabit Society communication;
- (b) because a simple ADSL connection does not ensure a connection of satisfactory quality for dozens of people at the same time, given its technical limitations; and
- (c) because a free public service does not necessarily have to be of poor quality.

1.10 The EESC endorses the adoption of red-tape free and streamlined arrangements for accessing the funding. However, it calls on the Commission to set at a minimum of 3 years the obligation to provide the service, subject to repayment of the funds received.

2. Introduction and background

2.1 Proposal COM(2016) 589 amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities forms part of a package of measures on telecommunications adopted by the European Commission on 13 September 2016, which also includes the following:

- a communication on Connectivity for a competitive digital single market — towards a European Gigabit society (COM (2016) 587),
- an action plan on 5G for Europe (COM(2016) 588),
- a proposal for a directive establishing a new European electronic communications code (COM(2016) 590), and
- a proposal for a regulation aimed at strengthening the existing Body of European Regulators for Electronic Communications (BEREC), turning it into an agency, while keeping its name (COM(2016) 591).

2.2 The EESC has drawn up an opinion for each proposal but with a single coordination structure, to ensure that the individual documents are harmonised and consistent in their vision and content (this current opinion ties in closely with the following opinions: TEN/611 European Gigabit Society, TEN/612 European Electronic Communications Code, TEN/613 Body of European Regulators of Electronic Communications (BEREC) and TEN/615 5G for Europe: An action plan) and also in keeping with the EESC's previous opinions on this subject.

3. Summary of the Commission proposal

3.1 The proposed regulation, which launches the 'Wifi4EU' initiative, is part of a package of measures that come under the umbrella of the European Gigabit Society communication. The Wifi4EU scheme is designed to fund the roll-out of hotspots providing free internet access in public places (libraries, squares, parks, hospitals and public buildings in general), based on and complementing the successful EDUROAM initiative which already provides this service in universities and other third-level institutions.

3.2 The Commission has allocated EUR 120 million and estimates that some 6 000 to 8 000 local authorities will come on board over the period 2017-2020. Once the scheme is rolled out, it envisages between 40 and 50 million connections per day. The rather modest budget frames the initiative as a pilot project.

3.3 The intended beneficiaries of the scheme are local authorities that do not yet provide such a service. Projects may not exceed a budget of EUR 60 000, and the funding will cover up to 100 % of the purchase and installation costs, while the local authority will pay for the internet subscription and maintenance of the equipment.

3.4 The local authorities will be encouraged to develop and promote their own free digital services in areas such as e-government, e-health and e-tourism.

3.5 The proposed scheme, which is limited to public places, is designed not to clash with or distort the free market of digital traffic, but rather to reinforce it through the deployment of digital technology in less developed areas.

3.6 The Commission proposal sets out three key criteria for the allocation of funding:

(a) the scheme is only open to local communities that do not yet provide this service;

(b) the funds are to be directly disbursed on a first come, first served basis;

(c) the funds are to be allocated in a geographically balanced way.

3.7 The proposal provides for a simplified model for accessing the funding and reporting on the activity carried out through a series of vouchers that will subsequently be used to pay the companies entrusted with installing the equipment. The Commission will be able to monitor in real time the proper functioning of the hotspots in order to take action and carry out checks if necessary.

4. General comments

4.1 The EESC welcomes the Commission's Wifi4EU initiative. This scheme is aimed at rolling out internet access in public places and will deliver benefits both in terms of accessibility⁽²⁾, primarily for the most disadvantaged social groups experiencing *digital poverty*⁽³⁾, and in terms of economic growth at local level, particularly in the areas of health, public services, trade and tourism⁽⁴⁾.

4.2 The Committee welcomes the fact that one of its proposals, reiterated a number of times in previous opinions, has finally become an integral part of the EU's digitisation process⁽⁵⁾. This stems from the conviction that internet access is a fundamental right of every citizen, as well as a tool for social inclusion and economic growth.

4.3 The EESC calls on the Commission to envisage the Wifi4EU initiative having a lasting impact in the beneficiary areas. Given the rapid progress of digital technology, all of the equipment installed is likely to become obsolete within a short space of time. For this reason, the Committee recommends including the pilot project in a broader, more sustainable strategic vision that places an emphasis on social objectives ahead of the purely technological.

4.4 The Committee feels that this proposal does not sufficiently explain how this initiative will be integrated into the EU's digitisation process, which is currently rather hit-and-miss. The situation ranges from areas that do not yet have an ADSL connection to areas that already have ultra wideband and are even successfully piloting speeds of 1 Gigabit/second. The EESC hopes that the initiative sets ambitious objectives in terms of the quality of the service provided.

4.5 The EESC points out that the proposal is not supported by a proper in-depth feasibility study. This is demonstrated by the fact that the data provided by the Commission concerning the scheme's potential impact are too general, not adequately supported by a socio-economic assessment and probably overestimated due to its modest budget.

⁽²⁾ OJ C 389, 21.10.2016, p. 28.

⁽³⁾ OJ C 451, 16.12.2014, p. 25.

⁽⁴⁾ OJ C 318, 29.10.2011, p. 9.

⁽⁵⁾ See footnote 1.

4.6 The EESC regrets that the budget proposed is limited to EUR 120 million, relegating such an important initiative to a mere pilot project. The Committee would therefore like to see the budget for this scheme increased significantly in order to raise the status of Wifi4EU to a structural and strategic measure, with measurable objectives, which is an integral part of the Gigabit Society vision and a means of achieving the digital development targets set for 2025. The EESC stresses the need for the Gigabit Society programme to include the target of 100 % free WiFi in all public places by 2025.

4.6.1 The EESC points out that over EUR 9 billion were originally earmarked under the Connecting Europe Facility (CEF) for the development of digital networks and services, and that this was subsequently reduced to just over EUR 1 billion. The Committee would reiterate its disappointment at this reduction in the funding made available for a priority that is crucial to Europe's competitiveness, and hopes that funds can be recovered from the budget headings.

