Opinion of the European Economic and Social Committee on ‘Strengthening EU cohesion and EU social policy coordination through the new horizontal social clause in Article 9 TFEU’ (own-initiative opinion)

(2012/C 24/06)

Rapporteur: Mr LECHNER

On 20 January 2011, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Strengthening EU cohesion and EU social policy coordination through the new horizontal social clause in Article 9 TFEU.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 28 September 2011.

At its 475th plenary session, held on 26-27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 113 votes to 1 with 7 abstentions.

1. Conclusions and recommendations

1.1 A fundamental innovation of the Treaty on the Functioning of the European Union is its horizontal social clause (HSC, Article 9 TFEU) which states that ‘in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.’ The European Economic and Social Committee (EESC), whose responsibility for contributing to the social dimension of the EU has increased as a result of the adoption of the Lisbon treaty, believes that this provision can represent a major step forward towards a more social EU only if it is properly applied. To this effect, it endorses numerous conclusions and recommendations from an independent academic study commissioned by the EU Belgian presidency of the Council of the European Union in the second half of 2010 (1).

1.2 The EESC stresses that application of the HSC constitutes the implementation of primary legislation to which all Member States committed themselves when they signed and ratified the Lisbon treaty. It should not be limited in its scope or methods but, on the contrary, it must be applied across all relevant Union policies and activities, including economic ones, by both the EU institutions and individual Member States.

1.3 The European Commission, which has been entrusted by the Lisbon treaty with the task of promoting ‘the general interest of the Union’ (Article 17 TEU), must ensure that the HSC is satisfactorily applied, and that it is referred to and fully taken into account in all relevant documents and judicial texts and plays a role in the fulfilment of the Treaty’s new objectives by both the European Union and the Member States.

1.4 The European Commission should further strengthen the overall role of social impact assessment within its general Impact Assessment System (IAS). This should be recognised as a key tool for systematically ensuring that the EU’s common social objectives are mainstreamed in all relevant EU policy areas.

1.5 The HSC must be applied to the broad fields and overall architecture of the new Europe 2020 EU socio-economic governance agreed upon by the European Council in 2010. It must be applied across each of its three priorities (smart growth, sustainable growth and inclusive growth), as well as in the monitoring of progress towards the five EU headline targets (which still have to be translated into national targets and which are designed to contribute effectively to meeting EU objectives), the seven flagship initiatives, the ten Integrated Guidelines for employment and economic policies, the ‘European Semester’ and the new economic governance.

1.6 Together with all of its sections, the EESC will therefore take the legally binding HSC – and all other legally binding horizontal clauses (Articles 8 to 12 TFEU) – into due consideration in its opinions and other work with a view to strengthening the social dimension of the EU.

1.7 In each of its opinions prepared for the European Commission or other EU bodies the EESC will consider in each case whether an adequate social impact assessment has been carried out. Where needed, it will urge the responsible EU bodies to rectify the deficiency.

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1.8 The Social Protection Committee (SPC), given its responsibility for EU coordination and cooperation in the social field, has a major role to play in ensuring a strong social dimension for the Europe 2020 Strategy and, more generally, in implementing a more social EU. It is critical that in the future it plays a full and equal role alongside the EU Economic Policy Committee and Employment Committee in the overall implementation and monitoring of the Europe 2020 Strategy.

1.9 In order to promote and strengthen social impact assessment at national and sub-national levels the SPC should give high priority to deepening existing work on this issue, ensuring that emerging vulnerable groups and gender equality deficits are better targeted. It should promote increased understanding of this tool, encourage Member States to build its use into their policy processes from an early stage, and support the development and dissemination of knowledge about the tools, methods and data sources needed to make it effective. At the same time, it should monitor and report regularly on the use of social impact assessments by Member States in the context of developing the National Reform Programmes (NRPs).