5. Specific comments

5.1 The Committee notes that the criteria set out for the allocation of funding are not sufficiently fleshed out in the proposal and fears that these may contradict each other. Specifically, it would point out that the first come, first served principle is liable to favour authorities that are already digitised and thus reduce the funding available to States and local authorities that need it most.

5.2 When allocating the funds, the EESC would recommend taking into account the population and geographical size of the countries concerned, and establishing in advance the maximum amount of funding to be allocated to each country, so that all regions can access it in a balanced way.

5.2.1 The EESC hopes that the register to which interested companies will have to sign up, and from which local authorities will select suppliers for the installation of the infrastructure, does not discriminate on the basis of company size.

5.3 The Committee would call for 20 % of the budget to be earmarked for areas that are less developed economically and digitally, with particular emphasis on islands, and on mountainous, border and peripheral areas, as well as on areas that have been exposed to natural disasters, in order to invest the resources where they are most needed⁽⁶⁾.

5.4 The EESC supports the principle of allocating the funding to delivering free internet access where it does not currently exist. It is aware, however, of both the urgency and the complexity of the technological and economic effort required to roll out this service throughout Europe. Therefore, as part of its strategic vision, the EESC calls on the Commission to supplement the public initiative with public-private partnerships.

5.5 The EESC calls for a high-quality free WiFi service to be deployed over the period 2017-2020, with a minimum connection speed of 100 megabit/s (ultra wideband), but anticipating from the outset that higher speeds will have to be delivered in the medium term. There are three reasons for this:

- (a) to bring Wifi4EU into line with the Gigabit Society communication, which aims to deploy ultra-fast fibre connections (1 Gigabit/second) at all sites in the EU where public services are provided (public administrations, hospitals, libraries, etc.) by 2025;
- (b) because a simple ADSL connection cannot ensure a connection of satisfactory quality for dozens of people at the same time, given its technical limitations (latency, connection stability and maximum bandwidth);
- (c) because the concept of a free public service should not have to mean a poor quality service.

5.6 While the EESC supports the idea of drawing on the EDUROAM project to establish Wifi4EU, it considers that these initiatives need to be made complementary from the outset, beginning by ensuring network access for all citizens anywhere in Europe using a single digital identity. In this regard, the Committee proposes redeploying the provisions already established by the eIDAS Regulation⁽⁷⁾ on digital identity, which has been proven to provide guarantees for data protection and security against distorted use of the service (terrorism). This would also have a considerable impact in terms of strengthening the sense of European citizenship.

⁽⁶⁾ See footnote 1.

⁽⁷⁾ OJ L 257, 28.8.2014, p. 73.

5.7 The EESC endorses the adoption of red-tape free and streamlined arrangements for accessing the funding. The Committee notes, however, that the Commission's proposal does not provide for a minimum period in which local authority beneficiaries are obliged to provide the Wi-Fi access free of charge (subject to repayment of the funds received). The EESC recommends setting at a minimum of 3 years this obligation to provide the service.

5.8 The Commission should further encourage the Member States to promote the roll-out of free WiFi in all public places. This would be of particular value in small towns and in areas that are of little interest to the market, where the big commercial operators are unlikely to make significant investments in digital infrastructure, with a view to the more harmonious development of the EU, offering more opportunities and quality of life for all.

5.9 The EESC reiterates its call for the Commission to take the demographic aspect into account. Many older people are still, in fact, digitally illiterate. The Committee therefore recommends that Wifi4EU include the creation of a single, multilingual and user-friendly access point. The Committee also recommends that local authorities in receipt of funding provide training for older people, in particular, in order to encourage greater internet use, guarantee the initiative's success, combat social exclusion and bolster local communities.

Brussels, 26 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

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 — 5G for Europe: An action plan’

(COM(2016) 588 final)

(2017/C 125/11)

Rapporteur working alone: **Mihai MANOLIU**

Consultation	Commission, 24.11.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	11.1.2017
Adopted at plenary	26.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	199/1/4

1. Conclusions and recommendations

1.1 The EESC endorses the Commission’s objectives of deploying the initial 5G networks (by 2018) and launching commercial services in Europe (by the end of 2020).

1.2 In the EESC’s view, the key factors will be the success of projects rolled out during the research phase of the 5G-PPP and integrating fronthaul and backhaul networks when transmitting data through high-capacity switches, heterogeneous transmission links and cloud-processing units using several internet providers.

1.3 The EESC recommends that the Commission work with the Member States and international bodies to resolve technical problems relating to frequencies and bandwidth, and to develop standards (without specific standards, mass development is impossible, and without development, there cannot be an affordable equipment market).

1.4 The EESC is aware of the potential risks (a series of factors can throw obstacles in the way of this project) for all urban areas and main transport paths which, in the future, will have 5G coverage. Measures to stimulate demand have proven ineffective with regard to service provision in these areas.

1.5 The Committee is in favour of compensating for the lack of private investment in isolated or sparsely populated areas of Member States through public investment or other financing solutions. At the same time, the EESC considers that the rationale for deciding to use public funds to finance such investment should take into account the impact on the local economy, telework, the provision of healthcare services and new education opportunities (spill-over effect).

1.6 The EESC recommends that procedures be standardised and specifications established throughout the 5G project as a prerequisite for fair labour relations, enabling the social partners to carry out an objective assessment of dysfunctions and the progress made towards meeting the objectives.

1.7 The EESC considers that, through specific characteristics such as interoperability, transparency and data security, 5G networks can make a significant contribution to modernising the public administrations of Member States and to cutting red tape.

1.8 The EESC draws attention to the potential role of SMEs in the digital arena. They can bring new innovative models to the market, and public financing for virtual SME clusters can support start-ups and is an opportunity not to be missed, alongside other innovative and tailor-made financing models.

1.9 In the EESC's opinion, developing digital skills among the general public and among the labour force in particular must be a priority for the EU. EU action on the e-Skills strategy and the Grand Coalition for Digital Jobs links up the social partners, educational establishments and other relevant social players in this field. The EESC points out that particular attention must be paid to disabled people, who must be given easy access to the new 5G technologies.

1.10 The EESC advocates that investment based on the Structural Funds should create a level playing field for all Member States and allow equal and non-discriminatory access for all economic operators.

1.11 The agriculture and forestry sectors and many businesses in rural and remote areas of Europe have consistently been promised faster broadband and 3/4G mobile networks, but these promises have never been kept. If the rural, remote, mountain and island areas of Europe are to have a future, then they surely have a right to demand access to at least 5Mb broadband and 3/4G mobile communications.

2. General comments

2.1 The EESC has always supported the Commission's ICT initiatives in its opinions, considering that these initiatives are a prerequisite for the achievement of the digital single market as a driver for economic and social development in the EU. The EESC welcomes the Commission's involvement in the deployment of 5G networks (ICT for mobile networks) and supports the steps taken by the Commission from the research phase. As for any new product or service, launch and development involve a number of risks and opportunities which must be assessed objectively, so that the policies best suited for delivering the expected results can be implemented.

2.2 Although based on current technology, 5G is quite different from 4G, which incorporates many advanced global technologies such as: LTE and LTE Advanced (TD-LTE, AXGP, LTE-A, TD-LTE-A, LTE with VoLTE), WiMax, WiMAX2, Network Function Virtualization/Software Defined Network (NFV/SDN), HetNets (Heterogeneous Networks) and LPLT (Low Power Low Throughput network).

2.3 The chief advantage of 5G technology over 4G is that it is much faster (Samsung has announced speeds of 7,5 Gbps and Nokia speeds of 10 Gbps, while the University of Surrey in the UK announced last year that it had achieved a mindboggling 1 Tbps, the same as with fibre optic technology — all achieved under laboratory conditions). In addition to speed, the low latency (sub-1 ms in large networks) and high capacity are further significant advantages. If latency under 1 ms is not achieved in real conditions, it will not be possible to develop some of the 5G services envisaged (augmented and virtual reality, driverless cars, tactile internet) with the necessary features.

2.4 Similarly, market reactions by all stakeholders will hinge on the expected technical characteristics. It is important to remember that, with the shift from 2G to 3G, expectations regarding internet access by mobile phone users were disappointed. This option was possible only when technical capacities specific to 3,5G technology were ready, and so the combination of smart phones and mobile broadband networks opened the door to internet access using these devices.

2.5 5G and fibre networks are complementary. Over short distances and in areas with a large number of connections, 5G is the better solution. For transmitting data over long distances, fibre optic networks (backhaul and backbone) are unbeatable: transmission speeds of up to 1 Tb, no danger of interference from other electromagnetic signals which clutter up the air and have an impact on wireless technology and no signal attenuation during transmission.

2.6 Standardisation of the technical specifications necessary for equipment, devices and networks is a key concern for the companies involved and international associations active in this field. Specifications provide instructions for testing and validating important technical components for 5G, and the development of specifications enables industry partners, component and network providers and operators to develop interoperable solutions, as well as contributing to the prestandardisation process. While ITU, 3GPP and other standardisation bodies have made 2020 the deadline for developing 5G standards, mobile providers have picked up the pace to provide 5G services which are as competitive as possible.

2.7 The EESC considers that action plans to develop and deploy 5G on a large scale must be bolstered by support measures (encouraging the demand for affordable broadband internet) and operational measures, so that the optimistic deadlines can be met.

2.8 The EESC is concerned that this development (5G networks) might result in existing developments of 3G and 4G in rural, remote and mountain areas being halted just because there is something better being promised sometime in the next 20 years.

2.9 In many parts of Europe there is no mobile signal, no 2G, no 3G, no 4G. This is because every time new technology becomes available, the rollout of the previous versions stops, which means that many rural, remote and mountain areas of Europe have communication services that became outdated 20 years ago.

2.10 The use of superfast broadband will become an integral part of the 5G network, but what happens if businesses do not have superfast fibre broadband and the speed of their wired network is less than 1 Mb? The agriculture and forestry sectors and many businesses in rural and remote areas of Europe have consistently been promised faster broadband and 3/4G mobile networks, but these promises have never been kept.

2.11 Too few people scattered over a large area is a common problem throughout Europe and is quoted by suppliers as the reason why these areas cannot be serviced. If the rural, remote, mountain and island areas of Europe are to have a future, then they surely have a right to demand access to at least 5Mb broadband and 3/4G mobile communications.

3. Specific comments

3.1 The EESC points out that, given the sky high cost of rolling out a new technology, investment needs in the EU far exceed the actual investment (EUR 4,2 billion) carried out through the public-private partnership in which the Commission is involved. The EESC considers that the measures proposed by the Commission can help support the financial, human and technical efforts provided there is a constant focus on this issue, a framework encouraging private investment and perfect coordination between the work of the Commission and of the Member States.

Action 1. *The Commission will work with Member States and industry stakeholders towards the voluntary establishment of a common timetable to launch 5G networks as rapidly as possible.*

3.2 The Commission's objectives of launching the initial 5G networks by the end of 2018, followed by commercial services in Europe by the end of 2020 depend largely on the outcome of the 5G-PPP projects rolled out during the research phase. These include the crucial 5GXCrosshaul project which aims to integrate fronthaul networks (5G wireless networks) with backhaul networks (which are largely fibre optic) in the transport of data. High-capacity switches, heterogeneous transmission links, cloud-processing units (mini data centres), and points-of-presence of the core networks of one or multiple service providers will be necessary.