1.10 The SPC has decided to issue an annual report covering an assessment of progress towards the EU headline target on social inclusion and poverty reduction, a monitoring of the implementation of the social aspects of the Integrated Guidelines, and other activities to monitor the social situation and the development of policies undertaken in the context of coordination and cooperation in the social field (1). This report could usefully become the Annual Assessment of the social dimension of the Europe 2020 Strategy and feed into the European Commission’s Annual Growth Survey and EU policy guidance and possible social recommendations to Member States on their NRPs. As agreed by the SPC, this SPC assessment will be based on annual strategic reporting by Member States on progress towards the EU’s common social objectives and updated plans taking account of the national policy cycle.

1.11 The EESC will draw up an annual opinion on the application of the HSC – which is to have its own, key section in the opinion – and on the application of the other social horizontal clauses, the Charter of Fundamental Rights and other socio-political provisions of the Lisbon treaty as well as secondary legislation and other legal and political measures, looking at whether objectives and targets have been adhered to and promoted. It will also evaluate and assess to what extent these can contribute to the development of the EU both socially and in terms of fundamental rights, and recommend concrete steps on how to meet objectives and targets more effectively. A hearing on this subject will provide an opportunity for other major organisations representing civil society in the social sector to present their own specific opinions and reports. Representatives of the European institutions will be informed about and briefed on this annual EESC opinion.

1.12 The EESC as well as the national economic and social councils and similar institutions in the Member States should play their part as stakeholders in the implementation of the HSC and social IAS by supporting European citizens’ initiatives and citizens’ projects in civil dialogue on social policy issues. The EESC’s Europe 2020 Steering Committee should also play a central role in monitoring and reporting on the content and process of the National Reform Programmes.

1.13 The EESC and the European Commission should conclude an interinstitutional agreement specifying that the Commission shall forward all impact assessments on Commission dossiers to the EESC, so that the EESC can take account of them in its opinions and reports.

2. Background to the development of a more social EU

2.1 The Lisbon treaty and the Europe 2020 Strategy provide significant opportunities to move towards a better and more mutually reinforcing balance between economic, employment and social objectives – and thus, towards a stronger social EU. As highlighted in the aforementioned academic study commissioned by the EU Belgian presidency 2010, there are five opportunities that stand out. (2)

2.1.1 The Lisbon treaty, through its HSC, provides a legal basis for taking into account the social impact of policies and using this as a tool to mainstream social objectives across all relevant policy areas (including non-social policies and measures) as well as to monitor and report on the impact of policies.

2.1.2 The Treaty and the Europe 2020 Strategy (with its headline EU targets and its EU flagship initiatives) have increased the potential visibility and importance of social issues – especially, though not solely, those regarding social inclusion and poverty.

2.1.3 The Europe 2020 Strategy holds out the possibility of a much more integrated and coordinated approach to economic, social, employment and also environmental governance. This could ensure that policies in these areas become genuinely reinforcing.

(1) See footnote 1.
2.1.4 Under the new Treaty there is more scope for better safeguarding, strengthening and modernising of national social protection systems and for better protecting services of general interest, especially social services, which could contribute to restoring the balance between the EU and national levels.

2.1.5 The Treaty provides the justification for EU action on a broader range of social issues than heretofore - such as contributing to a high level of education and training, protecting human health and reducing inequality. This may lead to greater coordination of the patchwork of ‘social’ policies in the broader sense.

2.2 As highlighted by José Manuel Barroso, president of the European Commission, ‘the Europe 2020 agenda, in setting a social inclusion target, has highlighted three dimensions of poverty and exclusion. It is also essential, however, that Member States – and the EU as a whole – continue to monitor performance according to the full set of commonly agreed social indicators underpinning EU coordination and cooperation in the social field.’

2.3 In line with the new EU objective of ‘territorial cohesion’ (introduced by the Lisbon treaty), and with the aim of the recent budget review being to concentrate cohesion funding on all the Europe 2020 objectives and so strengthen cohesion policy, the ultimate goal, which ought to be put at the heart of the next financial perspectives (for the post-2013 period), should be to ensure that the EU social objectives are fully taken into account in EU ‘territorial’ policies and programmes. This would consist of ensuring that links are developed between EU social objectives and cohesion policy – i.e. exploiting the potential of the new territorial cohesion objective in the next programming regulations, ensuring the implementation of non-discrimination and accessibility principles in structural fund spending, ensuring that cohesion policy is used as a ‘preventive arm’ to promote structural and institutional reforms that enhance the achievements of the EU social objectives, and also incorporating the territorial approach as an important element in EU coordination and cooperation in the social field. It is important to emphasise that a vital dimension of this ‘territorialisation’ will be local and regional actors’ active participation.