Actions 2 and 3. *The Commission will work with Member States to identify a provisional list of pioneer spectrum bands for the initial launch of 5G services (by the end of 2016). Agreement on the full set of spectrum bands to be harmonised for the initial deployment of commercial 5G networks in Europe (by the end of 2017).*

3.3 Radio frequencies used by 3G and 4G are overcrowded, and so solving technical problems regarding 5G frequencies and bandwidth is a global requirement. In addition to working with Member States, the Commission must also take into account action already taken at international level by industry bodies. For 5G technology, ITU and 3GPP, which bring together standardisation bodies such as ARIB, ATIS, ETSI, TSDSI, TTA, TTC and CCSA, have adopted a two-stage plan, with the first stage being research and the second being mass development.

Action 4. As part of the development of the 5G national roadmaps, the Commission will work with the industry, the Member States and other stakeholders (uninterrupted 5G coverage by 2025).

3.4 The Commission's objective of ensuring that all urban areas and major transport paths in every Member State have 5G coverage by 2025 will not be easy to achieve. The EESC points out that announcing a schedule with short deadlines for achieving bold objectives is a risky undertaking. The analysis of the deployment of Next Generation Network-type networks and the policies to bridge the digital divide have shown that white and grey areas, as they are called in the Broadband Guidelines, are still widespread. Neither ex ante regulations nor demand incentives have managed to bring about service provision in these areas.

3.5 The EESC points out that promoting and financing projects to deploy 5G networks by scaling back financing for fibre optic networks (NGA and NGN) can deepen the digital divide between regions in some Member States. The lack of private investment in 5G and fibre optic networks in isolated regions and regions with small and scattered populations, due to the limited return on investment, must be counterbalanced by public investment or other financing solutions identified at Member-State level. In making the case for decisions to use public funds to finance such investment, the spill-over effect on the local economy, telework, healthcare services and education opportunities should be considered.

Action 5. The Commission calls on Member States and the industry to commit to objectives regarding the standardisation approach (initial standards by the end of 2019).

3.6 5G plans alone cannot protect the network and users. In order to provide an appropriate level of protection, 5G networks and procedures must be standardised. Monitoring 5G network infrastructure, separating management networks from the service network, establishing incident management procedures and other processes can ensure optimum security, for both users and the network infrastructure. Security testing is vital. All interaction protocols must work properly, even when under attack (hackers are constantly trying to pinpoint and use products' weak points).

3.7 The EESC considers that standardising procedures in industrial processes and developing technical specifications for equipment are prerequisites for fair labour relations in the industry, enabling the social partners to carry out an objective assessment of the causes of any dysfunctions and to work together to correct them and achieve the objectives set. The EESC has pointed out in previous opinions that excessive standardisation can become an impediment to progress in this area.

Action 6. To foster the emergence of digital ecosystems based on 5G connectivity, key technological experiments will need to be planned and applications tested through the 5G-PPP (2017) and detailed roadmaps for the implementation of advanced pre-commercial trials will need to be developed (March 2017) (2018: European leadership in the introduction of 5G).

3.8 The timely testing of terminals and applications at European level can be an asset in the global race with major players. In commercial terms, large-scale development of 5G requires that a series of conditions be met. The EESC therefore considers that until specific standards have been adopted, mass development is impossible; without development, affordable equipment will not appear on the market; and the lack of equipment means that crucial 5G components will not be available.

3.9 The EESC considers that one of the major challenges for 5G will be attracting investment to develop and deploy 5G on a large scale, when 4G, which most users confuse with LTE, will continue to have significant potential in the future, with considerable scope for operators to generate revenue from previous investment in LTE networks.

3.10 In Europe, migration from 3G to 4G networks is still limited compared to South Korea, the US and Japan. It is possible that operators, and even users, will prefer 4G-type networks, particularly when the ongoing development of 4G networks will continue independently of 5G, as each of the technologies comprising 4G has the potential to yield substantial benefits for operators in the coming years, at a much lower cost than would be required for a new technology.

Action 7. *The Commission encourages Member States to consider using the future 5G infrastructure to improve the performance of communications services used for public safety and security, public protection and disaster relief systems (national 5G roadmaps).*

3.11 The EESC believes that 5G networks can make a significant contribution to modernising public administration, data use and interoperability. Encouraging the Member States to support the use of the future 5G infrastructure by public institutions is one way to promote the new networks. The EESC recommends that the Commission consider investing periodically in replacing equipment used on a daily basis by European institution employees, to show that it intends to act as a consumer to promote 5G. The same recommendation should be made to the Member States with regard to public investment.

3.12 The EESC considers that attracting private investment is crucial for the EU, and so consideration must be given to policy mixes encouraging research and innovation. The Innovation Council set up at EU level can make a major contribution to promoting innovation, along with a number of other instruments.

3.13 A key priority for the Commission must be encouraging research, innovation and development in the EU, urging European firms to boost R&D spending in the EU, and attracting other investors from outside the EU. During the 2007-2015 period, European firms sent increasing amounts of R&D funding outside the EU. This rise in the export of funds to outside Europe (China has become the main destination for corporate R&D spending), together with a decline in imports of R&D funds, has contributed to a loss of investment in R&D in Europe.

Action 8. *The Commission will work with the industry and the EIB/EIF Group (financing of SMEs) to identify the objectives, configuration and arrangements for a venture financing facility (feasibility to be assessed by March 2017, private funding and several sources of public funding).*

3.14 The EESC welcomes the action taken by the Commission to encourage digital firms. The Strategic Policy Forum on Digital Entrepreneurship, set up in 2014, has published the results of its work in this area. The EESC believes that SMEs can play an important role in promoting new innovative models. Devising and implementing financing solutions to create and develop innovative virtual clusters focusing on SMEs is one way to support innovative European start-ups using public funds to develop services and applications, and is an opportunity not to be missed.

3.15 The EESC considers that developing digital skills among the general public and among the labour force in particular must continue to be a priority for the EU, given the deployment of 5G networks. EU action on the e-Skills strategy and the European e-Competence Framework is still relevant today.

3.16 The EESC considers that the Grand Coalition for Digital Jobs can link up the social partners, educational establishments and other public and private players with a view to attracting as many young people as possible to the ICT sector.

Reduced access to 5G network services and specific applications by people in disadvantaged sectors of society, owing to their limited purchasing power, will be a challenge for future EU policies. Particular attention must be paid to disabled people, who must be given easy access to the new equipment and technologies which will be developed by manufacturers.

3.17 The EESC considers that investment plans based on the Structural Funds must create a level playing field for all Member States. The criteria set out in the specifications for the approval of projects must allow equal and non-discriminatory access for Member States and for economic operators from all the Member States. In order to avoid deepening the digital divide between Member States, which would undermine the objective of achieving a digital single market in the EU, the EESC recommends analysing the methods used to implement the Juncker Plan. Lessons must be drawn from the process of correcting dysfunctions, so that the policy decision regarding the financing of 5G networks can become a supporting pillar of improved cohesion within the EU.

3.18 In addition to the risks arising from the technical performance of the new networks, policies and decisions to allocate financial resources from the public purse and the risks associated with commercial considerations regarding taking on the risk of investing in new technology or keeping up investment in improving existing technologies (4G is forecast to reach saturation point in 2030), there are other risks which are being very carefully analysed by investors before they decide whether or not to invest.

3.19 Through constant monitoring of the progress made in deploying 5G networks, it will be possible to correct the inevitable shortcomings that will emerge between the *ex ante* and *ex post* assessments, enabling the two objectives set out in the communication — on standard-essential patents (SEP) (20 % of these must be held by European organisations) and on the minimum 35 % market share to be held by European 5G infrastructure providers — to be met.

Brussels, 26 January 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*

Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on the participation of the Union in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA) jointly undertaken by several Member States'

(COM(2016) 662 final — 2016/0325 (COD))

(2017/C 125/12)

Rapporteur: **Emilio FATOVIC**

Consultation	Commission, 18.10.2016, Council, 9.11.2016, Parliament, 27.10.2016
Legal basis	Article 188 of the Treaty on the Functioning of the European Union
Section responsible	REX
Adopted at plenary	26.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	164/3/1

1. Conclusions and recommendations

1.1 In line with a great many previous opinions, the European Economic and Social Committee (EESC) supports the proposal to participate in the PRIMA programme for the purpose of developing common innovative solutions for making water supplies and food production in the Mediterranean safer and more effective, efficient and sustainable in terms of the environment and costs.

1.2 The EESC believes that taking part in PRIMA would be of added value for the whole of the EU, as it would make for a comprehensive approach to tackling some of the root causes of the instability in the Mediterranean area that is prompting mass migration. Moreover, the contractual partnership, replacing the bilateral format with a multilateral, shared one, means that PRIMA could prove to be an important model in the coming years.

1.3 In the Committee's view, a genuinely holistic, multilevel and cross-sectoral approach, combined with tangible and measurable goals in the areas of sustainability, resilience, quality of life and work, human rights and democracy, are prerequisites for the success of PRIMA.

1.4 The EESC agrees with the proposal to base PRIMA participation on Article 185 TFEU in order to secure the fullest possible integration at scientific, management and financial level and, for the first time, to involve Member States and third countries on an equal footing. Incorporating all these aspects into an overarching *Macro-regional strategy in the Mediterranean*, one that embraces all the other policies (European Neighbourhood Policy (ENP)), initiatives and partnerships (Union for the Mediterranean (UfM)) that are already operational in the region, will serve to develop a more efficient approach to common problems with third countries based on *co-development and co-decision-making*.

1.5 The EESC concurs with the principle that EU funding for the PRIMA programme should match that of the countries involved and that, in the event of non-payment or late payment by any of the participating states, the Commission should be entitled to reduce the EU's share of the funding proportionally.

1.6 The Committee supports setting up PRIMA-IS as the executive body responsible for managing and monitoring the PRIMA programme. The EESC hopes that open governance will be a feature of this body and that it will introduce inclusive entry arrangements, particularly in respect of new third countries or Member States wishing to join. It also hopes that all potentially interested stakeholders (regions, local authorities, universities and organised civil society) will be involved in PRIMA-IS, in order to strengthen governance and help to jointly ascertain and monitor the programme's economic, employment and social impact.

1.7 In keeping with the principle of mainstreaming with other EU policies, the EESC would recommend combining PRIMA with the circular economy package and all its related initiatives (e.g. land use and fertilisers).

1.8 The Committee reiterates the urgent need for a *Soil Framework Directive* that takes into consideration the differences between the various EU Member States in order to ensure that innovation and research work carried out under PRIMA is as well-targeted as possible.

1.9 The EESC highlights the need for the programme to address the issue of water in a comprehensive manner, taking account of the environmental, economic and social perspective and covering the entire water cycle, including artificial stages, in the interests of sustainable development. In this respect, the EU needs to develop a fairer approach to water abstraction, balancing the requirements of competing economic and energy sectors with the need to conserve fresh-water ecosystems and the obligation to uphold a fundamental citizens' right.

1.10 The EESC considers the Horizon 2020 programme to be the most appropriate instrument for distributing funds, and also agrees with the decision to classify most of the PRIMA activities as 'challenges to society'. In the agricultural and food production sector in particular, the Committee would recommend supporting research and innovation projects that have a major social impact and are economically affordable and easily transferable, as well as optimising traditional knowledge as a way of stemming the brain drain and promoting economic growth and employability in line with the Sustainable Development Goals.

1.11 In the event of it being impossible to finance one or more projects out of national funds because the national allocation has been used up, the EESC is in favour of funding them with the support of PRIMA-IS. Funding of this kind, which may not exceed 20 % of the EU's overall contribution to the PRIMA programme, will ensure that completed projects are of high quality.

1.12 The EESC welcomes participation by bodies from EU Member States that have not joined PRIMA where they have competences that the countries that have joined do not. In these circumstances, their financial contribution should not be more than 50 % for 'research and innovation activities' and should be between 35 % and 50 % for 'innovation activities'. This will make it possible to carry out ambitious projects with an EU perspective and support countries intending to join and invest in the PRIMA programme.

1.13 In view of the considerable difficulties experienced by many of the present third country Horizon 2020 partners in complying promptly and efficiently with the programme's formal requirements, the Committee would call for these to be simplified wherever possible and for the capacity-building process to be actively supported.

2. Introduction

2.1 According to the United Nations, the Mediterranean region is home to 180 million people who are 'water poor' — half of the world's total⁽¹⁾. This has extremely damaging consequences for nutrition, health, livelihoods and standards of living and wellbeing.

2.2 The FAO's *Mediterra 2016* report shows the phenomenon has been further exacerbated in recent years by political instability, climate change and rapid population growth. These factors are compounded by a 'triple waste' comprising misuse of natural resources, food waste and the gradual disappearance of traditional knowledge⁽²⁾.

2.3 Water scarcity and lack of affordable and sustainable food production are some of the main causes of the wave of migration that Europe is currently facing. If these are not eradicated at source, the consequences will be impossible to deal with in either the short or long term.

⁽¹⁾ UNEP/MAP-Plan Bleu, *State of the Environment and Development in the Mediterranean*, Athens, 2009. The Mediterranean basin has just 3 % of the planet's water. According to the United Nations, each individual needs at least 1 700 m³ of water a year to live with dignity. As many as 180 million of the 460 million people inhabiting the Mediterranean basin are considered to be 'water poor', since they have less than 1 000 m³ of water per capita per year, while 80 million of these people have no more than 500 m³, which puts them in a situation of extreme water poverty.

⁽²⁾ CIHEAM/FAO. *Mediterra 2016. Zero Waste in the Mediterranean. Natural Resources, Food and Knowledge*, Paris, Presses de Sciences Po, 2016.

2.4 The investments that Member States in the Mediterranean area have made in research and innovation (R&I) in water supply and sustainable food production have never lived up to the challenge and have often been limited to cooperation arrangements governed by bilateral agreements and therefore patchy.

2.5 The idea of a Partnership for Research and Innovation in the Mediterranean Area (PRIMA) started with the Euro-Mediterranean Conference on Research and Innovation in Barcelona in 2012. The aim is to strengthen Euro-Mediterranean cooperation in research and innovation as part of the broader objectives of the Union's external policy with regard to the Southern Neighbourhood⁽³⁾.

2.6 The European Commission has drafted a detailed impact assessment⁽⁴⁾ and a proposal for participating in the programme⁽⁵⁾ (the subject of the present opinion) following the conclusions of the Competitiveness Council of 5 December 2014 and a formal proposal submitted the same month by the Member States and non-member countries in the Mediterranean basin⁽⁶⁾.

3. Summary of the Commission proposal

3.1 Participation in the PRIMA programme has its legal basis in Article 185 TFEU. This enables the EU, in implementing the multiannual framework programme, to make provision for participation in research and development programmes undertaken by a number of Member States, in agreement with those Member States, including participation in the structures created for the execution of those programmes.

3.2 The programme is to last ten years and will be launched jointly by fourteen countries:

- nine EU Member States: Cyprus, France, Greece, Italy, Luxembourg, Malta, Portugal, the Czech Republic and Spain;
- two third countries associated to Horizon 2020: Israel and Tunisia;
- three third countries not associated to Horizon 2020: Egypt, Lebanon and Morocco.

3.2.1 The participation of non-associated third countries will depend on an international agreement with the EU that extends PRIMA's legal regime.

3.3 The programme's strategic objective is to develop the common innovative solutions for water provision and food systems that the Mediterranean region urgently needs. These solutions will make access to water and food safer and more effective, efficient and sustainable in terms of the environment and costs.

3.4 PRIMA will be incorporated into a broader framework of high-level measures and will complement other non-R&I European initiatives, including:

- scientific diplomacy
- review of the European Neighbourhood Policy (ENP)
- Sustainable Development Goals
- migration
- European climate diplomacy after COP21.

⁽³⁾ COM(2016) 385. Communication from the Commission on establishing a new Partnership Framework with third countries under the European Agenda on Migration.

⁽⁴⁾ SWD(2016) 332 final.

⁽⁵⁾ COM(2016) 662 final.

⁽⁶⁾ Nineteen countries submitted the proposal.

3.5 The PRIMA programme, in line with the *Commission Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration*⁽⁷⁾, aims to address the root causes of migration by using all available EU policies⁽⁸⁾, under the format of contractual partnerships.

3.6 As far as *subsidiarity* is concerned, PRIMA is a joint programme based on and composed of national programmes run and activities carried out by the participating Member States and associated countries, with the support and participation of the EU. The multilateral and multisectoral approach, together with a sizeable investment in terms of resources, should make it possible to attain both the technical and the political medium- and long-term goals that the individual Member States have so far not managed to achieve alone.

3.7 In terms of *proportionality*, the Union will participate in PRIMA within the limits of the competence provided under the TFEU and will only facilitate and support, including financially, the fulfilment of PRIMA's objectives by the participating countries. These will have to work together to better coordinate, align and integrate the relevant national programmes or activities and ultimately develop a common long-term strategic research agenda.

3.8 The Union will provide financial support by matching national investments, with a maximum commitment of up to EUR 200 million, including the EFTA contribution. This will be secured through the Horizon 2020 framework programme for research and innovation and will cover seven annual work plans over the period 2018-2024.

3.9 The ceiling for the EU contribution cannot exceed what the countries promoting the programme themselves allocate. In addition, should the countries participating in PRIMA only pay a partial contribution or none at all, the Commission will be able to proportionally reduce that of the EU.

3.10 The Commission stipulates that implementation of a programme lasting ten years requires the drafting of a comprehensive strategic research agenda and its full implementation through multiple transnational calls for proposals, undertaken by several participating states and carried out through a dedicated executive body. The EU contribution will in the main be managed by the PRIMA Implementation Structure, referred to as PRIMA-IS.

3.11 The Commission stipulates that the annual work plans (AWP) must ensure consistency and coordination for all PRIMA operations and their focus on the achievement of the programme's general and specific objectives. Each AWP, which is subject to approval by the Commission, will include:

- transnational calls for proposals to be funded by the PRIMA-IS with an EU contribution, in accordance with the Horizon 2020 rules;
- activities only funded by the participating states and counting for the matching with the EU contribution.

These activities will be evaluated by a panel of external experts before being included in the AWP.

3.12 The annual PRIMA-IS report will cover both types of operation and will be instrumental in making adjustments and changes, including — where necessary — to the financial commitment following a Commission decision. PRIMA will also be subject to a mid-term evaluation in 2022 and a final evaluation in 2028.

⁽⁷⁾ See footnote 3.

⁽⁸⁾ Education, research, climate change, energy, environment and agriculture.

4. General comments

4.1 It should be borne in mind that:

- The EESC has repeatedly pointed out that water⁽⁹⁾ and sustainability in the agricultural and food production chain⁽¹⁰⁾ must be major European policy concerns, both now and in the future.
- The Committee has also warned that the ongoing water and food crisis in the Mediterranean region⁽¹¹⁾, together with war and lack of respect for fundamental human rights, is one of the main causes of the waves of immigration that Europe is currently facing.
- The EESC has frequently stressed the need for closer cooperation with third countries, particularly those involved in the European Neighbourhood Policy (ENP) and the Union for the Mediterranean (UfM), in order to deal with *common challenges*⁽¹²⁾ more efficiently on the basis of *co-development*⁽¹³⁾.
- The Committee has repeatedly called for decisive and resolute action to tackle and resolve the root causes of the current political, economic, social and humanitarian crisis in the Mediterranean⁽¹⁴⁾.

The EESC welcomes the PRIMA programme provided it is developed on the basis of a genuinely holistic⁽¹⁵⁾, multilevel⁽¹⁶⁾ and cross-sectoral⁽¹⁷⁾ approach, with prerequisites for success also including achieving tangible, measurable standards of sustainability⁽¹⁸⁾, resilience, quality of life and work, human rights and democracy.

4.2 The Committee agrees with the Commission's proposal — which has the backing of national governments, regions, local authorities, universities, organised civil society and all relevant stakeholders⁽¹⁹⁾ — to base the PRIMA programme on Article 185 TFEU so as to secure the fullest possible integration at scientific, management and financial level, with the involvement of Member States and third countries.

4.3 In the Committee's view, the PRIMA programme could prove to be an important initiative and excellent model because, by operating as a broader *Macro-regional strategy in the Mediterranean*⁽²⁰⁾, it would supersede the format of bilateral partnership agreements which, combined with lack of funding, have to date prevented a consistent approach to tackling some of the main problems afflicting the Mediterranean region.

⁽⁹⁾ EESC opinion (OJ C 44, 15.2.2013, p. 147; OJ C 12, 15.1.2015, p. 33).

⁽¹⁰⁾ EESC opinion (OJ C 303, 19.8.2016, p. 64).

⁽¹¹⁾ EESC opinion (OJ C 347, 18.12.2010, p. 41).

⁽¹²⁾ EESC opinion (OJ C 383, 17.11.2015, p. 91).

⁽¹³⁾ Resolution on the EESC contribution to the European Commission's 2017 work programme, 2016, point 9.4: 'Evaluation of the ENP should be a priority. Relations with countries south and east of the Mediterranean should not focus on a defensive approach based on security aspects or the refugee crisis, but rather become a real co-development policy between equal partners.'

⁽¹⁴⁾ EESC opinion on 'The EESC welcomes the Commission's latest proposal to "address the external dimension of the refugee crisis" (...). This latest proposal appears to recognise that addressing the root causes of migration is broader than home affairs and security but is linked to other policy fields such as trade, development, foreign policy, integration. This is in line with the principle of policy coherence of the EU international development cooperation.' (OJ C 71, 24.2.2016, p. 75, point 1.7).

⁽¹⁵⁾ EESC opinion on 'A macro-regional strategy in the Mediterranean' (OJ C 44, 15.2.2013, p. 1, point 1.4).

⁽¹⁶⁾ EESC opinion on 'The EESC believes that despite the very fragile (...) situation prevailing in the Mediterranean, the conditions are in place for multilevel dialogue to begin between the Commission, the Member States, the countries involved in Euro-Mediterranean cooperation, local and regional authorities and civil society to establish a Mediterranean macro-regional strategy (divided into two parts) that will meet the needs of the region by strengthening its international competitiveness.' (OJ C 44, 15.2.2013, p. 1, point 1.1).

⁽¹⁷⁾ EESC opinion on *The promotion of renewable energies and the European Neighbourhood Policy: the case of the Euro-Mediterranean region* (OJ C 376, 22.12.2011, p. 1, points 1.3, 1.10 and 1.11). EESC opinion on *External dimension of the EU's energy policy* (OJ C 264, 20.7.2016, p. 28, points 1.1, 1.2.3 and 1.3). EESC opinion on *Sustainable exploitation of fishery resources in the Mediterranean Sea* (OJ C 43, 15.2.2012, p. 56).

⁽¹⁸⁾ EESC opinion on *The post-2015 objectives in the Euro-Mediterranean region* (OJ C 383, 17.11.2015, p. 44).

⁽¹⁹⁾ PRIMA Impact Assessment — Stakeholder Event. Malta, 17 April 2016.

⁽²⁰⁾ EESC Opinion on *Towards a Strategy to develop cohesion in the Mediterranean* (OJ C 170, 5.6.2014, p. 1).

4.4 The EESC concurs with the principle that EU funding for the PRIMA programme should match that of the countries involved and that, in the event of non-payment or late payment by any of the participating states, the Commission should be entitled to reduce the EU's share of the funding proportionally.

4.5 The Committee considers PRIMA-IS to be an indispensable executive body for managing and monitoring PRIMA and the EU funds allocated to it, and therefore expects governance to be open.

4.6 The EESC considers the Horizon 2020 programme to be the most appropriate instrument for distributing funds, and also agrees with the decision to classify most of the PRIMA activities as 'challenges to society', given their global and transnational nature⁽²¹⁾.

4.6.1 The Committee would point out that to date many Member States already participating in Horizon 2020 report that they are finding it extremely difficult to comply promptly and efficiently with the programme's formal requirements. It therefore requests that the requirements be simplified wherever possible to make it easier to participate and to maximise results.

5. Specific comments

5.1 The Committee notes that not all Mediterranean countries are on board the initiative. In principle, any other Member State or third country should be entitled to participate in PRIMA provided they contribute to the funding. It notes, however, that the General Assembly of PRIMA-IS, comprising representatives of national governments, will be required to approve the entry of new third countries unanimously⁽²²⁾. Depending on the political and social conditions prevailing in the applicant third country, the Committee would advise the EU to take a more inclusive stance by avoiding unanimous voting, as this could be tantamount to some states exercising a veto over others. It should be replaced by a qualified majority vote. It also advocates including in the programme's implementing activities a broad range of technology readiness levels (TRL) covering all stages of scientific production.

5.2 The EESC calls for PRIMA to be genuinely cross-cutting in relation to all other EU policies and initiatives, whether up and running or still in the pipeline, so as to maximise its own impact. It draws particular attention to the need to proceed in tandem with the package on the circular economy⁽²³⁾. This will play a crucial role in the sustainable use of water and in sustainable agricultural and food production (e.g. land use and fertilisers⁽²⁴⁾).

5.2.1 The Committee believes that the PRIMA initiative is a reminder of the urgent need for a *Soil Framework Directive*⁽²⁵⁾ that takes account of the differences between the various EU Member States, something that is imperative to ensure that innovation and research work is as well-defined and targeted as possible.

5.3 The EESC advocates a multilevel approach with the active involvement of organised civil society. This could play a key role not just for achieving and disseminating specific objectives, but also more generally for democratisation and bolstering human rights protection in a number of third countries⁽²⁶⁾. It therefore hopes that civil society will be able to participate directly, in the form of a consultative committee, including in PRIMA-IS, in order to strengthen governance and help to jointly ascertain and monitor the programme's economic and social impact⁽²⁷⁾.

5.4 In the event of it being impossible to finance one or more projects out of national funds through the national funding bodies because the national allocation has been used up, the Committee proposes that these projects be funded with the support of PRIMA-IS. EU funding for this purpose may not exceed 20 % of the EU's overall contribution and, should the additional funding be insufficient, the next project on the list will be selected. This will be essential for maintaining the high quality of projects completed.

⁽²¹⁾ EESC opinion on *JTIs and PPPs/Horizon 2020* (OJ C 34, 2.2.2017, p. 24).

⁽²²⁾ COM(2016) 662 final. Article 12.2.

⁽²³⁾ EESC opinion on *Circular Economy Package* (OJ C 264, 20.7.2016, p. 98).

⁽²⁴⁾ EESC opinion on, *Circular Economy — fertilisers* (OJ C 389, 21.10.2016, p. 80).

⁽²⁵⁾ EESC opinion on *Thematic strategy for soil protection* (OJ C 168, 20.7.2007, p. 29). EESC opinion on *Circular Economy — fertilisers* (OJ C 389, 21.10.2016, p. 80, points 1.4 and 3.6).

⁽²⁶⁾ EESC opinion on *Civil societies in the Euromed region* (OJ C 376, 22.12.2011, p. 32).

⁽²⁷⁾ EESC opinion on *Governance of macro-regional strategies* (OJ C 12, 15.1.2015, p. 64).

5.5 The EESC welcomes the possibility of bodies from EU Member States that have not joined PRIMA being eligible for funding where they have competences that the countries that have joined do not. In such circumstances, their financial contribution should not be more than 50 % of eligible costs for 'research and innovation activities' and should be between 35 % and 50 % for eligible costs for 'innovation activities'. This will help to maintain a high level among projects carried out with an EU perspective and at the same time support countries intending to join and finance the PRIMA programme.

5.6 The EESC reiterates the need to address the issue of water in a comprehensive manner, taking account of the environmental, economic and social perspective and covering the entire water cycle, including artificial stages made possible by new technologies, in the interests of sustainable development. The EU needs to develop a fairer approach to water abstraction, one that meets the requirements of competing economic and energy sectors, the need to conserve freshwater ecosystems and the obligation to uphold a fundamental citizens' right⁽²⁸⁾.

5.7 The EESC notes that one of the main problems in the Mediterranean, particularly on the African side, is the loss of traditional, sustainable agricultural techniques arising from the brain drain (mostly involving young people). It would recommend that studies and research with high added value under Horizon 2020 explore financially accessible and easily transferable processes with a significant social impact, so as to preserve this knowledge and promote economic growth and employment.

Brussels, 26 January 2017.

*The President
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⁽²⁸⁾ EESC opinion on *Integration of water policy into other EU policies* (OJ C 248, 25.8.2011, p. 43, point 1.13).

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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