2.4 Translating the EU social inclusion target, as also defined in the Europe 2020 Strategy, into meaningful national (and possibly also sub-national) targets is essential. National targets should clearly contribute to the overall achievement of the EU target. Targets should be evidence-based. They should accurately reflect the mechanisms which cause poverty and social exclusion and the overall policy objectives set for increasing social inclusion. They must measure real policy outcomes and avoid any risk that, in meeting the target, policy objectives are distorted, forgotten or ignored. To ensure ongoing public and political support, targets should be set following a robust, rigorous and transparent process. They should also take into account the views of stakeholders. Progress towards EU and (sub)national targets needs to be closely monitored and reported on.

3. Background to the application of the horizontal social clause

3.1 The Lisbon treaty sets out some major changes to the social dimension of the EU. Article 9 TFEU on the horizontal social clause (HSC) states that ‘in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.’

3.2 This HSC ties in with the Treaty’s other horizontal clauses on gender equality, combating discrimination, environmental protection, consumer protection, animal protection and SMEs (Articles 8, 10, 11, 12, 13 and 153 TFEU). The EU and all its bodies – including the EESC as a consultative body – and the Member States have an obligation to apply these horizontal clauses in all relevant proposals, policies and actions. This also applies to all the relevant documents and judicial texts.

3.3 The aim of the HSC is to ensure that all of the EU’s activities take full account of the social dimension by following the six sub-objectives in Article 9 TFEU, in order to achieve the fundamental values and objectives of the EU within the scope of its responsibilities (Articles 2 and 3 TEU and Article 7 TFEU).

3.4 The essential objective of Member States’ efforts is ‘the constant improvement of the living and working conditions of their peoples’ (preamble to TFEU, third paragraph). The Union and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation (Article 151 TFEU).


3.5 The decision-making institutions should not limit the application of the HSC either in its scope (e.g. combating poverty and social exclusion) or methods (e.g. open method of coordination in the field of social protection and social inclusion, as well as impact assessment system), or to the activities of the Social Protection Committee, but should, on the contrary, apply it in the broadest sense across all EU policies, especially economic and foreign policy. The HSC must find expression in legislative texts which ensure fulfilment of the Treaty’s new objectives by both the European Union and Member States.

3.6 As highlighted in the 2010 General Report on the Activities of the European Union (p. 21), the Lisbon treaty gives increased responsibility to the EESC for contributing to the social dimension of the EU.

3.7 The EESC therefore needs to take the legally binding HSC – and all other legally binding horizontal clauses (Articles 8 to 12 TFEU) – into due consideration in all of its opinions and other work, thus strengthening the social dimension of the EU. In this way, the EESC will also support the proactive and preventive approach of the HSC.

3.8 The EESC has already adopted a comprehensive opinion on the HSC and the Social OMC (7), and one on the benefit to society as a whole of social welfare benefits (8), in which it pointed out that effective and vigorous practical implementation of the HSC in shaping and implementing EU policies could significantly contribute to stronger EU cohesion and social policy coordination.

3.9 In the second half of 2010, a number of conferences were held on the initiative of the Belgian presidency of the EU Council that highlighted the importance of the HSC and the social impact assessment system in the development of the EU’s social dimension (7). The HSC of the new Lisbon treaty calls for an intensified focus on the social dimension of EU policies. Taking into account the social effects of all EU policies calls for a structural dialogue across and within all EU institutions. This requires a commitment from the European Commission, the European Parliament, the Council of the European Union, the European Council and the European Court of Justice, to engage in dialogue across and within their institutions (19).

3.10 Other mechanisms to improve EU social policy coordination and cooperation, alongside the HSC and IASs, include the social OMC, EU cohesion policy and the EU social protection and social inclusion objectives (11).

3.11 The IASs are an important tool in applying and implementing the HSC, and the European Commission supports this with its own IAS guidelines in the context of good governance (12) and better and smart regulation (13).

3.11.1 The European Commission, the Council of the EU and the European Parliament also have an interinstitutional agreement on use of the IAS (14).

3.11.2 The European Commission has also developed its own guidelines on assessing social impacts within the Commission impact assessment system (15), and has planned eleven impact assessments for 2011 in the employment and social fields (16).

3.11.3 The European Court of Auditors has analysed the impact assessments for 2005-2008 comprehensively and evaluated them positively (17).

3.11.4 The Committee of the Regions is already cooperating with the European Commission on certain IASs (18).

3.11.5 The Council has called on the European Commission to apply Article 9 TFEU and the social IAS (19); proposal 29 for the Single Market Act suggests conducting a social impact analysis.

(1) EESC exploratory opinion on The open method of coordination and the social clause in the context of Europe 2020 (OJ C 44, 11.2.2011, p. 23).
(2) EESC exploratory opinion on The development of social welfare benefits (OJ C 44, 11.2.2011, p. 28).
(3) This is the case in particular of the conference on EU coordination in the social field in the context of Europe 2020: Looking back and building the future, 14-15 September 2010, La Hulpe, Belgium.
(4) The horizontal social clause and social mainstreaming in the EU, 3rd Forum on Social Services of General Interest, 26-27 October 2010.
(5) SPC opinion endorsed by the June 2011 EPSCO Council of Ministers.
(8) Inter-Institutional Common Approach to Impact Assessment (IA), 14901/05 JUR.
3.11.6 The EU Charter of Fundamental Rights has been systematically taken into consideration in the European Commission’s legislative proposals, and in 2010 the Commission presented a strategy for its implementation (20) on which the EESC has already issued an opinion (21).

3.11.7 The EESC has already adopted positive opinions on the introduction, drafting and application of impact assessments and on sustainability impact assessments and EU trade policy (22).

3.11.8 IASs are a potentially powerful but in practice challenging policy tool. In order for their potential to be fully realised and to ensure that they are not used to legitimise pre-determined policy proposals, there must be a shift in the policy-making culture, and officials need to have sufficient time, knowledge, skills and support. It is important to promote the involvement of stakeholders in the process. The implementation of impact assessments should be cost-effective and proportionate to their objectives.

4. General comments

4.1 The horizontal social clause (Article 9 TFEU) is one of the Lisbon treaty’s main social policy innovations, whose potential needs to be used to the full. It provides a strong mandate for taking into account aims in all the relevant EU policies, initiatives and activities. This article should make the development of a social EU a cross-cutting EU task which touches on all policy areas. Application of the HSC should therefore be taken into account in the European research programmes as well.

4.2 The HSC is particularly important and pressing given that the impact of the financial, economic and budgetary crises is making it more important, both for the EU as a whole and its individual Member States, to take full account of the social dimension of the EU. The imbalance between enhancing economic integration in the Single Market and further expanding the social dimension of the EU must be overcome. Implementation of this new instrument could therefore help to reduce long-standing discontent and overcome increasingly wide scepticism in many Member States as to the added value offered by the European Union, especially in terms of economic, social and employment-policy progress. It would also make the Member States take more responsibility.

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4.3 In each of its opinions prepared for the European Commission or other EU bodies the EESC will consider in each case whether an adequate social impact assessment has been carried out. Where needed, it will urge the responsible EU bodies to rectify the deficiency.

4.4 The European Parliament has a major role to play in the application of the HSC, inter alia in evaluating the social impact assessments undertaken by the European Commission and other EU bodies on an ongoing basis (23).

4.5 The Member States are also required to apply the HSC and all other horizontal clauses in all relevant proposals, policies and actions and all relevant documents and judicial texts. They should implement social IASs for these purposes.

4.6 Real participation by organised civil society at all stages and levels is essential to ensuring effective use of the HSC and the social OMC (24). The EESC is a consultative body made up of representatives of organisations of employers, of the employed, and of other parties representing civil society from all 27 Member States. It thus brings together key EU stakeholders and is therefore ideally placed to make a significant contribution to promoting and optimising the IAS.

4.7 The EESC can help to develop and intensify social policy objectives and social and civil dialogue in the Member States, by strengthening information-sharing and cooperation with the economic and social councils (ESCs) and similar institutions in the Member States and with the social partners, representatives of other interest groups and other relevant civil society organisations in the social sector at all levels (EU, national and regional). The work carried out by the EESC’s Europe 2020 Steering Committee, which regularly monitors and reports on the content and process of the National Reform Programmes, should also assist with these efforts.

4.8 The European Social Platform (25) and its constituent members, which include a number of sectoral social organisations (including women’s organisations and organisations representing older people, people with disabilities, people affected by poverty and the homeless), as well as other European and national civil society organisations in the social sector, also have an important role to play in calling for the HSC to be applied satisfactorily at EU and (sub)national levels.

(22) EESC opinions on Quality standards - Impact assessment (OJ C 175, 27.7.2007, p. 21) and Impact assessment guidelines (OJ C 100, 30.4.2009, p. 28); see also footnote 30.
(24) See footnote 8
(25) The Platform of European Social NGOs (Social Platform) is the alliance of representative European federations and networks of non-governmental organisations active in the social sector. See: http://www.socialplatform.org/
4.9 The Europe 2020 Strategy flagship initiative ‘The European Platform against Poverty and Social Exclusion’ (26) together with the EESC’s work on this (27) and on the other Europe 2020 Strategy flagship initiatives should also contribute to ensuring a balanced application of the HSC at EU, national and subnational levels.

5. Specific comments

5.1 The social policy provisions of the Lisbon treaty (in particular Articles 145 to 166 and 168 TFEU) and the EU Charter of Fundamental Rights (in particular Chapter IV on Solidarity) give the horizontal social clause concrete form, and must be fully respected.

5.2 The EESC will publish an annual opinion on the application of the HSC and the other social horizontal clauses (Articles 8, 9 and 10 TFEU), the Charter of Fundamental Rights (taking special account of basic social rights) and the other socio-political provisions of the Lisbon treaty (especially Articles 145 to 166 and 168 TFEU) as well as secondary legislation and other legal and political measures, looking at whether the social objectives and targets have been adhered to and promoted. It will also evaluate and assess to what extent these contribute to the development of the EU both socially and in terms of fundamental rights. Where appropriate, the opinion will also recommend concrete steps on how the social objectives and targets can be achieved more effectively at both European and national level. The SPC’s annual report on the social dimension of Europe 2020 (28) will be taken into account here.

5.2.1 In addition to the social partners and representatives of various interests, other major organisations representing civil society in the social sector will have the opportunity to present their own specific opinions and reports at an EESC hearing on the subject to be held each time the opinion is drafted.

5.2.2 Representatives of the EU institutions, especially the European Council, the Council, the European Parliament, the Commission, the European Court of Justice and the European Central Bank, will be informed about and briefed on the EESC’s annual opinion.

5.3 The EESC and the ESCs and similar institutions in the Member States should play their part as stakeholders in the implementation of the HSC and social IAS by supporting European citizens’ initiatives and citizens’ projects in civil dialogue on social policy issues.

5.4 The EESC and the European Commission should conclude an inter-institutional agreement specifying that the Commission shall forward all impact assessments on Commission dossiers to the EESC, so that it can take account of them in its opinions and reports.

5.5 The EESC, together with all of its sections, will take the legally binding HSC – and all other legally binding social horizontal clauses of the Treaty (Articles 8 to 12 TFEU) – into due consideration in their opinions and other work with a view to strengthening the social dimension of the EU (e.g. social clauses in free trade agreements (29), the social dimension of the internal market, sustainability impact assessments and EU trade policy (30)).

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON