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III  Preparatory acts

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

475th plenary session held on 26 and 27 October 2011

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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

475TH PLENARY SESSION HELD ON 26 AND 27 OCTOBER 2011

Opinion of the European Economic and Social Committee on ‘Social entrepreneurship and social enterprise’ (exploratory opinion)
(2012/C 24/01)

Rapporteur: Ariane RODERT

In a letter of 6 June 2011, Maroš ŠEFČOVIČ, Vice-President of the European Commission, asked the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, to draw up an exploratory opinion on

Social entrepreneurship and social enterprise.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 106 votes, with 1 abstention.

1. Conclusions and recommendations

1.1 When exploring initiatives promoting social entrepreneurship, the EESC deems it necessary to look at social entrepreneurship against the background of the wider notion of social enterprise since actions are needed at all stages of its lifecycle.

1.2 Social enterprise is a key element of the European social model. It is closely linked to the EU2020 strategy and makes a significant contribution to society. By supporting and promoting social enterprise, we can make the most of its growth potential and capacity to create social value. The EESC supports the Commission's launch of a political framework and action plan to promote social enterprise in Europe and stresses the importance of its full implementation at both EU and Member State level.

1.3 Since national definitions vary, social enterprise should be described on the basis of shared characteristics such as social objectives, reinvestment of profits, the multitude of legal forms and stakeholder participation.

1.4 Member States and the EU institutions must ensure that social enterprises are included and taken into account in public policy initiatives and programmes aimed at enterprises on equal terms with other forms of businesses. Cross-border social enterprise initiatives are best promoted by means of EU funding for European meeting-places for the exchange of ideas and models.

1.5 Better access to capital and tailored finance instruments are priorities for social enterprises. The Commission should collect and share existing good practice and innovation initiatives in the Member States, such as hybrid capital and forms of interplay between public and private capital and ensure that the current EU regulatory framework does not hinder the development of new instruments.
1.6 It is key that the next structural fund programming period explicitly includes programmes for starting up and developing social enterprises. The Commission should provide guidance on combining and leveraging financial instruments from different sources.

1.7 The Commission should launch an EU-wide exercise comparing approaches to public financing which are particularly suitable for social enterprise. The Commission should encourage and assess the prevalence of tenders with social considerations and tackle the issue of ‘gold plating’ in procurement. When reviewing the State aid rules, the Commission should consider full exemption of social services of general interest, or provide notification exemption for all small-scale public services and certain social services in order to encourage more start-ups of social enterprises.

1.8 Due to their varied legal forms and specific social missions, tax advantages do exist in certain Member States. These should be reviewed and shared in order to encourage the development of appropriate rules.

1.9 The Commission and the Member States should encourage the emergence of specific support programmes for social enterprises development and the next generation of social entrepreneurs.

1.10 Together with social enterprises, the Commission should take the initiative to look into the possibility of a common European system for measuring social outcomes and encourage the use of existing systems. Initiatives to create a more transparent reporting system in order to increase investor confidence should also be investigated further. The EESC calls on the Commission to launch a study of existing social labels with the aim of creating a common European system or code of conduct.

1.11 Social enterprise must be included in research, innovation and development programmes. Furthermore, initiatives should be taken to collect and share statistics on social enterprise in Europe. This could be the task for a social enterprise observatory at EU level.

1.12 Like all other employers, social enterprise must meet the requirements of decent working conditions and comply with any collective agreements in force, ensuring that they are properly applied.

1.13 Particular emphasis must be placed on new Member States in order to ensure the emergence of social enterprise, through the opening up of public services, adopting social inclusion policies and promoting forms for social enterprise such as the social economy.

2. Introduction

2.1 The Commission communication Towards a Single Market Act of 27 October 2010 (1) put forward measures to realise the concept of a ‘highly competitive social market economy’. One measure proposed was a ‘Social Business Initiative’. This proposal remained a key measure in the final version of the Single Market Act communication of April 2011 (2) and was also highlighted as a priority area in the EESC’s opinion INT/548 (3), responding to the consultation on the Single Market Act.

2.2 Europe is facing challenges which require solutions that combine economic and social well-being. Promoting social entrepreneurship and social enterprise, especially during the current harsh economic climate, will harness both its growth potential and its added social value. In order to realise its potential, a comprehensive political framework should be developed and implemented involving a broad range of stakeholders from all sectors of society (civil society, private, public) at all levels, (local, regional, national and European).

2.3 Social entrepreneurship and social enterprise cover a diversity of concepts that include various actors and terms at Member State level. This exploratory opinion is titled ‘Social Entrepreneurship and Social Enterprise’, the EESC being of the opinion that the broader term ‘Social Enterprise’ (which includes social entrepreneurship) should be used throughout the opinion since actions are needed at all stages of a social enterprise’s lifecycle.

2.4 This exploratory opinion aims to identify priority areas with a view to creating an enabling environment for social enterprise in Europe. The EESC has touched on this topic in several opinions (4) over the years and welcomes the Commission’s new attention to social enterprise. It is also important to recognise the substantial work done by different stakeholders in this area over the years, some of which is taken into account in this opinion take into account (5).

3. The EESC’s comments

3.1 Definition of social enterprise

3.1.1 Diverse linguistic and cultural traditions have led to differing meanings of the concepts of social enterprise.

(2) COM(2011) 206 final.
(3) OJ C 132, 3.5.2011, p. 47.
3.1.2 The EESC understands that the clear definition is needed so that efforts can be focused, but rather than a definition, proposes a description based on shared characteristics such as:

— having **primarily social objectives** as opposed to profit objectives, producing social benefits that serve the general public or its members;

— being primarily not-for-profit, with **surpluses principally being reinvested** and not being distributed to private shareholders or owners;

— having a **variety of legal forms and models**: e.g. cooperatives, mutuals, voluntary associations, foundations, profit or non-profit companies; often combining different legal forms and sometimes changing form according to their needs;

— being economic operators that **produce goods and services** (often of general interest), often with a strong element of social innovation;

— operating as **independent entities**, with a strong element of **participation and co-decision** (staff, users, members), **governance and democracy** (either representative or open);

— often stemming from or being associated with a **civil society organisation**.

3.1.3 Social enterprises make **important contribution to society** and are a key feature of the **European social model**. They contribute to the EU2020 targets by creating jobs, developing innovative solutions to meet public needs and by building social cohesion, inclusion and active citizenship. They play a particular role in promoting the participation of women, older persons, young persons, minorities and migrants. It must also be recognised that a many social enterprises are SMEs, often from the social economy and several active in the area of work integration.

3.1.4 The Commission’s ongoing **work on legal structures** for the social economy must take these characteristics into account in order to ensure that all forms of social enterprise are included. The Commission should also consider a **study on the new legal forms and legislative initiatives emerging** for social enterprises in some Member States (7), with a view to assessing their usefulness.

3.2 Including social enterprise in public policy on enterprise

3.2.1 Public policies for the development and growth of enterprise are linked to several policy areas such as competition, internal market, finance and innovation. Public policy initiatives to, facilitate the start-up and operation of businesses, must take account of and include **social enterprises on equal footing with other forms of enterprise** at both Member State and EU level, while recognising their specific characteristics.

3.2.2 Social enterprises are often locally based, and expansion is not always an obvious interest or priority. Rather than competing or expanding their model, they often prefer other approaches to growth. This must be considered when exploring **cross-border social enterprise initiatives**. The EU and Member States should fund and support the setting up forums, trainee exchanges, ‘social innovation camps’ and social franchising, which may be a better way of encouraging new ideas and cross-border cooperation.

3.3 Stimulating social investment

3.3.1 Better access to capital for both start-up and growth is a priority for social enterprises. Today there is a shortage of finance instruments developed especially for social enterprises, despite a considerable interest in cooperation among both financial institutions and social enterprises. A number of innovative financial instruments are now emerging at local and national level. The Commission should initiate work to **collect and share the good practice driving those innovative initiatives** and the existing expertise in the Member States to **stimulate social investment** for social enterprises in Europe. In doing this, the Commission should bear the following points in mind.

3.3.1.1 Due to its specific characteristics and varied legal forms, social enterprise needs different kinds of financing instruments than other forms of business. A special tailored form of **hybrid capital** (7) containing elements of grants, equity and debt capital suits social enterprises better throughout their life cycle. Hybrid capital combines a grant component (public grants, philanthropic funds, donations) together with equity and debt/risk-sharing instruments. Financing instruments of a hybrid capital nature include recoverable grants, forgivable loans, convertible grants and revenue share agreements. Hybrid capital often involves close interplay between public and private capital.

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3.3.1.2 The emergence of intermediaries specifically aimed at social enterprises should also be considered. These play a key role in bringing social enterprises and investors together, providing information on and furnishing capital, and offering advice and support. There are a number of interesting examples which should be reviewed further (9).

3.3.1.3 The Commission should also pay attention to the emergence of different types of public social investment (9) and other initiatives within the financial sector (cooperative banks (10), social banks (11), commercial banks with social programmes (12)), or innovative instruments such as ‘social impact bonds’ (9). It is especially important to support these initiatives at this time of diminishing public funding.

3.3.2 It is crucial that the Commission ensures that the EU regulatory framework (e.g. State aid rules) supports rather than hinders the emergence of these new financial instruments.

3.3.3 The next structural fund programming period must explicitly include programmes for the start-up and development of social enterprises and be available for a longer period in order to ensure that support is maintained during the sensitive start-up phase. For structural funds to support social enterprise, the Commission should also provide guidance on good practice in combining and leveraging financial instruments form different sources.

3.4 Modernising public financing

3.4.1 Social enterprises often produce goods and services of general interest which primarily are financed through public funding. In their application, current legal frameworks often favour large well-capitalised private actors. New legal instruments should be developed, and/or existing ones developed, so that they are better suited to social enterprises. The Commission should launch an EU-wide exercise to comparing approaches to public financing that are particularly accommodating to social entrepreneurship.

3.4.2 As the EESC pointed out in its opinion INT/570 (14), participation in public procurement by SMEs, including social enterprises, must increase. It is crucial to ensure equal access to public procurement for all actors. Procurement should be simplified by simplifying administrative procedures. The Commission plays a key role here in collecting and sharing effective and simple procurement models for social enterprises.

3.4.3 The EESC opinion on public procurement also points out the importance of innovative, environmental and social aspects in procurement. The Commission guide on Buying social (13), which identifies ways of taking social and environmental concerns into account in procurement, is central and should be given a higher profile. The Commission should also take steps to encourage and assess the prevalence of tenders with social considerations.

3.4.4 The Commission must tackle the ‘gold plating’ in procurement that occurs in some Member States, by building awareness of alternatives, more appropriate and innovative public financing instruments.

3.4.5 Social enterprises are often challenged by State aid rules. In its opinion TEN/455 (16), the EESC supports a more diversified and proportionate approach, the need to take into account not only economic criteria but also social, territorial and environmental aspects and measuring efficiency in terms of quality, results and sustainability. The efforts being made to simplify and clarify State aid rules must therefore consider how any revisions of these rules affect social enterprises. It is also important to highlight the exemptions to these rules that already exist (17).

3.4.6 In its review of State aid rules, the Commission should consider extending the exemptions to all social services of general interest, or, as suggested in the EESC opinion, providing notification exemption for all small-scale public services and certain social services. The uncertainty and added administrative burden of complying with State aid rules may deter private investors and public procurement officers from engaging with social enterprises. Exemptions can stimulate more innovation and business start-ups. However, such an initiative should still provide for a mechanism to prevent corruption.

3.4.7 Social enterprises have differing legal forms and are therefore often subject to differing tax rules and conditions. Because of their social objectives and limited or capped profit distribution, social enterprises enjoy tax breaks and other tax concessions in some Member States. These must be reviewed and shared in order to encourage the development of appropriate rules for social enterprise regardless of their legal form.

(11) The main actors offering social investments are venture philanthropy funds, social investment funds, funding consultancies and social stock exchanges. For details see: Investor Perspectives on Social Enterprise Financing: http://217.154.230.218/NR/dinlyres/1FCB89A1-6DE2-495F-9284-C3CC1CB706D/0/BC_RS_InvestorPerspectivesonSocialInvestment_forweb.pdf An example of a social investment is the UK ‘Big Society Capital’ see: http://www.cabinetoffice.gov.uk/content/big-society-capital.
(14) www.socialfinance.org.uk/ib.
(15) Of C 318 of 29.10.2011, p. 113.
3.5 Launching development programmes for social enterprise

3.5.1 Social enterprises need access to specially-developed support programmes for development. Initiatives involving ‘hubs’ that provide business support, work places and mentoring have proven effective during the start-up phase, as have training programmes by social enterprise networks. Special emphasis should be placed on investment readiness programmes. The emergence and sharing of these types of support programme should be encouraged.

3.5.2 Efforts are needed to support the next generation of social entrepreneurs. Social entrepreneurship should be encouraged in formal, informal and non-formal learning. Special training for social enterprise (19) should be shared between the Member States.

3.5.3 The Commission and the Member States should support and cooperate with established social enterprise actors and networks. Social enterprises often originate from the voluntary sector or the social economy. They provide an excellent channel for reaching social entrepreneurs and enterprises.

3.6 Building awareness of and trust in social enterprises

3.6.1 Social enterprise must be more visible and recognised as a vital sector in society. The Commission should consider a European social enterprise label which would increase awareness and recognition, and build trust and demand. A first step should be a study, initiated by the Commission and carried out in cooperation with social enterprises, of existing labels and other certification systems already in place in many Member States (19).

3.6.2 In research and policymaking, business is often equated with profit-making, private business. Efforts should therefore be made to include social enterprise in research, innovation and development programmes on a continuing basis.

3.6.3 There is a lack of consolidated statistics on social enterprise at Member State and EU level. The use of satellite accounts (20) should be promoted in all Member States. In addition, setting-up an ‘observatory’ for social enterprises at EU level with the active involvement of the EESC and its national counterparts in close cooperation with the Member States would help to collect, compare and disseminate knowledge on a systematic basis.

3.6.4 The benefits of social enterprise must be made more visible through the measurement of values other than purely economic value. Several instruments exist for measuring social outcomes (21), as well as methods for social accounting. Unfortunately these are often complicated for small actors to use. The EU, together with social enterprise, researchers and capital providers, should encourage the use of these existing systems, but also take steps to develop a simpler common European system or code of conduct based on these existing systems.

3.6.5 Increasing trust and confidence in social enterprise depends upon accountability and transparency. Social enterprises often rely on public funding, private donations and membership fees. The use of these resources must be reported more openly through an open reporting system, which could be a standard EU method, in order to increase investor confidence. Increased transparency and open reporting would also counter the risk of social enterprises quickly becoming more profit-making, with excessive salaries for executives and board members.

3.6.6 Establishing optimal conditions for social enterprise requires leadership and ongoing dialogue between all sectors of society. This requires, under the leadership of the Commission, cooperation between all the EU institutions, Member States and society as a whole with particular focus on regional authorities, which are often key stakeholders. The EESC, as well as the Committee of the Regions, can play a vital role in the next stage of this work given their composition, expertise and close links to the Member States.

3.7 Other comments

3.7.1 Social enterprises often involve volunteers. It is important to be clear about their role. The Council decision of 27 November 2009 (22), stresses that voluntary activities are undertaken ‘of a person’s own free will, choice and motivation’. They do not replace professional, paid employment opportunities and they add value to society.

3.7.2 Social enterprises must, like all other employers, meet the requirements of decent working conditions and comply with any collective agreements in force. In implementing the provisions of European legislation and national laws and/or collective agreements in the field of information, consultation and participation of employees, social enterprises must identify the most suitable and appropriate way to ensure that these rights are properly applied.

3.7.3 Social enterprise has emerged within varying national contexts. In particular, the EESC urges the Commission to focus appropriate support and initiatives on developing social enterprise in the new Member States. Important initiatives are to adopt changes to their welfare system, promote active inclusion policy, encourage the creation of social economy/social enterprise actors and open up the public service market.

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3.7.10 Establishing optimal conditions for social enterprise requires leadership and ongoing dialogue between all sectors of society. This requires, under the leadership of the Commission, cooperation between all the EU institutions, Member States and society as a whole with particular focus on regional authorities, which are often key stakeholders. The EESC, as well as the Committee of the Regions, can play a vital role in the next stage of this work given their composition, expertise and close links to the Member States.
3.7.4 The EU should also promote social enterprise outside its own borders. The EU model for social enterprise should be shared, in order to inspire the development of similar models in the candidate countries and internationally.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
1. Conclusions and recommendations

1.1 In late November 2010 – when the upcoming Polish EU presidency decided to consult the EESC on the impact of the crisis on the ability of European firms to undertake pro-climate investments, the question was aimed primarily at the effects of the European Emissions Trading System (EU ETS). Had the EU ETS – as the central pillar of the EU’s climate change policy – functioned adequately during the economic recession that the EU went through in 2009 after the financial crisis beginning in late 2008?

1.2 As the GHG and CO₂ emission data for 2009 and 2010 clearly show, it was the decline of business activity in 2009 that caused the reduction in emissions. Likewise, the economic recovery that set in during 2010 was accompanied by a surge in emissions. This would suggest that the price signals of the ETS are not sufficient to provide strong enough incentives to avoid carbon intensive processes and encourage long-term investments into more climate friendly technologies. Fortunately, the ETS was designed to be sensitive to such problems and is capable of being modified and revised to enforce a carbon price which will deliver reductions whilst compensating industries least able to adjust. In order to move towards a low-carbon economy, investments in green and resource-efficient technologies are required, instead of a decrease in industrial production.

1.3 The ETS was initially designed to optimise the costs of the mitigation process and is still considered the major emissions reduction instrument. The scheme requires urgent improvements in order to restore its effectiveness and environmental integrity.

1.4 Evidence is mounting that modifying the ETS cannot in itself ensure the successful implementation of a climate change policy that accelerates the transition to lower or no-carbon energy sources and sustains robust economic growth at the same time. By contrast, support for upfront investments in green and resource-efficient technologies in the European manufacturing industry and energy sector deserve much stronger public financial support. For instance the European Strategic Energy Technology Plan (SET Plan) and the EU’s Cohesion Policy should deliver more support for development and deployment.

1.5 The EESC therefore recommends providing the necessary finance to ensure a significant and meaningful technology push. The funds required should be raised by using the EU ETS auctioning revenues of Member States. Furthermore, the EESC welcomes the Commission proposal to harmonise energy and carbon taxation in the EU. The EESC calls on Member States to dedicate the majority of additional revenues of carbon and energy taxation to industrial clean tech innovation.

1.6 Energy prices have been very volatile recently due to the ongoing turmoil in some of the OPEC countries. This development, together with the impact of the Japanese nuclear reactor accidents at Fukushima, has triggered a new turn in the debate on energy issues. Unilateral steps taken very recently by some Member States and speculative development in the commodity markets may have serious implications for the development of the EU energy sector and ought to be analysed in depth.

1.7 Impact assessment models used by the Commission (PRIMES, etc.) in the accompanying staff working document arrive at very optimistic results at the macroeconomic level which are at variance – if not in contrast – with findings of research at the microeconomic, i.e. operations/sector level. Macro assessments should therefore be reviewed and made compatible with bottom-up research before political conclusions are drawn.
1.8 The Committee urges Council, Commission and Parliament to ensure the full implementation of all existing carbon-related targets for 2020 and to reconsider tightening the 2020 GHG target to a 25 % reduction based on achieved progress of the COP 17 negotiations and expected Community economic development on the way to the agreed 80-95 % reduction by 2050. The Committee considers it essential to maintain roughly comparable economic conditions for global players. For such a deal to work, other developed countries would have to make comparable, parallel efforts, and other key players – mainly emerging economies – would have to agree on voluntary, higher emission reduction targets as part of a global, legally binding and comprehensive agreement on the post-Kyoto regime.

1.9 In the wake of the COP 15 and 16 it is more or less clear, that the climate change global negotiations have been changing course, opening much more room for the bottom-up approach. The EU Low Carbon Roadmap 2050 (COM(2011) 112) recognises this important change from setting new binding targets towards measures. It initiates a debate with the EU member states, deciding if new targets have to be set or not. Both top-down targets and bottom-up technology innovation policy will have a role to play. The EU should not lose this opportunity for real progress and needs to set a positive example.

1.10 The post-crisis investment environment varies considerably across the EU and the situation is already getting worse with the foreseen second dip of the crisis. Public funding generally seems to be getting scarcer due to the ongoing debt crisis which calls for greater fiscal restraint. The SME sector will be more vulnerable to such changes as it depends more heavily on bank financings than larger corporations, which have access to the capital markets.

1.11 A new and vital wave of investment in infrastructure has not happened so far. Power and gas infrastructures should receive considerably more attention, especially in view of the single European energy market and require more extensive, deployment of RES. Without fully functional and interconnected grids, the chance for progress will be seriously impaired.

2. Introduction, background

2.1 The European Commission Communication on Analysis of options to move beyond 20 % greenhouse gas emission reductions and assessing the risk of carbon leakage (1) sets out the various options for achieving the new 30 % target within the ETS (in sectors covered by the EU Emissions Trading Scheme) and other sectors (primarily transport, built environment and agriculture). As the European Commission’s Communication does not analyse the impact of the economic crisis on the ability of European businesses to undertake additional pro-climate investments, the Polish presidency has proposed this issue as the subject of an EESC opinion.

2.2 It is widely recognised that mitigating CO2 emissions will not be an easy task and that there will be no quick solutions given continued population growth and high levels of energy scarcity in developing countries. Another key factor is the transition process away from fossil fuel-based power, given supply security issues. It could be argued that the Copenhagen Accord and its successor the Cancún agreements abandon the concept of ‘legally binding targets’, – reducing the likelihood for global cap-and-trade – in that they shift the time horizon to 2050 and stress the importance of technological developments and innovation processes. The Cancún agreement lists a number of important objectives, including the following three key aims:

— to establish clear objectives for reducing human-generated greenhouse gas emissions over time, to keep the global average temperature rise below two degrees;

— to encourage the participation of all countries in reducing these emissions, in accordance with each country’s different responsibilities and capabilities to do so;

— to ensure the international transparency of the actions which are taken by countries and ensure that global progress towards the long-term goal is reviewed in a timely way.

2.3 There is a broad consensus that setting an appropriate, generally accepted price on carbon is key to a successful climate change policy (William D. Nordhaus, Economic Issues in a Designing a Global Agreement on Global Warming). If the price of carbon is not set appropriately and is not generally accepted, it cannot have an incentivising effect. A realistic regulatory framework is required: incentivising mechanisms must work in practice to ensure that political decisions are effective. Therefore the EESC calls on the European Commission to present options to strengthen the EU ETS, and consistent measures in the non-ETS sectors.

2.4 There has been some success (at relatively low cost) in reducing greenhouse gas (GHG) emissions by improving energy/fuel efficiency, but technological reorientation and progress is the only way to sustain a gradual transition to a non-fossil fuel era. Even efficiency measures require the large-scale deployment of existing technologies and the development of innovative solutions (McKinsey Global Institute: The Carbon Productivity Challenge: Curbing Climate Change and Sustaining Economic Growth).

2.5 Energy-intensive industries have increased energy efficiency as a result of constant efforts to reduce operational costs. No operators will emit carbon dioxide just because they have free/abundant emission allowances. The consequences of personal consumption efficiency measures are less straightforward, due to the ‘rebound-effect’, which refers to the psychological phenomenon that leads people to spend their saving as a benefit, e.g. increased domestic heating temperature after having taken effective efficiency measures. This effect can easily detail even the most daring efforts to improve efficiency.

2.6 Renewable sources of energy will certainly contribute to the emission reduction process, though possibly to a lesser extent than is often believed. Physical, spatial and socio-environmental constraints of currently available renewable technologies are sometimes not fully taken into account and overcoming them through technological innovation has financial implications. Improving the operational and cost efficiency of currently known renewables also constitutes a financial challenge which is being addressed in some member states, though not in others.

2.7 Three aspects must definitely be resolved and none of them is likely to be satisfactorily settled before 2020. Firstly, intermittent resources need a fully integrated EU-wide smart grid with limited capability to integrate power from intermittent renewable energy sources (RES) above the expected 35–40% share. However, it should be noted that the German decision to rapidly phase-out its nuclear generating capacity has greatly stimulated action in this area. Secondly, such integration needs considerable accumulation capacity. Thirdly, a mature CCS technology is needed for wide implementation in the longer term should fossil fuels continue to be widely used as an energy source. Before solving these three critical issues, necessary traditional back-up power with accompanying emissions are indispensable for the wider deployment of existing RES.

2.8 Improving efficiency in the electricity/heat generating processes is so costly that it is unlikely that it can be achieved in the current climate, dominated by fiscal restraint. Therefore breakthrough inventions will play an important part alongside the wide scale adoption and improvement of existing RES technologies in achieving the expected 80–90% reduction by 2050 (International Energy Agency; Energy Technology Perspective 2010).

2.9 Further energy efficiency improvements to manufacturing technologies would also play an important role. Both incremental and radical innovations are therefore required across the full spectrum of low-carbon technology options. Without such innovation and improvement, the rapid pace and massive scale of low-carbon energy deployment required to meet global energy demand and avert potentially catastrophic climate risks will prove all but impossible to achieve. This central innovation challenge must be tackled directly and proactively.

3. Analysis of EU emissions data results; impact of the crisis

3.1 The Commission document presents a collection of arguments which, assessed in isolation, suggest that meeting the ambitious mitigation target would be difficult but achievable. Empirical EU emissions data from recent years must be set alongside the fact that renewables accounted for 61% of new electricity generating capacity in the EU in 2009. In reality, the variability of some RES sources make achieving a secure base load supply quite challenging in the short-term.

3.2 The Commission’s assumptions are based on optimistic expectations of deliverables from the RES directive and from the action plans of individual Member States. Furthermore, the 20% increase in energy efficiency is taken for granted, although information from the Member States indicates substantially slower progress in some cases. When the key element of energy efficiency in power and heat generation is considered – which could be referred to as carbon intensity – delays and postponements of power plant retrofits are likely to become a serious problem and could lead to energy shortages. In addition, IEA analyses show that 80% of emissions from the global power sector are, in fact, locked in until 2020. Therefore, also investments in the next decade, especially in CCS technologies, are critical to a low-carbon future.

3.3 Expert analysts have estimated that in 2010, GHG emissions increased by 4% and the installations under the EU ETS reported an increase of 3.2%. In 2009, global emissions dropped by 1.1% in comparison with the year 2008: the EU (-6.4%), the US (-6.5%) and Japan (-11.8% without emissions trading) all reported decreases, while China reported an increase of 9.1% (Richard N. Cooper, Harvard University, Europe’s Emission Trading System, June 2010; Christian Egenhofer, CEPS, Brussels, The EU ETS and Climate Policy Towards 2050, January 2011). It is obvious that the drop in emissions in developed countries between 2008 and 2009 was primarily the result of the economic recession. The preliminary results from 2010 confirm that emissions levels rise and fall in tandem with the level of business activity.

3.4 The most troubling finding from a careful review of the EU ETS, the world’s largest cap-and-trade system, is its failure to reduce substantially CO₂ or GHG emissions. Total European CO₂ and GHG industrial emissions had already been on a moderately declining trend since 1990, and extrapolating this trend to 2008 indicates that the ETS has reduced emissions by just two percent compared to projected levels without the EU ETS. Moreover, if the effects of the 2008-2009 financial meltdown and recession are taken into account, the data shows that the EU ETS has had little – if any – independent effect on European GHG emissions.
3.5 All in all, the drop in emissions in the 4th quarter of 2008 and throughout the year 2009, together with the increase in emissions which started in the 2nd quarter of 2010, must clearly be attributed to the onset (in late 2008) and end (in mid-2010) of the economic crisis. There is scant evidence that system changes had led to emission reductions in that period of time.

3.6 It is also important to note the fact that the industrial sectors have already taken outstanding, exemplary action: steadily reducing emissions by switching to more carbon-efficient fuels and taking effective measures to improve energy-efficiency. This process can be accelerated in the next trading period until 2020 if breakthrough new technologies in nearly all sectors under the EU ETS are developed and employed.

3.7 Some energy-intensive industries, such as steel, lime and cement for example, are approaching their physical limits of carbon efficiency and larger emission reductions in the near future may only be achieved through reducing production (Sustainable steelmaking, Boston Consulting Group, 2009).

3.8 It should be noted that carbon leakage is associated with specific levels of employment in industries subject to this phenomenon. The exact level of employment is different in the various Member States – the EU average is estimated at 3%, while in Poland, for example, the level of employment in these energy intensive sectors reaches 9.5%.

3.9 As set out above in point 2.4, technology development on a wide scale and the deployment of new technologies are the key elements to ensure GHG mitigation. All documents on this subject point to the unresolved issue of obtaining the necessary finance. The proceeds from the ETS are a possible, albeit distant and insecure, source of funding, but otherwise there is nothing tangible on the horizon. Even the current R&D and deployment programmes in the EU are insufficient; this is also true for the SET-Plan initiative, including carbon capture and storage (CCS) activities.

3.10 As a result of the recent turmoil and continued unrest in several OPEC countries, together with the Fukushima nuclear plant accident, attitudes towards global climate change negotiations have clearly changed. These changes may even present a window of opportunity for a meaningful international agreement. The EU should also take note of the recent, very ambitious US innovation plan (The White House: Strategy for American Innovation: http://www.slideshare.net/whitehouse/a-strategy-for-american-innovation).

3.11 All these indicators point to the urgent need to consider structural changes that would facilitate and accelerate the transition to an economy based on new, low-carbon energy sources. Although some experts and politicians wish to explore gradually moving away from the cap-and-trade concept towards a carbon consumption tax the feasibility of introducing any new form of taxation hypothecated to pro-climate investment at a meaningful level across the EU (let alone globally) seems remote, it should be closely investigated in preparation for the next steps of the climate change negotiations. The EU ETS therefore is considered as the best option in the EU but will require significant and radical reforms.

3.12 The post-crisis investment environment varies considerably across the EU and the situation is already getting worse with the foreseen second dip of the crisis. Public funding generally seems to be getting scarcer due to the ongoing debt crisis which calls for greater fiscal restraint. In the private sector, the availability of corporate finance has so far remained relatively stable, particularly for export-oriented industries. But the ongoing crisis of the European Monetary System, pending regulation (Basel III and Solvency II) and a possible clouding of the economic outlook might well impair the availability of bank loans before long. The SME sector will be more vulnerable to such changes as it depends more heavily on bank financings than larger corporations, which have access to the capital markets.

3.13 Some specific renewables have recently experienced a rather dynamic development. Whether this boom is healthy and sustainable is another question worthy of detailed examination EU-wide and in the Member States. The financial impact of guaranteed tariffs on energy prices may lead to longer-term distortions. Furthermore, the sudden surge in RES will certainly require significant investment in transmission infrastructure to maintain the grid’s reliability and safety.

3.14 This new and vital wave of investment in infrastructure has not happened to a sufficient extent so far. Power and gas infrastructures should receive considerably more attention, especially in view of the recent decisions in Germany to phase out nuclear energy by 2022. Without fully functional and interconnected grids, the chance for progress will be seriously impaired.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on ‘The processing and exploitation, for economic and environmental purposes, of industrial and mining waste deposits in the European Union’ (own-initiative opinion)

(2012/C 24/03)

Rapporteur: Mr FORNEA

Co-rapporteur: Mr KOTOWSKI

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

The processing and exploitation, for economic and environmental purposes, of industrial and mining waste deposits in the European Union.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 27 September 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 61 votes in favour with 5 abstentions.

1. Conclusions and recommendations

1.1 The main aim of processing industrial and mining waste is to avoid disposal. Challenges such as environmental pollution, health hazards and land aesthetics must be addressed responsibly and as a matter of urgency. Today, no country can afford not to take into consideration the recycling potential of waste produced after the use of primary raw materials. Simply abandoning these wastes without additional treatment because it is cheaper is no longer an option, when we are aware of the cost to the environment, human health and society.

1.2 Processing these types of waste for economic purposes can improve the environment, landscape, employment and the social conditions for the communities concerned. By eliminating the risk of pollution for people and the environment, living conditions in these regions would improve, resulting in win-win situations. This is the reason why the beneficial use of these wastes should be considered part of a sustainable development strategy and as a compensatory measure for the affected local communities.

1.3 The role of civil society, the social partners, professionals involved in the mining, metallurgical and energy industries, academia, equipment manufacturers, transportation and trade associations, is crucial to better inform the public and raise awareness about the environmental, economic and social advantages of processing the huge quantities of waste, which were or are produced by the mining and metallurgical industry and from coal-fired power plants.

1.4 Local authorities can play a key role in this issue by encouraging open civic dialogue at regional level, to identify solutions for environmental protection, waste processing and for rebuilding a base for sustainable industrial development. For this purpose is necessary to set up a network of public, private or Public Private Partnership projects, to share the responsibility for future investments, infrastructure and environmental protection.

1.5 The European Union and the Member States should develop innovative tools and policies for approaching the issue of industrial and mining waste in the most efficient and sustainable way, based on research, statistics and scientific facts. Also, it is important to reach a better understanding, through an appropriate consultation process with the relevant stakeholders, of the existing legal, political, administrative and social obstacles to processing these wastes.

1.6 Therefore the EESC points to the need to develop effective policies in the area of industrial and mining waste deposits in the framework of Europe 2020, which in an overall approach explicitly links sustainable industrial policy with innovative processes, resource efficiency and improved access to raw materials.

1.7 Any new extractive waste treatment process should be accompanied by information about the physical and chemical characteristics of the waste in order to make sufficient data available to authorities and companies who are to start potential reprocessing activities or environmental protection programmes.

1.8 Current political initiatives for ensuring the security of supply of raw materials should increase the financial support of EU and Member States for the research and development of technologies which process mining and industrial waste and recover valuable minerals and metals. One of the priorities should be the development of technologies which enable the recovery of critical materials and of those that may be damaging to human health and the environment.
1.9 In the context of the Europe 2020 Strategy, organised civil society considers it time to assess the results achieved by the Directive 2006/21/EC and is ready to put forward comments and suggestions for the improvement of its implementation and to promote initiatives for the beneficial use of the mining waste.

1.10 The proposal to improve recycling and reduce waste produced by the rock mining, quarrying and metallurgical industries can be summarised as follows:

- Modifying the legal status of the by-product as a co-product with the same properties as the primary product.

- Explicitly permitting the processing of by-products with specific treatment performed in the primary facility or in dedicated systems designed to give the co-product the characteristics required for use.

- Promoting the marketing of the co-product by means of facilitating transport and utilisation.

- Tax incentives for consumers who use the co-products.

1.11 EU-related institutions should provide increased information on the impact of thermal power plant wastes on the environment and human health and also on the beneficial uses of coal combustion products (CCPs). R&D is needed to improve applications in which the CCPs might be used, as well as for emerging technologies and general ash management and disposal.

1.12 The EU should set up and finance projects for the beneficial reuse of coal combustion by-products, thereby contributing to sustainable development by recycling these wastes and keeping them out of landfills, thus reducing the need to extract new raw materials, and conserving energy and water resources.

1.13 A survey should be set up at European level to garner more information about fly ash, bottom ash, boiler slag, flue gas desulphurisation (FGD) gypsum, FGD wet and dry scrubber materials as well as fluidised bed combustion (FBC) ash. EU coal-fired power plants should be invited to volunteer data for the survey. An inventory of existing products and the potential applications of CCPs must also be set up and constantly updated.

2. Overview

2.1 The Thematic Strategy on Waste Prevention and Recycling adopted in 2005 in the context of the implementation of the 6th Environmental Action Programme, now followed by a new Commission Communication (COM 2011(13)) assessing to what extent the objectives of the Strategy were met or not, proposes new actions to reinforce the strategy’s implementation.

2.2 The industrial and mining waste issue is of major concern to European citizens and organised civil society. The industrial future of Europe will depend, to a degree, on how we tackle this. Currently, a significant number of industrial projects run the risk of remaining deadlocked due to opposition from local communities and civil society organisations worried about the impact of industrial and mining activities on public health and the environment.

2.3 Unfortunately, in many cases, civil society’s concerns result from a lack of information and transparency and it is therefore necessary to ensure a full and correct implementation of the Environmental Impact Assessment in order to ensure a correct information and the participation of the civil society.

2.4 Industrial and mining waste still represents a challenge for a great number of Member States where industrial plants and mining facilities were, or still are, in place. These waste deposits can be a threat or an opportunity for local communities. They become a threat when simply abandoned and where measures are not taken to reduce the risk to the environment, but in some cases they can also present an opportunity, when the waste dumped could give rise to activities involving the recovery of metal or other useful secondary raw materials.

2.5 In some cases, the metal concentration in mining waste can be equal to or even greater than the concentration of metal in ore. The same applies to metallurgical industry waste: recovery technologies have evolved and there is now an opportunity to reassess the potential of waste resulting from old industrial activities and to make this domain environmentally sound.

2.6 In many cases, the local authorities have to deal with the industrial and mining waste issue due to the fact that the tailings or waste dump areas are located in their jurisdiction. Therefore, solutions can be found at this level for transforming the ‘challenge’ into an opportunity by encouraging private initiative, public-private and administrative partnerships to set up Industrial Parks for complete use of the waste, by combining horizontal and vertical approaches in the processing industry, construction and infrastructure.

2.7 In this opinion, we will focus on three categories of waste that can be found in considerable quantities in Europe (billions of cubic meters) and in which European Union and Member States legislators have expressed a special interest:

- Mining waste (or ‘extractive waste’ as defined in Directive 2006/21/EC resulting from the exploration, extraction and processing activities for coal or non-energy minerals – hundreds of millions of tonnes from existing or former mining areas have been or are still stored without treatment,
in varying proximity to local communities. Closed and abandoned mining waste facilities can become a serious danger for the environment and local communities.

— Metallurgical industry waste, mainly consisting of slag, sludge and dust. The waste from non-ferrous metallurgy for instance can have a high heavy metal content that can have a potentially negative impact on the environment if it is not properly treated.

— Wastes from thermal power plants. Slag and ash from power plants represent a large proportion of wastes especially in countries where the thermal power industry uses large quantities of low quality coal.

2.8 In all these cases, the waste storing areas, if not properly managed, can make the local communities’ surroundings very unpleasant and render unserviceable large tracts of land that could otherwise bring economic, social and environmental benefits to those communities.

3. Policy and legal framework for promoting the processing of the industrial and mining waste deposits

3.1 The EU 2020 Strategy, EU’s industrial policy (1), EU’s strategy for resource efficiency (3), EU’s strategy on raw materials (4), the Thematic Strategy on Waste Prevention and Recycling (5), and the EU’s strategy on innovation (6) promote:

— the sustainable growth of Europe through an economy that is resource-efficient, greener and more competitive;

— technologies and production methods that reduce the use of natural resources, and increase investments in the EU’s existing natural assets;

— the full application of the waste hierarchy based on prevention first followed by preparation for re-use and recycling, then energy recovery and in last resort waste disposal;

— the review of regulations to support the transition of service and manufacturing sectors to greater resource efficiency, including more effective recycling and promoting the commercialisation and take-up of key enabling technologies;

— the investment in extractive industries by setting up land-use planning policies for minerals that comprise a digital geological data base and a transparent methodology for identifying mineral resources, while also encouraging recycling and waste reduction;

— a European Innovation Partnership to accelerate research, development and market deployment of innovations.

3.2 The First European Directive on waste management has been in force since the 1970s. In 1991 the European Waste Catalogue (EWC) was established by Directive 91/156/EC which was followed by Directive 91/689/EC on hazardous waste. In 2008 Directive 2008/98/EC was issued which is particularly relevant to our opinion because its Article 4.1 introduced a more precise definition of the waste management hierarchy: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal.

3.3 Directive 2006/12/EC and Decision No 1600/2002/EC set out that:

— For wastes that are still generated, the level of their hazardousness should be reduced to the lowest possible degree of risk.

— Preference should be given to waste prevention and to recycling.

— The quantity of waste for disposal should be minimised and be safely disposed of.

— The waste intended for disposal should be treated as closely as possible to the place of its generation in so far as this does not lead to a decrease in the efficiency of waste treatment operations.


— Intends to prevent adverse possible effects of the mining waste from existing and new mines on public health and the environment.

— Includes an obligation for the operator to draw up a waste management plan which must be in accordance with the waste hierarchy – knowledge first, then prevention followed by re-use, then recycling and finally disposal.

— Includes the obligation for Member States to establish an inventory of the closed and abandoned mining waste facilities which causes or could cause damages to the environment and public health by 2012 (7).

(1) As for example, according to the Ministry of Economy, Trade and the Business Environment, in Romania there are 77 mine tailings with a volume of 340 million cubic meters, covering a surface of 1,700 ha, and 675 mine waste dumps with a volume of 3,1 billion cubic meters, covering 9,300 ha.


(5) Last report COM(2011) 13


(7) There is no provision, however, regarding the need ‘to reduce the harmfulness in the waste’ once it has been accepted or is already in the landfill.

(8) A guidance document on the establishment of the inventories has recently been published to support the Member States in this task.
4. Mining waste treatment

4.1 Legislative proposals to date have called upon Member States to establish by May 2012 an inventory of closed and abandoned extractive waste facilities sites having a potential impact on human health or on the environment and to make this inventory public.

4.2 In 2004, the EU's Pecomines study (10) and its case study report on using remote sensing (10) established a preliminary assessment of a number of sites in the wake of the accession of the first Eastern European countries. However, the study did not conduct any analysis of the physical or chemical stability of the sites.

4.3 No Europe-wide database exists to date on the location and the physical and chemical characteristics of mine waste and other industrial deposits. Member States, such as Spain, for example, have already developed national plans for managing waste from extractive industries on the basis of relevant statistical data about the number and volume of registered abandoned and existing waste dumps, dams and ponds (11).

4.4 Some Member States have developed and applied methods to assess the safety of old tailings dams and waste dumps and have established the priority actions required to prevent major pollution (e.g. the Slovakian Environment Ministry). However, no comprehensive assessment has been carried out with regard to the assessment of the current economic viability of reprocessing mining waste. Whether or not the reprocessing is economically viable depends largely on the market price of the minerals being targeted. Such assessments should be carried out by the Member States to identify possible win-win situations.

4.5 Access to these waste deposits and tailings would be a question of national mineral planning policies and land-planning policies, all of which fall under the subsidiarity principle and have to be handled by each Member State individually but respecting EU legislation on Impact Assessment, Mining Waste and Water Framework.

4.6 The EU's raw materials strategy proposes a long-term analysis of mineral demand which could provide a basis for the economic prioritisation of the reprocessing of old tailings and waste facilities.

4.7 Redeveloping waste facilities and tailings with or without an economic incentive can provide: employment, an improved environment, and better social and living conditions for the communities concerned; in particular improved landscapes and an eliminated pollution risk.

4.8 The treatment of closed and abandoned mining waste facilities should be governed by a number of considerations:

— The treatment of closed and abandoned mining waste facilities representing a risk for safety, health or which may pollute the environment or represent an economic value in the current economic climate should be prioritised with regard to speedy and careful issuing of permits; liability issues arising from previous operators should be resolved in order to encourage investment (12).

— The treatment of closed and abandoned mining waste facilities representing a risk for safety, health or which may pollute the environment and which does not have any economic value may require public funding (13).

— The reprocessing of closed and abandoned mining waste facilities which does not present a risk to safety, health and which does not pollute the environment, but has an economic value should be made available and liability issues arising from previous operators should be resolved in order to encourage investment.

4.9 Technology for reworking and rehabilitating old overburdened waste repositories is partly available, but would require some new research. The European Innovation Partnership on Raw Materials could provide a vehicle to stimulate research in this area and possibly provide funding for a pilot project. This expertise could become world class and be used in Europe and worldwide (e.g. technologies applied in eastern Germany after reunification). Research into further technologies and techniques could potentially be a field in which the European industry excels.

4.10 The BAT (Best Available Techniques) document on the management of waste from the mining industry refers only very briefly to using BAT for waste segregation to allow for better future reprocessing of tailings and other wastes.

4.11 The European Structural Funds play a critical role and already provide substantial investments in research and innovation. Some EUR 86 bn has been programmed for the current financing period (2007-13). Much of these funds is still unspent and should be used more effectively for innovation and achieving the Europe 2020 objectives.


(12) Plan Nacional de Residuos de Industrias Extractivas 2007-2015, which shows that in Spain there are 988 registered mining ponds and dams with a total volume of 325 878 800 cubic meters, and the total volume of mining tailings generated in the period 1983-1989 was around 1 375 673 315 cubic meters. Of the total number of mining tailings, 47.2% are abandoned tailings.

(13) An interesting model regarding ways to solve the liability issues is provided by the Good Samaritan Initiative of the US Environmental Protection Agency.

(14) This should apply only in the case of abandoned sites for which no liable operator is identifiable.
4.12 EU Structural Funds have already been used in the past in occasional cases where the development of new regional infrastructure could be combined with the clean-up and redevelop-ment of old industrial and mining regions. The most successful initiatives combine the reprocessing of old tailings and waste dumps with a new mine which - in most cases - improves economic viability due to economies of scale.

4.13 Until now, only a small amount of EU funding has been spent on the processing and exploitation, for economic and environmental purposes, of mining waste deposits in the EU. However, some European initiatives and projects as the European Technology Platform on Sustainable Mineral Resources, the EU ProMine Project and EuroGeoSource, have the financial support of the European Commission and it is expected that these projects will provide contributions on innovative technologies, mineral intelligence and mining waste data base.


5.1 The concept of industrial discharges has not substantially evolved over time, in the sense that the philosophy of 'what is not a product is a waste' remained unchanged. However, driven by recent environmental ('Zero Waste') policies and economic issues related to shortages of raw materials, the concept of the 'product' of an industrial activity might need to be revised substantially.

5.2 Today, complex industrial activities are aiming at obtaining many 'co-products' rather than generating a single product (14). For example blast furnace slag in cement production is now used as an important component of many mixes for cement (15).

5.3 The European legislation currently in force requires that a process must have, in addition to the product, only by-products and not co-products. This means that a by-product, if it is not processed in the main cycle, is considered as a reject that may be reused and is subject to all regulations on waste.

5.4 In reality this is not a problem of definition of the term (by-product or co-product can be considered equivalent). The problem is related to the limitations that the law now requires for the by-product. Under Article 5 of Directive 2008/98/EC, a by-product has to meet four requirements: (a) further use of the substance or object is certain; (b) the substance or object can be used directly or indirectly without any further processing other than normal industrial practices; (c) the substance or object is produced as an integral part of production process; and (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

5.5 The metallurgical industry waste disposed of in landfill may carry a variety of harmful substances such as heavy metals, including in the form of compounds, which were of no use in achieving the 'product'. Also, these substances (16), if disposed of in landfill, often require preliminary treatment on the basis of Directive 2006/12/EC.

5.6 The challenge of considering a secondary product as a co-product allows treatment and/or processing to be carried out in the main plant itself (as now) or in dedicated systems designed to transform the co-product into a new product to be launched on the market with no restrictions other than to declare the co-product. Currently this is only possible for companies and facilities authorised to process waste on the basis of Directive 2006/12/EC.

5.7 The primary benefit for the environment is a reduction in damage to the soil and landscape. For example, it might be estimated that every one million tonnes of steel slag (the slag from carbon steel can be inertized) requires a bulk landfill volume of about 900 000 m^3 and it would save the same volume of inert excavation for aggregates (17). A second benefit, after inertisation for reuse, concerns the reduction of emissions (dust and metal leaching) into the environment.

5.8 From a social and economic point of view, the activities related to the treatment and recycling of metallurgical industry waste are innovative activities that require, in addition to direct labour, R & D activities to minimise the environmental impact and reduce costs. In this field an interesting study was performed in the UK in 2010, in which the employer skills needed for the collection, management and treatment of municipal and industrial waste were identified (18).

6. Wastes from thermal power plants. Beneficial use of Coal Combustion Products

6.1 Coal is an important resource which nature provides in large amounts. In 2008, total global hard coal production was 579 Mt and total global brown coal production was 965 Mt (19). Coal provides 27 % of global primary energy needs and generates 41 % of the world's electricity. The importance of coal to electricity production worldwide is set to continue, (14) In fact, this concept is nothing new. It transfers to the industrial sector a concept common in agriculture in which organic waste is redistributed in the soil as fertiliser or used as fuel.

(15) The European cement standard EN 197-1 in fact contains nine types of cement in the list of components. 'Blast furnace slag' is used in quantities of between 6 % and 95 % by weight.

(16) E.g. EAF dusts (EU 27 estimate from carbon steel production of over 1.2 Mt) contain iron (10-40 %) but also zinc (21-40 %), lead (up to 10 %), and cadmium + copper (up to 0.7 %). Slag (EU 27 estimate from carbon steel production - BOF and EAF - 27 Mt) can contain steel droplets (up to 10 %) as well as oxides of iron (10-30 %), manganese (3-9 %) and chromium (1-5 %).

(17) It is estimated that the 27 Mt of waste produced in EU 27 must correspond in volume to a 20 m high pile occupying an area twice the size of Milan every year.

(18) http://www.viridor.co.uk/news/recycling-waste-industry-labour-market-investigation-published/

with coal fuelling 44% of global electricity in 2030. At current production levels, proven coal reserves are estimated to last 119 years (20).

6.2 After burning coal for producing electricity and heat, huge quantities of waste remain which present a great concern and a challenge for the communities in the EU and globally where these types of wastes are produced and disposed of. Companies and research institutions from countries such as the US, Germany and the UK, have, since 1945, been identifying beneficial uses for these wastes which have been classified as Coal Combustion Products (CCPs). The main CCPs are: Fly Ash, Bottom Ash, Boiler Slag, Fluidised Bed Combustion (FBC) Ash, Semi-Dry Absorption Product, Flue Gas Desulphurisation (FGD) Gypsum.

6.3 The American Coal Ash Association (ACAA) was established in 1968 in the US as a trade organisation aiming to reuse waste from coal-fired power plants. This association’s task was to advance the management and use of coal combustion products in ways which are environmentally responsible, technically sound, commercially competitive and supportive of the global community (21).

6.4 The ACAA calculated that in the US the production of CCPs rose from around 25 Mt in 1966 to about 135 Mt in 2008, and the beneficial use of CCPs over the same period rose from 5 Mt to about 55 Mt.

6.5 In 2007, the European Coal Combustion Products Association (ECOBA) (22) estimated total production of Coal Combustion Products in the EU to be more than 100 million tonnes annually in the EU 27 and 61 million tonnes in the EU 15 of which 68.3% was fly ash, 17.7% FGD gypsum, 9.4% bottom ash, 2.4% boiler slag, 1.5% FBC ash and 0.7% SDA products.

6.6 Worldwide but also in Europe, the potential users of CCP based products are not properly informed about the properties and advantages of using these new materials and products. Until now, the US industry has been the biggest producer and consumer of CCPs followed by a few European countries such as Germany and the UK. This situation is changing and nations such as China and India will become leaders in the production and consumption of CCPs (23).

6.7 Environmental benefits resulting from the beneficial use of coal-fired power plant wastes:

— Improved quality of the environment around coal-fired plants
— Saving of natural resources
— Reduced energy demand and greenhouse gas emissions
— Saving on disposal space.

6.8 Existing applications for Coal Combustion Products:

— Cement and concrete production. Fly ash is a binder in concrete (24)
— Solidification and stabilisation of hazardous wastes
— Use of bottom ash in asphalt mixtures for road construction
— Use of FGD Gypsum in agriculture
— Extraction of cenospheres or metals. Cenospheres can be used for lightweight concrete, structural materials, the synthesis of ultra-light composite materials. Applications in the automobile industry, aviation, tyres, paints and coatings, flooring, cabling, piping, construction and domestic appliances
— Protection of soil and reclamation of abandoned mines
— Bottom ash is used in the production of bricks and Clay Face Brick. Fly ash bricks do not require kilning and can incorporate a high percentage of recycled materials
— Recovery of Germanium from the coal fly ash
— Developing new paints and other environmental applications. The paints produced by using CCPs are resistant to water, acid and organic solvents
— Timber substitute products
— The use of fly ash in wastewater treatment, for heavy metals as Cd or Ni
— Research for turning toxic fly ash into automotive metal foams.

(20) World Coal Association.
(21) According to the ACAA’s website, the association also produces research, reports, surveys, industry documents and expertise in recycling coal ash, boiler slag or flue gas desulphurisation materials. Japan has also a relevant organisation: the Centre for Coal Ash Utilisation.
(22) ECOBA was founded in 1990 and today represents over 86% of CCP production in the EU 27.
(23) E.g. in India, it is expected that the country’s energy demand will be around 260 000 MW in 2020 of which around 70% will be generated from coal. 273 Mt of CCPs will be produced by coal-fired power plants.
(24) According to the ACAA, more than half of the concrete produced in the US is blended with fly ash.
6.9 Large volumes of fly ash in Europe go to landfill or are used for low-value applications with some exceptions (e.g. the Netherlands and Germany). This is due to ash quality in the EU which is not always suitable for high-value applications but also due to a lack of information and promotion of the beneficial use of CCPs in various applications. In future, the quality of fly ash is expected to improve due to the environmental requirements with which coal-fired power plants must comply and the efforts of the industry to burn coal efficiently and in an environmentally friendly manner.

6.10 More studies and research are needed to understand the factors which influence the utilisation of CCPs. The smart use of these products should be a goal and to this end innovative economic, management and logistic solutions are needed in addition to a performance-based fly ash classification system and R&D programs to improve the process of transformation of CCPs into new innovative materials and for enhancing existing knowledge on the fly ash cenospheres' composition, morphology and structure.

6.11 The legal definition of CCPs as waste causes obstacles which discourage the beneficial use of the coal-fired plant wastes. The existing classification is a harmonised list of wastes which can be reviewed on the basis of new knowledge and research results. CCPs which are not subject to waste legislation can then be subject to the REACH regulation.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on 'Opportunities and challenges for a more competitive European woodworking and furniture sector' (own-initiative opinion) (2012/C 24/04)

Rapporteur: Mr ZBOŘIL
Co-rapporteur: Mr PESCI

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 Opportunities and challenges for a more competitive European woodworking and furniture sector (own-initiative opinion).

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 27 September 2011. The rapporteur was Mr ZBOŘIL and the co-rapporteur was Mr PESCI.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 120 votes to 1 with 2 abstentions.

1. Conclusions and recommendations

1.1 The European woodworking and furniture sector (as well as the pulp and paper industry) mainly uses a natural renewable raw material, wood, and plays an essential role in the development of a green economy. The EESC has noticed that unfortunately there are currently some key inconsistencies between certain parts of some EU policies and initiatives which are having a serious impact on the forest-based industries’ competitiveness and profitability.

1.2 The sector is facing growing competition for wood from the renewable energy sector, due to subsidies and other measures promoting the use of biomass (wood is one of the main fuels used to produce biomass energy). There are also difficulties regarding investments, research, training, attracting young workers, and administrative restrictions relating to public procurement. Furthermore, the furniture sector is facing a dramatic rise in the price of raw materials such as leather, plastics, natural fibres and petroleum derivatives.

1.3 The EESC calls for the EU and Member States’ institutions to make a serious commitment to adjusting and developing a legislative framework that can boost competitiveness and help improve access to a supply of this raw material for the woodworking and furniture sector and pulp and paper industry. The EESC would recall the need for a detailed study on the problems relating to the supply of woody raw materials for forest-based industries and for the renewable energy sector (biomass).

1.3.1 The EESC encourages the Commission to cooperate with the forest/timber industry in order to put forward appropriate and specific measures to address these problems. To facilitate cooperation the Committee suggests setting up an informal, neutral, inter-institutional expert group – also linking with relevant stakeholders – on ‘wood as a sustainable raw material’. Naturally, the CCMI is interested in making part of this body.

1.4 The European study ‘EUwood’(1) shows that wood consumption for energy generation is expected to grow from 346 million solid cubic meters in 2010 (3.1 EJ) to 573 million cubic meters (5 EJ) in 2020 and could reach 752 million cubic meters in 2030 (6.6 EJ). These results are based on the assumption that the share of wood in energy from renewable sources will decrease - from 50 % in 2008 to 40 % in 2020. A deficit of 200 million m$^3$ of wood is expected by 2025 and 300 million m$^3$ by 2030.

1.5 The EESC pleads for the inclusion of wood, as a key raw material, in the European Innovation Partnership on raw materials, in line with the recommendations of the EC Communication on raw materials. In this context the opportunities for reuse and recycling could be explored in particular.

1.6 EU forest-related policies should support active forest management; in particular the EESC suggests that the European Commission should promote the cultivation of ‘short-rotation energy wood’. Measures should also be explored to ensure that wood which is suitable for industrial uses is not used for renewable energy production.

(1) Source European study ‘Real potential for changes in growth and use of EU forests. EUwood’. Page 45 Chapter 3.5 Future demand for wood energy ‘…. Wood consumption for energy generation is expected to grow from 346 million m$^3$ in 2010 (3.1 EJ) to 573 million m$^3$ (5 EJ) in 2020 and might reach 752 million m$^3$ in 2030 (6.6 EJ). These results are based on the assumption that wood energy decreases its share in energy from renewable sources from 50 % in 2008 to 40 % in 2020.’
1.7 The EESC underlines the need to actively promote green buildings that use environmentally-friendly and resource-efficient structures and processes throughout their life cycle. To this end, an annual event – such as a workshop – to showcase sustainable building and design could be usefully supported by the EESC, with links to relevant Commission services.

1.8 The EESC welcomes the proposal from the Vice-President of the European Commission, Antonio Tajani, to introduce a ‘competitiveness test’ before a commercial partnership agreement between the EU and other third countries is signed. It also agrees that it would be necessary to assess the effects on industrial competitiveness of all other policy initiatives (such as energy, trade, environmental, social and consumer-protection policies) prior to their implementation.

1.9 In order to increase productivity and stay ahead of the competition, the sector needs workers who are trained in the latest skills and technologies. The EESC welcomes the pro-active approach from the industry on protecting workers from exposure to harmful agents in the workplace and welcomes the sector’s commitment to ensuring career and employment security, maintaining the health and well-being of workers, developing skills and competencies, and achieving a work-life balance.

1.10 Success in getting woodworking and furniture research and innovation projects accepted at EU level has been noticeably modest so far. In order to provide stronger R&D support for the European woodworking and furniture industries, future programmes will have to take special account of the specific difficulties and needs of SMEs.

1.11 The EESC would recall the importance of strong cooperation between the industry and EU/national government institutions in combating counterfeiting. The EESC therefore supports the creation of the European standard patent and calls for a ‘product sheet’ to be set up for furniture products. Developing technologies to facilitate authentication should also help substantially. The EESC recommends that the EU should take action to strengthen the capacity of national customs, and that a ‘European/National Anti-Counterfeiting Day’ should be organised.

2. The woodworking and furniture industries in the European Union (1)

2.1 The woodworking and furniture industries are a vital, sustainable, innovative and eco-compatible sector, with a turnover in 2008 of around EUR 221 billion and an employment rate of 2.4 million people in more than 365 000 companies, the vast majority of which are SMEs. The furniture industry accounts for nearly half of this employment rate of 2.4 million people in more than 365 000 companies, the vast majority of which are SMEs. Jobs in the wood and furniture sector are often located in remote or less industrialised or developed areas, and therefore make an important contribution to the rural economy. The pulp and paper industry employs the highest number of people, with 363 000 jobs in the sector, followed by Poland, Germany, Spain and the United Kingdom. In the new EU Member States, particularly large numbers of people are employed in the sector: out of people in employment overall, 34 % work in the woodworking and furniture sectors. Jobs in the woodworking and furniture sector are often located in remote or less industrialised or developed areas, and therefore make an important contribution to the rural economy. The pulp and paper industry employs the highest number of people, with 363 000 jobs in the sector, followed by Poland, Germany, Spain and the United Kingdom. In the new EU Member States, particularly large numbers of people are employed in the sector: out of people in employment overall, 34 % work in the woodworking and furniture sectors. Jobs in the woodworking and furniture sector are often located in remote or less industrialised or developed areas, and therefore make an important contribution to the rural economy. The pulp and paper industry employs the highest number of people, with 363 000 jobs in the sector, followed by Poland, Germany, Spain and the United Kingdom. In the new EU Member States, particularly large numbers of people are employed in the sector: out of people in employment overall, 34 % work in the woodworking and furniture sectors. Jobs in the woodworking and furniture sector are often located in remote or less industrialised or developed areas, and therefore make an important contribution to the rural economy.

2.2 In terms of employment, the furniture industry accounts for 51 % of employment in the sector. Italy employs the highest number of people, with 363 000 jobs in the sector, followed by Poland, Germany, Spain and the United Kingdom. In the new EU Member States, particularly large numbers of people are employed in the sector: out of people in employment overall, 34 % work in the woodworking and furniture sectors. Jobs in the woodworking and furniture sector are often located in remote or less industrialised or developed areas, and therefore make an important contribution to the rural economy. The pulp and paper industry employs the highest number of people, with 363 000 jobs in the sector, followed by Poland, Germany, Spain and the United Kingdom. In the new EU Member States, particularly large numbers of people are employed in the sector: out of people in employment overall, 34 % work in the woodworking and furniture sectors. Jobs in the woodworking and furniture sector are often located in remote or less industrialised or developed areas, and therefore make an important contribution to the rural economy.

2.3 As the sector mainly uses a natural renewable raw material, wood, and has a proven track record in the field of sustainability, the sector is a forerunner in the development of a green economy, which is one of the EU’s key goals for the future. The pulp and paper industry also has outstanding environmental credentials. As regards raw materials, half of the fibres used in making paper are recycled. The other half demonstrates a good use of resources: 20–30 % of these fibres originate as residues from other industries, thinnings from silviculture make up 40–60 %, and only 20–30 % comes from final fellings.

2.4 Unfortunately, there are currently some inconsistencies between certain parts of some EU policies and initiatives which have a serious impact on the sector’s competitiveness and profitability. The European woodworking and furniture sector is facing growing competition for wood from the renewable energy sector due to subsidies and other measures promoting the use of biomass (wood is one of the main fuels used to produce biomass energy). There are also difficulties regarding investments, research, training and education and attracting young workers. Administrative restrictions relating to public procurement put additional pressure on the sector.

2.5 The sector faces growing competition from low-cost, emerging economies and a growing number of technical trade barriers. Furthermore, the furniture sector is not only facing difficulties in accessing wood as a raw material, but also a dramatic rise in the price of materials such as leather, plastics natural fibres and petroleum derivatives.

2.6 If the EU institutions do not commit to developing a legislative framework that can boost competitiveness and do not guarantee a supply of raw materials for the woodworking and furniture sector, the future of the entire sector will remain in doubt.

3. Effects of European renewable energy legislation on the demand for wood

3.1 The EESC is seriously concerned about the impact that the Commission’s Climate Change and Energy Package will have on the development of renewable energy sources and on the overall availability of wood, the industry’s raw material. The EESC is disappointed that the use of inappropriate subsidy schemes for renewable energy production, which were set up to achieve the climate commitments, has made it more profitable to burn wood directly than to use it for products. This has had a serious impact on the supply of wood to wood-working companies and on these companies’ overall competitiveness and profitability.

3.2 The EESC urges the European Commission to carry out a detailed study on problems relating to the supply of woody raw material for forest-based industries and for the renewable energy sector (biomass). The EESC encourages the Commission to cooperate with the forest/timber industry in order to put forward appropriate and specific measures to address these problems. To facilitate cooperation the Committee suggests setting up an informal, neutral, inter-institutional expert group – also linking with relevant stakeholders – on ‘wood as a sustainable raw material’. Naturally, the CCMI is interested in making part of this body.

3.3 The EESC supports the call of the wood and paper industries for a balanced approach to the use of wood biomass energy in order to avoid market distortions regarding the availability and price of forest-based raw materials for the manufacturing industries. It should be also taken into account that many panel companies have been forced to reduce capacity between June 2009 and June 2011 – not for financial or technological reasons but rather due to the lack of raw materials available.

3.4 Although wood biomass has, by far the highest (biomass) power density (energy flow in watts per square meter), it should be noted that this power density is still very low (0.6 W/m²) and, for instance, a wood-fired power plant with installed capacity of 1 GW, a capacity factor of 70% and conversion efficiency of 35% would require an annual harvest of about 330 000 ha of plantation growth - which equates to a square of land nearly 58 × 58 km (3). Meeting the European renewable targets with the expected share of biomass would require an annual harvest of about 340-420 million solid cubic metres (s.c.u.m) of wood biomass.

3.5 With regard to the promotion of renewable energy sources (RES) and biomass, the EESC considers that the following principles are essential:

— Member States should evaluate in their RES action plans the amount of wood biomass in the country or region that is clearly available for energy use and the volumes the wood-working industry already uses as raw material before implementing measures to promote the use of RES;

— In order to restore a natural balance between the material use of wood and the energy use of biomass, subsidies for the direct burning of wood have to be avoided;

— Adequate methods should be implemented to ensure an optimum degree of recovery and recycling of waste wood and production residues;

— The promotion of the cascaded use principle (manufacturing of products, reuse, repair and recycling, valorisation of energy content);

— Measures for increased wood mobilisation from forests and other sources are to be promoted (4) by European and national institutions and support given to short rotation forestry for energy biomass production.

3.6 From an economic point of view, the added value in the wood products industry is calculated to be EUR 1 044 per tonne of dry wood and EUR 118 per tonne for wood used as bio-energy. In terms of employment, the wood products industry generates 54 man-hours per tonne of dry wood, compared to only two man-hours in the bio-energy sector (5). With respect to the carbon cycle, the wood-based product industry thus provides far greater benefits in terms of employment and added value than the direct burning of wood.

3.7 The woodworking sector has been contributing to sustainable energy use and natural resources for many decades, carrying out pioneering work in the field of generating renewable energy. This is another vital contribution to mitigating climate change.

3.8 Furthermore, important energy savings have been achieved by investing in modern equipment and processes, generating most of the energy required for industrial woodworking processes from wood biomass which is unsuitable for recycling. Indeed, up to 75% of the energy used for manufacturing wood products is produced from wood residues and recovered wood. The sector also continually improves the recycling rates of wood through considerable investments in innovative technologies.


(4) ‘Mobilisation and efficient use of wood and wood residues for energy generation’. Report to the Standing Forestry Committee by the Standing Forestry Committee ad hoc Working Group II on mobilisation and efficient use of wood and wood residues for energy generation.

4. Wood as an excellent multi-purpose solution for saving energy in buildings

4.1 Energy efficiency is one of the main elements of the EU’s Europe 2020 Strategy for smart, sustainable and inclusive growth. Energy efficiency is ‘one of the most cost effective ways to enhance security of energy supply and to reduce emissions of greenhouse gases and other pollutants’ (5).

4.2 Buildings are responsible for 40% of energy consumption and 36% of EU CO₂ emissions. The energy performance of buildings is key to achieving EU climate and energy objectives in the short and long term.

4.3 Wood as a construction material can provide a solution to improving the energy performance of buildings cost-effectively; numerous international scientific studies have found that wood-framed buildings involve lower GHG emissions than their steel and concrete-framed counterparts (26% and 31% respectively). Furthermore, in the residential sector, steel and concrete-framed homes consumed 17% and 16% more embodied energy and released 14% and 23% more air pollutants than a wood-framed home. The sector can thus play a major role in supporting the EC’s Roadmap 2050 goals to achieve an 80% reduction in GHG emissions by 2050.

4.4 The EESC underlines the need to promote green buildings that use environmentally compatible and resource-efficient structures and processes throughout their life cycle: throughout the design, construction, operation, maintenance, renovation, and demolition phases. The use of a Life Cycle Assessment (LCA) approach should be promoted: this approach involves identifying the material with the least impact on global warming.

4.5 The EESC is disappointed about the fact that there are still legislative barriers or obstacles as regards perception which are hampering an enhanced use of wood and wood-based products in residential buildings in the EU. Ad hoc initiatives should be undertaken at national level to enhance local and regional authorities’ knowledge of wood as construction material. Moreover, the lack of appropriate education, training and skills, not only in the wood-based industries, but also in key related occupations (construction engineers, architects, etc.) is one of the most significant barriers which are preventing the increased use of wood for construction.

4.6 Unfortunately, the positive role of wood in housing is not always fully recognised in the green building rating schemes which are currently in operation. Some of these schemes have in fact worked against the use of wood. The EESC therefore calls for generally-accepted LCA methodologies to be used that recognise all the advantages and disadvantages of the building material, including carbon storage.

4.7 Encouraging the use of wood products is the greenest choice: by using the full potential of wood (sink and substitution effects) in buildings, Europe could reduce emissions of CO₂ by 300 million tonnes (between 15 and 20%) (7). The EESC recognises that by using green building materials it is possible to achieve effective energy savings in buildings.

4.8 More generally, with regard to the ongoing climate change debate, and in particular the discussion on land use, land use change and forestry (LULUCF), the EESC calls on the authorities to:

— Recognise wood products as carbon stores (8).
— Promote the use of materials which act as carbon stores and have lower carbon and other resource ‘footprints’.

5. Global Economy: challenges and opportunities for the woodworking and furniture industries

5.1 Nowadays, geographical distance no longer provides protection against competition.

5.2 Globalisation has affected the European woodworking and furniture industries in many areas:

— Import pressure from low-cost countries - in particular Asia - not only for consumer products like furniture or wood flooring (parquet and laminates), but also for plywood, where an antidumping duty has already been introduced. Plywood and furniture prices are under severe pressure due to competition, in particular from China.

— The export of logs (beech, oak, poplar) to China returning to Europe as (semi-)finished products. According to China Customs, total log imports amounted to 11 million m³ in the first four months of 2010, 24% more than the same period in 2009. In 2009, the value of the imported wood-working products in the strict sense of the word amounted to EUR 7 billion. For many years, China has been the largest foreign furniture supplier to the EU. Since 2008, more than 50% of total imports into Europe have been from China. European furniture imports from China are now 46.9% higher than in 2005, yet total furniture imports are now only 12.6% higher in value terms, which underlines the preponderance of China.


5.3 The European institutions should guarantee a level playing field with the same market rules for both European producers and their competitors. The EESC welcomes the proposal by the Vice-President of the European Commission, Antonio Tajani, to introduce a ‘competitiveness test’ before commercial partnership agreements are signed between the EU and third countries. In the future, commercial and investment agreements should be agreed between EU and non-EU countries on the basis of an impact assessment completed prior to the start of negotiations. Furthermore, the EESC agrees that it would be necessary to assess the effects on industrial competitiveness of all other policy initiatives (such as energy, trade, environmental, social and consumer-protection policies) prior to their implementation.

5.4 Since many effects of globalisation cannot be slowed down or prevented, the European woodworking and furniture industries will have to make further progress into new and innovative segments. The sector has already focused on developing competitive advantages such as:

- flexible production that allows products to be customised;
- high quality specifications and advanced technology;
- superior design;
- development of values other than price-based value (e.g. branding, buying experience);
- integration of pre- and after-sales services;
- quick distribution with minimal stock keeping.

5.5 The European industry is thus focused on a ‘never-ending’ innovation process in terms of technology, functionality and aesthetics. Highly innovative and original niche products are essential in order to compete with the Chinese industry, which can now produce all kinds of goods at much lower prices than Europe.

6. Social aspects

6.1 The woodworking and furniture sector is under tremendous pressure as a result of multiple external stress factors, including marketplace globalisation, an accelerated pace of technological change and the recent global financial crisis. It is imperative to re-focus market strategies in order to stay competitive and remain an important part of the European economy. In particular, challenges include retirement plans, the fact that the workforce has lower than average levels of education, and the ability to attract and maintain young workers and change skill requirements. The demographic development of the workforce in the sector should be closely monitored and remedial actions taken in advance, so as not to make it difficult for the sector to flourish in the future.

6.2 The availability of trained and skilled labour is a key aspect. The specific skills required in the production cycle of furniture or wood products can determine the success of the product itself. Workers’ training must be based not only on traditional models but also on new market needs and technological development.

6.3 Currently, a specific concern for the sector is the ageing workforce in most industry sub-sectors, and its lack of appeal to young workers. The sector needs workers who are trained in the latest skills and technologies.

6.4 The industry is working with its sectoral organisations and trade unions (9) to help solve these problems by focusing on the lack of vocational skills and the need to attract young workers. One key factor in reasserting the competitiveness of the sector is to ensure that a sufficient number of skilled workers are available to meet demand in the sector. Training college programmes should be responsive to workforce needs.

6.5 The industry has also been working to protect workers from exposure to harmful agents in the workplace through best practice projects on health and safety supported by the European Commission. The REF-Wood and Less Dust projects are the best examples of the woodworking industry’s commitment to creating a healthy working environment for its employees. These European social partners initiatives have aimed to improve employment through providing better working conditions and defining further steps allowing to reach the goals set by the social partners. The woodworking and furniture sectors consider that it is essential to ensure career and employment security, maintain the health and well-being of workers, develop skills and competencies, and achieve a work-life balance. The EESC welcomes and supports the fact that social charters exist on the rights and obligations of workers and employers at company level.

6.6 It is important to underline that these industries have great potential for developing local green jobs, due to the European woodworking and furniture industries’ renewable raw materials and low-energy consumption, and the fact that the industries’ plants are often located in rural areas.

(9) See for example the Pfleiderer AG Social Charta (PASOC), which was signed in Frankfurt am Main, Germany, on 30 November 2010. 
7. Research and innovation

7.1 In order to secure access to European R&D programmes, the European woodworking sector has formed the Forest-based Sector Technology Platform (FTP), together with its partners from the pulp and paper industry and forest-owners. Whilst this has definitely opened up opportunities for EU-level R&D activities, success in getting woodworking and furniture projects accepted at the EU level has been noticeably modest so far, given that only a few SMEs have the resources required to participate.

7.2 EU cooperation programmes such as the ERA-NETs have proven to be better tailored to the needs of SMEs, and they have also opened up specific opportunities for companies from the sector.

7.3 Thus, in order for the woodworking and furniture industries in Europe to be able to benefit from stronger R&D support, future EU R&D programmes will have to take special account of the specific needs of SMEs, so as to facilitate access to programmes and fit in with the day-to-day needs of companies.

7.4 The EESC therefore calls on the European Commission and the Member States to give due consideration to these observations, and to consider them in light of the ongoing public consultation on the Green Paper on a Common Strategic Framework for future EU Research and Innovation Funding. Furthermore, the EESC encourages the European institutions to explore initiatives in order to boost the development of non-technological innovation.

7.5 Innovation develops organically; it is not something that can be delivered on demand. National and European authorities can, however, support the innovation process by providing framework conditions that make it worthwhile for companies to invest time and money in their future.

7.6 The European raw materials policy has been focusing on critical materials, rather than on other raw materials such as wood or recycled paper. In order to overcome this apparent gap in EC policy, the EESC pleads for the inclusion of wood, as a key raw material, in the European Innovation Partnership on raw materials, in line with the recommendations of the EC Communication on raw materials.

8. Intellectual property rights and product counterfeiting

8.1 Protecting and enforcing intellectual property rights has to be a priority in order to ensure that the EU can continue to compete in the global economy despite increasing international counterfeiting and piracy in many sectors. The EESC stresses the need for enhanced cooperation in the area of industrial property rights, in particular through the creation of the European standard patent.

8.2 The EESC would recall the need for strong cooperation between industry and government institutions (at the European and national level) to combat counterfeiting. It is vital to providing better support to train for public-sector and customs officials, and raise awareness amongst consumers. Developing technologies to facilitate the authentication of genuine as opposed to fake products should also help substantially. The EESC recommends that the EU should take action to strengthen the capacity of the national customs to combat the trade in counterfeit goods.

8.3 The Italian initiative ‘National Anti-Counterfeiting Day’, held in Rome and several other Italian cities last year by Confindustria, is an example of good practice. The EESC invites the European institutions to organise a similar event at the European and national levels.

8.4 Counterfeit furniture products can be hazardous to health or even life-threatening. For this reason, in order to enhance intellectual property rights and combat counterfeit products, the EESC invites the European Commission to create a ‘product sheet’ for furniture products. The fact sheet should be enclosed with the purchased product, in order to guarantee the necessary transparency in trade relations between producers, dealers and consumers. Furniture products placed on the European market should provide the following information as a minimum: the legal name or TDC of the product; the business name of the producer or importer; the origin of the product; the presence of any materials or substances that may be harmful to humans or the environment; information on the materials used and the production methods if these are significant for the quality or characteristics of the product; the instructions for use.

8.5 The Committee recognises that there is a real need to support the furniture and woodworking sector through economic reforms to encourage product promotion internationally and ensure fair competition. The EU should also urge emerging economies to reform their national systems in order to eliminate bureaucratic inefficiency or compensate for the regulatory or bureaucratic imbalances that may exist through tariffs. The legal framework could also be improved in order to create a clear regulatory framework for European companies wishing to invest in third markets.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on ‘The prospects for sustainable employment in rail, rolling stock and infrastructure: how industrial change will influence the European employment and skills base’ (own-initiative opinion)

(2012/C 24/05)

Rapporteur: Mr CURTIS
Co-rapporteur: Ms HRUŠECKÁ

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

The prospects for sustainable employment in rail, rolling stock and infrastructure: how industrial change will influence the European employment and skills base (own-initiative opinion).

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 September 2011. The rapporteur was Mr CURTIS and the co-rapporteur was Ms HRUŠECKÁ.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 104 votes in favour with 1 abstention.

1. Conclusions and recommendations

1.1 The European rail equipment industry has proven to be capable of delivering state of the art solutions for environmental- and user friendly means of transport that meet the high demands of mobility and CO₂ reduction. A declining home market and limited access to other markets will undermine the leading position of the European industry. The ambitious EU transport agenda cannot be fulfilled without a strong European based industry. EESC recommends the following actions to consolidate and strengthen the strategic position of this industry in Europe.

1.2 A full-scale inventory of bottlenecks in the main national and transnational connections is needed.

1.3 A comparison of operational urban systems in European metropolitan areas and state-of-the-art solutions, on the basis of energy and environmental efficiency, should set a benchmark.

1.4 EU producers should have the same access to non EU markets as non-EU producers to the EU market, on a reciprocal basis.

1.5 A comprehensive industry policy is needed that contains substantial investment in conventional systems. The result of non-investment would mean further losses of jobs and skills in this strategic sector. This would in turn lead to the sector being dangerously weakened.

1.6 Although the European Rail Agency (ERA) issued Technical Specifications for Interoperability (TSI) an integrated rail network is still far from a reality, entailing obvious obstacles to pan-European rail transport. The EESC is of the opinion that, given the current state of affairs, full use must be made of the Europe 2020 Strategy that, among others, envisages a firm framework for the coordination between the Commission and the Member States in matters that are not directly covered by EU-regulations or legislation, but are of significant importance for the Single market.

1.7 A significant expansion of transnational cooperation, also involving universities, research centres, and properly-trained young professionals, is vital in order to standardise the development, design and production of newly-built trains that can cross different rail and signal systems. This in itself would give a boost to European industry. A variety of measures to promote and foster the use of rail transport, in order to reduce congestion and carbon emissions, should be encouraged. In order to trigger behavioural change it is at the same time necessary to improve the capacities, attractiveness and user-friendliness of rail transport in an environment of fair competition, also with other modes of transport.

1.8 The EU and national governments should encourage and support innovation as a factor for maintaining and increasing European competitiveness, as proposed in the EU 2020 programme. In this area, the priority approaches can be identified as simplifying technology, ensuring the quality of the services provided (in terms of safety, comfort, traffic regularity and capacity, etc.) lowering energy consumption and reducing the carbon footprint.
1.9 Technological development goes hand in hand with the development of skills and knowledge within the sector and with the ability to attract young engineers (war for talents). Demands of the potential users and other stakeholders are drivers of the technological development. Therefore further development of social partnership and stakeholder involvement is a necessity.

1.10 In the medium and long term, the establishment of a European sectoral skills council should be considered to identify the skills and jobs that will be necessary in this sector. It is therefore of importance that up-to-date research and accurate data on employment in the rail sector is done in order to define the future needs.

1.11 Without a comprehensive industry policy and proper funding, fragmentation will continue and the European market will lose its leading position. Only a growing home market will allow the industry to maintain the present employment levels in Europe.

2. Introduction

2.1 Passenger and freight rail transport is a key factor in a modern economy; it serves the general public's interest and has a strategic importance for policy makers in terms of increasing mobility and logistic streams while reducing environmental consequences. It supplies energy-efficient mobility with the lowest CO\(_2\) emissions and is one of the answers to congested highways and urban areas. Medium distance connections could be an alternative for air transportation, whilst short distance and local connections could reduce car traffic.

2.2 An efficient network is essential to an environmental friendly and mobile European community and for further integration of the European community as a whole and new Member States in particular. The present networks are not ready neither in capacity nor in quality, to attract a greater market share for rail transport.

2.3 The constant increase in fuel prices and oil dependency, greater concern for the environment and the fight against CO\(_2\) emissions will all affect the way in which different transport modes are used. Rail transport must consequently be upgraded and new, dedicated infrastructure put in place. The worldwide market is dominated by China, which is investing heavily in extending and upgrading its inter- and intra-urban rail network. Other emerging countries, such as India, Russia, Brazil and Saudi Arabia, amongst others, are also implementing or planning to implement large-scale projects. Growth outside and decline in the European market and the lack of reciprocity in the global market, will eventually undermine Europe's leading position.

2.4 The urban public transport market shows great potential for growth. Throughout the world today, there are 300 major agglomerations of more than one million inhabitants that do not have an urban guided transport system (metro or tram).

2.5 Mega high speed and conventional rail projects are foreseen in China, USA and other parts of the world. However the European industry needs level playing field and reciprocal market access to be able to compete.

2.6 An efficient rail infrastructure with modern facilities and equipment is essential to make changes in consumer behaviour, environmental demands and labour market mobility successful. A well-functioning system of spatial planning, including an appropriate involvement of citizens in the planning and decision-making processes is a prerequisite for achieving this. Due to the complexity and investment intensity of systems, the time to market can span several decades. Choices we make today will determine transport in 2050.

2.7 Competition from Asia, is already taking hold in Europe, whilst non EU markets are still protected by regulatory and legislative barriers. In order to avoid these barriers, European producers ‘buy’ market share with technology transfer, creating an industrial base in the receiving country which eventually will undermine the European employment base.

2.8 The growing power of this competition from outside the EU, is likely to be felt most in five to ten years’ time, for example, when the Chinese market itself reaches maturity. This will have a direct effect on job prospects in Europe’s railway sector.

2.9 In Europe, EUR 4.3 bn was made available for rail transport through the TEN-T 2007-2013 programmes. Additional funding through the European Cohesion Fund is mostly spent on road and not exhaustively used. The co-financing requirements seem to be an inhibiting factor. Special attention should be given to the situation in new Member States. While their rail systems are in coverage, capacity and technical state the least developed in the EU, the allocation of funds is relatively low. Out of the relatively few foreseen projects most of them are still in a study or pilot phase.

2.10 National and European funding on road transport, grants and support measures for the car industry, favourable tax facilities for air traffic are in contrast to how rail is treated. The fact that rail is taxed on its energy consumption and tickets revenues make it clear that rail is in many ways the last in line. In spite of its sustainability in social and environmental terms, the competitiveness of rail versus other transport modes is negatively affected by unfair taxation.
2.11 The introduction of Long Combination Vehicles (diesel trucks, often referred to with the misleading word ‘Eco-Combi’) and emerging long-distance bus transport as a result of deregulation in various European countries is further undermining the competitiveness of rail-transport.

2.12 The demand for ‘made in Europe’ rolling stock and rail infrastructure is clearly negatively affected by this unfair competition between the different modes of transport and the global trade barriers.

2.13 The European railway equipment sector is competitive industry and represents a considerable share in terms of employment. Although reliable statistics are missing, at least 113,000 employees are directly employed in the production of infrastructure and trains. The total employment in the sector in Europe is estimated at 300,000 employees. The EESC welcomes the initiative of the Commission to make a sector overview and competitiveness survey of the railway supply industry that will give us more insight in the industry.

2.14 Many countries are planning to renew or upgrade infrastructure, develop new trains, suburban and regional, upgrade and or extend metro lines and rolling stock, but the financial crisis jeopardised many plans and reduced the expected volume of investments. Postponing and downsizing projects are the order of the day.

2.15 Instead of renewing and investing in new technologies many operators of conventional networks are choosing to refit old fleets. Together with a slowdown of electrification plans (48% of the 230,000 km of European railways is not electrified), technological and environmental development then slows down and might even come to a standstill.

2.16 An emerging railway market in other parts of the world will accelerate the globalisation process and might affect the technological base and long-term employment in Europe. Asia has already overtaken Western Europe as the largest market for rail equipment, a development not previously expected before 2015/16. China assigned approximately EUR 60 billion to the rail equipment, a development not previously expected before has already overtaken Western Europe as the largest market for rail equipment. Ambitious mega-projects such as rail-Baltica have to overcome many political and budgetary hurdles and might be at jeopardy in the current situation.

3. General comments

3.1 The delaying effect of the financial crisis has increased the pressure on European rail systems. Many European countries, and particularly countries that have been hit by the financial and economic crisis, are unable to realise the renewal of their railway systems. Ambitious mega-projects such as rail-Baltica have to overcome many political and budgetary hurdles and might be at jeopardy in the current situation.

3.2 The impact of the crisis on national budgets has lead to the postponing of investment in conventional systems. However, conventional systems are primary means of transport for average short distance commuters. As they already exist, the ecological impact of these conventional systems is minimal compared to high-speed connections. Considering the transport volumes and density these conventional systems also have a larger impact on pollution and congestion reduction as an alternative for car transport.

3.3 Although the medium-distance high-speed networks developed rapidly in the last few decades, extending and interconnecting to the existing networks will be the next big challenge.

3.4 The emphasis on high-speed developments has resulted in under-investment in conventional railway connections, which has resulted in over-aged rolling stock and outdated infrastructure, in terms of signalling, energy-efficiency, capacity and safety standards. With further and unbalanced budget allocation on high-speed development this process will continue.

3.5 The conventional systems have developed over 150 years from regional into national systems. The system parameters (gauge, voltage, alignment margins, maximum speeds, signalling and safety) are different per country and, in some cases, even per region. In fact the conventional European network is a patchwork of different systems. Various approaches have been taken to overcome these differences: standardisation (for instance European safety standard); hybrid rolling stock (safety systems, voltage and adjustable gauges) and technical provisions to compensate for limitations of the infrastructure (tilting trains, double decks, etc.).
3.6 As the system is a patchwork, so are the political decisions behind the screen. Any planning involves numerous authorities of local, regional and national origin on the policy fields of transport, spatial planning, and demography. Economic and environmental development. Projects are developed as public or public/private projects and privatised operation is increasing, there are lessons to be learned from the success and failure of projects.

3.7 Political choices lead to a separation of the highly profitable parts of the network and the less profitable and loss-making parts. Decline of service in the periphery of the networks is the result.

3.8 In local transport the further development of metro systems is slowing down and might come to a standstill as a result of high-costs and risks. In many urban areas conversion of closed down sub-urban railway lines into light rail connections and the (re-)opening of tramlines is considered as an alternative to a metro. The domino effect of national austerity plans leads to postponing and mothballing of these plans.

3.9 In the tram sector the industry developed level floor accessibility, energy-efficient chopper technology, power regeneration and catenary-free power transfer (primove and APS), and increased accessibility, decreased CO₂ emissions and overcame aesthetic and practical objections. However, many urban operators still have later versions of the 1930 PCC concept (7) in use.

4. Specific comments

4.1 Whilst Europe used to be the leading continent in railway development, now the 'the dialectics of lead' amplified by shrinking public spending, will place Europe last in line.

4.2 The need for mobility causes congestion, pollution and longer travel times. Measures such as road pricing might reduce the use of cars, but then there has to be a competitive, reliable, environmental-friendly and comfortable alternative. Introduction of road pricing in Stockholm and London was successful because these cities both have extended metro networks that serve as the backbone of all public transport. City bound commuter traffic could be decreased with road-pricing, if there are efficient door to door alternatives.

4.3 High-density routes on the current conventional rail systems have reached the limits of their capacity. On many routes the service frequency has reached the limits of the safe working system, the train lengths have reached the limits of current platform parameters and the volumes have reached the limits of the clearance profile. More capacity will need major investment.

4.4 Intermodal integration is not yet optimised. Whilst the train brings passengers to the heart of an urban area, commuters need a reliable connection from there to their actual destination, often business zones on the outskirts of cities. Metro, segregated light rail and tram networks can still be expanded, better integrated and improved to decrease average ‘door to door’ time. Again, this needs major investments.

4.5 Although the development of high-speed networks has gone quickly, most networks ‘stand-alone’. The North-East corridor, connections to the East, international connections to and within the Mediterranean are still not competitive with air traffic. Substantial investment is needed to make high-speed rail competitive on more routes.

4.6 Although the Commission presented an ambitious vision in the White Paper (8), the strategic outlook of the funding of trans-European rail networks should be clarified. What is the industrial policy of each European country and the European Union in general and how the production of rail equipment fits in to this industrial policy? How realistic are the plans in the face of the economic and financial crisis? How large is the rail transport budget compared to other budgets (asphalt versus rail)? Is global trade policy affecting the European industrial base and what can we do about it? Are tendering procedures really creating a level playing field for the European industry or is it creating opportunities for outsiders whose home market is protected by trade barriers?

4.7 If the decline is not stopped, the sector will lose its attractiveness for young engineers and other skilled infrastructure workers because of the declining long-term perspective and will not be able to compete on the labour market.

4.8 Due to the lengthy development and production time, declining orders will cause a shake-out and shrinking variety of supply and competition.

4.9 In order to survive, companies will have to reduce the number of their locations, decrease their social standards and rely on external flexibility, which undermines the long-term competence base and will result in a further decline of attractiveness of the sector for skilled staff.

(7) See footnote 6.
4.10 Without a comprehensive industry policy and proper funding, fragmentation will continue and the European market will lose its leading position. Only a growing home market will allow the industry to maintain the present employment levels in Europe.

4.11 In general, the Member States and their administration of all levels should be encouraged, in particular in these times of budgetary constraints, not to sacrifice investment in necessary transport infrastructure of all modes which is fundamental for a long-term European development strategy also resulting in more jobs.

Brussels, 27 October 2011.

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

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 (NRP).

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 EU coordination and cooperation in the social field (\(^{3}\)). This report could usefully become the Annual Assessment of the EU coordination and cooperation in the social field. 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 NRP. 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. (\(^{3}\))

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.

(\(^{3}\)) 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.' (4)

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' (5) 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. (6) 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 TFEU 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).


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.

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.

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.

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.

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 (9). 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 (10).

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.

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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 (9). 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 (10).

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 explanatory 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 explanatory 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.
(6) EESC exploratory opinion on The development of social welfare benefits (OJ C 44, 11.2.2011, p. 28).
(7) SPC opinion endorsed by the June 2011 EPSCO Council of Ministers.
(8) EESC opinion on Effective governance of the renewed Lisbon Strategy (OJ C 175, 28.7.2009, p. 13).
(9) EESC opinion on Smart regulation Rapporteur: Mr Pegado Liz (OJ C 248, 25.8.2011, p. 87).
(10) Inter-Institutional Common Approach to Impact Assessment (IA), 14901/05 JUR.
(14) http://ec.europa.eu/governance/impact/ia_in_other/ia_in_other_en.htm (20.3.2011).
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.

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

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Opinion of the European Economic and Social Committee on ‘The problem of homelessness’
(own-initiative opinion)
(2012/C 24/07)

Rapporteur: Mr LUCAN

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

Problem of homelessness.

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 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 98 votes with 6 abstentions.

1. Conclusions and recommendations

1.1 The EESC wishes to make the following recommendations:

1.1.1 The European Union should allocate more resources under the Structural Funds (ESF and ERDF in particular) to tackling the issue of homelessness, with a particular focus on building permanent housing.

1.1.2 The European Union and the Member States should bear in mind that policies to combat homelessness must be based on complete respect for human rights, which include the right to affordable, adequate housing. The EESC believes that homelessness is not a pre-existing situation: it is the result of political and economic choices. The EU 2020 strategy's inclusive growth dimension must incorporate discussion on wealth redistribution, with this discussion beginning immediately owing to the crisis currently hitting the EU.

1.1.3 The European legal framework for an ambitious social housing policy is in place (treaties, charters and international texts). Furthermore, the EU could coordinate efforts to encourage Member States to ratify the revised European Social Charter (1). The European Commission, European Parliament and EU Agency for Fundamental Rights should draw up an annual report containing an assessment of how Article 34 of the EU Charter of Fundamental Rights on the right to housing assistance is being implemented in the Member States.

1.1.4 Eurostat should promote common definitions, indices and indicators in order to help understand the complexity and specific characteristics of homelessness at EU level and to harmonise statistics. The EESC supports the adoption of the ETHOS typology launched by FEANTSA to define homelessness at EU level.

1.1.5 The European Commission should develop an ambitious strategy on the issue of homelessness and support the Member States in developing effective national strategies, in accordance with the guidelines proposed in the 2010 Joint Report on Social Protection and Social Inclusion and taking account of the recommendations made by the jury of the European Consensus Conference on Homelessness. A major housing policy in Europe would fall within the scope of the major work projects generating jobs and well-being, which continue to be two of the goals of the European treaties.

1.1.6 Bearing in mind that the Europe 2020 strategy aims to secure smart, sustainable and at the same time inclusive growth, the EESC proposes that the EU should monitor this periodically and factor the relationship between the price of housing on the housing market and Europeans' access to buying or renting, depending on their income, into the policy-shaping process.

1.1.7 The EU should help Member States to take the following into account in their inclusion policies: eradicating deaths caused by living on the streets; personal dignity; multiple causality; prevention; empowering and encouraging participation by recipients through social contracts/tenancy agreements; European standards of cost-efficiency for housing and social services; building permanent housing, subsidised flats and prevention centres in every town (2); and an approach promoting swift access to permanent housing.

1.1.8 The European Commission should set up a European agency on homelessness.

1.1.9 The Member States should implement efficient anti-crisis strategies with a focus on an optimal cost-efficiency ratio, consultation and promotion of public-private partnerships, and building up the housing stock given that, with the crisis, prices on the housing market have fallen considerably.

(1) Revised ESC: the Council of Europe's European Social Charter of 1961; the revised version, as amended by the 1995 protocol, includes the right to housing among basic social rights; only 14 of the 43 states which have subscribed to this charter have ratified it in their national legislation.

(2) The Finnish model Housing first has shown that there is a EUR 14 000 saving for each recipient of assistance.
2. Background and general comments regarding the problem of homelessness in the EU

2.1 Homelessness was a key field of action for the 2010 European year (7).

2.2 Homelessness was mentioned for the first time as a priority in the 2005 Joint Report on Social Protection and Social Inclusion. In 2007, the European Commission published a study entitled ‘Measurement of Homelessness at European Union Level’ (6).

2.3 Combating the problem of homelessness has become a priority as it is a key aspect of the EU strategy on social protection and social inclusion.

2.4 Through the EU strategy on social protection and social inclusion (also known as the Open Method of Coordination in the social domain), the EU coordinates and encourages national measures and the development of policies to combat poverty and social exclusion through a reporting mechanism, common indicators and final policy conclusions adopted by the European Commission in cooperation with the Council of Ministers of the EU.

2.5 The European Parliament has adopted a number of major initiatives on the problem of homelessness, including a written declaration on ending street homelessness which was adopted in 2008 (5). The declaration calls on the Council to agree to an EU-wide commitment to end street homelessness by 2015. A further cross-party written declaration on the need for an EU strategy on the problem of homelessness was initiated by five MEPs on 6 September 2010 and adopted in December 2010. The EESC believes that European funds (ESF and ERDF) must be allocated if these ambitious goals are to be met.

2.6 In late 2009, the EU Network of Independent Experts on Social Inclusion submitted a report (7) on homelessness and housing exclusion in the Member States. The report called for the problem of homelessness to be made an integral part of the Open Method of Coordination in the social domain, and for it to be built on and pursued after 2010.

2.7 On 17 June 2010, the European Council adopted the new Europe 2020 strategy. By 2020, the EU wants to eliminate the danger of poverty and exclusion for at least 20 million people. The European Commission’s 2020 proposal includes a European platform for combating poverty in order ‘to define and implement measures addressing the specific circumstances of groups at particular risk such as […] the homeless’ (7).

2.8 In October 2010, the Committee of the Regions issued an opinion on ‘Combating homelessness’ which argued that the EU needed to work harder to combat this problem. The Committee of the Regions proposes promoting the ETHOS typology at European level, setting up a European agency to coordinate and support the fight against homelessness, promoting prevention measures and involving the regions.

2.9 The 2010 Joint Report by the European Commission and the Council on Social Protection and Social Inclusion (8) calls on the Member States to develop strategies with a focus on prevention, moving towards permanent solutions (subsidised and permanent housing), a ‘housing first’ approach which can be accompanied by additional social services, and improved governance.

2.10 The most important recommendations made in 2010 on homelessness are set out in the conclusions of the Consensus Conference (9) held at the end of the 2010 European Year against Poverty and Social Exclusion, at the initiative of the European Commission and with the support of the Belgian presidency of the EU.

2.11 In 2011, Eurostat (10) published the report on ‘Housing Conditions in Europe in 2009’, pointing out that 30 million people in the EU suffer both lack of space and poor housing conditions.

3. The right to housing

3.1 Homelessness can constitute a direct violation of human rights as set out in the EU Charter of Fundamental Rights (11).

3.2 Article 34 of the EU Charter of Fundamental Rights states that: ‘(3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources […]’.

3.3 The UN Universal Declaration of Human Rights guarantees the right to adequate living conditions which include housing and medical and social care. Article 25(1) states that ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services’.

(1) www.2010againstripoverty.eu.
(3) See appendix.
(7) www.2010againstripoverty.eu.
(12) Article 6 TEU 'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (…), which shall have the same legal value as the Treaties.'
3.4 Article 31 of the Council of Europe’s revised Social Charter (14) states that every citizen has the right to housing, and calls on the parties to ensure that the signatories undertake to promote access to housing of an adequate standard, to prevent and reduce homelessness and to make the price of housing accessible to those without adequate resources.

3.5 The right to housing is enshrined in many national constitutions of the Member States. Adequate housing is a need and a right. The EESC recommends that all Member States should help each and every person who has this right under current national legislation to have access to housing. The EESC calls on the Member States and civil society to monitor this process. The existence of this legal right is a good basis for initiating and developing effective policies to combat homelessness.

4. Social exclusion and poverty brought about by housing deprivation

4.1 Eurostat (16) has stated that 30 million people in the EU suffer both lack of space and poor housing conditions. In 2009, 6 % of the EU population suffered from severe housing deprivation. 12.2 % of people in the EU live in housing with high running costs compared to their income.

4.2 Homeless people living on the streets are the most visible and extreme form of poverty and exclusion. The problem of homelessness can encompass a range of other circumstances, such as people living in emergency, temporary or transitional accommodation, people living temporarily with family or friends, people who must leave an institution and do not have any form of housing, people threatened with eviction or people with inadequate or insecure accommodation.

4.3 Access to housing of an acceptable standard can be considered a basic human need.

4.4 Housing deprivation is defined by inadequate facilities, with the benchmarks being dwellings with a collapsing roof and without a bath/shower and toilet, or accommodation which is too dark.

4.5 Some Member States which joined the EU after 2004 have indicated that a large part of their population is faced with severe housing deprivation, particularly in Romania, Poland, Bulgaria and the Baltic States (14).

4.6 In many countries, poverty is linked to the high cost of housing: 67 % of Europeans consider that good quality housing is far too expensive. This view is particularly widespread in the Czech Republic and Cyprus (89 %), Luxembourg, Malta (86 %) and Slovakia (84 %).

4.7 One in six Europeans says that it is difficult to cover the daily running costs of housing (15). In the EU, 26 % of people consider that good quality housing is too expensive in our society. It is the fourth reason in EU society which best explains ‘Why are people poor?’.

5. Definitions of homelessness

5.1 There is no common functional definition at EU level of homelessness; the definition of homelessness varies widely between Member States. Homelessness is a complex and dynamic process, with different routes in and out for different individuals or groups.

5.2 There are different types and target groups of homeless people such as: single men living on the streets; children and teenagers living on the streets; young people who leave orphanages; single mothers living on the streets; people with health problems such as alcoholism or addiction; people with mental or psychiatric problems; elderly people who are homeless; families living on the streets; homeless people from ethnic minorities such as Roma or people with a nomadic lifestyle; immigrants who are homeless; asylum seekers (refugees) who are homeless; second-generation children living on the streets whose parents are homeless.

5.3 FEANTSA (European Federation of National Organisations working with the Homeless) has developed a typology on homelessness and housing exclusion called ETHOS. According to this typology, having a home can be understood as:

— physical domain: having an adequate dwelling (or space) over which a person and his/her family can exercise exclusive possession;

— legal domain: having a title (deed) of property;

— social domain: being able to maintain privacy and enjoying relations.

5.4 This leads to the four main concepts of Rooflessness, Houselessness, Insecure Housing and Inadequate Housing, all of which can be taken to indicate the absence of a home. ETHOS therefore classifies people who are homeless according to their living or ‘home’ situation. These conceptual categories are divided into 13 operational categories that can be used for different policy purposes such as mapping the problem of homelessness, and developing, monitoring and evaluating these policies (16).

(14) According to the new Eurobarometer survey on poverty and social exclusion, MEMO/09/480/27.10.2009.

(16) The ETHOS typology is appended to the report. Also see http://www.feantsa.org/files/freshstart/Toolkits/Ethos/Leaflet/EN.pdf.
6. Statistics, indices and indicators

6.1 At EU level, there is no single method for collecting data on homeless people from national statistics offices or other official sources of statistics in the EU Member States.

6.2 The ETHOS model with its conceptual categories can be used to produce statistics, to map people who are homeless, to assess recipients’ needs and local and organisational resources, and to develop, monitor and assess policies.

6.3 Studies and research into homelessness at EU level are needed to understand its causes and structure, and to plan policies and coordinate and implement strategies. The EESC calls on Eurostat (through the EU-SILC (17) data collection system) and the European programmes which have provided funds for the inclusion of homeless people to present an evaluation covering the last five to ten years and giving an overview of trends in homelessness at EU level.

7. Vulnerability and risk factors of housing exclusion. Causality

7.1 The causes of homelessness are often complex and inter-related. Such situations are the result of a combination of factors.

7.2 There are different types of vulnerability factors which must be addressed in order to prevent and solve the problem of homelessness:

— structural: the economy, immigration, citizenship, the housing market;

— institutional: the main social services, the benefits mechanism, institutional procedures;

— relationships: family status, situation of relations (for example, divorce);

— personal: disability, education, addiction, age, situation of immigrants;

— discrimination and/or lack of legal status: can affect immigrants and certain ethnic minorities such as Roma communities in particular.

8. Social or emergency services and strategies to promote access to housing

8.1 There is a range of support services for homeless people, both residential and non-residential. Promoting public-private partnerships is a key factor in implementing strategies to promote access to housing. Permanent housing and emergency social and medical services, as well as the promotion of partnerships, are very important in substantially reducing the number of deaths among homeless people, particularly in winter and summer, as in some countries a number of homeless people die on the streets during every very cold or very hot season.

8.2 The EESC recommends disseminating innovative models and guides to good practice at national and European levels, so as to promote innovative and interactive methodologies at those levels, whereby permanent housing and the necessary additional services are the first option. The Open Method of Coordination can be extremely helpful as regards promoting effective policies to integrate homeless people into society.

8.3 The EESC recommends developing various services and promoting minimum standards for all social services for homeless people so that they respond to the full range of needs of homeless people:

— direct social action: social and legal assistance in obtaining housing, temporary shelters, social houses and flats, support and care networks and multipurpose centres;

— specialised services (homeless people with HIV or special needs, etc.);

— counselling, legal advice and vocational and professional training;

— business training for homeless people, and social economy;

— monitoring and support (community care);

— family-oriented, social and cultural campaigns and prevention programmes.

8.4 The EESC suggests implementing integrated strategies which can be used to establish adequate and additional services in every domain corresponding to the panoply of recipients’ needs, particularly social housing. With a view to preventing deaths among homeless people, the EESC suggests that it is necessary to promote legislation requiring that at least one counselling centre and one emergency centre be set up for homeless people in every region, geared to the number of people living on the streets. The EESC highlights the importance of finding permanent solutions for integrating disadvantaged people by building shelters and permanent housing and establishing additional social services, particularly with a view to maintaining supportive family relationships (between parents and children, etc.) and as far as possible returning children to their families when the children have been taken from their parents owing to poverty and difficult living conditions.

8.5 The EESC recommends that Member States give priority to developing medium- and long-term prevention strategies.

8.6 Services for homeless people must not be used systematically to make up for the inconsistencies of immigration policies and the lack of specialised services for immigrants.
9. Specific comments

9.1 Homelessness can lead to human degradation, discrimination based on social position (belonging to a disadvantaged group) and sometimes even death (particularly in very cold or hot periods of the year). The EESC considers that homelessness can constitute a direct violation of human rights as set out in the EU Charter of Fundamental Rights (Articles 1, 2, 3, 6, 7, 21 and 34) (18), and in the revised European Social Charter and the International Covenant on Economic, Social and Cultural Rights.

9.2 The social integration of homeless people is a complex and difficult process. The EESC calls on the European Commission to develop an ambitious strategy to support the Member States in eradicating the social issue of homelessness by developing effective national strategies. These strategies must focus on common definitions and on causes, actions and impact. The EESC calls on the European Commission to prepare an urgently needed campaign to raise awareness about homelessness. The EESC recommends that European policies and strategies be shaped together with organisations delivering social services, homeless people, public authorities and the scientific and research community.

9.3 The EESC recommends that the European Commission should encourage Member States to allocate specific funds and budgets in the future for financing or co-financing programmes for homeless people (including ESF and ERDF). The EESC believes that ESF and ERDF funding for the period 2014-2020 should be increased and that the approach should be complementary. It also recommends that the Member States should include strategies on homelessness [with reference to Regulation (EC) No 1083/2006] and measures to reduce the harmful effects of the economic crisis on access to housing in their national operational programmes.

9.4 The EESC calls for the promotion of European policies to curb any trend towards speculation in the housing market. The EESC recommends that when analysing European and national social policies, the relationship between the net value of a monthly salary and the price of housing should be monitored. The EESC considers that access to decent housing must be proportionate to the relationship between a month's mortgage repayment or rent plus daily expenses, and the net value of a salary earned by a person living in the EU.

9.5 The EESC points out that the scale of homelessness in some countries is on the rise. A few decades ago homelessness affected mainly adult males, but now this issue has become broader and more acute in many EU Member States: there are increasing numbers of homeless women, there are families living on the streets, there are young people and children who are homeless and living on the streets, there are employees who have lost their homes after being unable to keep up with repayments in the wake of the housing and economic crisis, and there are increasing numbers of homeless immigrants or ethnic communities. Unfortunately homelessness is out of control in some areas, as proven by the fact that there are second-generation children living on the streets whose parents are homeless.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

See also point 3.2 of the opinion.
Opinion of the European Economic and Social Committee on ‘Cloud computing in Europe’
(own-initiative opinion)
(2012/C 24/08)

Rapporteur: Mr PIGAL

On 20 January 2011, the European Economic and Social Committee, acting under the second paragraph of Rule 29 of its Rules of Procedure, decided to draw up an opinion on:

Cloud computing in Europe.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 October 2011.

At its 475th plenary session, held on 26 and 27 October (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 143 votes to 1, with 7 abstentions.

1. Conclusions and recommendations

1.1 Using the Europe 2020 strategy and in particular its Digital Agenda as a starting point, the Committee has set out to examine an IT solution that is still undergoing significant, rapid development, holding out great promise for the future: cloud computing (CC). This opinion firstly aims to gather and share the concrete experiences of stakeholders and the CC market. Secondly, it seeks to put forward a list of recommendations as to how to encourage Europe (1) to position itself at the forefront of this promising sector, helped by leading companies in the sector.

1.2 Cloud computing uses a digital architecture that has the advantage of being rapidly deployable, easy to extend and based on a ‘pay-per-use’ model.

1.3 CC is a technical solution based on a promising economic model:

— a significant number of potential users: private individuals, businesses, public services etc.;

— pooling of IT resources and tools, optimising their use;

— mobility made possible by CC, particularly in the case of mobile workers who can have constant access to their data;

— the simple, scalable and transparent integration of various technical components e.g. internet, IT facilities management, mobile applications etc.:

— smoothing out of costs during the whole life cycle of IT systems, without any large up-front investment;

— focusing companies on their core business, without the need to worry about the complex nature of IT systems;

— opportunity for growth in new areas for major players in the sector, systems integrators, publishers of software.

1.4 CC has, to date, shown that it lacks maturity and has a number of weaknesses:

— the profusion of standards designed to regulate and control the use of CC;

— the absence of an identifiable European governing authority to enforce these;

— users, especially private individuals, lack the broad perspective needed to assess the benefits and, above all, the risks involved:

— the intrinsically fragile nature of the internet (interrupted service due to incidents, cyber attacks etc.);

— internet congestion: sluggish performance and strong growth in traffic (audio, video, spam). Limitation of the address system (IP);

— server congestion: the pooling of server resources and the resultant overbooking can trigger bottlenecks;

— the risks relating to the outsourcing of data and processing to a third party;

— the risks relating to the relocation of data and processing to another country which has another system of law;

(1) The terms ‘Europe’ and ‘European Union’/EU’ will be used interchangeably throughout this document.
— the social risk arising from the concentration of development, hosting and operating activities;

— the rights and obligations of both users and providers of cloudware are still unclear;

— there is no unambiguous distinction between the person responsible for processing personal data and the person actually doing the processing;

— service-level agreements are complicated and even incomprehensible for non-experts with respect to the composition, processing and transfer of user data and to users' legal rights.

1.5 For Europe, CC represents an opportunity to enter a promising, major and strategic market. In order to ensure the success of this venture, the Committee recommends that the following action be taken, by the European Commission itself, for instance, with the support of the Member States or European businesses within the sector.

1.5.1 Skills
— launch a study on the development in IT skills needed to keep pace with changes in CC needs and human resources;

— encourage and/or coordinate the implementation of training programmes;

— approve a certification or qualification scheme that would recognise and certify the skills of the specialists managing CC.

1.5.2 Research and investment
— encourage coordination among European research centres to help them keep abreast of developments in terms of knowledge and skills;

— boost the development of fibre optics with the support of European telecommunications companies through subsidies or partnerships.

1.5.3 Partnership
— promote the formation of consortia between European companies for investment in joint CC projects e.g. the framework programmes for research and technological development;

— encourage or even subsidise investors so as to create large server farms in the EU Member States, based on those already existing in other areas;

— use public procurement to encourage partnerships;

— bring together CC software producers and telecommunications companies, since the latter are automatically in direct contact with the target users of cloud computing.

1.5.4 Standards and governance
— encourage public and private players to be involved in devising rules that will establish a framework governing relations between providers on the one hand and European businesses or private individuals on the other;

— capitalise on the EU's competitive advantage in the field of data security and privacy protection to ensure their strict application in the area of CC;

— set up a European agency with specific responsibility for ensuring compliance with these standards;

— legislate so as to limit the transfer of sensitive data outside Europe;

— seriously address the challenges posed by cloud computing applications in the forthcoming revision of the data protection Directive, the EESC recognising that these challenges are very broad.

2. Introduction
2.1 Cloud computing should be considered as following on from other developments of a similar magnitude, such as the client/server model or the internet.

2.2 CC involves combining and optimising the use of such existing concepts and technologies as the internet, server farms, IT facilities management etc.

Accordingly, CC has inevitably inherited the strengths and weaknesses of its constituent parts: e.g. internet traffic performance, data protection in IT facilities management, overbooking of pooled computers etc.

2.3 The Committee has already done work on some of the features that CC has directly inherited, for example:

— Data protection (2)

— Telecommunications systems (3)

— Electronic communications (4)

To avoid any repetition, this opinion will focus on those aspects strictly relevant to CC.

2.4 In drawing up this own-initiative opinion, the EESC is not alone among the EU’s institutions and bodies in being interested in CC.

2.5 At the World Economic Forum in Davos on 27 January 2011, Neelie Kroes, Vice-President of the European Commission, set out her vision of cloud computing:

‘[…], when it comes to cloud computing I have understood that we cannot wait for a universally agreed definition. We have to act. […] As foreseen in the Digital Agenda for Europe, I have started work on an EU-wide cloud computing strategy. This goes beyond a policy framework. I want to make Europe not just “cloud-friendly” but “cloud-active” […].’

2.6 In 2009, the European Commission launched a study entitled The future of Cloud Computing (8), which was based on the work of a group of experts from the digital sector and researchers. Furthermore, it also launched a public consultation (9) the results of which will feed into the preparatory work for the European Cloud Computing Strategy, which will be presented in 2012. Cloud computing is an important factor in implementing the Europe 2020 strategy, especially its ‘Digital Agenda’ and ‘Innovation’ flagship initiatives.

CC programmes are already being funded under the 7th Research and Development Framework Programme (10).

2.7 In addition, the ENISA (11) published a report in November 2009 entitled: Cloud Computing: benefits, risks and recommendations for information security.

2.8 The NIST (12) recently published its Cloud Computing Standards Roadmap (NIST CCSRWG – 092, 5 July 2011).

3. Technical introduction to cloud computing

3.1 Attempts to agree on a single definition of cloud computing have been largely thwarted by endeavours on the part of software producers to establish their existing software as ‘cloud-ready’ solutions.

There is nevertheless a broad consensus that cloud computing is readily deployable, easy to extend and advantageous in terms of its ‘pay-per-use’ model.

3.2 What are the characteristics of CC?

— Dematerialisation: this involves ensuring that the configuration, location or maintenance of IT resources is as invisible as possible for users, be they private individuals or businesses.

— Ease of access: provided that there is internet access, users can access their data and applications wherever they are using them and by whatever means they wish (via computer, tablet, smartphone).

— Dynamic scalability: the provider adapts the IT capacity provided in real time to the user’s needs. This means the user is able to cover peak loads without needing to invest in IT resources that are under-utilised between two peaks.

— Pooling: the provider is able to ensure dynamic scalability by pooling IT resources between various users. The provider can thus achieve the largest and best possible pooling, using huge server farms, made up of several thousand computers.

— Pay-on-demand: the user pays only for the IT resources actually used i.e. in line with changing IT capacity needs. The terms of such contracts are still often somewhat ad hoc in nature; however, they are becoming increasingly standardised.

3.3 In the business sector, the first applications to adopt this new approach were: email, collaborative and web-conferencing tools, development and test environments, customer relations management (CRM) applications and Business Intelligence systems.

In future, the majority of IT applications will be cloud-compatible.

3.4 CC is typically deployed using one (or a combination) of the following three models, which vary in scope from partial to full-scale cloud computing and target different types of customer:

— IaaS (Infrastructure as a Service), where only the infrastructure is covered by CC, designed primarily for the IT services of large companies,
— **PaaS (Platform as a Service)**— where infrastructure and core software are covered by CC, designed primarily for software developers,

— **SaaS (Software as a Service)**— the solution is fully covered by CC, including application software, designed primarily for end-users, not necessarily IT specialists, e.g. for personal email use.

3.5 **Private cloud computing** is being broadly developed; it is deployed within companies, which means it can take advantage of CC's flexibility and productivity without the need to worry about the difficulties linked to outsourcing to a CC provider.

This option seems to meet various needs:

— to prepare for the transfer of existing IT systems to a platform that uses CC, which should be a cautious, in-house procedure;

— to make in-house IT departments – in their relations with other departments - more service-oriented and more transparent through pay-per-use charging.

4. The impact of **cloud computing**

4.1 What can a **business** expect from CC?

4.1.1 As noted above, CC has 'inherited' the strengths and weaknesses of some of its constituent parts.

4.1.2 At the outset it is worth highlighting a number of benefits for business which are not specific to CC but which stem from the prior emergence of IT facilities management:

— they remain focused on their core business;

— they benefit from economies of scale due to industrialisation and pooling on the part of the service provider;

— they have access to the expertise and service quality of specialists.

4.1.3 According to a recent study, 70 % of the costs of in-house IT facilities arise from the management of existing facilities. If part of this can be outsourced, IT departments will have the spare capacity needed for innovation and the development of new services.

4.1.4 The following are some of the benefits most often cited by businesses.

— **Lower initial investment**: for new digital solutions, the establishment or development of an IT system does not entail heavy investment in computer rooms, servers, software, application-specific training, etc.

However, it should be noted that existing systems will require heavy investment from both companies and software producers in order to be adapted and transferable to a CC platform.

— **Shorter deployment times**: development teams focus on business problems rather than getting involved in technical infrastructure issues, which are taken care of by the CC provider. Material and human resources can be made available flexibly, as the need arises.

— **Accounting recognition and cost control**: with CC, IT becomes an operating cost rather than a capital cost.

Maintenance costs are based on the rental fee; in particular, this covers transparent software or hardware updates and online technical support for hardware or software problems.

— **Strengthening the service model**: IT departments can rely on the commitments of the CC provider in terms of quality, availability, security and scalability of tools so as to offer Service Level Agreements to their in-house customers.

— **Mobility of employees**: a CC solution maintains quality and easy access to data for all company employees, whether they are mobile or not.

4.2 CC is of particular interest to **certain businesses**, especially:

— very small enterprises and SMEs which see CC as an opportunity for acquiring IT capacity (hardware, software and skills) without the need to pay any prohibitive 'entrance fee';

— start-ups, which by definition are in the phase of rapid growth and which know that the CC model will make it easier to gear their IT capacity to the growth of their business.

4.3 How are **systems integrators** preparing for CC?

4.3.1 The main activity of systems integrators is to implement IT solutions for their corporate clients.

They have come to play a major role in the IT sector; in terms of their expertise, their manpower and their ability to adapt to their customers' changing workload.

The leaders on the European market include Accenture, Atos, Cap Gemini, HP, IBM and Wipro.

4.3.2 Since IT developments are ad hoc and temporary in nature, IT departments call on the services of systems integrators as and when needed to provide them with IT specialists during the development stage.

Permanent IT departments are only involved in this stage to enable them to carry out the next stage, that of operation and maintenance, more effectively.
4.3.3 With CC, Systems integrators will continue to be responsible for designing and developing solutions for their customers.

Given the new work that this represents, the emergence of CC is certain to be well received and even encouraged by systems integrators.

4.3.4 However, there is a question mark over the sustainability of this new activity. Will it simply lead to a one-off boom in activity, similar to that witnessed with the ‘Millennium Bug’ or the introduction of the euro?

Several decades of innovation and technological progress have led to an increase in productivity which has reduced neither the volume of developments nor the number of IT specialists during this period; on the contrary, it has led to a considerable increase in both the number and the size of IT systems.

CC fits logically into this trend. It should therefore open IT developments up to new areas of SI activity.

4.4 *How are software producers preparing for CC?*

4.4.1 Microsoft, Google, Oracle and SAP – to name but a few – are all having to invest heavily in converting their existing products so that they can be labelled ‘cloud-computing ready’.

4.4.2 This transformation requires substantial investment in new IT developments to start with. Above all it presents a radical challenge to certain business models. For example, Microsoft’s Office 365 is offering something very different from its usual model based on selling a licence the first time one of its software products is used.

4.5 *What is the situation for hosting services as regards CC?*

4.5.1 IT facilities management has significantly developed over the past ten years, particularly its principal role, the outsourcing of hosting services (servers, networks and core software). CC is extending this approach by pooling the outsourced resources among an indeterminate number of users (businesses or private individuals).

4.5.2 CC would therefore appear to be facilitating outsourcing, primarily concentrating hosting facilities in the form of giant ‘server farms.’ The emergence of CC should therefore lead to the reorganisation of the sector, with strengthened competition among suppliers and mergers, which are necessary if the huge need for investment is to be met.

Inevitably, it will also have a social impact similar to that experienced by other sectors that have undergone phases of consolidation.

4.6 *Does the public sector see CC in a different light to the private sector?*

4.6.1 The public sector is based around strategies, cultures, employees and organisations that all have objectives, constraints and modes of operation similar to those of the private sector.

4.6.2 Consequently, the expected benefits of CC for businesses (see above) apply equally to public administrations.

CC can also help to improve public services for the general public by enhancing availability, accessibility, etc.

4.6.3 Nonetheless, the public sector has a number of distinctive features.

— General climate of austerity

This leads to budgetary constraints and cuts in public investment programmes, also in the area of IT. The CC model is fully justified in this context; it makes it possible to develop IT capacity without up-front investment costs.

— Public-sector research

While research obviously takes place in the private sector too, it is particularly widespread in the public sector through national research centres, universities and public-private partnerships.

Research sometimes involves peaks in IT capacity use, which CC in particular is perfectly capable of providing.

— Public-sector investment

Through a leverage effect, this could prompt and encourage investment in CC by national or European private players, particularly telecommunications operators. In the past, certain public-sector investments have acted as a catalyst for investment and strategic positioning in the private sector, e.g. in the aviation and aerospace sectors, mobile telephony, high-speed rail links etc.

— Certain Member States have already invested heavily in shifting their administrative software to CC architectures.

4.7 *Will CC also have an impact on individuals?*

4.7.1 CC solutions are aimed in particular at individual users. Examples of such products are Apple’s iCloud, Microsoft’s Office 365 and Picasa.
4.7.2 Very few private individuals are willing to buy one or more servers or network infrastructure. Furthermore, not everybody can or wants to get involved in the maintenance of such infrastructure in the case of personal computers.

4.7.3 Products which were once the preserve of PC hard drives (word processing, printing, photo storage, data storage etc.) are gradually being replaced by internet services, in line with the SaaS CC model (See above).

4.7.4 CC providers are able to offer basic services free of charge as it enables them to build up a list of potential targets for marketing and advertising. A fee-based premium version is usually available, offering more storage space, additional functionality etc.

4.7.5 In the case of private individuals, the CC model also responds to the growing complexity of IT tools, by offering simplifications providing external support. It is also a pay-on-demand model, which is perfectly suited to the limited and occasional use of IT tools and resources by private individuals.

4.7.6 Lastly, continuous and remote (mobile) access to data is becoming increasingly important for users. Several providers (13) now give their users the option of listening to their music, viewing their photographs etc. irrespective of their location.

4.8 Beyond the economic and commercial impact, what will be the social impact of CC?

4.8.1 IT specialists are the group most likely to be affected by the emergence of CC.

4.8.2 Systems integrators should not see any reduction in their activity due to CC and may even experience a substantial increase in connection with the introduction of CC. While the IT specialists at these companies will need to make the effort to acquire new skills to develop CC solutions, workforce numbers should not be affected.

4.8.3 In-house IT specialists (at SI client companies) responsible for development will most probably be deprived of their main task: participating in development alongside SI specialists in order to ensure effective maintenance once the consultants have finished their work. If the CC providers actually do take over a proportion of maintenance work, in-house development staff numbers ought to fall in proportion.

4.8.4 IT operations staff should be affected to a greater extent. They have already been significantly affected by the advent of IT facilities management which has brought them under the aegis of IT facilities management providers. With CC, IT facilities management will continue to develop but in a sector undergoing major consolidation and where data transfer or relocation is easier. We can therefore expect a further reduction in staff numbers in IT operating and hosting services.

4.8.5 The outsourcing of all or part of IT departments moves IT specialists further away from the end users. This organizational or even geographical distance limits the amount of contact between these two groups. Such contacts, however, can help stimulate direct and effective dialogue and provide a social link enabling IT specialists to gain a better understanding of, and respond more effectively to, users’ problems and expectations.

4.9 What are the key aspects of a CC solution contract?

4.9.1 The relationship between consumer and CC provider may take two different forms: free or fee-based services. However, the distinction is not always clear-cut. Free services, for example, may entail non-financial costs such as contextual advertising or consent for the provider to reuse the consumer’s data.

4.9.2 Free or low-cost services are typically aimed at private individuals. People need to pay particular attention to the general conditions of their contracts which, while they may appear to be relatively informal, still represent a contractual commitment. In addition, even for private individuals, the information entrusted to a provider is of value. In the event of problems, free service can actually turn out to be highly expensive, in terms of wasted time or loss of information.

4.9.3 Businesses must also carefully examine the wording of their CC contracts and ideally take specialist legal advice. Businesses are giving external providers access to valuable information and tools; in the event of abuse by the provider, this could land them in serious difficulties.

4.9.4 CC contracts are rarely negotiable and most providers require potential subscribers to sign a standard contract. However, as is always the case, if a contract is of sufficient value or of strategic interest, the provider may well be willing to accept an individually tailored agreement.

4.9.5 Whether free or fee-based, standard or individualised, the contract must stipulate the following:

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(13) Cloud Drive from Amazon and iCloud from Apple.
— the level of pooling of resources among the various users (risk of overbooking);

— the flexibility of the IT resources available and used, and the billing rates based on usage;

— the rights or obligations of the CC provider regarding the disclosure of information to a third party e.g. a court;

— the exact identity of the parties actually providing the services, particularly given the multilayered cloud architecture;

— the right to terminate the contract and the level of assistance guaranteed by the provider during the transition period;

— the system of law (national or international) governing the contract, for example in the event of dispute.

5. Weaknesses of cloud computing

5.1 CC is based on and largely dependent on the internet. However, the internet would appear to have reached its limit in a number of areas, particularly in terms of performance.

The ever-increasing number of users and forms of internet use; the explosion in the volume of data traffic (particularly audio and video); the ever shorter response times desired by users — these are all factors which have highlighted potential problems relating to internet performance. CC traffic can only exacerbate these problems by adding even higher volumes of data traffic and, above all, by reducing acceptable response times for users even further.

5.2 For CC, network resilience is another risk related to the internet. Technical incidents, cyber attacks or decisions by politicians have recently interrupted its operations and demonstrated its fragility and, above all, the extent to which its users are dependent on this public network. The CC model will only further emphasise the need for security for this network which was never originally designed for use by businesses.

5.3 Another major weakness of CC is the issue of data security, which is primarily linked to the outsourcing of data, whether it is transferred or not.

This poses problems in terms of continuity of access to data in cases where it is critical or vital that CC users have virtually immediate access. Then there is the issue of the confidentiality of data stored and managed by external providers.

This issue is especially relevant in the case of high-value data, particularly in the light of industrial espionage.

5.4 These solutions are all the more likely to be attacked, which means they are vulnerable as they represent a target for hackers whose appeal increases in line with the size, visibility and mission criticality of the server farms designed and built to support them. Additional efforts and specialists will be needed to make these targets less appealing to hackers.

It should also be noted that providers of IT services (outsourcing, CC, etc.) are already very aware of security issues and cybercrime, and are therefore almost certainly better prepared than most of their corporate clients.

To offer an analogy: a bank vault may attractive to criminals, but valuables are still safer there than in a box in the bedroom.

5.5 There is also the problem of establishing which system of law applies; that of the hosting provider or the owner of the data.

Moreover, which supervisory authority is responsible for ensuring compliance with the rules or resolving disputes between data owners and hosting providers?

On this subject, it is important to draw attention to the existence of Directive 95/46/EC on the Protection of individuals with regard to the processing of personal data and the Committee’s opinion on the proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data (14).

The European data protection system acts as a very effective brake on transfers of any kind outside Europe. The international nature of CC raises questions about the potential for data transfer, either between the client and the provider or within the provider’s infrastructure.

In this context, the absence of any (global) governance of the internet, and more specifically cloud computing, represents an additional weakness.

In addition to data protection, the issue of copyright should also be mentioned. As information that is covered by copyright may be transferred or distributed among various sites, it is becoming difficult to identify which rules apply for such issues as protection, remuneration and supervision.

5.6 Thanks to IT innovation, a number of players have acquired a dominant position on the market, e.g. Microsoft or Apple in equipment intended for home use (PCs, mobile telephones, etc.) but also Google, Facebook (search engine and social network). Europe has always taken care to ensure that dominant positions do not damage the interests of other stakeholders, such as consumers.

CC, which combines a number of major technologies, combines the prospect – and risks - of a dominant position; Europe should therefore be all the more vigilant.

5.7 The question of portability is not only a technical issue but also a commercial one. Without portability the CC solution user is locked in, unable to transfer his data to another provider; this impedes competition between different providers. Use of open standards and ensuring interoperability between services and applications can provide a quick and easy way to switch data between providers at no special cost for the user.

5.8 All of these weaknesses would appear to represent a serious danger to the roll-out of the CC model. Media coverage (press, media, social networks) of these problems or of the resulting disputes could be very damaging to CC and lead to a loss of confidence in the model on the part of both users and providers.

6. Challenges and opportunities for Europe

6.1 The European Commission has made it an objective for Europe to become ‘cloud-active’ (see the speech by Neelie Kroes quoted above). The word ‘active’ does not indicate whether this is about Europe simply using CC or about it developing CC. If it is about just using CC, this would reflect a glaring lack of ambition. Seeking to make Europe ‘cloud productive’ is much more explicit: in other words, Europe should provide CC solutions rather than simply using those provided by others.

6.2 The digital sector, whether it be IT services, products or content, is largely dominated by foreign firms, which are mostly based in North America or Asia.

In the telecommunications sector, meanwhile, Europe can legitimately claim to be on an equal footing. Operators such as Deutsche Telekom, Orange or Telefónica are leading players.

6.3 At a time when the digital industry is driving growth forward, Europe is lagging behind. In the recent past, Europe has shown that it can play a leading and dominant role in certain sectors, especially mobile telephony, even if its position has slipped somewhat of late.

6.4 The emergence of CC offers a new opportunity to ‘shuffle the cards’. In other words, all the players on the global market will have a new opportunity to compete for global leadership; the current major players will be challenged by existing competitors or new market entrants.

6.5 The global character of cloud computing calls for global principles and standards to be elaborated. The European Union must continue to work together with international organisations on developing such principles and standards. The EU must spearhead efforts to develop global principles and standards and stand as guarantor to ensure that these provide the high level of personal data protection intended by EU legislation.

6.6 Europe has a number of trump cards as it enters into this new era of global competition.

— It has an excellent digital infrastructure. Fibre optics is well developed. The infrastructure is controlled and managed by a small number of well established companies which can have a bearing on both telecommunications standards and the investment needed;

— It has the necessary ability and knowledge to introduce a strong public investment policy that can act as a catalyst for private investment;

— Its regional or national SMEs prefer local business partners and therefore European CC players;

— Certain sectors (e.g. the health sector, the armed forces, public transport, the public sector) are governed by national or even European rules and restrictions which give preference to national or European CC providers;

— Other sectors (e.g. banks, insurance firms, energy and pharmaceutical companies) are bound by data security considerations which restrict firms when choosing suppliers from outside their country or outside Europe.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on 'The development of regional areas for the management of fish stocks and the control of fishing' (own-initiative opinion)

(2012/C 24/09)

Rapporteur: Brendan BURNS

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

The development of regional areas for the management of fish stocks and the control of fishing (own-initiative opinion).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October 2011), the European Economic and Social Committee adopted the following opinion by 147 votes to 6 with 15 abstentions.

1. Recommendations

1.1 The Committee welcomes the intention to radically reform the CFP and in particular its objective to establish a de-centralised policy, less dependent on detailed decisions taken in Brussels and allowing more opportunity for local and regional involvement in fisheries management. However, the essential detail, clarity and sanctions regime needed for such a policy to work effectively is missing and needs to be included.

1.2 Without flourishing fish stocks there can be no sustainable fishing industry. It is therefore recommended that environmental sustainability should be prioritised as the basis for economic and social sustainability and specifically included in the Basic Regulation. This will require policy to be led by a scientific, ecosystem approach governed by the precautionary principle.

1.3 To be effective the strengthening of quota-based management plans based on 'maximum sustainable yield' (MSY) requires higher levels to be established that genuinely enable all regulated species to flourish and this should be done by 2015.

1.4 The proposed market-based system of tradable fishing rights with permits allocated on historical participation in a fishery risks allowing those responsible for past over-fishing to continue. The Committee therefore recommends that Member States use the provision that those receiving allocations must be required to demonstrate that their activities do not damage the marine environment and that they make significant contributions to coastal fishing communities. In this way the implicit privatisation of fish stocks will be subject to social and environmental controls.

1.5 The Committee welcomes the partial ban on discarding fish but suggests that it should be specifically linked to improvements in selective fishing techniques.

1.6 Continuing subsidies should be used for developing fishing fleets that fish in a less environmentally destructive way (less damage to fish stocks and the ocean floor, less discarding, etc.) and not be used to increase fishing capacity.

1.7 The standards and rules that govern the EU fleets when they fish at home should also apply when they fish on the high seas and in the waters of third countries – there should be no double standard.

2. Introduction

2.1 During the development of this Opinion the Commission proposals for the second revision of the Common Fisheries Policy (CFP) were published. It proposes a whole-scale and fundamental reform to address the current reality of overfishing, fleet overcapacity, heavy subsidies, low economic resilience and decline in the volume of fish caught by European fishermen. This Opinion therefore sets its comments on the development of regional areas for the management of fish stocks within the broader context of the proposed reform.

3. Background

3.1 The EU Treaties and the present CFP confer upon the Commission the right of initiative and upon the Council, exclusive competence for the conservation of marine biological resources. This systemic centralisation, or more specifically the 'top-down' approach chosen in executing the responsibilities of the CFP, has not produced workable solutions for the many different conditions and geographical jurisdictions of the CFP. The phrase 'one size does not fit all' is often used in critical reference to the resultant body of regulation.
3.2 The necessity for stakeholder engagement was recognised in the first reform in 2002 resulting in the establishment of the Regional Advisory Councils (RACs) which only offer advice.

3.3 Upon the adoption of the Lisbon Treaty very significant material changes have occurred. Co-decision now exists between Parliament and Council for all matters of fisheries regulation, excepting the setting of fishing opportunity, which remains the exclusive competence of the Council.

3.4 In an attempt to address every problem, the Commission and the Council have produced regulations that are over complicated and have failed to address the problems that exist within European waters.

3.5 According to the fishing industry there is an 'almost comical profusion of detail' - gear specifications, permitted compositions of landings and technical regulation, all included in 900 pieces of regulation. This minutia of detail slows up innovation by providing no incentive to find workable solutions. It has also resulted in a loss of trust between the fishing industry and the political mechanisms and committees that are meant to control the CFP. This inevitably results in attempts to evade rather than comply.

3.6 Under the present CFP, innovation and experimentation by the industry has not been encouraged but there are some good examples that have been instigated by fishers. In Scotland, there is a consistent record of innovation, e.g. conservation of cod in the North Sea. Significant decommissioning of vessels has taken place along with Real Time Closures: smart management of limited days at sea: development of selective gear and trials in the use of CCTV. This has help to reduce discards, improve competitiveness and improve conservation. Others, too, have contributed much, including, for example, the beam-trawl industry of the Netherlands in changing and developing gear types and decommissioning.

3.7 The hallmark of all these initiatives is the recognition by the fishing industry that there are problems (e.g. reducing discards) and the industry must be the major contributor to finding and implementing solutions. Other examples of regional solutions are available and they prove that regional solutions do produce better results rather than generic regulation made in Brussels.

3.8 However, these trials all share a fundamental constraint, i.e. under the current CFP there is no delegation of responsibility. The final outcome of innovation, experimentation and development can only influence regulation if the commission decides to pick it up.

3.9 The tendency by the Commission to keep an excessively close hold on regulation is perhaps explainable due to a strong desire not to fail in meeting the responsibilities. This was particularly the case pre-Lisbon and has become, regrettably, a self-perpetuating process. The more the legislation becomes centralised, complex and ill-fitting; the more the trust of stakeholders is lost and consequently, the less likely full compliance will occur. This creates a justification for tighter central regulation, and so the cycle continues.

4. General comments

For all the reasons explained in the section 3 above (Background), the logic for establishing regional authorities for the implementation of EU policies is self evident. This in turn raises several questions.

4.1 Delegation of authority

4.1.1 For Regional authorities to have true value, they need to have strategic targets based upon scientific evidence set in Brussels. Brussels should also:

— be responsible for ensuring a level playing field between regions and fisheries;

— police the industry to ensure that compliance with EU quotas, targets and other objectives are met.

4.1.2 Due to the variety of geographical and other factors of each fishery area; management tools need to be given to Member States. This will ensure that the development of rules and regulations at both the EU level and the regional level will be done with the full participation of the fishing industry and by those experts who know and understand what will or will not work in each area.

4.2 Fishing Regions and Regional Authorities

4.2.1 The wide variety of areas that will be covered by these changes does not allow this opinion to suggest definite objectives other than to recommend that all regions should be established through representative bodies that includes Member States and stakeholders; In particular, those bodies that only represent a regional interest but do not have a pan-European remit.

4.3 Discards

4.3.1 This has become an important issue specifically discarding that takes place during the catching process. Commissioner Damanaki has responded to this media attention by proposing a partial discard ban in the revision of the CFP.
4.3.2 The potential consequences of an ill-judged approach to fish discarding could be disastrous for the fishing communities and the industry.

4.3.3 The primary cause of volume discarding lies in the present regulations governing mixed fisheries – where several species are unavoidably caught together. Management by ‘total allowable catches’ for each individual species, overlaid with ‘catch composition’ rules governing the proportions of different species that may be landed, creates a rigid matrix of rules that does not reflect the abundance and proportions of certain fish presented in that ecosystem.

4.3.4 One of the main objectives of the revised CFP should be to support the introduction of better working practices as detailed in section 3 of this opinion so that discards can be reduced to negligible levels.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Committee opinion

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

Points 1.2, 1.3, 1.4, 1.6 and 1.7
Delete points 1.2, 1.3, 1.4, 1.6 and 1.7.

Result of the vote:
For: 46
Against: 102
Abstentions: 14
Opinion of the European Economic and Social Committee on ‘The role of civil society in the free trade agreement between the EU and India’ (own-initiative opinion)
(2012/C 24/10)

Rapporteur: Ms Madi SHARMA

On 14 September 2010 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on The role of civil society in the free trade agreement between the EU and India.

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 October 2011.

At its 475th plenary session, held on 26-27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 152 votes to 3 against with 5 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) believes an EU-India FTA could be advantageous to both Europe and India, with the potential to bring gains in the form of increased development, competitiveness, wealth and jobs. Trade is an important mechanism to support development and poverty alleviation. However, its economic, social and environmental impacts must be assessed carefully, transparently and comprehensively in the interests of all parties. In this context, civil society has a leading role to play.

1.2 The process for negotiating this FTA, including the identification of its potential impacts, has several weaknesses which need addressing on both sides before the FTA is finalised. The Commission Services position paper states that ‘more attention could have been paid to the impacts on informal employment’ and more analysis of the effects of the agreement on labour displacement would ‘allow more precise forecasts concerning other social impacts such as impacts on poverty, health and education’ (1).

1.3 The EESC recalls that, pursuant to Article 207 of the Treaty on the Functioning of the European Union, the EU’s common commercial policy must be conducted ‘in the context of the principles and objectives of the Union’s external action’, and that, pursuant to Article 3 of the Treaty on European Union, it must contribute, inter alia, to sustainable development, the eradication of poverty and protection of human rights. Trade is not an end in itself.

1.4 The EESC recommends the immediate undertaking of new studies that expressly take into account the true impact of the FTA on the EU and Indian civil society (in particular Mode 4, SMEs, labour rights, women, consumer protection, the informal economy, agriculture poverty and the impact on the accessibility of basic products such as life-saving medicines). In the interests of transparency, these studies should be conducted with public academic studies and workshops with civil society. The findings can then be taken into account as part of the negotiations, which are now in their final stages.

1.5 The EESC calls on the Council, Parliament and Commission to ensure that, prior to concluding an agreement, the EU:

— take into account the views and concerns of civil society in the EU,

— assess the impact on the likely Mode 4 scenarios covering the quality and quantity of work by sector and member state, in full consultation with social partners,

— comply with its legal obligations to ensure that the FTA does not increase poverty,

and that the agreement:

— is governed by an effective human rights clause in line with the EU’s past practice and stated policy,

— include an ambitious sustainable development chapter containing labour and environmental provisions enforceable by means of the normal dispute settlement procedures, with effective remedies,

— build in particular an ILO rights-based framework for those active in the informal economy,

— include a bilateral social safeguards clause that takes into account not only risks to domestic industry both in the EU and India, but also risks to society, including labour displacements.

(1) EC Services position paper - Trade SIA for FTA EU-India, 31.5.2010.
1.5.1 The EESC recommends that a civil society monitoring mechanism be established. The monitoring mechanism should be established with the power to make recommendations specifically on the need for activating the social safeguards clause to which the respective authorities should be under an obligation to provide a reasoned response. Training and capacity building for civil society should be supported in relation to this monitoring.

1.6 The contents of the EU-India FTA currently remain confidential and therefore its specificities cannot be discussed in this opinion.

2. Introduction

2.1 An EU-India Free Trade Agreement (FTA) would cover over a fifth of the global population, making it one of the most significant FTAs in the world. It has the potential to bring significant benefits for society to both the EU and India.

2.2 Both face important economic challenges, the EU, with its aging population and saturated markets, and India, with its huge population and increasing urbanisation. Liberalisation and the further opening of both markets, taking into account the unequal development of the two regions, has the potential to bring benefits populations on both sides.

2.3 EU and Indian business organisations recognise that some displacement may occur. However, by opening both markets further and through skills development, training programmes, the transfer of knowledge both ways, the development of infrastructure and supply chain provisions and joint ventures trade between India and the EU could bring sustained growth, increased competitiveness and more jobs in the long term. The European Business and Technology Centre (EBTC), established to provide practical solutions for businesses entering the Indian market, will play a leading role in addressing some of the challenges.

2.4 Promoting innovation through an FTA can ensure the future competitiveness of companies. Increasingly European and Indian companies are cooperating in technology developments in a range of sectors. India has a low-cost, highly educated workforce with substantial R&D capacity. However, both parties need an environment that can encourage sustainable investment in innovation. The experience and expertise of EU companies in India, and Indian companies in the EU can be an important asset to help fulfil these demands.

2.5 The FTA has important ramifications for foreign investment. Since 1991, India has been liberalising and simplifying its foreign direct investment FDI regime to attract higher funds, which has led to an increase in FDI inflows. The FTA would build on this foundation by providing EU companies with market access and legal security (2). In the new context created by the FTAs, a careful assessment must be made of the impact on India of opening up to foreign direct investment and a gradual approach to this is needed.

2.6 This opinion does not review the potential economic benefits of the FTA. It is concerned with its uncertain social and environmental effects for the EU, especially in terms of Mode 4 and for the poorer segments of Indian society. These impacts are an important component of the due diligence and brand protection interests of EU businesses. CSR, labour and human rights issues extend beyond the borders of Europe for EU companies trading overseas.

3. The negotiation process

3.1 The negotiators have consulted large businesses in both the EU and India. However, the EESC, as the consultative body for all segments of civil society, is concerned that the negotiators are not consulting all societal stakeholders on an equal footing and would urge the EC to take all stakeholders' views fully into account on both sides. It calls on the EC to consult with: SMEs on potential impacts; trade unions on the lack of clarity surrounding labour guarantees and Mode 4, consumer groups and agricultural sectors on food safety and security, and the informal economy in India.

3.2 Many NGOs and trade unions, EU and Indian, alongside EU Foundations and Indian informal businesses, have raised concerns regarding both the potentially negative effects of the FTA and the way in which the negotiations were conducted (3). While acknowledging the importance of confidentiality to trade negotiations, the EESC urges the EC to clarify any misunderstandings, by releasing its proposals on these issues, on the equally important grounds of transparency.

(2) OJ C 318, 29.10.2011, p. 150.

(3) Studies point to difficulties from the effects of: TRIPS-plus IPR provisions, liberalising and deregulating financial services, liberalising trade in goods, in the agriculture sector, entry of major retail chains, liberalised investment and government procurement practices, prohibition on export restrictions. See, e.g., S. Polaski et al, India’s Trade Policy Choices: Managing Diverse Challenges (Carnegie, 2009), S. Powell, EU-India FTA: Initial Observations from a Development Perspective (Traidcraft, 2008), C. Wichterich, Trade Liberalisation, Gender Equality, Policy Space: The Case of the Contested EU-India FTA (WIDE, 2009), K. Singh, India-EU FTA: Should India Open Up Banking Sector? Special Report (Delhi, 2009), CEO|India FDI Watch, Trade Invaders: How Big Business is Driving the EU-India FTA Negotiations (2010).
3.3 The EESC believes that trade cannot be omitted from the EEAS competence. European policy coherence is essential to retain European values and principles. The Committee recommends that all relevant Directorate Generals are kept informed throughout the negotiations.

4. Sustainability impact assessment (SIA)

4.1 The EC commissioned an SIA by independent consultants, which reported in 2009 (4). This SIA estimated that, for the EU, the social impacts of this FTA would be negligible, with no impact on wages, and only minor labour displacement (5), while for India there would be an increase in wages of skilled and unskilled workers of 1.7% in the short run and 1.6% in the long run, as well as some labour displacement in the direction of better paying jobs (6).

4.2 The EC places great store by this SIA when emphasising the overall FTA benefits (7). However, it is important to note that the same SIA also warns of the potential social and environmental risks.

4.3 EU trade unions raise concerns regarding labour rights in the EU and call for an impact assessment on the likely Mode 4 scenarios, before the negotiations are concluded. Such an assessment should cover the impact on the quality and quantity of work by sector and by Member State. It should also include full consultation with social partners, be carried out both before and after the introduction of the FTA, and provide binding recommendations on preventing or mitigating any negative impacts identified.

4.4 The SIA describes the FTA’s effects on labour standards and working conditions in India as ‘uncertain’. In the case of India, according to official government statistics, around 90% of India’s economy is informal (or unorganised), which is projected to remain broadly stable in the near future (8). According to ILO/WTO figures, those in the informal sector live on less than USD 2 per day (9). The majority of women (over 95%) in the work force are in the informal sector and disproportionately at risk.

4.5 The SIA highlights potential environmental effects, noting that there are likely to be moderate negative effects on the atmosphere (10), land quality (11), biodiversity (12), and water quality (13). The EESC considers that the SIA’s own warnings need to be heeded.

4.6 The SIA’s methodology is insufficient to capture the true impacts. The primary focus of the SIA was on the formal economy, for which economic modelling is comparatively simple (14). By contrast, its analysis of the social and environmental effects is based on a less transparent qualitative methodology. Nor does the SIA properly analyse the impact on carbon emissions, consumer safety or food security.

4.7 According to the Commission Services position paper, more attention could have been paid to the impacts of the agreement on decent work, informal employment, and labour displacement. This would ‘allow more precise forecasts concerning other social impacts such as impacts on poverty, health and education’ (15).

4.8 Surprisingly the SIA does not address the many other studies that have pointed to the potentially severe consequences of the FTA in India (16) nor the EU concerns, particularly of Mode 4 on EU employment.

4.9 The EESC recently adopted an Opinion on SIA which sets out guidelines for a best practice methodology to be used in assessing the full impact of an FTA (17).

4.10 The EESC recommends that new studies should be undertaken which, based on these guidelines, expressly take into account the impact of the FTA on EU and Indian society, including in particular labour rights, Mode 4, women, consumers protection, SMEs, the informal economy, environment, agriculture (including food security), poverty and climate change. These new studies should be conducted with independent public academic studies and workshops.

(4) ECORYS, CUTS, Centad, Trade SIA FTA EU and India – TRADE07/C1/C01, 18.5.2009.
(5) ibid, pp 17-18. Labour displacement estimated between 250-360 per 100 000.
(6) ibid, Labour displacement estimated between 1 830 and 2 650 per 100 000.
(10) as 4, p. 277. (SIA of 2009 - see note 4 for full citation).
(11) ibid, p. 278.
(12) ibid, p. 279.
(13) ibid, p. 280.
(14) ibid, p. 51.
(15) as 1.
(16) as 4.
4.11 None of this means that the FTA will necessarily have a negative impact. But it at least makes a prima facie case for the likelihood that the FTA might have this impact. This alone is sufficient to warrant a further examination by the EC, particularly given that as discussed below, the EU has a legal responsibility to assess the impacts of its external policies at home and on others.

5. The EU’s responsibilities

5.1 It is the primary responsibility of a government negotiating trade liberalisation to take into account the economic and social impacts of its policies. There is no doubt that India is primarily responsible for the effects of its policies on its population. The EESC recognises the challenges the EC faces in dealing with India, which rightly believes in addressing human rights, labour standards, sustainable development and its civil society in its own way. But this does not mean that the EU has no independent responsibility in this regard. Indeed, this is a legal obligation.

5.1.1 By virtue of Article 207 of the Treaty on the Functioning of the European Union (TFEU), the EU’s trade and development policies must be conducted in the context of the principles and objectives of the Union’s external action. These are set out in Article 21 of the TEU, and include, as principles, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

and, as objectives,

foster[ing] the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty.

5.2 The EESC calls on the EC to comply with its legal obligations to ensure that the EU-India FTA complies with human rights and does not undermine efforts to foster sustainable economic, social and environmental development and the eradication of poverty. It insists on the importance of building an ILO rights-based framework for those active in the informal economy.

6. Monitoring and adjustment of the FTA

6.1 The EU must ensure that its policies are not likely to have negative effects on poverty and contribute to the eradication of poverty. This obligation can be satisfied by ensuring that there are clauses in the FTA, under which the trade liberalisation provided for can be modified in the event that these effects are manifested, and by establishing an effective monitoring mechanism on the basis of which such clauses can be activated.

6.2 Human rights clause

6.2.1 The EU has a record of including provisions in its bilateral agreements to ensure that the agreements do not undermine social objectives. Since 1995 the EU has a policy of including a human rights clause in every trade and cooperation agreement with third countries (19). More recently, a practice has developed of subjecting later agreements to human rights clauses in existing framework agreements. This may be legally effective, depending on the wording of the original human rights clause, and the wording of the ‘linking’ clause in the later agreement.

6.2.2 It is essential that this FTA is subject to an effective human rights clause, however this is achieved. The 1994 EC-India Cooperation Agreement contains a human rights clause, but of an early type. As the European Court of Justice has said, the function of this clause is to permit the suspension of the Cooperation Agreement (20). It does not permit the suspension of other agreements, such as the FTA (20). It is essential that, whether by way of a new human rights clause, or a carefully drafted linking clause, the FTA complies with the EU’s stated policy on human rights clauses.

6.2.3 The EESC emphasises that it is essential, whether by way of a new human rights clause, or a carefully drafted linking clause, that this FTA complies with the EU’s stated policy on human rights clauses. This position has also been endorsed by the European Parliament (21).

6.3 Sustainable development provisions

6.3.1 It is equally important that the EU’s best practice on the inclusion of environment and labour standards in FTAs be continued and reinforced. Both the EU-Korea FTA and Cariforum-EU Economic Partnership Agreement (EPA) contain provisions requiring the parties to ensure that ILO core labour standards are complied with (an absolute standard), and not

(19) Communication from EC Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries, COM(95) 216.
(21) L Bartels, Human Rights Conditionalities in the EU’s International Agreements (Oxford: OUP, 2005), 255. The position is arguably different for agreements in which the essential elements clause is accompanied by a ‘non-execution clause’ providing for ‘appropriate measures’.
(22) EP Resolution 26.3.2009, para 43, which ‘stress[ed] that human rights and democracy clauses constitute an essential element of the FTA.’ See also the general policy reflected in the EP Resolution of 11 May 2011 in which the EP ‘firmly supports the practice of including legally binding human rights clauses in the EU’s international agreements, with a clear and precise consultation mechanism modelled on Article 96 of the Cotonou Agreement’ and the EP Resolution on the human rights and democracy clause in EU agreements (2005/2057(INI)).
to reduce their existing levels of environmental and labour protection (a relative standard), as well as other related provisions.

6.3.2 The EESC welcomes the commitment of Commissioner de Gucht who has expressed a commitment to social and environmental chapters (22). However, it also calls on the EC to ensure that, unlike the provisions in the above agreements, these provisions are accompanied by the same robust enforcement measures that are available for violations of other parts of the FTA or for example, equivalent provisions in US FTAs (23). The EESC also calls on the EC to create incentives through cooperation programmes or similar mechanisms, backed up by a system of effective fines for violation of these provisions, as recommended by the European Parliament (24).

6.3.3 The EC must include enforceable labour and environmental provisions in the EU-India FTA on both sides enforceable by means of the normal dispute settlement procedures, with remedies including the suspension of trade obligations as well as fines.

7. Social safeguards clause

7.1 All trade FTAs contain safeguard clauses permitting trade liberalisation to be suspended in the event of injury or disturbance to domestic industry. It is expected this FTA will include provisions to this effect. However, such provisions must be targeted at the risks in question.

7.2 The EESC calls on the EC to ensure the inclusion of a bilateral social safeguards clause that takes into account not only risks to domestic industry both in the EU and India, but also risks to society, including labour displacements. This clause should be modelled on Article 25(2)(b) of the Cariforum-EU EPA, which states that a safeguard measure may be taken when a product is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause disturbances in a sector of the economy, particularly where these disturbances produce major social problems.

8. Civil society monitoring mechanism

8.1 EU and Indian civil society are both very organised and proactive. It would be advantageous for authorities on both sides to provide a mechanism to increase transparency and consultation, as well as alleviate fears, by ensuring civil society has direct access to the decision-makers.

8.2 The EESC recommends that a civil society monitoring mechanism be established to include actors from business, trade unions, NGOs, academia and others as recommended in the SIA. The EESC could be part of this process (25). This could be established, on the models of the EU-Korea FTA or the Cariforum-EU EPA, which has a range of civil society stakeholders, trained and funded to provide an effective monitoring mechanism (26).

8.3 The SIA and EC Services position paper also both recommend a monitoring mechanism (27).

8.3.1 Such a monitoring mechanism should also have a concrete function in relation to the social safeguards clause. Normally, the effective application of safeguards clauses depends upon a degree of organisation of the affected industry. This is obviously much more difficult in the case of the informal economy.

8.3.2 The EESC recommends that the civil society monitoring mechanism be given the power to make recommendations specifically on the need for activating the social safeguards clause to which the respective authorities should be under an obligation to provide a reasoned response.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

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(22) as 7.
(23) e.g. Art 17(2)(b) US-Jordan FTA.
(24) EP Resolution 25.11.2010: human right and social and environmental standards in international trade FTAs, para 2.
(26) as 18.
(27) as 4, p. 288; as 1, p. 2.
Opinion of the European Economic and Social Committee on 'The new foreign and security policy of the EU and the role of civil society' (own-initiative opinion)

(2012/C 24/11)

Rapporteur: Mr CEDRONE

On 14 September 2010, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

The new foreign and security policy of the EU and the role of civil society.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 May 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 111 votes to 23 with 23 abstentions.

1. Conclusions and proposals

1.1 Strategy

1.1.1 In the light of the major changes taking place, the EU, taking advantage of the opportunity provided by the establishment of the EEAS and the creation of the High Representative for Foreign Affairs, needs to redefine and update its foreign policy strategy, as regards both policies and areas of action to prioritise. Pursuing common interests and a major coordination initiative are essential to facilitate achievement of this objective.

1.1.2 Europe accounts for a third of world GDP. However, the EU is not just an economic community. The full extent of Europe's role becomes apparent in the light of the fact that it is now no longer possible for the EU Member States, acting purely as nation states, to protect their interests, establish their values internationally or address challenges which have taken on a cross-border dimension, such as migration or terrorism. Thus, a greater joint endeavour on the part of Member States in the area of foreign policy would also help to curb the trend towards an intergovernmental approach and prevent isolated measures being taken by individual countries, as has happened recently. If it were to be consolidated, this trend could speed up not just the economic decline but also the political decline of the EU, potentially jeopardising the democratic values on which it is based.

1.2 Policies

1.2.1 The EU must preserve, first and foremost, its foreign policy values, defining joint actions and policies to preserve peace, prevent conflict, develop stabilising measures, strengthen international security with due regard for the principles of the United Nations Charter, consolidate and support democracy, the rule of law, fundamental human rights and the principles of international law, including the core labour standards, and help communities facing natural or man-induced disasters. If Europe is acting outside its borders, however, it is not purely out of human goodness or love of its neighbour, but because it is in the interest of its own prosperity at home. It therefore needs to address the issue of refugees and create prospects for people in their own countries.

1.2.2 The EU must take the lead in this field within the UN, which is primarily responsible for keeping international peace. Close cooperation is therefore necessary between the EU and the UN in civil and military crisis management and, in particular, humanitarian aid operations.

1.2.3 Moreover, the EESC believes that integrated, joint foreign policy measures need to be stepped up in the areas of energy supply and security, food security, climate change, regulating migration flows and fighting organised crime, illegal trafficking, piracy and corruption. This process of integration and coordination will also have to cover trade policy. Overall, this will be a major, complex commitment which will entail the EU's foreign policy budget being increased accordingly.

1.3 Geographical areas of intervention

1.3.1 The EU has to monitor and concern itself with what happens outside its borders, redefining its strategy of alliances. However, it still does not have all the means and instruments to do so as is necessary and has been called for, in order to become a genuine international political player. Its main problem, however, is not lack of instruments but inability to ensure consistent management of the different instruments and secure Member States' political will to this end.
1.3.2 Therefore, without neglecting, at least in economic terms, its relations with the major world regions, such as North America – with which it has a strategic relationship – South America and the Caribbean – with which the European Union has established a bi-regional Strategic Partnership – China, India and Russia, the EU must focus even more attention inside its geographical borders and on its neighbours, as it has been doing thus far. To this end, it is crucial to generate synergies between bilateral and regional relations.

1.3.3 In this perspective, it is necessary to complete enlargement to include the Balkans, which is an extremely sensitive area inside the EU’s borders, pursue negotiations with Turkey, and develop an effective neighbourhood policy focusing attention on the situation in the Mediterranean and the Middle East.

1.3.4 In this regard, the Mediterranean policy needs to be relaunched on new bases, with new institutions, new cooperation bodies and appropriate resources and operational instruments. The calls for democratisation and civil progress emanating from these countries must be heard and supported. The EU has a fundamental responsibility to ensure a rapid, non-traumatic transition to democracy rather than to new, albeit disguised, dictatorships, so as not to betray communities’ and young people’s hopes of freedom, human dignity and social justice.

1.3.5 To this end, more resources need to be earmarked in the Community budget for cooperation with these countries, with particular regard to institution-building, economic and social development, job creation and creation of investment opportunities in the various countries.

1.3.6 In this context, the EESC has a crucial role to play in implementing people-to-people measures and initiatives and developing an organic link with the genuine, representative civil society organisations in the Mediterranean and the Middle East who were behind the current transition processes, in order to support dialogue between these organisations and the various governments, and to strengthen democratic participation in upholding civil rights and the rule of law.

1.3.7 Africa as a whole must be the EU’s other priority for action: the EU’s security and stability depends greatly on the development and democratic growth of the African continent, which is so near. If the EU wants to find a solution to the destabilising waves of mass emigration caused by desertification, food crises and impoverishment of African peoples, corrupt, dishonest regimes and lack of justice and freedom, it must act effectively and immediately, signing an agreement with the African continent.

1.4 International bodies

1.4.1 Coordinated, effective measures should be promoted in international forums, which also need to undergo far-reaching change to make them cope more effectively with new responsibilities and new needs; the EU must manage to speak with one voice in this setting with a view to having a single representative.

1.4.2 In particular, the labour rights laid down in the ILO’s core conventions should be placed on an equal footing with economic and free-trade rights; the EU should have one voice in the ILO as well.

1.4.3 The EESC believes that the EU should play an increasingly active role in that context, with particular regard to the G20 process and links with the UN’s most representative institutions, especially ECOSOC, where it should represent joint positions. In this framework, reform of ECOSOC could enable progress to be made and also make civil society’s voice better heard in the organisation.

1.4.4 Effective, long-term policies should be developed to safeguard the euro area and set up appropriate instruments to combat international speculation, abolish tax havens, reduce competition based on exchange rates and boost economic growth and decent work. Amending Article 136 of the Treaty is a major first step. Above all, it facilitates a community Europe: the central role of the Commission and involvement of the European Parliament have been guaranteed, furthering the democratic process. The same should be done for foreign policy (amending Article 24).

1.4.5 Involvement of the social partners and civil society organisations is one of the prerequisites for safeguarding and promoting the values underpinning peaceful international coexistence. The EU must promote broad-based consultation with the EESC, civil society and the social partners in order to facilitate involvement in international organisations’ future governance structures.

1.5 Security policy

1.5.1 As regards security and defence policy, the European Defence Agency needs to be strengthened and permanent structured cooperation needs to be implemented without delay, not least to generate useful synergies and savings on national budgets, with the resources saved channelled into production investments, job creation and reducing public debt.

1.5.2 It should be possible for the security and defence instruments available to the EU to be used and recognised as genuine regional security instruments.

1.5.3 As regards security, the EU should give priority to its neighbourhood, mounting operations to stabilise crisis areas and peace-keeping initiatives.
1.5.4 In this context, the EESC hopes that, as happened after the 1998 St Malo agreements, joint experiences will be included by the Defence Agency and incorporated into the common security policy.

1.6 The EESC
The EESC must have a role to play in the definition and implementation of EU foreign policy and be able to contribute to it. It therefore feels it would be appropriate for EU foreign policy measures to be submitted to it for its opinion, not least in order to ensure transparency and monitoring of the initiatives concerned. Use should therefore be made of all existing EESC opinions which give guidance on aspects of the EU’s foreign and security policy, and of those which concern cooperation instruments that could have an impact on foreign policy (1). Action by the EESC could prove extremely effective here, as a link between action by the Member States, the EU and the demands voiced by civil society.

1.6.1 This is necessary in order to allow involvement of organised civil society and the public in decision-making on international policy issues, which have more direct impact on the economy and European citizens’ lives.

1.6.2 At international level, the EESC can pursue EU policy seeking to promote the role of civil society in negotiations and implementation of the resulting agreements. On the basis of its accumulated experience and initiatives already taken, it believes that it should both work with the partners to advance the EU’s international negotiations and be included in the mechanisms for applying and implementing these agreements, whether association, trade or other agreements.

1.6.3 In particular, in the context of consultation processes and international participation responsibilities conferred on it, the EESC will continue to act as a link with EU civil society organisations in the countries and regions targeted as priorities by EU policy.

1.6.4 It is therefore necessary that the EESC also be consulted at the different stages by the common external service, so that it can discharge its responsibilities properly in the interests of the EU citizens. To this end, a cooperation agreement could be signed between the EESC and the common external service, based on the existing agreement between the Commission and the EESC, a memorandum of understanding that sets rules and procedures for structured cooperation.

1.7 The EU’s instruments and role

1.7.1 The potential of the Treaty must be harnessed so that the EU, starting with the EEAS, can carry increasing weight internationally, speaking with ‘one voice’, ensuring consistency in Community policies and between EU and Member States’ policies, preventing spectacular divisions which end up harming its image.

1.7.2 Instruments such as reinforced cooperation should be promoted in the area of foreign policy, so that a group of countries will form which will take the lead and act as a driving force to achieve increasingly integrated foreign policy, thus creating an institutional framework which is more robust and coherent in pursuing joint goals. A first step could be to sign a ‘Foreign Policy Plus Pact’, similar to the Euro Plus Pact (Council of 24-25 March 2011).

1.7.3 The EESC therefore believes that the EU decision-making process must be improved and made more effective, in particular to raise the EU’s profile internationally. To this end, the EESC hopes that the EU can find the right procedures and proposals to enable it to act with one voice in foreign policy.

1.8 Immediate-term priorities

1.8.1 All the European Commission bodies involved in launching the common external service must make every endeavour to work together, so that more is achieved than just adding a ‘new directorate-general’ to those already in place.

1.8.2 The need must be stressed for an international agreement preventing fresh financial speculation, which is still a threat, on the basis of the proposals tabled by the EU at the G20.

1.8.3 Specific, immediate-term EU measures must focus on the Mediterranean.

1.8.4 The conclusions of the European Councils of 16 September 2010 and 24-25 March 2011 regarding EU strategic partnerships need to be put into practice.

1.8.5 Article 11 of the Lisbon Treaty must be effectively and scrupulously implemented, with all the institutions called on to comply with the requirement to consult the EESC, and to dialogue closely with each other on issues which could have a direct or indirect impact on civil society, in close liaison with the EP and national parliaments.

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2. Introduction

2.1 The new Treaty provides the opportunity for a radical improvement in EU foreign policy, if national governments allow it; thus, the EU's role as an international political player can be strengthened. Although the new Treaty does not yet meet the EU's objective needs, it has raised many expectations in the Member States and internationally. What is needed now is to give practical effect to the changes introduced and meet international society's expectations sufficiently if the EU is not to lose credibility. This objective cannot be achieved without the full, active involvement of civil society. The European Economic and Social Committee (EESC) is given full legitimacy by Article 11 of the Lisbon Treaty, as a representative of organised civil society, to contribute to European Union Common Foreign and Security Policy, and so it must be directly involved by the EU and the EEAS.

3. The new international framework

3.1 In the past the EU has played a relatively minor role in foreign policy; now it has more opportunities which it must fully exploit to halt its decline. Indeed, individually, the Member States are playing an increasingly insignificant role in the new, constandy- and rapidly-changing international framework. Greater mutual support within the EU is therefore needed, with powers shifted from individual countries to the shared framework of the EU as a whole, preventing competition between Member States, which is almost always harmful.

3.2 Today, more than ever, the European Union is facing numerous global challenges which call for more unified agreement and greater common will to address increasingly complex threats which are shifting the geopolitical balance towards a multipolar world. In the Middle East, with particular regard to the Israeli-Palestinian question, which is still open, in Iran, Afghanistan, Iraq, Sudan and elsewhere in the world there are still unresolved conflicts or areas of tension. The whole of North Africa is aflame with revolts against authoritarian regimes, whose outcomes are difficult to predict. States' security is endangered by global threats of various kinds such as religious intolerance or new nuclear programmes such as the Iranian programme.

3.3 Other very important factors are and/or could become contributors to instability and revolt, such as food security, population growth, social inequalities, which are on the increase, trade imbalances and, lastly, the struggle for rare earths and metals. These factors should be addressed early on and are related to globalisation, which has nevertheless also given countries new opportunities for fighting poverty, unemployment, etc.

3.4 The EU is in a situation, in a 'state of need' which forces it to act. However, it must act more swiftly and without delay, better than it did in cases such as the euro support fund, in the Middle East, etc. A common foreign policy is a great antidote to all this and an excellent instrument for better protecting the interests of the EU and its businesses and citizens. The Mediterranean crisis could be the opportunity for the EU to launch a common foreign policy.

4. Reasons and goals for a foreign policy and the state of the Union

4.1 Globalisation and the financial crisis have highlighted and increased the need for new finance rules and greater European and global governance, which the EU must champion. Hence the need for the Member States to act in close cooperation and speak as one in international bodies where they are represented individually and sometimes over-represented in terms of their international clout. European Union delegations must be able to represent the EU’s position in all international institutions (Article 34 of the Treaty), starting with the UN Security Council (see European Council decision of 24-25 March 2011).

4.2 The EESC believes that, in order to act as one, the EU should have a common strategic approach to the challenges and opportunities of globalisation, establishing political priorities and priority areas of interest, and gradually expand the scope of measures in accordance with resources and capacity for action. To this end, a strategy of global alliances in a multipolar system is imperative for the EU. This should start with the transatlantic alliance, which needs to be consolidated with a unified political approach, given the two-way relationship which has long existed. That would stop relations between the two sides of the Atlantic weakening as they are at present. The EU will be required to play its role with conviction and credibility, to foster in practical terms a multipolar system and a new, healthy north-south balance, developing its action in respect of Latin America, Asia and, in particular, the African continent.

4.3 The EU needs to be more careful in making choices. Indeed, its neglect in recent years of calls from civil society on the southern side of the Mediterranean, where first the Barcelona process and then the Union for the Mediterranean have been substantial failures, is jeopardising the security of a border which is vital for the stability of the European Union. The EU must address this complex issue responsibly, seeing it as an opportunity, responding to the calls for civil, economic and social progress from civil society in those countries and encouraging the establishment of democracy and the rule of law.

4.4 This reflection applies to the rest of the African continent too, where the EU cannot stand by and watch China, the only country which is expanding, and overlook its own historical and geographical responsibilities; it should sign a global agreement with the continent as a whole.

4.5 A more active, effective EU 'foreign policy' has taken shape with the gradual enlargement of its geographical borders to the east and south. It has worked well thus far but the process has yet to be completed, with the negotiations underway with the Balkans and Turkey; these negotiations cannot be drawn out indefinitely but must be undertaken openly, without preconceptions or fears, by both sides.
4.6 Mutual interests need to be served, with forms of partnership with countries or regional areas, to achieve balanced development which places ‘people’ at the heart of the common interest and joint action, without underestimating the strategic interests of the EU and its citizens. The EU must consistently support and promote the content of the European Social Model and base its agreements on fundamental and labour rights.

4.7 The EESC believes that there are various policies which resonate in the EU’s external relations field, where civil society has an unavoidable role to play, given their substantial impact within the EU as well: for example, in the area of rights, rules on speculative finance, monetary policy (the euro as reserve currency and an international economic policy instrument), energy policy (often used for blackmail), environment policy, trade policy, food security, security and combating terrorism, immigration and corruption, etc.

4.8 It is therefore important for the European Commission to provide objective, specific, effective information, with a contribution from the EESC, on the EU’s action in the area of foreign policy and its significance and added value compared with action at national level. This is often lacking, or the process is distorted by the Member States. It is also extremely important to this end to involve the European Parliament and national parliaments.

4.9 The danger here is that Europeans will feel confused and question the usefulness and role of the EU. In fact, often the politicians of the various Member States have no interest in promoting work carried out in Brussels: they are more concerned with their own short-term survival than undertaking a long-term, wide-ranging project.

4.10 However, the European Union is still a model of balanced, sustainable growth which should be extended to neighbouring countries, based on the values of the rule of law, democracy and peaceful coexistence. Its ‘soft power’, its transformational diplomacy, has led to the stabilisation of Europe, extending the democratic process and prosperity to many States through enlargement and neighbourhood policies.

4.11 That is not enough, however. The European Council of 16 September 2010 stated that ‘the European Union must be an effective global actor, ready to share in the responsibility for global security and to take the lead in the definition of joint responses to common challenges’.

4.12 The EU remains the largest donor to countries in need, and so it should make better use of cooperation policy. It is the foremost trading power in the world and its stances on environmental policy are at the cutting edge, as shown by the recent Cancun summit. It therefore has both the right and the responsibility to play a key role and take the lead in defining new multilateral rules.

4.13 The United Nations stands at the pinnacle of the international system. We must breathe new life into multilateralism to address both the political and the economic challenges. We need to take far-reaching action in all international spheres and help carry out a thorough overhaul of institutions such as the IMF, the World Bank and the WTO. In addition, the G20 should be given a more structured, targeted role, to improve regulation of economic and financial transactions, as has long been called for, without creating further hierarchies.

5. Security policy

5.1 The EU has developed a common security and defence policy, establishing crisis management instruments and catering for the diversity of Member States’ positions. It must play a major stabilising role in its neighbourhood. The EU must therefore require all the Member States to support and comply with the principles underlying peaceful international coexistence, in the knowledge that fundamental rights are not negotiable.

5.2 The EU has long been directly (or through its Member States) involved in various military and civil missions. In effect this is a global undertaking which is at times purely symbolic. The instruments available to the EU must be strengthened and used as genuine regional security instruments, and recognised as such. The EU must use all its instruments, including the EEAS and the HR/VP, to take tangible action.

5.3 In the area of security, the EU should give priority to operating in what is known as the neighbourhood: Eastern Europe, Caucasus, Balkans, Mediterranean and Africa, by means of a combination of initiatives aiming to stabilise crisis areas with peace-keeping, institution-building and economic development measures. It is in precisely these areas that civil society has a key role to play in encouraging peaceful development. The EESC is already very active and is carrying out valuable work to this end.

5.4 Even security and defence policy, which traditionally comes under Member States’ sovereignty, is becoming increasingly important for civil society and the European public, given the potential strategic, budgetary and social implications of decisions relating to these sectors.

5.5 In this perspective, the EU and NATO must develop and deepen their strategic partnership to achieve better cooperation in crisis management. In addition to being a decisive element of the CFSP, the European Union’s Common Security and Defence Policy is also seen as an integral part of the new strategic approach of the Atlantic Alliance, agreed in Lisbon on 20 September 2010 with participation by the highest NATO and EU bodies.
6. The EESC’s role

6.1 The aim of the European Economic and Social Committee (EESC)'s work in the field of external relations is to voice the points of view of organised civil society on EU trade, enlargement, development and foreign affairs policies.

6.2 The EESC monitors relations between the European Union and many countries in the world, in particular the countries and regions with which the European Union has a structured relationship, and builds relationships with civil society in these countries and regions. Close relationships with the economic and social partners and other civil society organisations in third countries have been established in order to draw up proposals, mainly on economic and social issues, and help strengthen civil society. In this framework, joint declarations addressed to political authorities are adopted.

6.3 Relations with our counterparts are conducted through the permanent committees. There are thus joint consultative committees with the candidate countries (Turkey, Croatia, Former Yugoslav Republic of Macedonia) and countries for which an association agreement exists (European Economic Area countries). Contact groups exist for the Western Balkans, Russia, Japan and neighbouring European countries to the east. Moreover, the follow-up committees work with their counterparts in the field of relations with Africa, the Caribbean and the Pacific, relations with Latin America and in the framework of the Union for the Mediterranean. Civil society round tables meet on a regular basis with the Brazilian and Chinese ESCs.

6.4 Among these specific policies, for example, the EESC has developed major activities in three areas:

— development policy, where the EESC works regularly with the Commission, providing organised civil society's contribution to the various DG Development proposals, whether in the form of opinions or in the form of joint recommendations drawn up together with civil society organisations from ACP countries;

— EU enlargement, through its work with candidate countries, with which it sets up civil-society joint consultative committees. The role of these committees is to channel know-how, experience and information between the EU and the socio-occupational organisations in these countries regarding the scope of common policies and the actual implementation of the Community acquis;

— trade policy, where the EESC provides monitoring of the social, economic and environmental impact of international agreements signed by the EU, acting as intermediary for the joint structures set up with civil society in the countries or regions concerned and putting across the views of organised civil society. This can be achieved by means of greater involvement in negotiating the EU’s international agreements, which must explicitly provide for the existence and role of organised civil society.

6.5 In addition, the EESC has been given the task of involvement in monitoring the implementation of trade agreements signed between the EU and Cariforum, the EU and Central America and the EU and Korea. The increasing number of trade negotiations is set to expand this role considerably. The EESC also monitors implementation of the European Instruments for Democracy and Human Rights and the International Cooperation Instrument by means of specific meetings with the Commission and by working together with the European Parliament, which has a ‘right of scrutiny' as regards these instruments.

6.6 The EESC therefore has a particularly important contribution to make to achieving greater consistency between Community policies, which are having an increasing impact on international policy and are in turn influenced by it. An example is the close interconnection between internal market and international economic and financial, monetary, energy, environment, trade, social, farming, industrial and other policies. The EESC could be particularly effective, serving as an interface between the action of the Member States and the Community institutions and the needs expressed by civil society.

6.7 The EESC believes that these objectives should also be pursued through proper representation of civil society and effective action in international bodies, starting with the UN Economic and Social Council, the ILO and the economic and financial institutions, which have been in need of a thorough overhaul for too long now, to reflect the fast-moving change we see every day and to make decision-making processes – which often lack effective monitoring systems – more transparent.

6.8 The Treaty gives the EU as a whole the chance to work together with civil society, a model which should be introduced and promoted at international level. Under Article 11 of the Treaty, the EESC has a key role to play in foreign policy as regards implementing participatory democracy, on which the EU is founded, embodying 'civic diplomacy' and safeguarding it for the public, including as regards transparency of initiatives. For these reasons, and on the basis of its work thus far at international level, the EESC believes that, as is already the case for other policies, it should be one of the key partners of the Commission, through the European External Action Service (EEAS), of the Parliament and of the Council in drawing up and monitoring foreign policy. To this end, the EESC will propose to the EEAS that a memorandum of understanding be drawn up between the two institutions to help achieve a better structure for civil society involvement in EU foreign policy, whether through opinions or other regular consultation mechanisms.
6.9 The EESC has already long been working very hard internationally; it has set up a network of links with similar bodies in various parts of the world, promoting the principles underpinning the EU and the calls of civil society bodies in the area of the economy, cohesion, partnership, combating discrimination and social inequalities.

6.10 The EESC calls for greater consistency between the actions of the various Commission DGs and EU bodies. Furthermore, it feels that the WTO should put labour rights on the same level as economic and free-trade rights, when there are countries which have failed to ratify or apply the ILO core standards or which completely ignore them. These decisions have repercussions on European society, workers and businesses. Therefore, the EESC believes that the EU should uphold a fairer, more ambitious concept of globalisation, to prevent the jobless recovery becoming the status quo.

6.11 The EESC believes that organised civil society must be more actively involved in international policy issues, by means of a direct link and regular consultation by the EEAS. It wants to prevent EU citizens being inadequately informed about events which directly concern them.

6.12 To this end, the EESC can serve as a vehicle for debate at European level on issues which can no longer be resolved at national level: migration; energy; neighbourhood matters; the environment; demographic change; corruption; social and food issues; trade and development, etc. Moreover, the EESC can keep these debates in the public eye, even when other urgent matters are in danger of pushing them off the European agenda.

6.13 The EESC can also provide the European institutions with the expertise and the ability to analyse specific EU policies from new perspectives, representative of the interests of the sectors involved: promotion of the social economy in third countries; farmers’ interests in international foodstuffs trading; the role of civil society in development policy; international water management; international trading of farm products in the WTO framework; small businesses; social cohesion; regional integration; etc.

Brussels, 27 October 2011.

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

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

475TH PLENARY SESSION HELD ON 26 AND 27 OCTOBER 2011

Opinion of the European Economic and Social Committee on the 'Proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB)'

COM(2011) 121 final — 2011/0058 (CNS)

(2012/C 24/12)

Rapporteur: Mr WUERMELING

On 6 April 2011, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 115 TFEU, on the


The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October 2011), the European Economic and Social Committee adopted the following opinion by 137 votes to 22 with 15 abstentions:

1. Conclusions and recommendations

1.1 The EESC supports the proposal for a common consolidated corporate tax base (CCCTB) as a big and important step in the European single market. Completing the single market requires more substantial alignment of the principles of corporate taxation.

1.1.1 The Commission's draft directive is a success because the CCCTB creates better conditions for companies that operate across borders. In their entirety, the proposed rules make it possible to levy corporate taxation according to economic performance, to avert distortions and to prevent circumvention of the system. However, the draft directive requires further clarification in its details and a few changes.

1.1.2 Most of the tax obstacles to cross-border activity within the EU could be reduced or even eliminated with a CCCTB. These include limited cross-border loss relief, complicated calculation of transfer prices, and double taxation and unequal treatment of permanent establishments and subsidiaries within the EU and according to their localisation within or outside the national borders.

1.1.3 The EESC expects that even in the mid-term the draft directive will lead to a significant reduction in tax compliance costs for businesses and to lower administrative costs for the Member States.

1.1.4 The CCCTB will effect the removal of distortions in intra-EU competition caused by tax rules. With the CCCTB, business decisions in the single market will no longer be based on tax considerations. In this way, the CCCTB should promote fair, sustainable competition and has a beneficial effect on growth and jobs.
1.2 The EESC recognises that there is concern that CCCTB would entail a loss of national sovereignty, limiting of tax policy choices, a fall in tax revenue, or other unintended consequences. In particular, there is a danger that in the rapidly changing and fiercely competitive global economy, the European Union in operating a CCCTB system for 27 Member States, does not have the structures to respond quickly to global tax changes or incentive packages (for example for R&D) which could result in a loss of Foreign Direct investment.

1.2.1 The CCCTB must take appropriate account of concerns about curtailed tax sovereignty and lower tax revenues. At a time when public finances are under considerable pressure across the EU, it is vital that Member States do not suffer undue negative impact on their revenues and are able to predict the impact on their national accounts. Member States will remain free to set the tax rate on their share of the tax base. It is true, however, that only the European level will be able to take economic policy measures in tax legislation relating to the CCCTB. There is a concern that this will make Europe less flexible and competitive in competing for FDI, which will result in losing investment to countries such as Switzerland or Singapore.

1.2.2 Whether, and in what measure, the CCCTB will have adverse social and societal consequences in terms of where businesses choose to establish themselves is difficult to gauge, since corporation tax is only one of several important factors feeding into this decision. The EESC recommends that a socio-economic impact assessment be conducted on this.

1.2.3 The tax base proposed is broader than the current average across the Member States. This will lead initially to higher tax revenues. On the other hand, cross-border offsetting of losses may lead to a lower tax burden. The EESC believes that these differences should average out over the years and that no lasting loss of tax revenue need be feared in the Member States.

1.2.4 The EESC believes that the CCCTB should be made revenue-neutral. It therefore supports the possibility provided for in the directive that the Member States adapt tax rates so that the tax burden is neither raised nor lowered.

1.2.5 Naturally, taxation policy and taxation systems are at the forefront of the debate that is currently underway. However, the EESC suggests that when making an overall assessment of the plan the European Parliament and the Member States should also heed the economic benefits that a CCCTB offers by creating free and fair terms of tax competition for all Member States.

1.2.6 Differences in effective tax rates would be more transparent with the CCCTB. In the EESC's view, the CCCTB would not eliminate the importance of national tax rates for businesses' choice of location, because tax rates would continue to differ between the Member States even after its introduction. What happens in essence in the present tax competition situation is that profits and losses are shifted between Member States that tax comparatively lower or higher. With the CCCTB, tax competition would be concentrated on those factors included in the formula for apportioning the tax base.

1.3 The EESC welcomes the offsetting of losses against profits in different Member States (or consolidation) as the heart of the CCCTB rules. Only consolidation will eliminate current transfer pricing problems, make EU-wide tax-neutral restructuring possible and avoid double taxation. Since consolidation is the essential economic benefit of the CCCTB, the common tax base should include this element from the outset.

1.4 Regarding the scope of the CCCTB, the EESC no longer insists on its immediate mandatory application, but would endorse an optional arrangement during the introductory phase. In the long term, however, it should be mandatory, initially above a certain threshold. If the CCCTB were to remain optional for ever, this would create considerable red tape for the Member States, as existing corporate tax structures would have to continue to operate in tandem with the new CCCTB system.

1.5 The EESC welcomes the fact that the draft directive provides for the CCCTB to be used by businesses of any size, regardless of whether they operate across borders or only nationally. The option of the CCCTB offers significant advantages for small and medium-sized enterprises in particular, since the increased compliance costs involved in cross-border operations are markedly reduced. This is not the case, however, for the many SMEs that, being partnerships or sole proprietorships, are not subject to corporation tax.

1.6 The avoidance of double taxation of income earned outside the EU through across-the-board application of the exemption method is to be welcomed and should be developed further. The EESC does not consider it appropriate for such income to be taxed even where tax rates in the non-EU country are low.

1.7 Further clarification, in some cases significant, is needed with regard to individual rules. This is needed to avoid vastly differing transposition and hence differing application of particular rules of the directive between countries. In particular, definitions are missing and insufficiently clear legal concepts are used. This jeopardises uniformity of application.
1.8 The EESC considers the introduction of a one-stop shop for determining the tax base to be useful so as to simplify tax procedures, especially for small and medium-sized enterprises, and to ensure uniform application of the rules to all taxpayers but this assumes enhancing administrative cooperation between Member States, which does not exist at this stage particularly as regards automatic notification of information on the consolidation area. The EESC, however notes that there is considerable scope for disputes between national competent authorities of Member States and the principal tax authority concerning requests for an opinion by the competent authority, revenue audits and formula apportionment issues.

1.9 The EESC considers that the European Commission should give further consideration to the proposed system of apportionment. The current proposal, by giving equal weight to the sales by destination factor as to assets and labour factors may favour larger consuming Member States simply because of their size, and the almost total exclusion of intellectual property considerations in the formula would make this a system based on an outdated vision of the modern European economy which would not encourage or support the development of the smart economy.

1.10 The EESC believes that plans by two or more Member States to align the corporate tax base, by means of intergovernmental cooperation, promote tax convergence. However, these initiatives must be designed in such a way that they do not create new hurdles for European harmonisation or seek to establish preconditions for the EU-wide project.

2. Content of and background to the proposal

2.1 On 16 March 2011, the Commission adopted a Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2011) 121/4; IP/11/319). The core purpose of the proposal is to enable companies in the EU engaged in cross-border activities to apply a single set of rules when computing the tax base applicable to corporation taxes. Currently, businesses have to calculate the tax base in accordance with the rules of up to 27 different national systems. This leads to significant administrative costs, especially for small and medium-sized enterprises, and to distortions in competition in the single market.

2.2 The idea of the CCCTB is to eliminate or at least reduce the obstacles to cross-border activity within the EU that are hindering the completion of the single market:

— the administrative costs for computing taxes (tax compliance costs) would be significantly reduced;

— the complex question of transfer pricing within a business would become obsolete, as tax treatment would be identical everywhere;

— cross-border losses could be offset;

— the problem of double taxation would be uniformly resolved across Europe.

2.3 According to the Commission’s estimates, the CCCTB will enable businesses in the EU to save EUR 700 million a year in compliance costs, a further EUR 1.3 billion through consolidation and up to EUR 1 billion for cross-border activities. In addition, the CCCTB is intended to make the EU more attractive to foreign investors.

2.4 As the directive is framed, it will ultimately be Member States’ decisions regarding the level of tax rates that determine whether or not the introduction of the CCCTB has a negative impact on the level of tax revenues. According to European Commission models, no adverse effects on revenue are to be expected for several years, particularly since the CCCTB tax base is on average broader than that under national provisions.

2.5 In the case of cross-border loss compensation, the tax base would, however, tend to be reduced. This should be offset at least in part by a drop in compliance costs and greater appeal of the EU to investors from third countries.

2.6 Key components of the CCCTB proposal are the rules on its scope, on computing the tax base, on cross-border offsetting against profits (consolidation), on apportionment of the tax base between the Member States, and on a single point of contact for businesses.

2.7 The scope is limited to legal entities liable for corporation tax in the EU. The CCCTB does not, therefore, apply to partnerships, natural persons or investment funds.

2.8 Eligible corporations have the right to choose taxation in accordance with the CCCTB (Article 6 of the draft directive); this will then apply for an initial period of five years and subsequently for periods of three years (Article 105 of the draft directive).

2.9 The draft directive contains all the arrangements for uniformly calculating the tax base. It makes no mention of a particular set of accounting standards, although individual rules do embody the principles of the IFRS. Taxable income is determined based on a profit and loss account and is in line with usual international practice.

2.10 Businesses opting for the CCCTB can fully offset losses against profits in various Member States (consolidation). At present, this is only possible — if at all — to a limited degree, which results in significant tax disadvantages for parts of the company outside the country where it is domiciled.
2.11 In terms of which entities are covered, the scope extends to all company groups domiciled and all establishments located in the EU. Subsidiaries are included where a parent company controls more than 50% of voting rights and owns more than 75% of the capital. The material scope includes income from all of companies of the group. The territorial scope is limited to the European Union.

2.12 Profits, computed in accordance with the uniform rules, are apportioned among the Member States where the company operates according to the amount of (business) activity (measured by labour, assets and sales). Apportionment is carried out using a formula based on these three value-added factors (labour, sales and assets). These factors are adjusted to take account of special cases (such as, in the financial sector, financial institutions and insurance companies). The specific level of tax is arrived at in each Member State by applying the national tax rate to the apportioned profits.

3. General observations

3.1 The EESC expressly supports the plan for a CCCTB as an important measure for overcoming taxation obstacles in the single market: double taxation will become obsolete, unfair treatment of establishments in the single market will be eradicated, cross-border losses can be offset, and the problem of transfer pricing will disappear.

3.2 The EESC has in the past called for free and fair terms of competition to be introduced, including in tax legislation, to promote cross-border activities (1). More recently, on 14 February 2006, the Committee issued a detailed opinion on the Creation of a common consolidated corporate tax base in the EU (2). The draft directive takes into account many of the EESC’s earlier comments.

3.3 However, the evidence presented by the Commission is conflicting. While the Impact Assessment on the one hand instances a study by Deloitte showing that compliance outlays in the specific case of a multinational setting up a new subsidiary in a different Member State could fall by over 60%, a PWC study of a sample of established multinationals estimated compliance cost would fall by only 1%. Another study by Ernst and Young estimated that compliance costs would rise by 13% as a result of the additional costs of preparing and filing the tax return and the associated tax administration outweighing the expected savings in costs due to the reduced need for transfer pricing. Administration costs by taxing authorities will rise because of the need to run a national system side by side with the CCCTB system.

3.4 For businesses, the draft directive leads to a significant reduction in tax compliance costs; for the Member States, it lowers administrative costs, although outlay will initially be incurred in the changeover.

3.5 The removal of distortions in intra-EU competition caused by tax rules is, in the EESC’s view, of crucial importance. At present, business decisions in the EU are not taken exclusively on the basis of competition criteria. Instead, ‘tax optimisation’ considerations are often critical. For example, investment in research is carried out where costs are tax deductible, or high-risk activities are located where losses can be offset against tax. It goes against the fundamental principle of the single market that business decisions should be distorted by tax considerations and this has a detrimental effect on growth and job creation.

3.6 However, the EESC does not underestimate the concerns expressed by many, in particular national parliaments from nine Member States (3) that believe the proposal does not comply with the principle of subsidiarity, that this would entail a loss of national sovereignty, limiting of tax policy choices, a fall in tax revenue, or other unintended consequences.

3.6.1 It is true that the Member States will no longer have recourse to any economic policy measures in their national taxation in respect of companies that opt for the CCCTB, since the tax base is established at EU level. On the other hand, such measures can now be taken at EU level to intensify competitiveness and create jobs – which will benefit the entire single market – without different conditions arising for individual businesses.

3.6.2 Over the mid and long term, CCCTBs may lead to a relocation of economic activity and jobs where these have been the result of national tax incentives. In fact, these are the very distortions of competition through tax advantages that the CCCTB is intended to avoid. However, the EESC believes that the Commission should examine these aspects more closely in a socio-economic analysis so that the EU institutions and other stakeholders can better assess such consequences.

3.7 In principle, the CCCTB preserves the Member States’ tax sovereignty, as they are free to set the level of taxation on the share of the tax base that falls to them. It is the tax base – not tax rates – that is harmonised with the CCCTB. Member States will still be able to set national tax rates in accordance with their budgetary policy preferences. For a transition period, however, there may be drops in revenue that can only be corrected for the future by raising the tax rate.

(2) Exploratory opinion requested by the Commission, OJ C 88, 14.4.2006, p. 48.
(3) Pursuant to Article 6 of Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality, National Parliaments of Bulgaria, Ireland, Malta, Poland, Romania, Slovakia, Sweden, the Netherlands and the United Kingdom sent Reasoned Opinions to the European Parliament, the Council and the European Commission.
4. Detailed comments

4.1 The draft directive is a great achievement for the Commission, but its details need further clarification and a few changes. As a whole, however, the proposed rules make it possible to levy corporate taxation according to economic performance, to avert distortions and to prevent circumvention of the system.

4.2 The EESC welcomes the fact that the draft directive provides for the CCCTB to be used by businesses of any size, regardless of whether they operate across borders or only nationally – although it is aimed primarily at business or groups that do operate across borders. It will, however, also help small and medium-sized enterprises to expand their cross-border activities, because it offers substantial cost benefits compared with taxation under several national systems. The CCCTB option holds advantages for SMEs that are established as limited liability companies – not, however, for the many small and medium-sized sole proprietorships and partnerships, which are not subject to corporation tax.

4.3 With this in mind, the Committee no longer insists on the immediate mandatory application of the CCCTB, but would endorse an optional arrangement during the introductory phase. In the long term, the CCCTB should be mandatory, at least above a certain threshold, for business operating across borders. If it were to remain optional for ever, this would create considerable red tape for the Member States, since they would have to continue to operate their existing corporate tax structures alongside the new CCCTB system.

4.4 Aggregating the total profits and losses of the eligible members of the group (or consolidation) constitutes the key to eliminating tax obstacles within the single market and underlies the main benefits of the CCCTB. Only through consolidation can the following benefits be obtained: cross-border loss relief, avoidance of transfer pricing problems, the possibility of an EU-wide tax-neutral company structure, avoidance of double taxation, and equal treatment of EU subsidiaries and EU permanent establishments. Consolidation thus deserves unequivocal support. It constitutes a 'big' solution that is preferable to the 'small' solution of a common corporate tax base without consolidation.

4.5 The scope of the CCCTB is correctly defined in terms of the entities, income and territory it covers. Using formal criteria to define the type of entities eligible has the advantage that these criteria are easy to apply, verifiable and less pliable. From the perspective of companies, the criteria are also easy to apply and legally certain, although this is only true in part for the rules on joining and leaving the group. The broad definition of the material scope, covering all income, makes sense in order to avoid difficulties with deciding what should be included. Limiting the territorial scope to the European Union is also appropriate. In the absence of worldwide provisions on computation of profits, to go further and bring in global income would require very costly reconciliation.

4.6 The EESC considers that the distribution of the tax base between the Member States according to the value-added factors of labour, assets and sales, given their relevance to the real economy, makes more sense than a calculation based on key macro-economic indicators.

4.6.1 The uniform apportionment formula serves to avoid distortions and double taxation. The possibility for taxpayers to assign factors to a Member State with the lowest possible tax rate is significantly limited by the fact that several factors are taken into account. Use of an alternative apportionment method should be subject to unambiguous limits and special justification. These are necessary, for example, for the financial sector (banks and insurance companies) because of its specific business model.

4.6.2 There is still a risk that individual Member States may apply the formula in a non-uniform manner and that the sum of the shares of the tax base will therefore be greater or smaller than the actual total income to be apportioned. This would lead to multiple taxation or under-taxation of the total income to be apportioned. The European Commission must address this by promptly adopting implementing legislation.

4.6.3 Regarding the allocation of assets in the assets factor, a more precise definition is required with respect to economic ownership and effective use and consideration should be given on how to include intellectual property. For the labour factor, which is in two halves, apportionment based on the number of employees is simple and feasible, though it could prove problematic, especially if an activity is performed 'under the control and responsibility' of a group member. Studies have revealed that apportioning profits based on the labour factor can have adverse economic effects on the labour market. In view of the differing social security and pensions systems in the EU, the inclusion of social and pension provision could harbour further potential for conflict between the Member States. The sales factor is market-oriented and could unduly favour large Member States simply because of their size. Its deletion or re-weighting within the apportionment formula should be considered.

4.7 The tax base is broader than the current average across the Member States. This will initially lead to higher tax revenues. On the other hand, cross-border offsetting of losses may lead to a lower tax burden. The EESC believes that the CCCTB should be revenue-neutral. It therefore supports the possibility provided for in the directive that the Member States adjust tax rates so that the tax burden is neither raised nor lowered.
4.8 The system for establishing the tax base is in line with international standards, in particular with those in 25 out of the 27 Member States. The EESC considers this to be appropriate. The draft directive makes no reference to IFRS rules on company accounts, since the CCCTB provides a distinct regulatory framework for independent computation of profits for taxation purposes. However, the IFRS principles, which have continued to evolve over the many years of CCCTB planning, are present in some individual provisions.

4.9 Clarification, in some cases significant, is needed in certain rules so as to avoid fragmentation resulting from application by Member States. In particular, definitions are missing and insufficiently specific legal concepts are used (e.g. ‘fixed assets’ or ‘acquisition and construction costs’). A lack of detailed rules for individual sectors, e.g. the treatment of financial assets, or insufficiently detailed regulations, e.g. regarding the definition of the economic owner, jeopardise the uniformity of application.

4.10 The general anti-abuse clause included is questionable in its current form. The draft directive stipulates that artificial transactions carried out for the sole purpose of avoiding taxation are to be ignored for the purposes of calculating the tax base (Article 80 of the draft directive). The application or interpretation of such a general anti-abuse rule will cause considerable difficulties, since ECJ case law has determined that abuse must be demonstrated in each individual instance.

4.11 The EESC welcomes the avoidance of double taxation of income earned outside the EU by applying a blanket exemption of such income from tax. In this way, EU businesses are only subject to the tax of the third-country market. The EESC sees no reason why there should be an exception to this, as the Commission proposes, if the third-country tax level is very low. The EESC finds that the switch to the credit method in cases where the level of foreign tax is too low is questionable, since this would affect not only abusive arrangements, but also normal business activities.

4.12 In the view of the EESC, the possibility of creating provisions is excessively curtailed.

4.12.1 Provisions may be created only for activities and transactions relating to legal obligations. This rules out obligations arising from purely business activities. This is not, in the EESC’s opinion, economically justified, since business performance, and hence taxable profits, are also constrained by purely business obligations.

4.12.2 With regard to provisions for legal obligations, the requirements as to the minimum probability that these will be used need to be clarified. Similarly, the criteria for a reliable estimate are not adequately determined. For want of specifics, the detail of how provisions for contingent losses are treated remains unclear. Provisions for pensions are not mentioned in the rules either, but should be taken into account, otherwise the specific assessment rule would be without effect.

4.12.3 The draft directive contains no specific information, nor delegation of implementing powers to the Commission, regarding the risks specific to certain sectors that are recognised by EU law. There is only a special rule on the deductibility of technical provisions of insurance undertakings, where Member States are given the option to allow deduction of equalisation provisions.

4.12.4 Detailed rules are needed for the financial sector in particular, in order to take proper account of risk-specific peculiarities (against the background of the financial crisis). Specifically, there is a lack of detailed rules for the treatment of derivatives and leasing. In addition, it is probably necessary to adopt rules that either provide for banks’ provisions (for general banking risks) to be deductible or for depreciation of financial assets. The draft directive itself should, as in the case of the special rule for insurance, include the detailed rules for the financial sector.

4.13 It is right that corporation tax itself and similar taxes not be deductible. In any event, the list of non-tax-deductible national taxes in Annex III of the draft CCCTB directive (which refers to Article 14) must be re-examined with a critical eye. Insurance tax, for example, which is to be non-tax-deductible only with regard to tax levied nationally, is not comparable with corporation tax. If insurance tax on the insurance premium is paid and classed by the insurance company as income, a deduction as a business expense should also be possible.

4.14 Specifying a discount rate seems appropriate as regards tax equity, since choice in the matter would allow too much room for discretion. The fact that agreed interest rates may be used by way of exception is thus not without its problems.

4.15 The proposal provides for the possibility of pool depreciation rather than individual asset depreciation. This makes sense. The pool depreciation method provides businesses with self-financing opportunities. At a depreciation rate of only 25%, however, a large portion of total depreciation would only be offset at the moment of replacement investment. The depreciation rate for pool depreciation should therefore be raised accordingly.

4.16 Limiting exceptional deductions to non-depreciable fixed assets where a permanent decrease in value can be demonstrated places excessive limits on what losses can be taken into account. There is also a lack of clarity as to what constitutes a permanent decrease in value. Specifically, no exceptional deductions may be made in respect of assets whose disposal proceeds are tax-exempt, for example shares in companies. This could put holding companies and venture capital businesses at a disadvantage.
4.17 The EESC considers the introduction of a \textit{one-stop shop} for determining the tax base to be useful so as to simplify tax procedures, especially for small and medium-sized enterprises, and to ensure uniform application of the rules to all taxpayers but this assumes enhancing administrative cooperation between Member States, which does not exist at this stage particularly as regards effective monitoring of the scope of consolidation (companies, subsidiaries, permanent establishments) which will change each year. The automatic communication of information should become the norm as is the case for VAT within the EU.

4.18 It is worth mentioning that all communication with the tax authorities is intended to take place solely between a so-called principal taxpayer of the group and the principal tax authority to which it is assigned. This makes coordination with various national tax authorities unnecessary. The EESC welcomes the associated reduction in red tape for taxpayers and tax authorities.

Brussels, 26 October 2011.

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\textit{The President}\hspace{1cm}
\textit{of the European Economic and Social Committee}\hspace{1cm}
Staffan NILSSON
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\textbf{APPENDIX}

\textit{to the Opinion of the European Economic and Social Committee}

The following amendment were rejected during the discussion but received over a quarter of the votes.

\textbf{Point 1.4}

Amend as follows:

1.4 Regarding the scope of the CCCTB, the EESC no longer insists on its immediate mandatory application, but would endorse an optional arrangement during the introductory phase. In the long term, however, it should be mandatory, initially above a certain threshold for business operating across borders. If the CCCTB were to remain optional for ever, this would create considerable red tape for the Member States, as existing corporate tax structures would have to continue to operate in tandem with the new CCCTB system.

This amendment was rejected by 70 votes for, 90 against and 15 abstentions.
Opinion of the European Economic and Social Committee on the Proposal for a Council directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity

COM(2011) 169 final — 2011/0092 (CNS)

and the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Smarter energy taxation for the EU: proposal for a revision of the Energy Taxation Directive

COM(2011) 168 final

(2012/C 24/13)

Rapporteur: Mr PIGAL

On 29 April 2011 the Council decided to consult the European Economic and Social Committee, under Article 113 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity

COM(2011) 169 final — 2011/0092 (CNS)

and the

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Smarter energy taxation for the EU: proposal for a revision of the Energy Taxation Directive


The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 158 votes to 4 with 13 abstentions.

1. Conclusions and recommendations

1.1 Conclusions

1.1.1 At a time when many Member States are drawing up their strategies for overcoming the economic and financial crisis, the revision of the Energy Taxation Directive (ETD) offers an opportunity to reconcile environmental and economic objectives. It enables Member States wishing to do so to shift part of the burden of taxation from labour or capital to a form of taxation which encourages environmentally responsible behaviour and is favourable to energy efficiency, in accordance with the Europe 2020 strategy.

1.1.2 Europe cannot be content with the energy policy objectives it has set itself. It must now provide the means to achieve them. In order to succeed in this it must send out a strong 'price signal'. This is an effective way, if not the only one, of forcing through a change in mentalities and behaviour.

1.1.3 The recast of the ETD undoubtedly represents progress compared with the initial version. The introduction of two factors to measure/tax energy is more accurate and relevant. The CO₂ tax factor complements the Emission Trading Scheme (EU ETS).

1.1.4 On the basis of the two taxation factors, most forms of energy should be treated/taxed on an equal footing on the basis of their CO₂ emissions and energy content. It should be noted, however, that electricity is not subject to this alignment with other energy sources.

1.1.5 However painful it may be in the short term, the price message conveyed by high levels of taxation on motor fuels has prepared European energy consumers for inevitable shortages and restrictions by promoting energy investment and economy efforts, the attractiveness and development of renewables, resistance to oil shocks, etc.

However, the price signal given by taxation is not getting across when it comes to heating fuels and the recast ETD may not change this. Consumers cannot then benefit from energy-saving efforts and investment for heating fuels and they suffer from unpredictable market fluctuations.

1.1.6 The stronger incentive for consumers to economise on fuel would also benefit companies in the sector by accelerating the renewal of equipment and offering new market opportunities.
1.1.7 Highly energy-intensive industrial sectors which were previously excluded from application of the ETD are now rightly reintegrated.

However, other sectors remain wholly or partly exempt, for example:

— agriculture, construction, public works,
— public transport and transport used for the armed forces, waste collection and public administration,
— ambulances (excluding taxis), air transport, Community maritime transport,
— household electricity, etc.

It is difficult to see any coherence in all these exemptions, particularly as the need for them may not be understood by those who do not benefit from them.

1.1.8 Contrary to what is stated in the Commission communication, the new ETD does not provide a framework for, take a position on or even present a recommendation regarding the use by the Member States of all or part of the revenues from the new system of taxation to encourage the orientation of energy supply towards new technologies and cleaner energy.

1.1.9 The EESC cannot help but note, however, that the ETD helps to develop the single market by aiming for, and making it possible to achieve, harmonisation of energy taxation.

1.2 Recommendations

1.2.1 The Committee supports the efforts of the European Commission aimed at achieving the objectives of the Europe 2020 strategy. Clearly, the ETD recast goes in that direction, for example by:

— encouraging sustainable development and safeguarding the environment,
— protecting the internal market and promoting growth,
— facilitating a reduction in labour costs and budget deficits.

1.2.2 However, the EESC regrets that the recast ETD is not more ambitious and coherent. Even before the text was presented (or negotiated) in the Council, the Commission took the initiative of including exemptions and derogations in the text designed to please certain Member States or not displease others.

In the coming negotiation process in the Council the Commission risks having no more room for manoeuvre, without finally and dangerously watering down the spirit of the recast, as submitted now.

1.2.3 Reticence or opposition is to be expected from the Member States. However, the Committee considers that Europe, and more specifically the European Commission, should be capable of imposing measures on the Member States, particularly when some of them are faced with blockages at national level of decisions necessary to achieve objectives accepted by all at European level.

1.2.4 The European Commission must also be prepared for, and resist, the efforts of lobbyists who seek to prevent any change by invoking ‘possible additional costs’ or a ‘dangerous loss of competitiveness’. While it clearly must encourage Member States to make allowance for a minority of sensitive cases, it must nonetheless maintain the course set for European energy objectives and stress the strategic advantages of innovation in new energy sources, job creation and spin-off growth, improvements in the quality of life, etc.

1.2.5 The Committee suggests that, in order to pre-empt probable reticence on the part of the Member States, the Commission should identify flanking measures for the changes imposed and, as far as possible, include these in the proposed text. This approach seems to us preferable to concessions made before the negotiations with the Member States, particularly as it would also enable consumers to prepare better for the changes envisaged.

2. Introduction

2.1 Summary

2.1.1 The text under consideration is not a new directive but a recast which is scheduled to enter into force on 1 January 2013, a date which coincides with the third phase of the EU ETS.

2.1.2 For each motor or heating fuel the revised directive introduces two taxation factors, each with its own objective:

— taxation of CO₂ emissions, aimed at reducing pollution by greenhouse gases;
— taxation of energy content, aimed at reducing energy consumption, independently of the energy product used.

2.1.3 Motor fuels:

— 2013: the tax on CO₂ will be EUR 20 per tonne CO₂;
— 2018: the tax on energy will be EUR 9,60 per gigajoule (GJ).

2.1.4 Heating fuels:

— 2013: the tax on CO₂ will be EUR 20 per tonne CO₂;
— 2013: the tax on energy will be EUR 0,15 per GJ.
2.1.5 It should be remembered that the current ETD, like the proposed recast, introduces minimum rates of taxation. States may thus set higher levels of taxation, which most in fact do.

2.2 Background

2.2.1 This proposal for a recast is the latest in a series of previously drafted and adopted directives, including:

— 2003/96/EC: Directive on taxation of energy products (ETD), which has to be revised;

— 2003/87/EC: Directive establishing a scheme for greenhouse gas emission allowance trading (EU ETS);


— 2006/32/EC: Directive on energy end-use efficiency; definition of NCV (1) in Annex II;

— 2009/28/EC: Directive on the promotion of the use of energy from renewable sources, which lays down sustainability criteria for motor fuels and biofuels.

2.2.2 In addition to examining the proposal for a recast of the ETD, this opinion also draws on additional information contained in the communication (2) and the memo (3) drawn up by the European Commission.

2.2.3 Is important to note that the Commission’s work to establish this European policy is part of an international context with a major impact on various areas, for example:

— regulatory: the Chicago Convention is strict and binding in limiting taxation on aviation;

— market: research has made it possible to extract shale oil. This discovery has made it possible to exploit new sites, thus increasing the supply of fossil energy. It has also completely disrupted the natural gas market; the world natural gas price has collapsed, making other forms of energy, including renewables, less attractive;

— strategic: the events in North Africa and the Middle East have a very significant effect not only on fuel prices but also the Member States’ position on the energy sources in question;

— environment: the Kyoto agreement and the Cancun discussions must be taken into account and, if necessary, European strategy and policies need to be adjusted accordingly;

— public opinion: the events in Fukushima have shown how much public opinion can be affected by a major and unexpected event. The Member States and Europe cannot remain indifferent to this when devising their strategies and decisions and must of course adjust their policies rapidly.

2.2.4 The question therefore arises of how to put the problem of taxing energy into an international context:

— what reference price should be set for CO₂ in Europe in the absence of an international agreement?

— the idea of a general, international tax also deserves consideration.

2.3 Chronology

2.3.1 The previous directive (2003/96/EC) was the product of a 1996 Commission proposal. This proposal was substantially amended following long negotiations in the Council of the European Union in order to take account of specific national situations. The amendments consisted of proposing very progressive application, with transitional periods, derogations and other exemptions. The 1996 proposal for a directive was finally adopted in 2003.

2.3.2 Its implementation in the Member States, developments in the energy market and a growing awareness of the environmental and climatological impact of energy consumption put the spotlight on weaknesses and possible improvements (see below).

2.3.3 Work on revising this directive began in 2005. A first attempt, focusing on the use of commercial diesel fuel, was initiated in 2007 but did not succeed in the Council. A new proposal for a revision was requested by the European Council in its conclusions of March 2008 and was made a priority by the Commission in its 2011 annual growth survey.

On 12 April 2011 the College of Commissioners adopted the proposal for a recast of the provisions of the ETD.

3. General comments

3.1 The recast of the ETD aims first and foremost to respond to the European Union’s new priorities, as defined in the Europe 2020 strategy, inter alia:

— combating climate change;

— priority for sustainable growth;

— a greener and more competitive economy;

— contribution to tax harmonisation;

— reduction of tax on labour;

— support for low-income households;

— budget consolidation in the Member States.

(1) NCV: Net calorific value of energy products and electricity.
(2) COM(2011) 168 final.
(3) MEMO/11/238.
3.2 It also responds to the 20/20/20 rule of the EU climate and energy strategy (2013-2020):

— reducing greenhouse gas emissions by 20 %;

— reaching the target of 20 % renewable energy by 2020;

— improving energy efficiency by 20 %.

3.3 It also aims to correct the weaknesses and shortcomings of the previous ETD:

— The current minimum rates generally apply to the quantity consumed without taking account of their energy content or pollution.

— This leads to behaviour which runs counter to the EU's objectives, for example by encouraging the use of coal and penalising renewable energy.

— The ETD does not provide for any incentives to promote substitute forms of energy; thus ethanol is the most heavily taxed.

— The inadequate coordination between the ETD and the EU ETS on CO₂ emissions results in double taxation or absence of taxation, depending on the sectors.

3.4 This recast takes account of exogenous constraints:

— the restructuring and modernisation of tax systems;

— an economic crisis which has reduced the Member States' room for manoeuvre and exacerbated budgetary pressures;

— the tangible and measurable appearance of the first effects of climate change;

— international tensions which cause upheaval and uncertainty on the international energy market.

3.5 Finally, it also has to come to terms with certain other endogenous constraints:

— preventing energy taxation from being discriminatory or distorting competition between companies in the Member States;

— and, conversely, limiting distortions arising from the lack of harmonisation of energy taxation in Europe.

4. Specific comments

4.1 The key elements

4.1.1 Referring back to the introduction, the key element of the proposal is the definition of two taxation factors (Article 1). It also confirms (Article 4) that the taxation levels set are a minimum, which may be exceeded by the Member States and that these minimum rates will be adapted every three years.

4.1.2 The other key point of the proposal is to introduce (Article 4(3)) a new requirement for the Member States to apply equal levels of taxation to all products used for the same purpose (motor fuels or heating fuels), the rates to be calculated on the basis of their CO₂ emissions and energy content.

4.1.3 In the initial directive the minimum levels of taxation were established by product (and a given use), but without linking them to each other.

4.1.4 With this change, the Member States will be required to recalculate their (national) levels of taxation in order to ensure that they are in the same proportions as those defined for minimum European taxation levels (see tables A, B and C of Annex I to the revised ETD).

4.1.5 This obligation applies to both motor fuels and heating fuels. It will apply to heating fuels from 2013 and to motor fuels from 2023. This postponement is intended to take account of major differences between Member States.

4.1.6 However, the minimum levels of taxation for electricity being set out in a separate table (Table D), the requirement for proportionality and alignment of taxation levels does not apply to electricity.

4.1.7 Electricity remains subject to a tax on the final consumer (at the socket) as regards the 'tax on energy'. This is in order to prevent double taxation – of production and consumption.

4.1.8 As the consumption of electricity does not in itself emit CO₂, the CO₂ tax can only apply to electricity producers. Large plants will be exempt from the ETD as they are part of the EU ETS.

Electricity from nuclear power plants is not taxed on CO₂ (no emissions) but on energy consumption.

4.1.9 In order to integrate Directive 2003/87/EC on greenhouse gas emission allowance trading and prevent any overlap, the revised directive (Article 14(1)(d)) proposes that energy products used for activities falling under the EU ETS be exempt from CO₂ taxation. At the same time activities hitherto excluded from the EU ETS will now fall within the ambit of the ETD.

4.2 Specific sectors

4.2.1 The proposal also acknowledges that sectors may be exposed to the risk of carbon leakage (Article 14a) and proposes that a tax credit be established until 2020 for each installation concerned. The tax credit will be calculated on the basis of the median annual consumption of energy products during the reference period.
4.2.2 Activities which were hitherto exempt from taxation (Article 2) will now be liable to taxation, either on CO₂ or energy content.

4.2.3 The only change to the differentiated rates of tax (Article 5) concerns the exclusion of taxis from this provision.

4.2.4 Air transport (except private air transport) and Community maritime transport (except leisure boating) are exempt from the ETD.

4.2.5 Motor fuels may be taxed like heating fuels (Article 8) in specific sectors:

— agriculture, horticulture, fish farming and forestry,

— stationary motors,

— construction, civil engineering, public works,

— vehicles not licensed for on-road use.

4.2.6 With regard to agriculture and its CO₂ emissions, the Commission proposes (Article 14a) analysing whether this is a sector affected by carbon leakage, in which case it would authorise the Member States to establish a tax credit for farms.

The Commission will also allow the agricultural sector (Article 15(3)) complete exemption from the tax on energy content if it can demonstrate equivalent energy-efficiency gains, the definition being left to the individual Member States.

4.2.7 Biofuels (Article 16) will no longer be taxed like their fossil equivalents. The general energy tax (on energy content) will apply.

4.2.8 There is a difference, however, in relation to the CO₂ tax. Biofuels are not all renewable; some of them emit more CO₂ than they consume. Renewable biofuels will not be subject to it as their CO₂ emissions are considered by definition to be zero. Non-renewable biofuels will be subject to the CO₂ tax as conventional energy products.

4.2.9 Until 2023 the Member States will be able to continue applying specific levels of taxation which are lower than the ETD minimum rates.

4.2.10 Member States will retain the option of granting partial or total exemptions for household heating fuels and electricity (as well as charitable organisations) (Article 15(1)(h)).

5. Opinion of the European Economic and Social Committee

5.1 The foundations of the ETD

5.1.1 Taking account of two factors in calculating energy taxation is undoubtedly an advance compared with the old directive. First of all, it responds to the two objectives of the Europe 2020 strategy, namely reducing CO₂ emissions and energy consumption.

It also measures more precisely (using only one criterion) the damaging effects of energy consumption: pollution and over-consumption of global reserves.

5.1.2 The proposed revised ETD imposes a CO₂ tax at Member State level; it should be remembered that another mechanism already exists at European level, involving the purchase of emission rights via the EU ETS.

Moreover an installation falling under the EU ETS cannot be taxed under the ETD; it would be exempt. Thus the ETD prevents double taxation of CO₂ under the two schemes. Conversely, however, the ETD makes it possible to establish a taxation instrument which also covers small installations, hitherto excluded from the EU ETS on the basis of their size.

The EESC supports this proposal to integrate the ETS into the ETD, as it fills a gap in the EU ETS which excluded 50 % of CO₂ emissions from motor and heating fuels.

5.1.3 Certain forms of energy are more polluting than others. Certain, denser forms of energy give rise to more consumption than others. The fair balance between energy sources proposed in the revision of the directive is therefore in principle fair and coherent.

It will, however, lead to a sharp rise in the taxation of certain energy sources, which are currently taxed more lightly in some Member States. The most striking example is diesel fuel, for which the minimum level of taxation should be higher than that of petrol, in view of its slightly higher CO₂ emissions, but above all its higher energy content. But in many Member States the opposite situation applies. Diesel is more lightly taxed and less expensive than petrol and there are considerably more diesel-powered vehicles on the roads.

5.1.4 The Committee shares the Commission’s view that, diesel being significantly less expensive than petrol, the refining market is currently distorted by excessive demand for diesel relative to petrol. Increased taxation of diesel would help restore the balance.
5.1.5 However, the EESC also alerts the Commission to the fact that the inversion of the petrol/diesel price differential could seriously disrupt the motor vehicle industry market and impose an additional cost on households for motor vehicle transport. Here too the transition should be gradual.

5.1.6 Paradoxically, the high levels of taxation of motor fuels have protected consumers from oil shocks: the high price encourages people to reduce their consumption preventively and high taxes reduce the proportion of the price of motor fuel which is sensitive to market fluctuations (shocks).

5.1.7 Over a period of decades motor vehicle manufacturers have been able to invest in R&D and reduce the fuel consumption of their engines. Despite recurrent oil shocks the transport sector has never been in a state of paralysis.

5.1.8 On the basis of this analysis, the EESC notes that the CO₂ tax is identical for motor and heating fuels. It would amount to EUR 20 per tonne CO₂ or, for illustrative purposes, EUR 0.0533 per litre for all diesel fuels (whether used for heating or not).

However, it is surprised that the general energy tax is:

— EUR 9.60/GJ for motor fuels, or EUR 0.316 per litre of diesel,

— but so low for heating fuels: EUR 0.15/GJ, or EUR 0.0054 per litre of diesel used for heating.

5.1.9 The EESC therefore thinks that the energy tax on heating fuel should be made noticeable for consumers; it should not be EUR 0.0054 per litre!

The EESC recommends that it be gradually but significantly increased, in order to:

— take into consideration the inevitable heating needs of consumers,

— reduce consumption of heating fuels,

— justify investment by economic players in energy innovation for domestic and industrial uses (as motor vehicle manufacturers have done).

5.1 The exceptions and derogations of the ETD

5.2 5.2.1 Five Member States allow lower levels of taxation on the commercial use of diesel (lorries, coaches, taxis, etc.) compared with private use. The revision of the ETD addresses this and obliges the Member States to rebalance taxation.

Pollution from diesel is the same, whatever its use (commercial or private), and ending this tax reduction would make good sense and be coherent with the principles set out in the 2020 strategy. Moreover, the exponential rise in road transport, most of which is based on consumption of diesel, highlights the need to promote an end to this trend and a reduction in lorry traffic.

However, the cumulative effects of two measures increasing taxation of diesel (rebalancing vis-à-vis petrol (see above) and ending the lighter taxation of commercially used diesel) will lead to very sharp rises in the price of diesel in some Member States. In this case certain well organised and easily mobilised groups of workers might either put pressure on their national governments or launch major protest movements.

The EESC therefore alerts the Commission to the danger of moving too far, too fast, and to the inevitable reservations of the Member States. It therefore suggests that flanking measures be considered, responding to the requirements of the Europe 2020 strategy and encouraging Member States to support the revision of the ETD.

5.2.2 The Member States must ensure that they tax all forms of energy equally and in proportion to their CO₂ emissions and energy content (see above). Electricity is excluded, however, from this requirement for harmonisation.

The EESC wonders about this exception and would like to see the Commission revise its proposal to ensure that electricity is considered in the same way as other forms of energy.

5.2.3 Activities which in the previous directive were considered exempt from energy taxes should in future be aligned with the others and taxed identically on CO₂ and energy content.

The exempt activities were: metallurgical activities and chemical reduction, electrolytic processes, enterprises making intensive use of electricity (where electricity represents more than 50% of the cost of production) and the manufacture of non-metallic mineral products (cement, glass, lime, etc.).

With this modification, however, the authors of the revision of the directive show clear coherence: all polluting or energy-consuming activities are taxed without discrimination; at the same time all activities are encouraged to invest in order to reduce their energy impact.

The EESC supports this return to fairness and coherence. It is concerned, however, about the economic and social impact on the activities concerned. In this area too, it therefore suggests that flanking measures be considered in order to:
— help these sectors to invest and/or adapt;
— ensure their survival and location in the EU.

The Committee also has doubts about the true impact of this revision which brings these activities within the scope of application of the ETD, while simultaneously removing those coming under the ambit of the EU ETS.

Finally, the EESC wonders whether there might be a risk of carbon leakage from previously exempted activities. The EU ETS includes protection mechanisms and the ETD could draw on these.

5.2.4 The Member States retain the right to levy different rates of taxation on almost all the activities to which this previously applied. But allowing local public transport to continue to benefit from this will certainly not encourage local transport to reduce pollution or fuel consumption. It could be justified, however, as a way of encouraging public rather than individual transport.

However, the EESC has doubts about the justification for maintaining exceptions for waste collection, ambulances, public administration, people with disabilities, the armed forces etc.

It therefore recommends that the proposal be amended so that the excellent reasons for excluding taxis from the benefit of differential taxation can be applied on the same basis to other means of transport.

5.2.5 Based on the same analysis as for differential rates of taxation, the EESC wonders about the reasons for exempting air transport and Community maritime transport from the ETD.

5.2.6 Even if air and maritime transport were in the future to be brought within the ambit of the EU ETS, for the purposes of CO₂ emissions only, the EESC is concerned that these two very energy-intensive sectors should be exempted from taxation on energy consumption.

International conventions would make it impossible to tax these two modes of transport under the 'energy content' heading. The EESC therefore suggests that negotiations be launched at global level in order to bring these conventions more into line with European rules.

5.2.7 The EESC also has doubts about the right retained by the Member States to exempt households (for example) from taxation on heating fuel and electricity.

This option compromises the coherence of the whole ETD. The basic principle underlying the ETD is that the price signal will encourage the stakeholders concerned to reduce their CO₂ emissions and energy consumption. Why then should households, which are major consumers of energy, not receive this signal?

The EESC therefore recommends that the option to exempt household heating fuel be withdrawn from the text of the proposal, albeit with due consideration for the specific constraints of local/ national consumers.

5.2.8 The revision of the ETD seeks coherence in bringing previously excluded activities back into the ambit of the directive and in ensuring that commercial use of diesel is no longer given preferential treatment compared with private use.

With this in mind, what is the justification for allowing other areas of activity (e.g. agriculture, construction, public works etc) to continue to benefit from preferential treatment by being taxed on motor fuel at the much lower heating fuel rate? Particularly as these sectors ought to be exemplary; given their activities and their high profile, they are key to improvements in land-use planning and housing.

5.2.9 The EESC wonders about the justification for this exception, which cannot be either economic, social or environmental. It is concerned that this approach could be used as a pretext to slow down or block the application of the new ETD on the grounds that it is arbitrary and discriminatory.

5.2.10 With specific reference to the agriculture sector, the EESC would like to alert the Commission to the fact that the revised ETD is rather vague and that the Member States might require clarification and legal certainty before implementing the proposal.

Clarification is needed on:

— the reasons for specific, highly advantageous treatment of agriculture which would be at odds with the principles and price signals underlying the ETD and with the efforts required from other sectors facing equal difficulties:

— the evaluation process and criteria for the risk of carbon leakage and the quid pro quo proposed for energy efficiency.

5.3 Various aspects of the ETD

5.3.1 The new ETD cannot be a simple, monolithic solution. The European Union’s energy policy is, more than other policies, multi-faceted and complex; it requires either a combination of several solutions or a complex solution.

The EESC notes, however, the efforts made by the authors of the ETD revision to simplify its principles, objectives and application.
5.3.2 At the same time, as discussed above, the recast of the ETD is part of a rich and complex regulatory environment. It also contains numerous references to other texts and directives. The cross-referencing between texts eliminates the need for redundant repetition of elements in several directives.

But the areas of energy and the environment are constantly changing. The procedure for updating the Combined Nomenclature codes (Article 2(5)) illustrates this point. Moreover, any change in a reference text may impact on others in an unexpected or undesirable way.

The EESC proposes that all the reference texts be placed in an annex; in addition, if appropriate, it should be made clear whether certain annexed elements may be fixed, in order to ensure the coherence of the future ETD.

5.3.3 Article 4 adds to the calculation of the minimum rate the ‘total charge levied in respect of all indirect taxes’, including purely national measures like the carbon tax levied by some Member States. However, the scope of application of the carbon tax levied by the Member States, and exemptions from it, may differ from the carbon tax established by the ETD.

The EESC thinks that the Commission should make it clear that the two CO₂ taxes should be integrated by the Member States when transposing the directive.

5.3.4 The revision focuses on the taxation of energy and the Commission acknowledges that the ETD does not cover the use of ETD revenues by the Member States.

The Europe 2020 strategy makes sustainable growth with a view to a more resource-efficient, greener and more competitive economy a priority.

The EESC wonders why the future ETD does not include specific measures paving the way for coherent, joint action by the Member States aimed at achieving a more sustainable, greener and more competitive economy, for example:

— social measures to promote employment and reduce the cost of labour;
— measures to promote technological development in the new energy sector;
— budget consolidation measures in the Member States.

5.3.5 CO₂ emissions are expressed in tonnes, energy content in gigajoules (GJ). The minimum rate of taxation for each energy product is calculated on the basis of its CO₂ emissions and energy content. These minimum rates must be applied to the usual billing and taxation unit, typically the litre for motor fuel and certain heating fuels, the kilowatt hour (KWh) for electricity etc. The conversion requires calculations carried out by the Commission’s departments. However, the rules and assumptions used for these calculations are not explained, making it impossible for the representatives of certain Member States to arrive at the same results.

The EESC points out that harmonised conversion calculations are essential, and therefore suggests that the text give details of the conversion methods used, based as far as possible on units similar to those used for taxation in the Member States.

Brussels, 27 October 2011.

The President of the European Economic and Social Committee
Staffan NILSSON

COM(2011) 483 final — 2011/0210 (COD)

(2012/C 24/14)

Rapporteur-General: Mr SMYTH

On the 2 September and 5 October 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 177 of the Treaty on the Functioning of the European Union, on the


On 20 September 2011 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr SMYTH as rapporteur-general at its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October 2011), and adopted the following opinion by 87 votes to zero with 7 abstentions.

1. Conclusions and recommendations

1.1 The EESC notes the Commission’s proposal to amend Regulation 1083/2006 as regards repayable assistance and financial engineering, which seeks to offer needed clarity and legal certainty.

1.2 The EESC approves the proposal.

2. Reason

2.1 Article 28 of Council Regulation (EC) 1260/1999, which regulated the structural funds and cohesion policy for the period 2000-2006, identified various forms of assistance, including repayable and non repayable direct assistance, that could be provided through the EU structural funds. Article 44 of the general Council Regulation (EC) 1083/2006 for cohesion policy which lays down the rules for the current programming period (2007 – 2013) deals with financial engineering instruments, but does not, however, contain adequate legal language defining assistance, either repayable or non-repayable.

2.2 Member States are using repayable forms of assistance quite extensively, certainly after the positive experiences they had with this instrument during the previous programming period (2000-2006).

2.3 It has therefore proved to be necessary to amend Council Regulation (EC) 1083/2006 to include a general definition of repayable assistance, and as regards financial engineering to clarify a number of technical practices as currently revolving forms of finance are being used for a wider range of activities than simple financial engineering.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Amended proposal for a directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (recast)’

COM(2011) 319 final — 2009/0165 (COD)

On 19 July 2011, the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast)


Since the Committee has already set out its views on the subject of the proposal in question in its opinion on the Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast), adopted on 28 April 2010 (1), it decided, at its 475th plenary session of 26 and 27 October 2011 (meeting of 26 October), by 149 votes to none with 5 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned document.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

(1) EESC opinion ‘Minimum standards on procedures in Member States for granting and withdrawing international protection (recast)’, OJ C 18 of 19.01.2011, p. 83.
Opinion of the European Economic and Social Committee on the ‘Amended proposal for a directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (recast)’

COM(2011) 320 final — 2008/0244 (COD)
(2012/C 24/16)

On 19 July 2011, the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast)


Since the Committee has already set out its views on the subject of the proposal in question in its opinion on the Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast), adopted on 16 July 2009 (*), it decided, at its 475th plenary session of 26 and 27 October 2011 (meeting of 26 October), by 148 votes to 1 with 12 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned document.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability’

COM(2011) 482 final — 2011/0211 (COD)
(2012/C 24/17)

Rapporteur-General: Mr SMYTH

On the 2nd September and 5 October 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 177 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability


On 20 September 2011 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Smyth as rapporteur-general at its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), and adopted the following opinion by 89 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC notes the Commission’s proposal to amend Regulation 1083/2006 increasing payments to countries affected by the crisis and receiving assistance from the European Financial Stabilisation Mechanism (EFSM) or Balance of Payments (BoP) mechanism for the period that they are under these support mechanisms, but without increasing their overall allocation under the Union’s cohesion policy for the programming period 2007-13.

1.2 The EESC approves the proposal.

1.3 The EESC nevertheless regrets that the Commission, building on its Communication Regional policy contributing to smart growth in Europe 2020 COM(2010) 553, has not gone one step further and proposed a 100% EU financing facility for Innovation and R&D-related projects which would notably benefit SMEs and would contribute towards achieving some of the goals set out by the Europe 2020 strategy.

2. Reason

2.1 Under the Commission’s proposal, currently six countries falling under the EFSM and BoP mechanisms would be required to contribute less to projects that they co-finance in the framework of EU cohesion policy. Thus, they would have to find less national match-funding, which at a time when their domestic budgets are under considerable pressure would make a significant contribution towards getting these troubled economies back on track.

2.2 The Committee agrees that it is vital to boost prosperity and competitiveness in the Member States most hit by the crisis and therefore supports the above-mentioned proposal.
2.3 In October 2010, the Commission adopted a Communication entitled: *Regional Policy contributing to smart growth in Europe 2020* Com(2010) 553 which clearly underscores the importance of developing Innovation and Research and Development throughout the Union and highlights the role that Regional Policy can play in this matter. The Communication also highlights the relative slow uptake hitherto of funding available for innovation. It is therefore a missed opportunity that the current proposal does not allow for up to 100 % financing by the Union of Innovation projects, which would particularly be of benefit to SMEs.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability’

COM(2011) 481 final — 2011/0209 (COD)
(2012/C 24/18)

Rapporteur-General: Mr SMYTH

On 13 September and 5 October 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Articles 42 and 43 of the Treaty on the Functioning of the European Union, on the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability.


On 20 September 2011 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr SMYTH as rapporteur-general at its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October 2011), and adopted the following opinion by 90 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC notes the Commission’s proposal to amend article 70 of Regulation 1698/2005 which foresees in the possibility to increase payments to countries affected by the crisis and receiving assistance from the European Financial Stabilisation Mechanism (EFSM) or Balance of Payments (BoP) mechanism for the period that they are under these support mechanisms, but without increasing their overall allocation under the Union’s cohesion policy for the programming period 2007-13.

1.2 The EESC approves the proposal.

2. Reason

2.1 The current proposal introduces special provisions in Regulation (EC) 1698/2005 that will allow the EAFRD contribution rate applicable to the rural development programmes of these Member States to be increased up to a maximum of 95% of eligible public expenditure in the regions eligible under the Convergence objective, in the outermost regions and in the smaller Aegean Islands; and up to a maximum of 85% of eligible public expenditure in other regions. These provisions, which will remain valid only for as long as the Member States in question are under the aforementioned support mechanisms, will provide them with additional financial resources and thus will facilitate the continuation of the implementation of programmes on the ground. Thus, they would have to find less national match-funding, which at a time when their domestic budgets are under considerable pressure would make a significant contribution towards getting these troubled economies back on track.

2.2 The Committee agrees that it is vital to boost prosperity and competitiveness in the Member States most hit by the crisis and therefore supports the above-mentioned proposal.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1198/2006 on the European Fisheries Fund, as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability’

COM(2011) 484 final — 2011/0212 (COD)

(2012/C 24/19)

Rapporteur-General: Mr SMYTH

On 6 September and 29 September 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 43 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1198/2006 on the European Fisheries Fund, as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability


On 20 September 2011 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr SMYTH as rapporteur-general at its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October 2011), and adopted the following opinion by 91 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC notes the Commission’s proposal to amend Regulation 1198/2006 to increase payments by applying a 10 percentage points top-up of the applicable co-financing rates for the priority axis to countries affected by the crisis and receiving assistance from the European Financial Stabilisation Mechanism (EFSM) or Balance of Payments (BoP) mechanism for the period that they are under these support mechanisms, but without increasing their overall allocation under the Union’s cohesion policy for the programming period 2007-13.

1.2 The EESC approves the proposal.

2. Reason

2.1 Under the Commission’s proposal, currently six countries falling under the EFSM and BoP mechanisms would be required to contribute less to projects that they co-finance in the framework of EU cohesion policy. Thus, they would have to find less national match-funding, which at a time when their domestic budgets are under considerable pressure would make a significant contribution towards getting these troubled economies back on track.

2.2 The Committee agrees that it is vital to boost prosperity and competitiveness in the Member States most hit by the crisis and therefore supports the above-mentioned proposal.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
1. Conclusions and recommendations

1.1 Through the Green Paper consultation the Commission is trying to obtain a better understanding of the online gambling sector which is expanding rapidly, is cross-border in nature and is characterised by different national regimes being implemented by Member States.

1.2 The EESC notes that there are a number of objectives which are common to all EU Member States. These can be identified as follows: the fight against illegal gambling activities, the protection of consumers, the preservation of public order and the funding of public interest objectives (good causes).

1.3 Consumer protection is an area where the EU can bring value added to its citizens. The EU should create an EU framework in the form of EU consumer protection legislation binding on all operators licensed in the EU. In this way a minimum (not low) set of consumer protection standards would be created. National governments must however still have the right to set higher standards of consumer protection for their national markets should they wish to do so. In particular, one of the objectives of national laws that originate from Member States should be the prevention and treatment of compulsive gambling.

1.4 The fight against fraud, ID theft, money laundering and other crimes requires stronger cooperation between Member States at EU level. The EESC is calling for a formalised structure of cooperation at EU level between Member State competent authorities. In particular each Member State should make available a list of operators that are licensed in that particular country and the Money Laundering Directive (1) should be extended beyond casinos to include other online gambling activities thus affording national authorities greater powers to fight criminal activities.

1.5 Gambling opportunities can lead to gambling addiction. The EESC is calling on the Commission to carry out an EU-wide study to fully determine the specific profile of addiction in gambling following which the appropriate measures, including preventive ones, should be introduced. To this end, we recommend that part of the tax revenues gathered should be channelled to the prevention and treatment of compulsive gambling disorder.

1.6 The EESC is also calling for the introduction of strict regulation concerning the prohibition of gambling advertising aimed at minors or including minors or persons who appear to be below the national age limit for gambling to ensure that minors and other vulnerable groups are effectively protected.

1.7 The sector is currently characterised by the unauthorised provision of gambling services by both unlicensed operators (defined as black and illegal in the Green Paper) as well as operators licensed in one Member State providing their services to consumers in another Member State without the required authorisation (defined as grey in the Green Paper). For the sector to develop in a coherent manner and be able to reconcile public interest objectives with Internal Market principles more legal certainty is required.

1.8 There are many different types of funding of public interest activities across Member States. The EESC agrees with the principle whereby fixed percentages of revenue or tax on gambling activities go directly to sport in general or other public interest activities.

1.9 The EESC joins the Conclusions on the framework for gambling and betting in the EU Member States adopted by the Competitiveness Council meeting on 10 December 2010.

1.10 The EESC calls on the Commission to identify the impact of cross-border offers on funding of sport, whether such funding is reaching grass root sports and to propose concrete measures to secure such funding to sport.

1.11 Member States draw on preventive and punitive measures against illegal online gambling offers. The proliferation of illegal offers points towards the fact that such measures are not efficient enough. The EESC therefore considers that a system of infringements and penalties needs to be designed and introduced to guarantee effective compliance with the rules. This could entail blocking activities, shutting down the media through which information society services enable illegal gambling to be conducted, and even seizing and destroying any element used in conducting such activities.

1.12 The authorities and the Social Partners should establish guarantees to ensure that online gambling activities do not impact on employment in the land-based gambling sector.

2. Introduction

2.1 The EESC welcomes the Green Paper on online gambling, as a good initiative for a pragmatic and sound reflection on the future of the sector in Europe. To this end, the EESC calls on the EU to carry out, as a matter of urgency, an in-depth study to assess the possible implications for employment throughout the public and private gambling sector.

2.2 The Green Paper consultation launched by the Commission aims to achieve extensive dialogue on online gambling in order to get a better understanding of the specific issues arising from development of both the legal and unauthorised (black and 'grey' market) provision of online gambling services directed at consumers who have their residence in EU Member States. Due to the nature of these services, their provision is often not within the control of the national governments to whose citizens these games are offered.

2.3 This Green Paper also responds to the European Parliament Resolution on Integrity in online gambling (2) of 10 March 2009 and has been called for by the Council in its Conclusions on the framework for gambling and betting in the EU Member States (3) of 10 December 2010.

2.4 The regulation of gambling in the EU is diverse, and is also in the process of being reviewed in many EU Member States to account for the expansion of the online segment of this market across borders.

2.5 The Commission’s primary aim in launching this consultation is to obtain a facts-based picture of the existing situation in the EU online gambling sector. The consultation attempts to obtain a clear picture of the societal and public order challenges that arise from the online provision of gambling services in the EU, as well as the regulatory and technical challenges.

2.6 The EESC calls on the EU institutions, in particular the Commission, to urgently address the crucial challenge arising from the distortions of competition due to unauthorised undertakings not established in the country of the residence of the consumers for whom they provide online gambling services, which benefit in their country of establishment from low tax and social contribution rates.

In tandem with this, the EESC also calls on the Commission and the Member States to engage in an aggressive fight against the illegal operators (black market) who are responsible for most instances of fraud, money-laundering and other criminal acts.

3. Public interest objectives

3.1 The EESC considers it of vital importance to ensure the protection of public interest objectives mentioned in the Green Paper, in particular the protection of consumers against, fraud, problem gambling and addiction and its harmful effects on health and over-indebtedness. Gambling must be developed on the basis of national authorisations granted by the Member States, in order to guarantee that public order is upheld, fraud combated, addictive behaviour prevented, the rights of minors protected and the rights of players safeguarded.

3.2 In this respect the EESC notes that there are a number of objectives which are common to all EU Member States, namely: the fight against illegal gambling activities, the protection of consumers (players, minors and the vulnerable, fight against addictions), the preservation of public order (prevention of fraud, money laundering and other crimes), the financing of public interest activities (good causes) and the protection of employees in the sector of online gambling and gambling in all its current forms.

3.3 Given the particular nature of online gambling due to the social, public order and health care aspects linked to it, the EESC, in line with the Court's case-law, points to the fact that, in the absence of Community harmonisation, Member States have a 'margin of appreciation' (4) to regulate and control their gambling markets in accordance with their traditions and cultures. However, the restrictive measures that they impose must satisfy the conditions laid down in the case-law of the Court as regards their proportionality (5).

3.4 Having said that, there are some objectives which cannot be sufficiently achieved by Member States individually and where action at EU level could bring clear added value.

3.5 The EESC recommends that as these objectives are common to all Member States, the exchange of best practices between such Member States should be fostered. In this context, the EESC also takes note of a number of self-regulatory initiatives taken by public and commercial gambling operators. The EESC stresses, however, industry self-regulation can only complement and not replace statutory legislation. In view of this, the EESC believes that the EU institutions should in

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(5) Placanica and Others, paragraph 48; Liga Portuguesa and Others, paragraph 59.
3.6 Consumer protection is an area where in particular the EU can indeed bring added value. The EESC believes that the EU institutions should create an initial EU framework in the form of EU consumer protection legislation which is binding on operators licensed in the EU. In this way a minimum (not low) set of consumer protection standards would be created. This minimum level of protection should include the need to prevent problem gambling, the setting of age limits for access to any games of chance or gambling activities, a ban on the use of credit, and the prohibition of any form of advertising aimed at minors or including minors or persons who appear to be under the age limits. National governments will however still have the right to set higher standards of consumer protection for their national markets if they so wish.

3.6.1 Consumers throughout the EU market should be able to distinguish between illegal sites and sites authorised by an EU Member State. In this regard the EESC is recommending that each EU Member State obliges each operator working with a licence of that particular EU Member State to carry in a prominent fixed position on the front end of its website an interactive label showing that the operator is a licensed one. The label is to be used by all Member States and should contain common features in its design such as to make it easily recognisable across all EU Member States. It must however also clearly show the country of origin from where the licence is being granted. The European Commission should be responsible for the enforcement of this measure.

3.7 The EESC envisages the creation of an independent body in each Member State which will be responsible for monitoring and ensuring the effective implementation of the consumer legislation mentioned in 3.6 above. The introduction of the EU consumer protection legislation should be accompanied by an information campaign, to be carried out in each Member State. The national authorities in each Member State should require gambling operators to display the authorisation number granted them by the State in a visible location in order that they may be identified, and to resolve consumer complaints in accordance with national consumer law and with the courts with jurisdiction in the place where the operator is domiciled.

3.8 Responsible gambling policies mean that gambling should be tackled through a comprehensive policy of corporate social responsibility. This should consider gambling as a complex phenomenon requiring a combination of preventive, awareness-raising, intervention and monitoring measures, as well as measures to remedy any detrimental effects. This means:

— paying due attention to high-risk groups;

— providing the public with the information necessary for it to make an informed choice in its gambling activities, promoting moderate, non-addictive, responsible gambling;

— highlighting, in line with the nature and methods of each game, the ban on gambling by minors or persons having explicitly requested not to be allowed to take part.

3.9 The EESC notes that while a number of Member States have gathered solid data with respect to gambling addiction, others have not. A number of national empirical studies have been carried out and various, sometimes conflicting conclusions have been reached. What is however clear is that gambling opportunities can lead to gambling addiction which in turn creates societal problems. This is an aspect which must always be taken account of whenever consumer protection policy for the sector is developed.

3.10 Aspects such as the new opportunities which have been created by the online medium to gamble should also be borne in mind as new technologies have opened up more avenues for gambling for people who spend more time at home such as pensioners, house wives and unemployed. Guarantees must be put in place to ensure that minors, people deemed unfit to gamble and others who are prohibited from doing so, either as the result of their own decision or of a court ruling, are unable to access Internet-based, interactive gambling.

3.11 The EESC calls for a comprehensive EU-wide study to be carried out to fully determine the specific profile of addiction in both the online and offline sector of gambling in order for the EU legislator to be able to take effective and targeted action to combat and prevent this problem.

3.12 The EESC believes that an effective way of reducing money laundering activities would be for Member States to cooperate at EU level to fight the rampant illegal online gambling activity in the EU. The Committee therefore calls on the EU Member States to put in place effective mechanisms to achieve these aims, which will undoubtedly have a positive impact on increasing tax revenues.

3.13 In addition, the EESC strongly believes that the Money Laundering Directive should be extended beyond casinos to include other online gambling activities which would afford national authorities greater powers to fight these criminal activities.

3.14 Furthermore with respect to match-fixing, the EESC believes that the integrity of sport should be preserved at all costs. The EESC takes note of the contributions of public and some private betting operators to sport betting integrity, education programmes for athletes and sport officials and early detection and warning systems of suspicious betting behaviour, and their varying degree of quality and dimension. The EESC believes that a framework for coordinating efforts of all stakeholders involved is necessary to tackle this issue holistically and avoid duplication of resources. In particular a system should be put in place which is not limited to simple detection but which also includes preventive, educational and enforcement measures.
3.15 Finally, the Green Paper also refers to the financing of benevolent and public interest activities, as well as events on which online sports betting relies. The EESC is in favour of a system whereby such activities and events receive part of the revenue collected from gambling activities. The EESC calls on the Commission to propose concrete measures to preserve such national funding mechanisms as recognised by the Conclusions on the framework for gambling and betting in the EU Member States adopted by the Competitiveness Council meeting on 10 December 2010. In addition the EESC believes care should be taken to avoid that such ‘activities’ are used to counter the negative social connotations of gambling and encourage further gambling on the basis that such activity benefits a good cause. The EESC moreover calls the Member States for part of the tax revenues gathered to be channelled to funding the prevention and treatment of compulsive gambling and the occupational and ongoing training of employees in the sector.

4. Establishment and Licensing

4.1 The online gambling sector is currently characterised by fragmentation due to different national regimes that are applied by EU Member States.

4.2 One of the major issues being faced by the sector is the fact that operators licensed in one or more Member State may be providing their services to consumers in another Member State without having the authorisation, where required of that particular Member State. Such offers are considered to be ‘unauthorised’ (6).

4.3 On the other hand, between April 2006 and February 2008 the Commission issued 12 letters of Formal Notice to 10 Member States and moved to the stage of Reasoned Opinions with seven of them. On 5 May 2010, the Commission closed the procedures against Italy and on the 24 November 2010 the Commission closed infringement proceedings against France. The Commission has opened infringement procedures against cross-border restrictions to gambling services as a result of numerous complaints lodged with the Commission for alleged violations of the Treaty in order to verify the proportionality of these restrictions. The EESC calls on the Commission to decide in a decisive manner as to how it will proceed with the pending cases.

4.4 With respect to the nature and legal status of online gambling, a series of principles have emerged from the case law to date. Firstly, gambling services fall under Article 56 TFUE and as such are covered by the rules on the freedom to provide services.

4.5 Since gambling services are to date not subject to Union-wide uniform rules, Member States retain a ‘margin of appreciation’ (7) to regulate these services, which includes restricting the number of operators, types of games on offer and volumes of it.

4.6 According to the Court’s established case-law, operators authorised in one Member State may provide their services to consumers in other Member States, unless the latter impose restrictions which are justified by overriding reasons in the public interest, such as consumer protection or the general need to preserve public order.

4.7 Such restrictions must be proportionate, non-discriminatory and form part of a policy that is applied in a consistent and systematic manner.

4.8 The EESC notes that the principle of mutual recognition does not apply in the gambling sector and that a Member State can consider that the mere fact that an operator lawfully provides its games in another Member State is not a sufficient assurance that consumers within the territory of the concerned Member State will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

4.9 Whilst referring to paragraph 4.8, it is still clear that the sector requires greater legal certainty if it is to develop in a coherent manner respecting public order objectives as well as Internal Market Principles. The Green Paper consultation should provide an important impetus in this direction.

4.10 In addition the EESC believes that the advertising of gambling needs to be strictly regulated to ensure that vulnerable groups such as minors are protected. It is particularly important to set boundaries for such advertising, especially to prevent access for minors and people deemed unfit to gamble, to prevent the use of images, messages or objects that could, directly or indirectly, offend people’s dignity or fundamental rights and freedoms and to prevent any possible form of racial or sexual discrimination or incitement to commit violence or any criminal act.

5. Sports

5.1 The Commission wishes to focus on two sport related issues, (1) whether sport events, on which gambling activities are carried out, should receive a fair economic return from the associated gambling activity and (2) whether there exists the risk of so-called ‘free-riding’.

5.2 The EESC notes that there are many different types of funding of public interest activities across Member States. In some Member States national legislation imposes on for example national lotteries to channel a fixed percentage of their revenue directly to sport and/or other identified public interest activities. In other Member States the State Treasury channels a percentage of the tax revenue it generates from gambling activities into various public interest activities of choice.

5.3 The EESC is in agreement with the principle whereby fixed percentages of revenues or tax on gambling activities go directly to sport or other identified public interest activities.

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5.4 The EESC notes the important contribution made by state/national lotteries and other legal gambling activities to the financing of sport, especially grassroots sport. The EESC also notes that the provision of cross-border online gambling and betting services by operators established in a particular jurisdiction could impact negatively on the funding of sport and other public interest objectives in another jurisdiction where it provides services.

5.5 Accordingly, the EESC calls upon the Commission to identify the impact of cross-border offers on such funding, whether such funding is reaching grassroots sport and to propose concrete measures to secure such funding to sport.

5.6 The EESC has reservations about the possible creation of the ‘Sports Right’ or right of fair return. The EESC considers that further clarification is necessary to understand what is being envisaged in a right of fair return and whether this will lead to the creation at European level of a new IPR for sporting events.

5.7 The EESC therefore calls upon the Commission to clarify the nature, scope and impact of the right of fair return as well as the legal basis applicable thereto.

5.8 The issue of ‘free-riding’ is a tax issue and as such the EESC feels that this should be left to the national competence. The EESC does however feel that a fair approach providing a return for all parties involved must be discussed and agreed upon between the EU Member States. It is a difficult subject for debate at EU level but a deeper discussion at some stage is absolutely necessary to avoid important disruptions of the sector.

5.9 The EESC invites the Commission to clarify whether indeed there is a link between the sport issues raised in the Green Paper and sport integrity or whether they are separate issues to be tackled individually. In addition, the Commission could clarify whether it believes the creation of a right of fair return or sports right would actually constitute an effective means to ensure the integrity of sports.

6. **Enforcement**

6.1 Another major issue that needs to be tackled with urgency is the provision of illegal gambling services throughout the EU (\(^\text{8}\)) to the detriment of the protection of consumers, public order as well as the funding of public interest objectives.

6.2 Cooperation between Member States is crucial for protecting consumers in the EU against illegal operators. In this respect the EESC believes a formalised structure of regulatory cooperation at EU level would facilitate this cooperation (\(^\text{9}\)). In particular each Member State should make available a list of operators that are licensed in that particular country. Each of these lists should be made available to the Commission, Member States, national regulators and consumers. Cooperation between Member States should also include the exchange of best practices.

6.3 The EESC also notes that the industry lacks data. This does not allow for a proper analysis of the industry and its particular dynamics. In view of this the EESC proposes that there should be common data collection requirements established at EU level and imposed on all regulators who would in turn oblige all licence holders to submit the data required. This can then be aggregated at an EU level. Data in terms of efforts being made to crack down on illegal websites would also be welcome in order to establish the efficacy of national efforts to fight the black market.

6.4 The fight against illegal operators calls for effective enforcement measures. The EESC feels that this is an area of weakness which requires more action by Member States to prevent illegal gambling providers from offering their services online which could include a system of infringement penalties. Accordingly, it calls on the Commission to examine the possibility to propose a legally binding instrument obliging banks, credit card issuers and other payment system participants in the EU to block transactions between illegal gambling providers and their clients without hindering legitimate transactions. This could also involve blocking activities, shutting down the media through which information society services enable illegal gambling to be conducted, and even seizing and destroying any element used in conducting such activities.

**Brussels, 26 October 2011.**

**The President**

_of the European Economic and Social Committee_

Staffan NILSSON

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\(^{8}\) See last paragraph on page 3 of the Green Paper.

\(^{9}\) Some Member States participate on a voluntary basis in the Gaming Regulators European Forum commonly known as ‘GREF, http://www.gref.net/’. 
APPENDIX

to the opinion of the European Economic and Social Committee

The following point of the section opinion was deleted to reflect the amendment adopted by the Assembly although more than one quarter of the votes cast were in favour of its retention (Rule 54(4) of the Rules of Procedure):

a) **Point 4.11**

4.11 The EESC invites the Commission to carry out an evaluation of the requirements and conditions that are currently being set in national licenses and controls carried out in different Member States with the aim of developing a common framework of conditions which would then need not be replicated each time a license holder in one EU country applies for a license in another country while at the same time ensuring the protection of public interest objectives as detailed in section 2 above.

Outcome of the vote on the amendment:

Votes in favour: 73
Votes against: 46
Abstentions: 18
1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the intent behind the European Commission's Green Paper, but strongly recommends (1) a more precise and robust definition of corporate governance.

1.2 The Green Paper asks genuinely important questions. When answering all of them, the EESC would always like to quote the ten principles of the good corporate governance, listed in 2.14 and calls the Commission to take the relevant measures to make sure that all companies comply with these principles and the relevant operationalised rules listed in 2.15.

1.3 However, given the wide diversity of national corporate governance models, as described in point 2.4, the EESC finds it particularly difficult to give a one-size-fits-all solution to them. The specific characteristics of legislation, traditions, manner of doing business and behavioural patterns of shareholders vary across Member States and make it very challenging to provide a sound legislative framework at EU level.

1.4 Although, in the EESC's opinion, most of the questions in the Green Paper have been answered by national corporate governance codes, this does not diminish the need for EU legislative intervention, with the scope set out in the Green Paper, in order to improve corporate governance in the European Union, by strengthening legislation and non-binding rules.

1.5 The EESC calls on the Commission to exercise caution, however, when deciding on regulatory initiatives. In this regard, careful impact assessment is strongly recommended before producing any legislation.

1.6 The EESC stresses that if the Commission seeks adequate answers to questions 16 to 25 it should perform and make available a detailed study on recent developments and trends in shareholders' types, structure and relative importance in terms of shares held.

2. Introduction

2.1 The EESC welcomes the Commission's complex initiative to improve corporate governance as stated in a number of papers and placed at the heart of the Commission's reform programme (2). This opinion sets out and aims to develop the EESC's positions on the relevant European Commission papers to date (3).

2.2 The Green Paper aims to improve corporate governance in the European Union by optimising the system of legislation and 'soft law'. It asks 25 questions, structured in three sections, concerning the composition and work of the Board of Directors, the role of the shareholders and the application of the 'comply or explain' approach which underpins the EU corporate governance framework.

(1) OJ C 84 of 17.3.2011, p. 13.
2.3 In responding to the questions in the Green Paper, the EESC refers to the Top Board in a company, whether it is a board of directors or a supervising board. Indeed, the Commission should take better account of the specific characteristics of one-tier and two-tier systems. By evading this issue, drawing a brief (and erroneous (4)) distinction between the Board of Directors and the supervisory board, the Commission is failing to acknowledge the diversity of the systems in place in Europe.

2.4 The EESC invites the Commission to take into account the differences between the existing systems of corporate governance.

2.4.1 The British system of corporate governance is characterised by the specific concept of 'shareholder value' with the stock market playing an important role for financing companies and for their external corporate control. Companies have a one-tier board system and usually very low levels of ownership concentration.

2.4.2 At the same time, in the so-called 'Germanic model' of corporate governance the company is seen as a partnership between various participants who have a 'stake' in the activities of the firm. In addition to shareholder value maximisation, firms are concerned with a broader mix of strategic goals. Bank financing is much more important for raising capital for companies than capital markets. Very often banks own large equity holdings, perform financial services and advice and represent shareholders on corporate boards. The external market for corporate control is almost non-existent because of large block holdings and cross-shareholdings. Managerial decision-making is reinforced through the direct influence of shareholders in a two-tier system, where stakeholders are represented in addition to shareholders (5).

2.4.3 Between these two extremes but closer to the latter is the Latin model of corporate governance. It has similar features to both models, but differs because of the important role of the state and large family ownerships. After the collapse of the communist regime and during the transition to a market economy, a new model started to develop as well in the new EU Member States in Central and Eastern Europe. This model is not homogeneous - some countries in the region place the emphasis on shareholder value, whereas others resemble the continental models with its stakeholder orientation (8). A specific common feature is the relatively large ownership participation of employees due to the process of privatisation while capital markets are relatively underdeveloped.

2.5 The EESC welcomes the objective of the Green Paper, but warns that the Commission's definition of corporate governance is not comprehensive; the EESC is of the view that it should be made more complete and suggests a more incisive and general concept (7). In particular, the EESC would urge the Commission to bear in mind that the main objective of corporate governance is to ensure that the company survives and thrives in a sustainable way. To do this the Board must meet the reasonable expectations of shareholders while ensuring the reasonable satisfaction of the stakeholder community – consumers, partners, contractors, suppliers and employees (9).

2.6 The EESC calls on the Commission to carefully study and to take into consideration the new types of shareholders and their relative importance in terms of shares held in the EU capital market since the traditional continental forms of corporate governance underwent a dramatic transformation starting in the mid '90s. In the context of resurgent deregulation and globalisation of financial markets, financial institutions across Europe are increasingly affected by global competitive pressures (7). Large private banks and the largest blue-chip companies have shifted away from close bank-firm relationships. Concomitant to the process of unravelling of the relational banking regime is the growing importance of equity markets for corporate financing. The growing competition in product markets creates incentives for European companies to attain sufficient size and market influence, mainly through external growth strategies and equity swap strategies (9). An important aspect is the increasing presence on European exchange markets of foreign (mainly British and American) institutional investors, i.e. pension funds, mutual and hedge funds. Such investors are strong advocates of shareholder value maximisation, and exert additional pressure on the traditional corporate governance models across Europe to shift away from emphasis on stakeholder interests towards short-term shareholder interests.

2.7 The EESC agrees with the Commission's criticism of the damage inflicted by short-termism and excessive risk-taking – two important parts of the corporate governance model, which have gradually increased in the last twenty years. The EESC is of the opinion that companies should aim at adding long-term value through sustainable policies, which in many cases requires continuing to amend the current corporate governance framework.

(4) 'The term 'board of directors' in this Green Paper essentially refers to the supervisory role of directors', p.5. If supervisory boards genuinely play a supervisory role, then boards of directors can play a management role by taking part in strategic decision-making (mergers/acquisitions, sale/purchase of companies).


(6) See A. Vliegenthart, Transnational actors and the converging corporate governance regulation in ECE, Central and East European International Studies Association (CCEISA), 2006.

(7) OJ C 84 of 17.3.2011, p. 13.

(8) Ibid, point 2.4.


2.8 The EESC supports the need to strengthen the corporate governance role in the light of planning ‘actions to be taken to ensure sustainable growth and build a stronger international financial system’ (11). Respect for good corporate governance principles undoubtedly benefits the companies by allowing them to manage their business processes and risks more effectively and to achieve their goals, contributing at the same time to the growth of general welfare in the EU. Such a policy helps the consumer to obtain responsible products based on fair trade and relevant information. The expansion of corporate governance principles through the system of legislation and ‘soft law’ towards unlisted companies is a process which must be promoted and encouraged.

2.9 The EESC would stress companies' social function in an inclusive society and the need for their governance to incorporate the principles of social responsibility.

2.10 The EESC recognises that in certain corporate governance models worker representatives are Board members and contribute directly to the corporate governance. Notwithstanding these arrangements, works councils and other participative arrangements facilitate employee engagement in company's operations. The EESC proposes that these considerations are included in the final EC document.

2.11 Listed companies can vary in size, whether measured by capital, revenue or employees, from the large multinational to the smallest incorporated micro and SME. Most of the focus of the corporate governance debate is on the larger companies because of the economic and social impact they make, whether they succeed or whether they fail. Good corporate governance measures should be adapted to the characteristics and needs of SMEs. This is necessary because of the limited resources of SMEs, especially administrative and human resources.

2.12 When planning the changes in the corporate governance package, the EESC calls on the Commission to conduct a thorough impact assessment in terms of expenses, human resources and legislative reforms required, so that its future proposal will be realistic (12). The most appropriate way to achieve this goal is by taking account of the size, structure and importance of the companies and the economic situation of international groups.

2.13 In its final version the Commission proposal must enable listed companies (and in case of expansion, unlisted companies as well) to perform their activities effectively and remain competitive, so that economic growth and job creation are not at risk (13).

2.14 The EESC calls on the Commission in its future legislative proposals to strike a balance between legislation and ‘soft law’, including recommendations and corporate governance codes. However, the EESC firmly believes that all codes should be based on the following principles in order to provide for high quality corporate governance:

2.14.1 The main objective of corporate governance is to ensure that the company survives and thrives.

2.14.2 Corporate boards should act in the best interests of the company in line with the expectations of shareholders, who have to be treated equally. Corporate boards should maintain active dialogue with the stakeholder community, in order to be able to meet the expectations of the stakeholders as to provide long-term sustainability of the company, creating wealth and jobs.

2.14.3 Corporate boards should be responsible for the entire performance of the company including strategic guidance, major actions, risk management, business planning, effective monitoring of management and reporting.

2.14.4 The membership of corporate boards should be designed to meet the need for complex expertise, depending on the specific industry, scope and location of the business. Boards should also be adequately balanced in terms of authority, gender, executive and non-executive directors and diversity of interests among Board members in order to provide the company with a wider and broader perspective.

2.14.5 Board members should be able to commit themselves effectively to their responsibilities, devoting enough time and effort to this endeavour. Their decisions should be based on accurate, relevant and timely information.

2.14.6 The Board must manage the company in its best interest taking into account the interests of the owners or shareholders and employees as well as those of society at large. Their decision should therefore be based on accurate, relevant and up-to-date information. Genuine independence of these independent directors should be guaranteed by the limitation of consecutive mandate they can hold.

2.14.7 Companies should establish transparent remuneration policies. These policies have to be accepted by the shareholders. Remuneration of the Board members should take into account the scope of their tasks and responsibilities, the achievement of corporate goals and the company’s economic situation, and it should be approved by shareholders.

(13) Of C 84 of 17.3.2011, p. 13.
2.14.8 Companies should disclose in an accurate and timely fashion all material matters regarding the company. They should encourage shareholders to attend general meetings and be open to dialogue on corporate governance matters with shareholders and other stakeholders.

2.14.9 Companies should aim to apply good corporate governance practices, presented in the corresponding national corporate governance codes, which reflect the specific features of local economic development and legislation.

2.15 The EESC promotes the following operationalised rules of corporate governance concerning the work of the Board, which are to be included in the corporate governance codes:

2.15.1 Under a unitary corporate governance structure, the roles of the chairman of the board of directors and the chief executive of the company should be separated.

2.15.2 There should be a formal, rigorous and transparent procedure for the appointment of new directors to the Board.

2.15.3 All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.

2.15.4 All directors should receive induction on joining the Board and should regularly update and refresh their skills and knowledge.

2.15.5 The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

2.15.6 There should be a formal and transparent procedure for developing policy on executive remuneration.

3. Questions

3.1 Introduction

Question 1. Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.

Regulated European markets trade securities of a variety of companies. Each company has its own characteristics, determined by the Member States’ level of economic development and jurisdiction. The companies’ size, structure and business model affects corporate governance. However, given the legitimate interest and involvement of the different stakeholders in all kinds of companies, the principles of corporate governance, set out in point 2.13 should apply to all listed companies. The Member States’ national corporate governance codes provide a good basis for this, and they are also an effective mechanism for monitoring and controlling the companies’ performance (this is usually done by the market regulator). The EESC is of the view that a differentiated and proportionate regime should be established for listed SMEs, which are not traded in the highest segments of regulated markets.

Question 2. Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for unlisted companies?

There is a large number of significant unlisted companies in each Member State. The EESC acknowledges that they can be as important to society as listed companies. However corporate governance measures for unlisted companies at EU level are unnecessary at this juncture since national company laws should regulate the critical elements of their governance. The Commission should emphasise and promote the development and application of voluntary codes at national level for unlisted companies especially those with significant importance to society in particular companies with state or municipal ownership and companies with significant market power.

3.2 Boards of Directors

Question 3. Should the EU seek to ensure that the functions and duties of the chairperson of the Board of Directors and the chief executive officer are clearly divided?

The EESC supports the division of the functions and responsibilities of the chairperson of the Board of Directors and the chief executive officer since it ensures that the Board is organised more efficiently, creates a better control system and prevents concentration of power. It nonetheless believes that any decision to divide these functions and responsibilities should be left to each company (shareholders and Board of Directors) and is not in favour of European regulation imposing this type of separation. But the ultimate decision should be left in the purview of company’s sovereign corporate governance policy, since there are small companies whose boards consist of the minimum number of individuals. At EU level it is strongly recommended to have such a division.

3.2.1 Membership of the Board

Question 4. Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the Board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?

(14) The OECD has developed an international standard to help governments improve the way they exercise their ownership. See OECD Guidelines on Corporate Governance of State-Owned Enterprises, OECD 2005.
It is desirable that the composition of the board should reach an appropriate balance between the experience, expertise, competence and diversity of its members, particularly to avoid the follow-behaviour and encourage the emergence of new ideas. In this endeavour, broader representation of foreign members, gender balance and worker representation could be accounted. In its response to a similar question in the Green Paper - Corporate governance in financial institutions and remuneration policies (15), the EESC has already noted and upheld the view that in establishing a Board of Directors, it is advisable to analyse skills and experience necessary for a particular function and thereafter to hire the candidate who best meets these criteria. It is important for the Board to consist of directors showing integrity, competence and dedication, and it is up to the company to decide about these qualifications.

Question 5. Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?

Corporate governance codes recommend or require information disclosure based on the ‘comply or explain’ principle. Therefore a diversity policy disclosure should be ‘compulsory’ for companies which have accepted/joined such codes. For companies which have not, reporting on diversity policy could be promoted as one of their advantages in terms of implementing in practice the transparency and disclosure principles.

Question 6. Should listed companies be required to ensure a better gender balance on boards? If so, how?

The EESC notes the positive fact that the role of women in EU corporate and social life has undoubtedly increased, with more balanced representation in all areas in line with the European system of values (16). In this respect we refer to the ‘Strategy of gender balance between men and women 2010 – 2015’ (17), to the ‘Women on the Board’ initiative (18) launched by Commissioner Viviane Redding and to the non legislative resolution on women on business leadership adopted by the European Parliament on 6 July 2011 (19).

The EESC acknowledges that female participation in the decision-making process is still inadequate. Gender balance could bring different perspectives and should be encouraged. Women must have access to all posts for which they have the necessary experience, skills and qualifications. Of course, a Board seat should primarily be a matter of competence rather than gender, and the key criteria should be designed to guarantee appointment of Board members with an optimal balance of education, expertise, experience, knowledge and skills, thereby best enabling the company to meet its goals and satisfy the reasonable expectations of shareholders and other stakeholders.

3.2.2 Availability and time commitment

Question 7. Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?

The number of mandates a non-executive director can hold simultaneously should, in principle, be limited, but it would not be easy to set the precise number arbitrarily. In the EESC’s opinion, a reasonable balance must be found, however, so that directors can carry out their duties properly, with sufficient time to study case files, to take part in meetings of specialist committees, to receive training and to carry out checks, particularly in relation to the companies’ accounts, etc. In all cases, for any mandate the directors should have the time to perform the functions required.

3.2.3 Board evaluation

Question 8. Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?

Good corporate governance practices should be promoted and mechanisms built and applied in order to better inform investors, shareholders, consumers, employees and other stakeholders and society as a whole about corporate governance benchmarks. A good step in this direction could be to encourage formulation of stock exchange indexes and independent ratings of good governance practices. When appropriate, chairpersons or supervisory boards could commission external evaluations or request specific reports from the audit committees for internal use. This is considered to be good practice, which could be extended to unlisted companies, considered in Question 2.

3.2.4 Directors’ remuneration

Question 9. Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?

(15) OJ C 84 of 17.3.2011, p. 13
(17) http://www.equalities.gov.uk/pdf/EN_document_travail%5Bmain%5D.pdf.
The EESC believes that shareholders, potential investors and all stakeholders must have sufficient and accurate information about the companies' corporate boards and senior management motivation schemes and their structure, and in particular about the company's remuneration policy (20) (see point 2.13.7). The EESC therefore believes that each company should publish a clear and readily understandable statement on its remuneration policy, containing in particular the information laid down in Article 5 of Recommendation 2009/384/EC of 30 April 2009 (21).

Question 10. Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?

The EESC supports the proposal since shareholders must be informed and at the same time should have the right to accept future policy and to receive reports concerning remuneration. The motion proposed to shareholders at their general meeting must, however, be discussed and approved beforehand by the whole Board, reflecting the new practices in place in Germany pursuant to the 2009 law on the adequacy of directors' salaries.

3.2.5 Risk management

Question 11. Do you agree that the Board should approve and take responsibility for the company's 'risk appetite' and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?

The EESC would like to draw attention to the fact that timely reporting of risks helps enhance trust between companies' corporate boards and stakeholders. Currently corporate governance codes recommend the introduction and maintenance of stable risk management systems and companies which comply with the codes must state how these systems function and what difficulties they meet in this respect.

Social and societal risks must be taken fully into account, not just in internal risk supervision and control systems but also in their disclosure, and in accordance with the recommendations of the OECD (22). In other words, the Board of Directors or the supervisory board should not just validate and control the company's appetite for risk (financial, social and environmental), it should also report it meaningfully to shareholders, workers and their representatives and other stakeholders in accordance with the information disclosure mechanisms envisaged by the codes.

Question 12. Do you agree that the Board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?

Yes. Where there are rules, corporate boards are and must be responsible for ensuring that risk management is effective and commensurate with the company's risk profile. Therefore, efficient risk management mechanisms are the responsibility of the Board as well as the other elements of the company's business strategy. In their reports, directors have to provide information about the business's activities and any associated risks. The principles adopted by EuropeanIssuers regarding the functioning of risk management and auditing systems (23) support this point.

3.3 Shareholders

3.3.1 Short-termism of capital markets

Question 13. Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behaviour.

The arrival of new investors such as hedge funds and the influence of the motivation structure of asset managers have deeply changed capital markets. Current European regulation in the area of merger and acquisitions does not hamper hostile takeover bids, the sole purpose of which is to increase short term share prices, to the detriment of long term added value for shareholders and stakeholders. It should therefore be amended accordingly.

The EESC considers information disclosure to be more effective when performed as a two-sided process. Since listed EU companies are subject to a raft of legal requirements binding companies to disclose in a timely fashion any regulated, price sensitive or inside information, it could be useful if institutional investors were also subject to binding requirements to disclose their investment policies. This would provide benefits for the investee company, such as predictability in case of potential capital raising, more transparency and the possibility for listed companies to set up a long-term investor relations policy.

The EESC suggests that the Commission should revise the accounting rules for the solvency of pension funds, so that it would be possible to estimate potential problems. The short cycle of financial reporting requirements could also be revised for the same purpose.

3.3.2 The agency relationship between institutional investors and asset managers

Question 14. Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?

(20) OJ C 84 of 17.3.2011, p. 13.
(22) The corporate governance framework requires or encourages boards to take into account the interests of stakeholders and publicly disclose how it is doing so in relation to significant matters, OECD, 2006, Methodology for assessing the implementation of the OECD principles of corporate governance, p. 112.
(23) EuropeanIssuers is an umbrella organisation of issuers' associations, see http://www.europeanissuers.eu/_mdb/position/200_Towards_Common_Principles_for_ICRM_European_Companies_final_100127.pdf.
Yes, the incentive structure and in particular the remuneration policy for portfolio managers of long-term institutional investors should be disclosed. The EESC calls on the Commission to take measures to avoid conflicts of interest in the process of managing assets, as well as to restrict transactions when the client's best interest is not taken into account.

**Question 15.** Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?

The EESC sees the need for more rigorous requirements regarding the investee companies. This could happen through information disclosure from asset managers regarding their policy towards investee companies. Strategies and expenses in most cases are well regulated at contract level, as well as in terms of information disclosure procedures.

3.3.3 Other possible obstacles to engagement by institutional investors

**Question 16.** Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?

Yes, the EESC calls for clear, strict rules at EU level, which impose a certain degree of independence of the asset managers' governing body and require disclosure and management of conflicts of interests. Furthermore, asset managers must be encouraged to join voluntary initiatives such as accepting corporate governance codes and disclosing information that exceeds the volume of the preset minimum established by law.

**Question 17.** What would be the best way for the EU to facilitate shareholder cooperation?

The ESSC recommends, as a first step, clarifying the legal framework and identifying ways to encourage cooperation between long-term investors.

Current information technologies and their affordable price mean that cooperation among shareholders via internet is completely possible and very efficient. Dedicated forums could be set up to this effect with some form of institutional support, particularly with the cooperation of stakeholders and their organisations.

3.3.4 Proxy advisors

**Question 18.** Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

The EESC proposes that new requirements be imposed so as to increase the transparency of proxy advisory services. They must disclose in due time, not only to their clients but also to the companies, the existence of any conflict of interest when casting a vote or when providing consulting services on how to vote, as they must also disclose their policies for preventing such conflicts. A proper supervision mechanism should also be considered.

**Question 19.** Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?

Yes, this would not impede the reputable issuers and at the same time will help to avoid potential conflicts of interest. Proxy advisors must not provide consulting services to companies for which they are proxy advisors for their own clients.

3.3.5 Shareholder identification

**Question 20.** Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).

The EESC draws attention to the fact that the process of designing such mechanisms should take into consideration the specific characteristics of national legislation in the area of personal data protection. That is why it would be better to resolve this problem at national rather than at European level. One possible measure could be to recommend to the national depository institutions that they include an internet address in the shareholders' books, which would expand the options for communication between the issuers and their shareholders.

3.3.6 Minority shareholder protection

**Question 21.** Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?

No, this is not necessary. The latest changes in the European legislative framework regarding the protection of shareholders' rights and facilitating their participation in general assemblies have created a good system which provides shareholders with the possibility to receive information, to participate easily in general assemblies and to exercise all of their rights. Any introduction of further complementary rights should carefully balance the interests of minority and controlling shareholders so that procedures for making important decisions are not blocked. The presence of a controlling shareholder could guarantee additional control over the membership and activities of the Board of Directors.

**Question 22.** Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?

Yes, because related party transactions could often be a source of potential conflict of interests. There should be uniform regulation of related party transactions at European level. It must be clear and at the same time flexible enough to prevent companies making major mistakes. It should not allow regulatory bodies to take arbitrary decisions in the case of unclear and misleading texts.

3.3.7 Employee share ownership

**Question 23.** Are there measures to be taken, and if so, which ones, to promote at EU level employee share ownership?

No, the EESC does not believe that this is necessary at EU level. It is completely sufficient at this stage that such an opportunity exists in principle without being mandatory; it could be used when its application is appropriate.

Motivating employees and workers by offering them property in the form of shares could be used to increase their commitment and productivity, but under no circumstances must this be a substitute for existing remuneration or hinder collective wage bargaining, nor should it replace the other forms of participation mentioned in point 2.9. However this decision should fall within the scope of independence of each company because it may not always be appropriate (25).

3.4 The ‘comply or explain’ framework – monitoring and implementing corporate governance codes

**Question 24.** Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?

Yes. There may sometimes be good grounds for such departures. When they are explained and justified, the interests of the company are protected to the same degree as the interests of investors who would be informed about the need for such departures. Otherwise the role of the codes as an instrument for the promotion of good corporate governance practices would be undermined.

**Question 25.** Do you agree that monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?

Yes. This is certainly information which is important for stakeholders and investors and should be taken into account when investment decisions are made. Regulating bodies must have this right by analogy with the rest of the information disclosed by issuing companies. Besides monitoring and educating on rare occasions (i.e. significant societal risks) they should have the ability to take action. Otherwise confidence in corporate governance declarations would drop and investors and other stakeholders would perceive more risks.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Single Market Act — Twelve levers to boost growth and strengthen confidence — “Working together to create new growth”’

COM(2011) 206 final
(2012/C 24/22)

Rapporteur: Ms FEDERSPIEL
Co-rapporteurs: Mr SIECKER and Mr VOLEŠ

On 13 April 2011 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Single Market Act — Twelve levers to boost growth and strengthen confidence — ‘Working together to create new growth’


The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 150 votes, with four abstentions.

1. Introduction

1.1 The European Economic and Social Committee (EESC) has been closely following the Single Market from the civil society perspective and set up its Single Market Observatory (SMO) in 1994 to this effect. It has contributed to the Commission’s initiative to relaunch and revive the Single Market, but regrets that it did not fully take on board the Monti, Lamassoure, Gonzalez, Grech and Herzog Reports and effectively deliver a Single Market at the service of consumers and citizens, as urged by the EP in its Resolution of 20 May 2010.

1.2 In its opinion on the Single Market Act (1), the EESC had identified a number of measures that were missing in the Single Market Act. The missing levers include copyright levies, the revision of the copyright directive, net neutrality, data protection, investor protection, the social progress protocol, European private company statutes, e-procurement, European credit rating agencies, gender equality, micro- and family businesses, measures to support the formation of new companies and the extension of the existing ones, credit and debit cards, e-payments, consumer credit and over indebtedness, interbank transfers, youth, measures to complete the implementation of the Euro and to consolidate the operation of the Single Euro Payments Area (SEPA), etc.

1.3 The Committee had selected a number of priorities for an integrated Single Market, many of which are now mentioned in the list of priority actions called the twelve levers: The Charter of Fundamental Rights as an integral part of the Single Market, Services, Retail financial services, Services of General Interest - SGI, Sustainable development, Small and medium-sized enterprises and other legal forms of entrepreneurship, Competitiveness, Standardisation, Digital Single Market, Corporate Governance and workers involvement, Free movement of workers and the economic freedoms, Public procurement legislation, External dimension and Access to justice/Collective redress.

2. Gist of the Commission Communication

2.1 The Internal Market has shortcomings, which were highlighted by Mario Monti in his report A New Strategy for the Single Market and by the European Parliament in Louis Grech’s report Delivering a single market to consumers and citizens. To remedy these shortcomings a proactive and cross-cutting strategy should be developed. This means putting an end to market fragmentation and eliminating barriers and obstacles to the movement of services, innovation and creativity. It means strengthening citizens’ confidence in their internal market and ensuring that its benefits are passed on to consumers.

2.2 In order to tackle these challenges, the Commission put 50 proposals up for debate. These were set out in the Communication Towards a Single Market Act(2). On the basis of the contributions made during the public debate the Commission has identified twelve levers. In order to boost growth and reinforce citizens’ confidence, the Commission proposes that the EU should adopt a key action for each lever by the end of 2012.

(1) OJ C 132, 3.5.2011, p. 47.

2.3 For the proposed actions to produce the effects expected in terms of growth and jobs, the conditions for their development and efficient implementation must be met. There are at least four such conditions: (1) a better dialogue with civil society as a whole; (2) a close partnership with the various market participants; (3) efficient provision of information for citizens and enterprises; and (4) closer monitoring of the application of single-market legislation. By the end of 2012, a new stage in the development of the Single Market will be launched. The discussions will draw upon a comprehensive economic study, the results of which should enable the identification of specific areas with untapped growth potential, together with possible new levers for growth. The Commission will also consult civil society and all Single Market actors through its new governance instruments.

3. General comments and recommendations

3.1 The EESC welcomes the Commission’s ambition to boost growth and to strengthen confidence in the Single Market. The Committee recalls that the Single Market is a centrepiece of European integration, with the potential to deliver directly-felt benefits to European stakeholders and to generate sustainable growth for Europe’s economies. In the current environment, this makes a functioning, future-oriented Single Market not merely desirable but essential for the political and economic future of the European Union. To deliver these benefits, it is crucial that the Commission’s proposals are ambitious and go beyond tackling only low-level, detailed challenges.

3.2 The Committee recognises that the Commission’s communication is just the second step in a process, with many more steps needing to follow. This communication presents the choice of the Commission to continue with 12 levers out of the original 50 proposals from its Communication Towards a Single Market Act. The Committee has noted that many of the levers proposed were not new as promised because they have been already included in the Commission’s work programmes for 2010 and 2011.(1)

3.3 Besides, the Committee would like to understand the logical thread of the overall political option underlying the achievement of the Single Market ultimately leading to the Commission making their choice of twelve out of many. This very process transpires neither from the Communication nor from the analysis of said measures.

3.4 The EESC calls upon the EC to continue to work with the remaining proposals listed in the initial Communication (COM(2010) 608) but not included in 12 levers. It also recommends the Commission to consider the missing levers (see paragraph 1.2) set out in the Committee’s previous opinion on the Single Market Act. The Committee wants to be informed about developments in both areas and reminds the Commission that fast follow-up action is required to ensure that the further development of the Single Market can positively impact on European growth in the near future.

3.5 A number of proposals are already in the pipeline and are scheduled to be tabled before the end of this year. The EESC expects to be consulted by the Commission on these and the other concrete proposals in order to express the views of all relevant stakeholders. The EESC also stands ready to participate in the evaluation of the effects the new legislation would have on the Single Market and is ready to contribute to the comprehensive economic study, the results of which should enable identification of niches where there is untapped growth potential together with possible new levers for growth. The EESC notes that more effort is needed to determine the impact of past and current Single Market legislation, with a focus on determining whether the combination of measures has been successful in delivering a step change in how the Single Market works with regard to benefits felt directly by businesses, workers and consumers.

3.6 The EESC also emphasises that responsibility for the development of the Single Market does not only lie with actions and measures which fall under the responsibility of DG Markt but also concerns many other policy areas. In this context, the Committee notes the importance of initiatives such as the Digital Agenda (4) and the EU Citizenship Report (5) and urges the Commission to ensure progress on delivering a functioning Single Market in the policy areas covered in these communications.

3.7 In the introduction the Commission stresses the importance of sustainable development. The Committee regrets that the ambitious Sustainable Development Strategy, which the Commission adopted in 2008, does not get a follow-up in this communication. The necessity to change towards more sustainable patterns of production and consumption should get the support it deserves.

3.8 Before the Lisbon Treaty the political and economic interest of a reuniting Europe had priority over social issues and sustainability. In the Lisbon Treaty that inequality has arguably been balanced, with the other interests being of equal importance (though the results of this in practice remain to be seen). However, it is mentioned several times in the Communication that there ought not be extra burdens for businesses or extra costs for consumers though there is no reference to the impact on workers and public authorities.

3.9 The EESC wants to reiterate its call for a holistic approach. While it thinks that promoting growth and business potential is essential, the Committee finds however that the proposals should focus more on consumers and citizens as independent players in the creation of the Single Market.

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3.10 The EESC calls for zero tolerance of non-implementation of EU legislation by Member States and reminds the Council and the Commission that delayed, inconsistent and incomplete implementation remains a major barrier to a functioning Single Market. It would very much welcome publication of correlation tables by Member States that would contribute to better promotion and understanding of Single Market (6).

4. Specific comments and recommendations on the twelve levers

4.1 Actions for SMEs

4.1.1 The EESC welcomes the proposals that should lead to the solution of some of the problems that SMEs face, especially regarding increased access to cross-border venture capital financing. However, the Committee notes that this will not be sufficient to address the more general restricted access to financing many SMEs face across Europe in the aftermath of the crisis. In addition, more attention must be paid to the needs of micro- and family businesses which are often unable to access existing support mechanisms and whose financial sustainability is often undermined by late and non-payment. The effect of Basel III on the banks’ willingness to finance SMEs should be assessed.

4.1.2 The EESC would also like to remind that most other key actions will have an impact to a large or smaller extent on the SMEs. The role of Small Business Act should not be underestimated. The principle of ‘think small first’ should therefore be applied in every legislative proposal, whose effects on SMEs and micro/family businesses should be screened ex ante. Implementation and its monitoring should be considered a priority for EU SME policy.

4.1.3 The future linguistic regime of the EU patent must ensure there will be a financial support to the companies from those countries whose official language is not used as an official language of the EU patent to avoid any discrimination.

4.2 Mobility for citizens

4.2.1 The proposed key action to achieve increased mobility for citizens is to modernise the system for recognising professional qualifications. Promoting the occupational and geographical mobility of workers could help improve the functioning of European labour markets and the provision of cross-border services. Companies all across Europe are struggling with severe skills shortages in part caused by insufficient vocational education and training. While progress in this area is welcome, the Committee urges the Commission to also tackle a wide range of other barriers which still prevent citizens to move easily across borders within the EU.

4.2.2 Recognition of professional qualifications has been tried before, in the late eighties, with then fewer Member States. The Professional Qualifications Directive adopted in 2005 consolidated the 15 previous directives covering separate categories of regulated professions. Since it did not reach so far its target the EC started in 2010 the revision of the transposition of the Directive.

4.2.3 The EESC wants to underline that any additional legislation to the current directive should be preceded by a thorough diagnosis of how existing legislation can be amended to further support the mutual recognition of professional qualifications. The EESC points out:

— Reducing the number of regulated profession: A systematic screening should be conducted on the need for regulated professions to stay regulated respecting new labour market needs.

— The idea of a European Professional Card needs to be explored further (automatic recognition by the competent authorities, who should be able to issue these cards in the first place).

— Updating of minimum training standards should be based on the outcome in terms of skills and competences rather than on hours spent in the school.

— To ensure co-existence of the general system of the professional qualifications Directive on the one hand and EQF (7) and the other transparency tools of the Bologna and Copenhagen process.

4.2.4 The EESC suggests that until a full harmonisation among the 27 Member States is reached a possibility of another approach based on joint activities between a smaller number of Member States should be evaluated, potentially utilising enhanced cooperation, that follows migration patterns and labour market developments; this might bring the success that is needed to improve the mobility of workers. After this first step, it could prove easier to target full harmonisation.

4.2.5 The EESC does not see a need to review the Directive on occupational-pension institutions since it established a sufficient legal framework. It is still necessary to improve the functioning of its cross-border elements.


(7) European Qualifications Framework.
4.3 Intellectual Property Rights (IPR)

4.3.1 IPR must work for creators, copyright users and consumers (8). Consumers should have access to copy-righted content and products and services based on copy-righted material regardless of where they are based in the EU. A more pan-European approach to licensing and levies is needed.

4.3.2 For consumers, the current IPR legal framework is bewildering; this is even worse on a pan-European level. The legal framework needs to be clarified and legal sanctions and enforcement need to be proportionate: individual consumers who might infringe IPR inadvertently and/or at a small scale for their personal consumption may have to be treated differently from large/commercial scale criminal activity.

4.4 Consumer empowerment

4.4.1 Alternative Dispute Resolution (ADR) can be a useful instrument to help protect consumers and enable them to get their right in a speedy and cheap way. Not only with regard to e-commerce, but in general. Consumers' interests must be at the centre of this non-judicial mechanism and they should also have recourse to legal routes if necessary. The Committee welcomes the legislative proposal for ADR, foreseen in the Commission work programme for 2011, and reminds that the proposal must give high level protection.

4.4.2 In addition to ADR, DG Justice has carried out a consultation on Collective Redress Unfortunately a legislative proposal is not foreseen in November – only another Communication on the results of the consultation this spring which is disappointing. It is now high time to move from consultation to action. The Committee is looking forward to a legislative proposal in the near future. Such a proposal must lead to a collective redress mechanism which operates both nationally and across borders and is accessible to all consumers within the Single Market.

4.4.3 These mechanisms should be available to all who have their rights infringed upon within the Single Market. Not only consumers see their rights violated by providers of goods and services, by unfair contract terms and unfair commercial practices. Also workers whose rights are violated and citizens in general who suffer from discrimination should have access to collective redress systems. SMEs may need similar protection against unfair commercial practices etc.

4.4.4 By-and-large, consumers still do not feel the benefit of a Single Market in the area of retail financial services. While the

Committee welcomes the continuation of work on transparency of bank fees and on better protection of borrowers, more needs to be done to encourage cross-border access to retail financial services. Also basic payment accounts should be available to all citizens across the EU.

4.4.5 The EESC welcomes the revision of the General Product Safety Directive with a greater focus on the consumer perspective and is looking forward to commenting on the concrete proposals. Equally, a higher degree of both national and pan-European market surveillance is to be welcomed.

4.4.6 Direct rights of consumers and citizens deriving from the Single Market are a key building block of market integration and provide a directly accessible benefit of European economic integration, be it in the area of passenger rights, with respect to roaming charges or in e-commerce. Consumers/passengers must have quick and easy recourse to mechanisms which can provide them with help in achieving their rights, especially when they are in a distressing situation, for example when caught abroad without means to return to their home country. In addition, uniform application is crucial since passengers are not treated equally in the EU as enforcement varies considerably; as does the interpretation of present rules and regulations.

4.5 Services

4.5.1 The Committee supports the proposal for the extension of the standards on services, but points out that the specific character of services should be taken into account and the model of standardisation of goods cannot be copied automatically. Further development of standards in the field of services has to take into consideration market and societal needs as well as consumer safety.

4.5.2 The EESC welcomes the proposal regarding the High Level Group on business services to identify the main obstacles and bottlenecks on the market.

4.5.3 The Committee welcomes the initiative to modernise public administrations by setting up ‘points of single contact’, and can only applaud the development of administrative cooperation in cross-border matters. This cooperation also needs to be extended to policy areas where compliance with obligations is at stake. The EESC considers the Commission's conclusions on the impact of the Services Directive and on the functioning of the services sector to be premature as the directive has been in force for only a few years (9).


4.6 Networks

4.6.1 In the field of energy networks (10) the Committee is of the opinion that Member States must retain freedom of choice as to the type of energy they opt for. Promoting general interest means securing good networks, good quality service and everything which ensures universal access, security and continuity at affordable prices. The Union should speak with one voice in the international arena on matters pertaining to energy and energy transportation networks; it should tackle these questions, in particular the security of energy supplies as an integral part of the Union’s diplomacy (ENP) and propose governance standards in transit countries. Together with the Union as a whole, Member States should advocate energy solidarity throughout the world and respect the principle of general public interest within the Union. Furthermore, the EESC calls for a European consultative committee on energy and climate change to be set up.

4.6.2 On transport issues (11), the EESC calls for a better connection of the west and east, as well as the north and south of the EU. It also wants to see explicit consideration given to so-called neighbourhood policy with further connections to the eastern and southern neighbours of the EU. The Commission and the Member States should focus above all on the network rather than on individual infrastructure projects. This also promotes solidarity between the Member States. The Committee would like to stress, that if the purpose of the EU is to create a real integrated single transport market in Europe and to continue cohesion policy, a radical change is necessary in the choice of the networks. In this regard, the EESC approves the recent revision of the TEN-T policy. As well the EESC recommends careful and selective use of Public Private Partnerships (PPP) in the funding of TEN-T projects. The different level of experiences among the Member States should be taken into account and a consistent funding strategy is needed to mobilise all relevant EU and national financial instruments as part of a ‘better funding’ approach.

4.7 The Digital Single Market

4.7.1 Electronic commerce seems to be one of the big victims of the fragmentation of the Single Market. Absence of harmonised rules, lack of interoperability of information systems (12), unsolved problems with IPR, lack of payment security and uncertainty of consumer rights especially regarding product safety hinder the full exploitation of the large potential of on-line cross-border trade for both providers and consumers. While the actions proposed in the Commission’s communication address some of the barriers to the Digital Single Market, the Committee recalls that much more is needed to prepare the Single Market for the knowledge age, including, for example, uniformly high data protection rules for example in the area of e-signatures. In this context, the EESC reiterates its request to have net neutrality recognised as one of major principles in the digital single market.

4.7.2 The solution of the problems mentioned with regard to e-commerce in the Communication can increase consumer confidence in the Single Market. However, so far, little concrete action is proposed. The Committee urges the Commission to develop an ambitious Action Plan for the development of e-commerce with the consumer at its heart. The outcome must be an online EU market place where consumers can feel protected and safe, knowing how to access support for their rights if infringements occur.

4.7.3 A functioning Digital Single Market must entail that consumers and business experience a removal of those barriers based on nationality/residence. This must mean that consumers can order digital products such as music freely from other countries within the EU, which is especially important to make the Single Market relevant for the next generations of Europeans.

4.8 Social entrepreneurship

4.8.1 The EESC welcomes the promotion of social entrepreneurship and the Commission’s initiative for a political framework aimed at realising its potential. Initiatives aimed at social entrepreneurship should follow the basic principles of Single Market legislation, such as competition and State aid rules, and take account of the work done by the EESC in this area (13).

4.8.2 The EESC has supported the establishment of a European Foundation Statute but invites the Commission to consider whether a legislative intervention to facilitate cross-border operations of existing Foundations may be a complementary avenue to pursue, given the low uptake of the existing precedents such as the Statute for a European Cooperative Society and the Statute for a European Company.

4.8.3 The Commission has to strengthen EU commitment to enhance corporate governance to further develop employee involvement and improve transparency of information provided by businesses. Employee right to information, consultation and participation has been integrated as a fundamental right under the treaty in different forms of workers’ involvement: TFEU Art. 151.1 Dialogue between management and labour and 153.1 where it says in f) that the Union shall support and complement the activities of the Member States in the following fields: representation and collective defence of the interests of workers and employers, including co-determination. Public consultation should therefore look into how to improve the transparency of information provided by business on social and environmental matters and human rights. A Social Business Initiative will be critically assessed by the

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(13) See page 1 of this Official Journal.
EESC, including the possibility to keep upright the voluntary basis of CSR, when a concrete request for an opinion reaches the Committee.

### 4.9 Taxation

4.9.1 Regarding the review of Energy Tax Directive the EESC underlines that the concept of introducing a carbon tax should complement the Emission Trading System (ETS) and the Energy Efficiency Plan (EEP) \(^{(14)}\). The carbon tax should provide the funding support necessary to accelerate R&D efforts for low carbon based processes and innovative technologies, with its proceeds dedicated exclusively to these goals. This tax must be set to not endanger growth or cause political or public opposition and its implementation should not lead to higher rates of energy poverty.

4.9.2 The carbon tax ought to be based on consumption rather than on production. The Commission should develop a set of general guidelines for levying this carbon tax, leaving its details otherwise at the discretion of individual EU Member States. They would be free to levy this tax according to their respective manufacturing and energy-producing industrial structures.

4.9.3 The Committee welcomes actions which will address some of the inconsistencies of taxation, in areas such as VAT, energy taxes and the corporate tax base. While care needs to be taken to safeguard the ability of individual Member States to finance their public services in line with the principle of subsidiarity, a focus on the difficulties faced by citizens and SMEs in the day-to-day experience of the Single Market that are caused by differential tax regimes and their implementation is also necessary to ensure that the Single Market can work more effectively. The proposed financial transaction tax should also help to address some of the unsustainable risk-taking in that sector.

### 4.10 Social cohesion

4.10.1 The EESC supports the ideas the Commission presents under the lever of Social Cohesion. It goes beyond simply better implementation of the Posting of Workers Directive, as the Commission initially proposed in its communication Towards a Single Market Act. The Commission plans to adopt a legislative proposal to improve the implementation of the Posting of Workers Directive, which is to include or be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the

\(^{(14)}\) See page 7 of this Official Journal.

Single Market. This does not propose a revision but suggests another legal act on the improved implementation of the directive. Contradictions in the applications of the directive should be clarified and Member States’ competence to enforce their labour standards and industrial relations systems, including the crucial role of collective bargaining in the different forms, should be properly defined. The result of this clarification should show if a revision of the Posting of Workers directive is needed. This should not come at the expense of competition rules and the principle of non-discrimination on ground of nationality. Any review of the existing legislation or any new legislative act should be based on consultation with the social partners and on the balance between high labour standards and economic freedoms, as well as addressing problems caused by black labour markets.

### 4.11 Business environment

4.11.1 Regulation cannot be labelled as a barrier or a burden when it equals safeguarding societal interests, including consumers and workers rights. The proposed simplification of the accounting directive that would reduce the administrative burden to the businesses especially SMEs seems a right contribution to the business friendly environment but it should be only one part of a comprehensive review of unnecessary regulatory burden that the European enterprises have to face making them less competitive on the global market.

4.11.2 The EESC welcomes and supports the proposed actions such as interconnection of business registers, a Statute of the European Private Company which matches societal requirements, more coherent implementation of the Small Business Act by the EU and Member States but stresses the need to reduce the unnecessary administrative burden further and expects that the Commission will propose the targets after 2012 when the administrative burden should have been reduced by 25%. The Committee notes that a reduction of unnecessary burden is always desirable be it for businesses, consumers or public authorities but that there needs to be a careful assessment to ensure that the original purpose of the legislation is not compromised. The Committee recalls that a common EU approach can also reduce administrative burden if it replaces 27 differing national approaches.

### 4.12 Public procurement

4.12.1 The EESC welcomes the initiative to develop a balanced procurement policy which fosters demand for environmentally sustainable, innovative and socially responsible development. Attention must also be paid to ensuring that corruption and misuse of public funds in procurement processes is addressed across the EU. But public procurement
is in danger of becoming too complex to be applied consistently (15). At the very least, more should be done to build capacity in public administration to apply public procurement rules in a consistent way, while at the same time enabling them to build the new demands public procurement needs to fulfill into their specifications. The Commission should also promote more widespread use of the code of conduct by public authorities to make procurement more SME friendly (16).

4.12.2 Since the start of the Single Market project in the mid 1980s, the integration of a fundamental social clause in the rules has been discussed. These demands have been partially met during the revision of the procurement rules in 2005. The review of the EU public procurement directives should allow for full exploitation of the current framework for the integration of social and environmental criteria into public contracts, also to be applied by third country services providers, provided that such criteria are in balance with the fundamental principles of EU law as enshrined in the Lisbon Treaty.

4.12.3 The Commission’s initiative in the area of public procurement should pay more attention to the persistent imbalance in openness of public procurement markets between the EU and its main trading partners. It should be considered to which extent EU public procurement markets can sustainably remain open whilst third countries maintain an unlevelled playing field. In this respect, ratified ILO conventions and Human Rights have to be respected by all players, Member States and third countries alike. The EU should actively promote this policy at global level.

5. The conditions for success

5.1 The Committee welcomes the recognition in the Commission’s Communication of the importance and willingness of civil society to be involved in the development of the Single Market. It recalls that the Committee’s role is to act as a bridge between Europe and organised civil society and is thus in a unique position to help the Commission to develop the Single Market further. In this context, the Committee reminds the Commission that it is not sufficient to simply consult but to demonstrate how the consultations and consultative opinions have shaped the proposals.

5.2 The Single Market Forum should become an effective platform for the interaction of the EU and national/regional administrations responsible for the smooth functioning of the SM with the key players. The Committee strongly supports the concept of a Single Market Week, set out by Commissioner Barnier, associating the public authorities and the civil society organisations of individual Member States.

5.3 The Internal Market Information system (17) (IMI) is the main technical tool for the cooperation between the national administrations and has additional potential as an interface for Single Market users.

5.4 The weakening support of the European citizens to European integration requires an intensive and targeted communication strategy including the mobilisation of all tools providing the necessary support to businesses, workers and citizens alike such as Solvit, EURES, European Enterprise Network, European consumer centres, RAPEX etc. The development of a single entry point (‘Your Europe’) for businesses and citizens can be helpful but only if the information is complete, relevant, authoritative and accessible. There is a need to recognise that citizens and businesses also have to be able to pose their questions directly to a person, rather than only relying on electronic material.

Brussels, 27 October 2011.

The President 
of the European Economic and Social Committee
Staffan NILSSON

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(17) For more information http://ec.europa.eu/internal_market/imi-net/index.html
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: Developing the European Dimension in Sport’
COM(2011) 12 final
(2012/C 24/23)

Rapporteur: Alfredo CORREIA

On 18 January 2011, acting under Article 165 of the Treaty on the Functioning of the European Union, the
European Commission decided to consult 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 on Developing the European Dimension in Sport

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 and 27 October 2011 (meeting of 26 October), the European
Economic and Social Committee adopted the following opinion by 79 votes to 2 with 7 abstentions.

1. Conclusions and recommendations

1.1 The EESC wishes to highlight its great interest in, and
commitment to, developing the European dimension in sport. It is vital to ensure continuity for sports development policies in the EU, working together with Member States and with due regard for the subsidiarity principle, the scope for this being limited by the powers conferred under the Treaty.

1.2 Sport makes an undeniable contribution to promoting physical and mental health and to developing values such as discipline and team spirit, which in turn promote social integration. Participating in sport plays a key role in preventing a vast array of diseases. Health problems are directly linked to low levels of physical activity. Sport helps improve the quality of people’s lives and their life expectancy and also makes the European economy more productive and competitive. The EESC calls for participation in sport to be promoted and for EU action to be taken to achieve this.

1.3 The EESC acknowledges the problem of doping in sports. Discussions must take place at both EU and Member State levels on how to combat this social blight. Doping can jeopardise sportsmen and sportswomen’s health, especially in the ranks of young amateurs, as well as being damaging to genuine competition in sport.

1.4 The Commission’s stance on the practice and development of sport in education, as the EESC has previously recommended (1), is to be welcomed. The Committee reiterates the need to improve sports centres, changing rooms and other infrastructures, to enable people to participate in sports in good conditions and at an affordable price.

1.5 It is of particular concern to the EESC that sportsmen and women receive a decent education. Too often, young people drop out of school to pursue their sporting ambitions. In line with the principle of pursuing a dual career, they must be given the opportunity to start and develop a career in sports without leaving school. This principle is also important given the need for those concerned to enter labour markets equipped with the necessary skills once their sporting careers are over. For this to happen, sports coaches should also be trained to instil the right values in the young people they are training.

1.6 Violence in sport is deplorable and requires resolute action to eradicate it, through both policing and appropriate criminal legislation. The EU can and must act as coordinator for Member State initiatives, with a view to improving the exchange of information on the most effective ways to act.

1.7 The EESC considers that particular attention should be paid to the most disadvantaged groups in sport, such as people with disabilities and the elderly. Such individuals have the right to participate in sporting activities, on an equal basis. The Committee recalls that the EU is signatory to the United Nations Convention on the Rights of Persons with Disabilities: Member States must ensure that this convention is properly implemented.

1.8 The Committee reiterates its 2008 call (2) for particular attention to be paid to the representation of women in sport and for gender equality be mainstreamed in this area.

1.9 The EESC wishes to highlight the role played by not-for-profit sports associations in promoting sporting activities. It is essential that these organisations be supported, either through the provision of appropriate financial resources or by encouraging voluntary activity.


(1) Idem.
1.10 Active cooperation between professional and not-for-profit organisations is also required, because the sport’s future depends on it. The EESC considers it a priority to find sustainable forms of financing to make such cooperation viable.

1.11 The Committee is particularly concerned at the growth of the illegal and unregulated betting and lotteries sector, where there is a clear lack of regulation and appropriate sanctions. It is worth highlighting the potential importance of this state-run or state-licensed sector for funding sport by investing revenue in upgrading sports facilities. Dialogue should be established between Member States in order to find the models that best reflect the EU’s principles. Regulating the betting and lotteries market in sport is crucial for ensuring genuine competition and transparency in sport.

1.12 The EESC acknowledges the difficulties facing the EU in regulating the betting market. The rules of the internal market and competition should be fully respected, whilst showing due regard for the subsidiarity principle. The Committee urges the Commission to follow this matter closely and to establish a guiding framework for regulating this market on the basis of these principles and of the potentially valuable information to emerge from the consultation procedure currently under way (3).

2. General comments

2.1 Introduction

2.1.1 On 18 January 2011, the European Commission issued a communication on Developing the European Dimension in Sport, which reviews the results of the White Paper on Sport. In accordance with Article 165 TFEU, the Council of the European Union established an action plan based on working groups, aimed at achieving the objectives set.

2.1.2 The importance of sport is universally acknowledged, not only by the Member States but also by all those involved in the sector. Sport’s added value for society is undeniable. The benefits it provides for health, social integration and the economy in the EU demonstrate the need for cooperation and the development of joint strategies. The EU is the most appropriate level for steering Member States towards achieving good results in this area.

2.1.3 The importance of the European dimension in sport is clear, in terms of both funding programmes and specific measures in this sector and developing specific platforms for dialogue and the exchange of information.

2.1.4 The 2012 Olympic Games, which will be held in London, represent an opportunity to develop the European dimension in sport at a number of levels, in respect of organisational monitoring and coordination models and the outcome of dialogue between the different stakeholders involved.

2.2 Objectives and content of the proposal

2.2.1 The entry into force of the new Treaty has seen a new power conferred on the EU in the field of sport. To date, the European dimension in sport has developed indirectly, through the powers conferred on the EU in social affairs, education and health and, even more indirectly, in relation to the principles of the internal market and competition law.

2.2.2 Despite these limitations, it has always been recognised that it would be in Member States’ best interest to cooperate on sports development issues. The EU has now become an appropriate authority for implementing this policy.

2.2.3 The communication attempts to identify the requirements and scale of the European dimension in sport. It identifies the most relevant issues and those most appropriate for EU-level action. To this end, public consultation has been held with the various stakeholders in order to determine the priority areas to work on. Three important areas emerged, namely:

— the social function of sport;

— the economic dimension of sport; and

— organisational aspects of sport.

Within these areas, the most important aspects were pinpointed.

2.2.4 The communication under consideration endeavours to develop/build on the White Paper, taking account of what has been done since its publication and, of course, with the entry into force of the new Treaty (and the relevant Article 165 TFEU), to use the powers that have been conferred on the EU.

3. Specific comments

3.1 Health

3.1.1 The EESC acknowledges that taking part in sport improves people’s physical and mental health in general and has a direct and positive influence on productivity at work and on quality of life, since it is an important means of combating increasingly sedentary lifestyles.

3.1.2 Sport helps prevent and combat obesity and a number of serious diseases, especially cardiovascular disease. Sport therefore provides additional economic benefits by lowering healthcare and social security costs.

3.1.3 Sport also has a key role to play in the social integration and well-being of the elderly. It not only helps combat disease, but also promotes greater solidarity between the generations.
3.2 The fight against doping

3.2.1 Combating doping is of the particular importance. Protecting the physical welfare of sportsmen and women and genuine competition in sport requires action coordinated at all levels, not only between the 27 Member States and their national bodies, but also at international level. The closer cooperation and understanding is between all parties as regards the best forms of action, the more successful such action will be.

3.2.2 One particularly important aspect is the fight against doping, not only in professional sports, but in amateur sports too.

3.2.3 Robust action that is coordinated between Member States for regulating and monitoring the sale of substances used in doping is crucial, and the EESC therefore endorses the Commission’s intention to propose a draft mandate to sign up to the Council of Europe’s Anti-Doping Convention.

3.3 Education, training and qualifications in sport

3.3.1 Physical activity in schools is the first step towards instilling in our youngest children the sporting values they will retain throughout their lives. Measures aimed at implementing good sporting practice in the education system and improving the necessary infrastructure have the Committee’s full support.

3.3.2 The EESC agrees with the European Commission’s position recognising the importance of a dual career in the education and training of athletes.

3.3.3 The EESC also endorses the initiatives under the Lifelong Learning Programme, which it considers to be an essential strategy for inculcating good sporting values.

3.3.4 Proper qualifications for sports trainers and trainees is another key factor for preserving sporting values. The Committee shares the Commission’s desire for sports qualifications to be included in national qualifications schemes, to ensure they are reflected in the European Qualifications Framework (EQF).

3.3.5 Voluntary work in sport, carried out mainly in local sports clubs, is of considerable value to society as a whole. Often, however, not-for-profit voluntary sports organisations do not receive appropriate public recognition and are nowadays facing major challenges. The EESC wishes to point out that the Commission communication fails to take sufficient account of the importance of voluntary work in sport and consequently calls on the Commission to take the necessary steps to further promote the culture of voluntary work in this sphere. In particular, the qualifications and training of volunteers and the acquisition and recognition of their knowledge and skills should be encouraged with greater determination at European level. The Commission should also monitor this process and avoid any unintended detrimental consequences for not-for-profit sports organisations when drafting European legislation.

3.4 Combating violence in sport

3.4.1 The EESC welcomes the Commission’s initiative to develop and implement training measures relating to violence in sport, which targets both spectators and the police.

3.4.2 Training spectators is also something that starts in the earliest schooldays. The values and practice of sport should be given priority over unhealthy competition.

3.4.3 Violence in sport is a serious problem that is rife throughout Europe. Violence is frequently associated with racism, xenophobia, homophobia and other similar forms of intolerance. Any measures taken must aim to combat these phenomena, which run totally counter to sporting values.

3.4.4 Information should be permanently monitored and there should be continuous cooperation between the bodies responsible for the well-being of spectators, especially with a view to preventing offences committed by previously identified risk groups, primarily at international sporting events.

3.5 Social inclusion in and through sport

3.5.1 Everyone, including people with disabilities and the elderly, must have access to sporting venues as a participant and not just as a spectator. Public support for achieving this aim is of the utmost importance.

3.5.2 Little research has been carried out into the sporting activities of people with disabilities with a view to enabling them to take part in all sports. The EESC supports the Commission’s initiative on this matter.

3.5.3 The EU and the Member States’ signing of the United Nations Convention on the Rights of Persons with Disabilities means that the necessary measures must be adopted in order to comply with the Convention. The EESC calls on the Commission to check the measures adopted by the Member States in this area.

3.5.4 Gender equality in sport must be guaranteed, since women are under-represented in a number of sports. The EESC supports initiatives aimed at ensuring respect for the principle of gender equality and equal opportunities. It agrees, therefore, with the inclusion of the ‘sport’ category in the database on women in leadership positions.

3.5.5 Sport can be a means to foster integration and dialogue between different cultures and can promote a spirit of European citizenship. It is worth highlighting sport’s potential for bringing together disadvantaged and vulnerable groups. The EESC fully agrees with the need to support programmes intended to boost social integration through sport. NGOs play a key role in this area, and this should be encouraged.
3.5.6 Ever-increasing numbers of sportspersons and athletes are migrating from one country to another. For the host countries, integrating these individuals and their families is one way of promoting the host countries’ cultural and social values. The EESC supports the Member States’ and the Commission’s efforts to create legislative incentives to host, settle and ensure non-discriminatory treatment for people in this situation.

3.6 The economic dimension of sport

3.6.1 The EESC recognises the economic growth of sport. This sector accounts for around 2% of the EU’s total GDP. The sports market contributes to employability and to growth rates. Many sports organisations have become limited companies, but a great many remain not-for-profit bodies. Relations between these two types of organisation need to be established or further developed in order to make them financially sustainable.

3.6.2 The private sector has an important social role to play in the development of sport, both directly through specific contributions and through sponsorship.

3.6.3 The EESC recognises and supports the creation of a Sport Satellite Account. To be able to adopt the most appropriate policies, reliable data will be needed on the amounts generated by sport. The greater the cooperation and information that is in place, the easier it will be to draw up the most sensible policies.

3.6.4 The communication under consideration attaches great importance to the exploitation of property rights that organisers hold over their sports events, as well as of their intellectual property rights. The EESC endorses this emphasis. Selling television rights and merchandising does account for a large part of these sports organisations’ income. More account should be taken of sports organisations’ rights in EU legislation. Organisers of sports events should have the right to ask for a fair return for any form of use of their events whatever the economic value involved.

3.6.5 The EESC shares the communication’s legal analysis of the potential breach of competition rules arising from the collective selling of rights. Nevertheless, recognition that joint selling can meet the criteria for an exemption under Article 101(3) TFEU is to be welcomed and the EESC acknowledges that collective selling has undeniable advantages for sports organisations and that this selling should be carried out in such a way that it remains outside the scope of Article 101(1) TFEU.

3.6.6 Trade (and production) in sports goods and clothes and other associated products is a business worth billions of euros in Europe as well. Through advertising and sponsorship, the sector is one of the biggest sources of funding in sport. Numerous studies carried out at the request of European organisations have revealed that there are many shortcomings linked to the working conditions in the global manufacturing chain for sports products, which may weaken the ethical credibility of the whole sports movement. Sportspersons, the sports movement and businesses sponsoring sports events as well as cooperation partners should be required to monitor the production chain, and the working conditions associated with it, in a reliable and transparent way (and develop ethical guidelines based on the international labour standards of the ILO).

3.6.7 The Committee notes that the state-run or state-licensed betting and lotteries market is extremely important to the financial sustainability of sporting activities. Tax revenues are considerable and indirectly help make the different levels of sports financially sustainable. Accordingly, online sports betting operators should allow sports event organisers, on a contractual basis, control over the types of betting offered and compensation for the use of their events as the basis for online sports betting.

3.6.8 Establishing a European sports lottery could make this market segment more attractive and would raise funds to finance the development of regional sports associations and sports training and education.

3.6.9 The EESC recognises the difficulties inherent in regulating this market and wishes to remind the Commission that on the basis of internal market principles and competition law, it is legally possible to promote measures that would bring transparency to this sector.

3.6.10 Corruption and organised crime groups are involved in the illegal betting market. These groups attempt, sometimes successfully, to manipulate results, which helps undermine genuine competition in sports, corrupt officials and players and distort the values of sport. The Committee urges the Commission and Member States to work towards harmonising legislation to combat these illegal practices.

3.6.11 The EESC welcomes the initiative to monitor the application of state aid legislation in the field of sport, in order to ensure full compliance with European legislation.

3.6.12 The Committee fully endorses exploiting the possibilities of the European Regional Development Fund to support sport infrastructure, since voluntary organisations need this support which boosts regional and rural development in the Member States.

3.7 The organisation of sport

3.7.1 There is a real need for European legislation applying to the sports sector to be clarified. The EESC welcomes the Commission’s initiative to provide assistance and guidance on a case-by-case basis regarding the proper application of the concept of the ‘specific nature of sport’.

3.7.2 The Committee fully shares the growing concern from the legal point of view at the activity of sports agents. The priority is to understand and study the impact of this type of activity on sports and training organisations and ensure that athletes are better protected.
3.7.3 A conference on the regular analysis of developing the European dimension in sport and its impact already has the support of the EESC, which would like to play an active role in such an event.

3.7.4 The EESC agrees with the Commission proposal that it is crucial to support and establish continuous dialogue between the social partners and sports organisations to explore and discuss sports-related issues, such as education and training, the protection of minors, health and safety, employment, working conditions and contract stability.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Communication from the Commission: Our life insurance, our natural capital: an EU Biodiversity Strategy to 2020’

COM(2011) 244 final
(2012/C 24/24)

Rapporteur: Mr RIBBE

On 3 May 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on the:

Communication from the Commission: Our life insurance, our natural capital: an EU Biodiversity Strategy to 2020

COM(2011) 244 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 October 2011. The rapporteur was Mr RIBBE.

At its 475th plenary session of 26 and 27 October 2011 (meeting of 26 October 2011) the European Economic and Social Committee adopted the following opinion by 120 votes to 5 with 6 abstentions.

1. Summary of the EESC’s conclusions and recommendations

1.1 In this, its fourth opinion on biodiversity policy in only four years the EESC again welcomes the fact that the Commission makes it clear that much more needs to be done if the objectives set by the European Council are to be met.

1.2 The EESC is, however, critical of the fact that the Commission does not really analyse the reasons why requirements which have been known for years and which have always been welcomed by the Committee - e.g. the 160 actions of the 2006 Biodiversity Action Plan - have been inadequately implemented, if at all. An analysis of the reasons for the non-implementation or failure of the comprehensive programme of actions contained in the 2006 Biodiversity Action Plan is particularly important because only on that basis will it be possible to draw up new, more promising actions and strategies.

1.3 The strategy now submitted contains nothing substantially new. The problem cannot be tackled by submitting a new strategy paper which contains old, well known proposals. When it comes to maintaining biodiversity there is no shortage of laws, directives, programmes, model projects, political declarations or recommendations, but there is a lack of implementation and concerted action at all political levels.

1.4 Politicians have not yet found the strength or the will to implement measures which have been acknowledged to be necessary for years, although the communication repeatedly makes the point that society and the economy will benefit equally from a stringent biodiversity policy. Not even the EU’s central nature conservation directives have been fully implemented by the Member States – 19 or even 32 years after their entry into force.

1.5 The EESC does recognise that there have been partial successes in maintaining biodiversity. But this should not blind us to the fact that, overall, biodiversity is declining dramatically. The EU is thus faced with the challenge of developing an implementation-orientated strategy.

1.6 Unfortunately it is not clear how the lack of political will can be remedied. In this sense the biodiversity strategy now submitted does not represent real progress. The debates on the communication which have so far taken place in the Council of Ministers show that we are still a long way from integrating biodiversity policy into other policy areas.

1.7 It is therefore of the greatest importance that the forthcoming political reform processes (e.g. fisheries, agricultural, transport, energy and cohesion policy) be closely linked to the biodiversity strategy. But the EESC believes that there are still major shortcomings in this respect. This also applies to the plans submitted for the 2014-2020 financial perspective, which do not appear to the EESC to be suitable for ensuring sufficient financial resources. The Commission must take its own biodiversity strategy more seriously!

1.8 During the drafting of this opinion parallels were drawn on this point with the debt and euro zone crisis. If the EU Member States do not take their own principles and criteria seriously, whether they are nature conservation rules or the stability criteria for monetary union laid down in the Maastricht Treaty, it is hardly surprising if a) political problems occur and b) people lose confidence in politicians.

1.9 There is a clear need for information and knowledge about biodiversity and its complex interactions with development and employment as well as for the identification and support of success stories.
1.10 The Commission is urged finally to submit the list of environmentally harmful subsidies which it promised as early as 2006.

2. Key elements of and background to the Commission’s Communication

2.1 In 2001 the Gothenburg European Council adopted the EU sustainability strategy which also formulated a clear objective for biodiversity policy: Protect and restore habitats and natural systems and halt the loss of biodiversity by 2010 (1).

2.2 In March 2010 the heads of state and government of the EU acknowledged that they had not achieved their objective. They therefore came out in favour of a new objective, proposed by the Commission in its Communication on Options for an EU vision and target for biodiversity beyond 2010 (2). It focuses on 2020 and entails: Halting the loss of biodiversity and the degradation of ecosystem services in the EU, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss.

2.3 The Council instructed the Commission to draft a new strategy to achieve this objective, which is submitted with the communication.

2.4 In it the Commission underlines the need finally to act - with facts which have been known for years:

— Biodiversity loss is described, alongside climate change, as the most critical global environmental threat; the Commission adds that the two are inextricably linked;

— Species extinction is occurring at an unparalleled rate: species are currently being lost 100 to 1 000 times faster than the natural rate;

— In the EU, only 17 % of habitats and species and 11 % of key ecosystems protected under EU legislation are in a favourable state (3) (4);

— The few benefits of the measures introduced since 2001 have been outweighed by continued and growing pressures on Europe’s biodiversity: land-use change, over-exploitation of biodiversity and its components, the spread of invasive alien species, pollution and climate change have either remained constant or are increasing;

— The fact that biodiversity’s economic value is not reflected in decision-making is also taking a heavy toll on biodiversity.

2.5 Greater attention is paid in the communication than in previous EU papers to the economic aspects of biodiversity loss, and this is illustrated by the increasing use of the concept of ‘ecosystem services’. Reference is again made to the TEEB study (5) and the point is made that insect pollination is estimated to be worth EUR 15 billion to the EU every year. From this it is deduced that the continued decline in bees and other pollinators could have serious consequences for Europe’s farmers.

2.6 Part 3 of the communication sets out a framework for action for the next decade, with six targets:

— Target 1: Fully implement the Birds and Habitats Directives;

— Target 2: Maintain and restore ecosystems and their services;

— Target 3: Increase the contribution of agriculture and forestry to maintaining and enhancing biodiversity;

— Target 4: Ensure the sustainable use of fisheries resources;

— Target 5: Combat invasive alien species; and

— Target 6: Help avert global biodiversity loss.

2.7 Each target has actions designed to tackle the associated challenges. A total of 37 actions are described.

2.8 The communication repeatedly states that biodiversity policy needs to be more effectively integrated into other areas of EU policy, such as agricultural and fisheries policy.

2.9 There is a need for funding in two areas in particular: completing the Natura 2000 network and implementing global commitments (6).

2.10 It is also pointed out that the reform of harmful subsidies (…) will also benefit biodiversity.

(3) http://www.eea.europa.eu/publications/eu-2010-biodiversity-baseline/.
(4) No information is given on unprotected habitats and species, although they are of course also important for biodiversity.

(5) The Economics of Ecosystems and Biodiversity (TEEB), see: http://teebweb.org.
(6) See COP 10 conference in Nagoya 2010.
3. General comments

3.1 The EESC issued opinions on biodiversity policy in February 2007, July 2009 and September 2010.

3.2 The EESC notes that the areas, targets and actions listed in the current draft strategy were a key component of the 2006 action plan.

3.3 The strategy now submitted contains nothing substantially new. It does, however, once again show which approaches are absolutely essential and which are the most urgent and the most promising ones. The strategy is to a large extent a ‘copy-paste’ of old, well-known facts, proposals and measures. The issues are all sufficiently understood. There is no need to consider again what needs to be done, only to ask why it is not being done and how we can act in a focused way. But the strategy so far provides no answer to this key question.

3.4 The Commission paper is therefore extremely unsatisfactory. The EESC therefore calls for a greater emphasis on implementation in the biodiversity strategy 2020.

3.5 The EESC would like to reiterate what it said in 2007.

— Maintaining biodiversity is an essential, key task which does not only represent an ethical and moral obligation. There are also economic reasons why it is necessary to act more quickly and more effectively.

— Species decline in Europe is the result of millions of individual value judgements which have been taken in recent decades; the absolutely overriding majority of these decisions have been taken in accordance with existing laws.

— Biodiversity continues to decline. What has been missing up to now is the political will to effectively implement the measures which have long been acknowledged to be necessary.

— The reasons which lie behind this situation are rightly identified by the Commission as governance failures and the failure of conventional economics to recognise the economic values of natural capital and ecosystem services.

— These elements, together with the fact that the ethical and moral reasons for maintaining biodiversity tend to be treated as matters of secondary importance in planning and political appraisal processes, have brought about the current critical development of the situation.

— The EESC welcomed the 2006 action plan and recognised the advisability of the some 160(!) measures which it set out; most of these, however, were even then by no means new and had been on the agenda for years. The EESC regrets that the lack of a strategic debate over the question raised in the Committee’s exploratory opinion of 18 May 2006 (7) as to how to explain the tremendous discrepancies between the action which should be taken, the action which has been announced and what actually happens in reality in respect of maintaining biodiversity is almost completely disregarded in the Commission’s communication and action plan.

— The EESC endorses the concept of the ‘global responsibility’ of the EU.

3.6 These key points of the opinion adopted in plenary session in 2007 are as relevant today as they were then. The EESC deeply regrets that nothing has really changed decisively in the intervening years.

3.7 The Commission communication contains no analysis of the reasons for the non-implementation or failure of the comprehensive programme of actions contained in the 2006 Biodiversity Action Plan. A thorough analysis of the failure is needed because only on that basis will it be possible to draw up new, more promising actions and strategies. The problem cannot be tackled by submitting a new strategy paper which contains old, well known proposals.

3.8 Although the Commission has for years been attempting to place greater emphasis on the economic arguments for maintaining biodiversity, the results have been meagre. The EESC, which once described biodiversity policy as a long-term economic issue, which the ministers for economic and financial affairs should therefore finally address (8), welcomes the fact that an attempt has been made to highlight the economic consequences of failed biodiversity policy. But biodiversity policy has not so far been integrated into the EU’s economic and financial policy. The new strategy needs to suggest ways of remedying this.

3.9 And on the other hand the EESC would like to highlight a potential danger of the increasing emphasis on economic issues. The danger that protection of biodiversity might in future focus mainly on areas which offer, or appear to offer, a short-term economic payback. The Commission should therefore consider how one should deal with species and habitats whose economic value cannot be directly calculated. It would be difficult to estimate the value of large mammals like the wolf, the bear or the lynx for example in euros and cents; the same is true of the common frog, the grasshopper, the white stork or thousands of other species. At the same time species whose economic value cannot be overestimated are left completely out of the political debate; where are the conservation programmes for bacteria, fungi or earthworms, the decomposers without which the decomposition of organic substances would not be possible?

3.10 The strategy focuses strongly on agriculture and forestry as well as on fisheries policy. In one sense this is justified, as a) they affect biodiversity and b) they are policies which affect extensive areas and can be influenced by the EU. On the other hand, however, there is too little emphasis on other kinds of pressure on biodiversity such as transport and urbanisation.


(8) OJ C 48, 15.2.2011, p. 150, point 1.6.
4.1 The EESC would like to show, by looking at the six individual targets and a few actions, why it considers the newly submitted biodiversity strategy to be lacking in ambition from a technical point of view. The reason for the Commission’s reticence in the formulation of the actions is probably political. The extremely tough negotiations in the Environment Council on the individual actions show that biodiversity is still not integrated into other policy areas.

4.2 Target 1:

4.2.1 The 1979 Birds Directive and the 1992 Habitat Directive are of key importance for European nature conservation. Nature conservation in Europe has no chance if these are not fully implemented. However, the fact that Target 1 of the new biodiversity strategy is entitled Fully implement the birds and habitats directives could be seen as a most unfortunate signal. The EESC regards the fact that these directives have still not been fully implemented 19 or even 32 years after their adoption as the greatest problem facing biodiversity policy in Europe. This provides convincing proof that, when it comes to maintaining biodiversity, it is the political will which is missing rather than legal bases or strategies. There is clearly a role for the European Court of Justice here, as even good strategies cannot compensate for the apparent lack of political will.

4.2.2 The EESC’s disappointment at the slow implementation of these directives is all the keener, given that most of the practical actions with successful outcomes were associated directly or indirectly with these nature conservation directives. Now and again the question is raised in political circles as to whether these directives and their objectives are still relevant, to which the EESC responds with a clear and unambiguous ‘yes’!

4.2.3 During the drafting of this opinion parallels were drawn on this point with the debt and euro zone crisis. If the EU Member States do not take their own principles and criteria seriously, whether they are nature conservation rules or the stability criteria for monetary union laid down in the Maastricht Treaty, it is hardly surprising if a) political problems occur and b) people lose confidence in politicians.

4.2.4 Among the actions listed for the achievement of this target, ensure adequate financing of Natura 2000 sites is described as a priority. The EESC agrees but cannot find anything in the draft financial perspective for 2014-2020 to suggest that the substantial improvements needed are likely to be achieved in the new financing period. A premium for the management of Natura 2000 areas, e.g. by agriculture, would be a positive signal, but unfortunately the CAP reform makes no provision for this.

4.2.5 Only 17 % of habitats and species and 11 % of key ecosystems protected under EU legislation are in a favourable state. The EESC asks the Commission to confirm whether the objective of having 100 % more habitat assessments and 50 % more species assessments under the Habitats Directive show an improved conservation status by 2020 will actually be sufficient to halt biodiversity loss. The Committee interprets the wording to mean that the Commission would be satisfied if by 2020 34 % of legally protected habitats and species were in a favourable state (and presumably 2/3 in an unfavourable state).

4.3 Target 2:

4.3.1 Target 2 is entitled Maintain and restore ecosystems and their services, a promise made by the heads of state and government as early as 2001. By 2020, improvements are to be made, inter alia by establishing green infrastructure and restoring at least 15 % of degraded ecosystems ( 9 ).

4.3.2 The EESC stresses that land use conflicts have escalated dramatically in the past decades, in all areas (e.g. agriculture and forestry, energy extraction, transport, urbanisation). Clearly, restoring degraded ecosystems under current conditions will exacerbate land use conflicts, as land users will perceive nature conservation as an additional competitor for land. The EESC calls for the implementing strategy announced for 2012 to suggest ways of solving these conflicts.

4.4 Target 3:

4.4.1 Target 3, Increase the contribution of agriculture and forestry to maintaining and enhancing biodiversity, has been the subject of discussion for years, without producing any solution to the problem. The EESC has repeatedly pointed out that farmers and foresters have a high level of affinity with nature and biotope conservation. Many model projects show that positive results can be achieved from working together in partnership.

4.4.2 Farmers are willing to meet the challenge assigned to them by society of practising ‘multifunctional’ rather than purely production-orientated agriculture. But they are faced with tasks which cost money but bring none in, as producer prices do not take account of the expected additional contribution of agriculture.

( 9 ) This target corresponds to the relevant objective of the Convention on Biological Diversity (CBD).
4.4.3 The common agricultural policy therefore needs to be adapted in order to solve this dilemma. The Committee would refer to its relevant past opinions and it will continue to monitor the forthcoming CAP reform intensively from this perspective too.

4.4.4 Financing methods outside the EU agricultural budget should also be looked at in order to provide the necessary incentive.

4.5 Target 4:

4.5.1 **Target 4. Ensure the sustainable use of fisheries resources**, addresses EU fisheries policy directly. The interests of commercial fisheries and the protection of biodiversity come into conflict again and again. It is therefore no wonder that the targets laid down for agriculture and fisheries (e.g. Action 13: Improve the management of fished stocks) remain very general and contain hardly any quantifiable nature conservation objectives. The EESC welcomes the target of maintaining and restoring by 2015 (and not only 2020) fish stocks to levels that can produce maximum sustainable yield, although it must be recognised that this is an objective for fisheries rather than nature conservation policy. And yet the discussions in the Council have shown that there is significant opposition even to such relatively non-binding wording. For the EESC this shows that biodiversity policy continues to be assigned lower priority than production methods which have long since been recognised as unsustainable. The Committee will closely monitor the progress of the negotiations on reform of fisheries policy.

4.6 Targets 5 and 6:

4.6.1 The Committee has already commented on **Target 5. Combat invasive alien species**, in an opinion (10). This problem is not new and it too still awaits a solution, as does **Target 6. Help avert global biodiversity loss**. On this issue the Committee notes that many of the announcements and promises on global biodiversity maintenance are clearly not being implemented. The Yasuni National Park in Ecuador is a case where the global community promised financial support in return for the abandonment of an oil extraction project. The promised level of funding was not forthcoming, however, with the result that oil extraction is now to go ahead, to the detriment of the rain forest.

4.6.2 The EESC calls on the Commission, the Council, and the European Parliament to make it clear how much money will be made available for ‘global biodiversity policy’ in the new 2014-2020 financing period. This is not clear from the existing documents. So far the EU and the Member States have devoted less than 0.004 % of their economic output to global biodiversity maintenance and development actions. The problems, which are in fact likely to increase as a result of global competition for land, cannot be solved in this way.

Brussels, 26 October 2011.

The President
_of the European Economic and Social Committee_
Staffan NILSSON


COM(2011) 330 final — 2011/0144 (COD)
(2012/C 24/25)

Rapporteur: Mr SARRÓ IPARRAGUIRRE

On 24 June and 18 July 2011 respectively, the Council of the European Union and the European Parliament decided to consult the European Economic and Social Committee, under Article 43 of the Treaty on the Functioning of the European Union, on the


The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 129 votes to 1 with 8 abstentions.

1. Conclusions

1.1 The EESC endorses the European Commission’s proposals and acknowledges the efforts that both the Member States and fishermen are making to comply with the International Commission for the Conservation of Atlantic Tunas (ICCAT)’s tough bluefin tuna recovery plan. The plan is now yielding results, but its implementation is having serious socio-economic effects, which should be taken into account.

1.2 To ensure that recovery can be observed and the best management measures can be adopted in the future, the Committee calls on the Member States and the Commission to continue supporting applied scientific research.

2. Introduction

2.1 The proposal put forward by the Commission is an amendment to Regulation (EC) No 302/2009 concerning a multiannual recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean.

2.2 Regulation (EC) No 302/2009 was adopted on 6 April 2009 as a consequence of ICCAT Recommendation 08-05, drawn up at ICCAT’s 16th special meeting held in November 2008. The regulation repealed Council Regulation (EC) No 1559/2007 of 17 December 2007, which had established an initial multiannual recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean.

2.3 At its annual meeting in 2010, ICCAT made a recommendation modifying the existing multiannual recovery plan, with a view to rebuilding bluefin tuna stocks in the eastern Atlantic and the Mediterranean.

2.4 The 2010 Recommendation again reduces the TAC (Total Allowable Catch) and strengthens measures to reduce fishing capacity and reinforce control measures, especially as regards transfers and caging operations.

2.5 The purpose of these measures is to ensure that the plan is effective and to achieve a biomass corresponding to the maximum sustainable yield (BMSY) with greater than 60 % probability by 2022.

2.6 ICCAT’s recommendations are binding on those Contracting Parties (CPs) that do not object to them. As a Contracting Party to ICCAT since 1997, the European Union has a responsibility to apply this recommendation, to which it has raised no objections.

2.7 The purpose of this proposal for a regulation is consequently to transpose into EU law the ICCAT recommendation referred to above.

3. Changes

3.1 The first change is to the aim of the recovery plan, which is to reach the maximum sustainable yield with greater than 60 % probability rather than 50 %.

3.2 A number of changes are made to definitions; in particular, the definitions of ‘auxiliary vessel’ and ‘transfer operations’ are extended, the definition of ‘farming’ is amended, and the definition of ‘responsible Member State’ is added.
3.3 Chapter II on fishing opportunities introduces the obligation for Member States to transmit to the Commission, by no later than 15 September each year, their provisional annual fishing plan for the following year.

3.4 With regard to capacity measures, the subject of Chapter III, the proposal for a regulation sets a timetable for each Member State to adjust its capacity between 2010 and 2013 to ensure that by the last year, each Member State has eliminated 100% of the discrepancy between its fishing capacity and its fishing capacity commensurate with its quota, for both fishing vessels and tuna traps.

3.5 In Chapter IV on technical measures, the ban on purse seine fishing for bluefin tuna is extended by one month, to run from 15 June to 15 May of the following year.

3.6 Chapter V contains changes to control measures, in particular:

3.6.1 The Commission will not accept any retroactive inclusion of fishing vessels or catching vessels on the lists that each Member State has to send it 45 days before the fishing season opens.

3.6.2 EU catching vessel owners are obliged to include in the daily logbook not only the information stipulated in the Community CFP standard control system, but also the information contained in Annex II to the proposal, so as to ensure strict monitoring of bluefish tuna fishing.

3.6.3 Joint fishing operations with other CPs are prohibited.

3.6.4 The whole of the article on transfer operations has been replaced, and a clearer and more effective control system for such operations is proposed.

3.6.5 The whole of the article concerning caging operations is replaced.

3.6.6 The article referring to the Vessel Monitoring System (VMS) is extended, making it mandatory for fishing vessels included in the ICCAT bluefin tuna record of catching vessels to start transmitting VMS data to ICCAT at least 15 days before the opening of the fishing season and to continue at least 15 days after it closes. Furthermore, transmission is not to be interrupted when vessels are in port.

3.6.7 The recording and reporting of trap activities is amended to ensure that, in addition to communicating on trap catches at the end of each fishing operation, estimated quantities remaining in the trap are also transmitted.

3.6.8 Moreover, the ICCAT Scheme of Joint International Inspection is extended so that when at any time, more than 15 fishing vessels of a Member State are engaged in bluefin tuna fishing activities in the ICCAT Convention area, that Member State must, during that time, have an inspection vessel in the Convention area, or must cooperate with another Member State or CPC to jointly operate an inspection vessel.

3.6.9 Article 30, concerning the national observer programme, is amended to extend national observer coverage to ensure coverage for:

— 100% of active purse seine catching vessels equal to or less than 24 m in 2011;
— 100% of active purse seine catching vessels equal to or less than 20 m in 2012;
— 100% of towing vessels.

3.6.10 In the article on the ICCAT regional observer programme, paragraph 1 is amended so as to require each Member State to ensure an ICCAT regional observer presence on:

— all purse seine vessels over 24 m during the 2011 fishing season;
— all purse seine vessels over 20 m during the 2012 fishing season;
— all purse seine vessels irrespective of their length during all the fishing season from 2013 onward.

3.6.10.1 Purse seine vessels referred to above without an ICCAT regional observer will not be authorised to fish or to operate in the bluefin tuna fishery.

3.6.11 The access to video records regulated by Article 32 is replaced in its entirety, with the addition of a new point obliging Member States to take the necessary measures to avoid any replacement, editing or manipulation of the original video record.

3.6.12 A new Article 33a is added, entitled ‘Transmission of the Union inspection plan to the ICCAT’, setting 15 September as the deadline for Member States to transmit to the Commission their inspection plan for the following year. The Commission is to transmit the EU inspection plan to the ICCAT Secretariat for endorsement.
3.6.13 Article 34(1), dealing with market measures, prohibits domestic trade, landing, imports, exports, placing in cages for fattening or farming, re-exports and transhipments of eastern Atlantic and Mediterranean bluefin tuna that are not accompanied by accurate, complete and validated documentation required by the present Regulation; the amended Article 34(1) adds to this stipulation the documents required by Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna Thunnus thynnus.

3.6.14 Lastly, the proposed amendments in Chapter V on control measures also entail the replacement and amendment of the regulation's annexes.

4. General comments

4.1 The EESC welcomes and endorses all of the amended technical and control measures and the new ones introduced. It views these measures as the result of experience gained and as contributions to rebuilding bluefin tuna stocks in the eastern Atlantic and the Mediterranean, in order to achieve a biomass corresponding to the maximum sustainable yield (BMSY) with greater than 60% probability by 2022.

4.2 The Committee therefore urges the Commission to apply this regulation with the utmost rigour to all Member States and CPCS carrying out bluefin tuna-fishing or farming and fattening activities in the area covered by the ICCAT Agreement.

4.3 The EESC acknowledges the work that has been done in recent years by the European Commission, the Member States and fishermen to adjust fleets to available fishing opportunities and to comply with the tough recovery plan, with all its concomitant social and economic effects, which should be taken into account.

4.4 The Committee is pleased to note that the sacrifices that have been made are yielding results and that both scientific experts and the fishermen affected are now seeing bluefin tuna stocks recover.

4.5 The EESC calls on the Member States and the Commission to continue to support national scientific institutes to enable them to make as accurate as possible assessments of bluefin tuna stocks and the effects of the recovery plan. To this end, it welcomes the creation of the scientific monitoring centre involving national authorities, scientific experts and trap operators, and the private initiatives developed by businesses and scientific experts to help improve understanding of this species.

4.6 With regard to closed seasons for the purse seine fleet, the EESC considers that the proposals drawn up by scientific experts to change the current seasons should be carefully studied in order to make this activity more sustainable, in economic, social and environmental terms.

Brussels, 26 October 2011.

The President of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on food intended for infants and young children and on food for special medical purposes’

COM(2011) 353 final — 2011/0156 (COD)
(2012/C 24/26)

Rapporteur: Ms Madi SHARMA

On 5 July 2011 the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 114 of the Treaty on the Functioning of the European Union, on the Proposal for a Regulation of the European Parliament and of the Council on food intended for infants and young children and on food for special medical purposes


The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 141 votes and 6 abstentions.

1. Conclusions and recommendations

1.1 The Committee praises the Commission for its comprehensive review of existing food legislation and recognises that it is difficult to clarify the distinction between foods intended for the general population and foods intended for specific groups. This lack of clarity makes the interpretation, application and enforcement of the current legislation difficult, particularly for Member States and civil society.

1.2 The Commission has conducted an in-depth impact assessment and associated consultations to address its objectives of coherence, simplification and harmonisation of the internal market. The impact analysis has reviewed issues such as administrative burdens, reformulation and labelling, innovation, competitiveness, prices, consumer protection and information, potential employment and small business consequences and social wellbeing.

1.3 It is essential that the current definition of ‘foods for special medical purposes’ is maintained in order to differentiate them from foods for general consumption, and to ensure the inclusion in their formulation of vital ingredients, such as amino acids and oligo-peptides.

1.4 Furthermore, the EESC believes that formulae for premature infants, who are an extremely vulnerable group, often in a poor state of health, should be included in the category of nutritionally complete foods with standard nutrient formulation.

1.5 The current application of the framework legislation, as recognised by the Commission, is leading to the distortion of trade in the internal market due to uneven interpretation and enforcement across the Member States. It is hoped that the proposed new Regulation will correct this distortion, without any adverse effects for employment or SMEs within the sector and will enable continued innovation.

1.6 All products for human consumption are currently protected under EU legislation on Food Safety, Labelling and Claims, supported by EFSA (the European Food Safety Authority). The new proposal will support the harmonisation of EU rules in the field of food safety and consumer protection, removing any duplication and ambiguity. The principle of subsidiarity will be respected by allowing Member States to apply national rules when justified in the interest of public health protection.

1.7 The EESC urges the Commission to review growth preparations for infants of 12 to 36 months under rigorous scientific assessments. There are currently conflicting scientific conclusions, and the public requires clear guidance and information.

1.8 The EESC believes that the new legislation should retain the current legal provision (Article 8(2) of Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses) enabling information on foodstuffs for particular nutritional uses and their correct use to be communicated to health professionals, so that they are able to provide consumers and patients with proper information and recommendations.
1.9 The EESC calls on the Commission to ensure that there is no distortion in the field of sports food, which has a European retail market estimated to be worth EUR 2 357 million, and an annual growth rate of 7%. In the broader context of food safety and labelling, the EESC also urges the Commission to consider the introduction, in future legislation, of warning statements on food products whose nutrient profiles (particularly in the case of sports products and slimming/diet control products) could have an adverse effect, if taken over long periods or in unadvisable quantities.

1.10 The EESC recognises that due to the current economic, social and cultural diversity in Europe, it may not be possible for all population groups to receive all the nutrients needed for a healthy life, and this has led to the development of fortified foods, alongside which the Commission has developed advertising and labelling rules. In this respect, the EESC strongly supports current EU legislative and implementing measures, which will ensure that all voluntary claims made on food products are clear, accurate and substantiated. These claims must not be misleading so that final consumers can make informed choices and, in the case of foods for special medical purposes, so that qualified medical, nutritional and pharmacological staff can have adequate information about their nutritional content and correct usage.

1.11 Finally, the EESC endorses the continued requirement, as laid out in the Commission Proposal Recital, for a Rapid Alert System for Food and Feed (RASFF) to be implemented in the case of food crises that could affect consumers anywhere in Europe.

2. Background

2.1 The free movement of safe and wholesome food is an essential aspect of the internal market and contributes significantly to the health and wellbeing of citizens. In this context, EU food legislation has been developed to ensure that ‘food shall not be placed on the market if it is unsafe’. This requirement concerns both its physical content and labelling provisions.

2.2 The Dietetic Foods Framework Directive (Directive 2009/39/EC) was adopted in 1977 to address the fact that ‘differences between national laws relating to foodstuffs for particular nutritional uses impede their free movement, [and] may create unequal conditions of competition’. The terms from the definition of ‘foods for special medical purposes’ have been retained within the proposal, ensuring their differentiation from normal foods and the inclusion in their formulation of essential ingredients. The ‘common definition on dietetic foods’ drawn up under ‘the general provisions and common labelling rules’ states that dietetic foods have three major characteristics:

— they are intended for specific groups of the population and not for the general population;

— they satisfy the particular nutritional requirements of the persons for whom they are intended.

2.3 Examples of dietetic foods, as defined in the Dietetic Foods Framework Directive, are foods intended for infants or young children, for people suffering from intolerance to gluten or for special medical purposes, where a ‘suitability statement for the particular nutritional use’ must be indicated on the packaging. For a number of these groups (infant formulae, processed cereal-based foods and baby food, food intended for use in energy-restricted diets, food for medical purposes and food for people intolerant to gluten), specific legislation has already been laid down for compositional and labelling rules. However, for sports foods, foods for persons with diabetes and foods for lactose intolerant people, no specific rules have been laid down.

2.4 In 2007, the Commission began a consultation process with the Member States on the Framework Directive on dietetic foods. Since then, further consultations have been held with the Member States, inter-service steering groups (SANCO, AGRI, ENTR, RTD, TRADE and the Secretariat-General), and industry and consumer groups, and an external consultancy report has been prepared.

2.5 Following these consultations, the Commission has tabled the present Proposal for a Regulation on food intended for infants and young children and on food for special medical purposes. The proposed Regulation will repeal the following directives:


— Directive 92/52/EEC on infant formulae and follow-on formulae intended for export to third countries;

— Directive 96/8/EC on foods intended for use in energy-restricted diets for weight reduction;

2.6 The action now proposed by the Commission is to simplify and clarify the legal requirements applying to only a limited number of categories of foods and establish a single list of substances that may be added to the foods (‘Union list’) covered by this proposal. In particular, it:

— abolishes the concept of dietetic foods;

— provides a new general framework law with a clear and defined scope of application, covering only a few well-defined categories of foods that have been identified as essential for certain, well-established groups of consumers with specific nutritional needs;

— maintains specific measures for these essential categories of foods;

— lays down general rules as regards the composition and labelling applying to these categories of foods;

— removes differences in interpretation and difficulties for Member States and operators in applying different items of food legislation by simplifying the regulatory environment;

— removes the burdens associated with the notification procedure;

— ensures that similar products are treated in the same way across the Union;

— removes rules that have become unnecessary, inconsistent and potentially conflicting;

— establishes a single legal measure for substances that can be added to the foods covered by this proposal.

2.7 Emergency procedures, as listed in Article 6 of the Commission Proposal, are foreseen in situations where food covered by this proposal constitutes a serious risk to human health.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Proposal for a Council directive laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption’

COM(2011) 385 final — 2011/0170 (NLE)
(2012/C 24/27)

Rapporteur: Mr Josef ZBOŘIL

On the 27 June 2011 the Commission decided to consult the European Economic and Social Committee, under Articles 31 and 32 of the Euratom Treaty, on the


The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 105 votes to 2 with 2 abstentions.

1. Conclusions and recommendations

1.1 Conclusions

1.1.1 The Committee welcomes this proposal, which defines basic safety standards for the protection of the health of the population against the dangers arising from ionising radiation with regard to radioactive substances in drinking water.

1.1.2 The EESC endorses drawing up the proposal on the legal basis under chapter 3 of the Euratom Treaty in order to ensure coherence of the approach with the environmental monitoring requirements under this Treaty and under the Basic Safety Standards for radiation protection.

1.1.3 The proposal sets quality standards and monitoring requirements under standard conditions. Radiological emergency situations and the resulting contamination of drinking water from man-made radiation sources are subject to a special emergency regulation (1).

1.1.4 The Committee understands that Commission Recommendation 2001/928/Euratom (2) of 20 December 2001 on the protection of the public against exposure to radon in drinking water supplies deals with the radiological quality of drinking water supplies as regards radon and long-lived radon decay products.

1.2 Recommendations

1.2.1 The Committee agrees that radon and radon decay products should be included in the scope of the proposed Directive despite the existing Recommendation 2001/928/Euratom.

1.2.2 However, the EESC recommends that the long-lived radionuclides polonium (Po-210) and lead (Pb-210) should be included in the definition of Total Indicative Dose (TID).

1.2.3 The EESC notes that the proposed Directive takes account of the chemotoxicity of uranium in Annex III, p 3 ‘Performance characteristics and methods of analysis’. The Committee also recommends incorporating a provision on toxicological checks of ground water intended for drinking water supplies in exposed areas with a higher occurrence of uranium substances in Council Directive 98/83/EC on the quality of water intended for human consumption.

1.2.4 The EESC notes that the parametric values of Tritium described in Annex I of the proposed directive are one hundred times lower than in the Guidelines for Drinking Water Quality issued by the World Health Organization (Geneva, 3rd edition, 2008). While a far too low parametric value for Tritium does not lead to unjustified restrictions today and it can be useful as an indicator of other problems, it needs to be reconsidered in view of future technologies.

1.2.5 The Committee appreciates the very thorough work on the proposal carried out by all the bodies involved and recommends proceeding with its adoption as soon as possible.

2. Background

2.1 Water is one of the most comprehensively regulated areas of Community environmental legislation. Only a very small percentage of drinking water systems are located in areas that have potential sources of man-made radioactive contamination from facilities that use, manufacture, or dispose of radioactive substances.

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(1) Council Regulation (Euratom) 3954/87.
2.2 Water systems vulnerable to this type of contamination are required to be extensively monitored to ensure that their drinking water is safe. However, there are many regions in Europe where the presence of naturally occurring radioactive substances is of concern.

2.3 EU level technical requirements for the protection of the health of the general public with regard to radioactive substances in drinking water have been finalised for more than five years now, after a consultation process involving the Group of Experts under Article 31 Euratom, the Committee established under the Drinking Water Directive and the Committee of Member State representatives under Articles 35 and 36 of the Euratom Treaty. So far, the requirements for monitoring tritium and total indicative dose under Council Directive 98/83/EC on the quality of water intended for human consumption have not been implemented, pending the adoption of amendments to Annexes II (monitoring) and III (specifications for the analysis of parameters).

2.4 It is justified to incorporate the requirements for monitoring levels of radioactivity in a specific legislation under the Euratom Treaty in order to maintain the uniformity, coherence and completeness of radiation protection legislation at Community level.

2.5 Therefore, the Commission has presented a proposal laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption based on Article 31 of the Euratom Treaty.

2.6 Upon adoption, the provisions of the proposed Directive under the Euratom Treaty will supersede those of Directive 98/83/EC as regards radioactive substances in drinking water.

2.7 The governing principles of the proposed directive are as follows:

2.7.1 Legal basis: the provisions of this Directive are related to the basic standards for the protection of the health of the general public. Consequently, the legal base chosen is the Euratom Treaty, and in particular, Articles 31 and 32 thereof.

2.7.2 Subsidiarity principle: As the Community has exclusive legislative powers under Title II Chapter III of the Euratom Treaty, the proposal is not subject to the principle of subsidiarity.

2.7.3 Proportionality principle: the proposal complies with the proportionality principle by setting minimum harmonised standards for monitoring tritium and total indicative dose and adapting the requirements of Directive 98/83/EC related to radioactivity to the latest scientific and technical progress.

2.7.4 Choice of instruments:

— While the Community is responsible for establishing uniform rules in the radiation protection field, it falls on the Member States to transpose these rules into their national legislation and to implement them.

— A directive is therefore best suited to create a common approach to defining harmonised requirements for radioactivity parameters and for monitoring the quality of water intended for human consumption.

3. Comments

3.1 The Committee welcomes this focused and consistent proposal, which clearly and explicitly defines basic safety standards for the protection of the health of the population against the dangers arising from ionising radiation with regard to radioactive substances in drinking water. It provides reassurance on the radiological quality of water supplied in distribution systems.

3.2 The EESC endorses the legal basis for drawing up the proposal under chapter 3 of the Euratom Treaty to ensure coherence of the approach with environmental monitoring requirements under this Treaty and under the Basic Safety Standards for radiation protection.

3.3 The proposal is the result of extensive consultative work involving experts in radiation protection. It sets quality standards and monitoring requirements under standard conditions. Radiological emergency situations resulting in the contamination of drinking water (‘liquid foodstuffs’) from man-made radiation sources are the subject of special emergency regulations and procedures (3).

3.4 The Committee understands that Commission Recommendation 2001/928/Euratom of 20 December 2001 on the protection of the public against exposure to radon in drinking water supplies deals with the radiological quality of drinking water supplies as regards radon and long-lived radon decay products.

3.5 The Committee notes that the exposure resulting from radon gas as such in domestic water supplies is predominantly attributable to inhaling the gas released into the air indoors, and to a much smaller extent to drinking the water.

3.6 On the other hand, the EESC is of the opinion that the long-lived radionuclides polonium (Po-210) and lead (Pb-210) should be included in the definition of the Total Indicative Dose (TID).

(3) Council Regulation (Euratom) 3954/87.
3.7 The EESC notes that the proposed Directive takes account of the chemotoxicity of uranium in Annex III, p. 3 ‘Performance characteristics and methods of analysis’. A toxicological check of ground water intended for drinking water supplies should be performed in exposed areas with a higher occurrence of uranium substances in the geological layers. A provision to this effect should be included in Council Directive 98/83/EC on the quality of water intended for human consumption, taking account of the provisional guideline value for uranium of 30 μg/l, recommended by the WHO Guidelines for drinking water quality (4).

3.8 The EESC notes that the parametric values of Tritium described in Annex I of the proposed directive are one hundred times lower than in the Guidelines for Drinking Water Quality issued by the World Health Organization (Geneva, 3rd edition, 2008). While a far too low parametric value for Tritium does not lead to unjustified restrictions today and it can be useful as an indicator of other problems, it needs to be reconsidered in view of future technologies.

3.9 The EESC observes that in Note 2 of Annex II (‘Monitoring of radioactive substances’) of the proposal for a Directive, the Commission allows Member States to use ‘the number of inhabitants in a supply zone instead of the volume of water’ in determining the frequency of audits of water for human consumption supplied from a distribution network. However, this does not take into account cases where water from the distribution network is bottled for sale.

Brussels, 27 October 2011.

The President of the European Economic and Social Committee

Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Functioning and application of established rights of people travelling by air’

(2012/C 24/28)

Rapporteur: Mr HERNÁNDEZ BATALLER

On 1 June 2011 the European Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the "Functioning and application of established rights of people travelling by air" (exploratory opinion).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 157 votes to one with two abstentions.

1. Conclusions and recommendations

1.1 The EESC considers that there is a need to undertake a legislative reform of Regulation No 261/2004 in order to consolidate all air passenger rights into a single text. This reform should firstly, incorporate the body of case-law laid down by the Court of Justice of the European Union and secondly, attempt to define and identify the practical scope of what is understood by the term 'extraordinary circumstance', determine the precise extent of the right to assistance, and address all other aspects mentioned in the present opinion in order to guarantee a high level of protection for passengers.

1.2 Information to passengers must be improved, so they are clearly notified of their rights. This should be extended to boarding areas and, in any case, greater efforts should be made to publicise passenger rights among other organised civil society actors such as consumers' organisations etc.

1.3 Airlines bear the sole and exclusive responsibility for compliance with the obligations under Article 13 of Regulation 261/2004 with regard to passengers. This means that they may, on occasions, seek compensation from third parties, unconnected with the travel contract, who have caused delay or cancellation. Rapid and effective mechanisms should be put in place for these compensation proceedings.

1.4 The EESC is of the view that transparency must be increased by means of effective instruments for exchanging information, including administrative and judicial decisions, together with publication of any sanctions that are applied and the degree of compliance with Regulation 261/2004 by operators. Moreover, harmonised, accessible and efficient procedures must be introduced, subject to specific deadlines and with binding decisions.

1.5 Regarding persons with reduced mobility (PRM), there are problems with the satisfactory implementation of Regulation 1107/2006. The EESC calls on the Commission to cooperate with the enforcement bodies and the relevant representative organisations, including organisations of PRM, in drawing up guidelines to clarify the definitions contained in this regulation, and to improve the implementation thereof. In the event that the guidelines fail to resolve existing problems concerning the lack of effective application of PRM rights, the EESC urges that an immediate revision of Regulation 1107/2006 be undertaken.

1.6 As part of the process of revising Regulation 261/2004, the EESC considers that the elements forming the final price of air transport services should be specified and defined.

2. Introduction

2.1 The rules governing air transport are complex and divergent. The effects of this state of affairs are felt most strongly in the rules governing carriers' liability towards passengers.

2.2 The current growth of air transport has had a negative impact on quality. This deterioration is due to a number of causes which are detailed in communication COM(2011) 174 final.

2.3 Passenger transport is moreover a key instrument for implementing and underpinning the European Union principles of free movement of goods and of EU citizens.

2.4 Since publishing the communication, the European Commission has been carrying out an assessment of the impact of Regulation 261/2004, to improve the protection of air passenger rights and to keep pace with evolving socio-economic realities.

The EESC is aware that implementation of Single European Sky II throws up a wide range of issues which it has addressed in another opinion (1).

3. The EP referral to the EESC

3.1 The Chairman of the European Parliament's Committee on Transport and Tourism has addressed the present referral to the EESC President, with the aim of assessing whether the application of the current European rules ensures adequate protection of passenger rights, and of identifying areas in which new measures may be considered necessary. The Parliament has also asked for a reply to the specific questions contained in its letter.

3.2 Question 1: What are the main deficiencies identified in the application of the existing rules? What measures could be recommended to tackle those issues, especially whether it is necessary to take some legislative initiative?

3.2.1 Airlines represent a strongly liberalised and highly competitive sector, that therefore requires an EU-level regulatory framework capable of ensuring the balanced development of the internal market, guaranteeing airlines' competitiveness, fostering social cohesion and sustainability, monitoring the transparency of airlines' commercial practices and, in consequence, implementing a high level of users' rights.

3.2.2 The key benchmarks in terms of consumer protection policy are the right to protection of health and safety and of economic interests, compensation for loss, information, education and representation. It is crucial for any future amendment or revision of Regulation 261/2004 to take these into account in order to guarantee a high level of protection for passenger rights.

3.2.3 The legislator, aware of the particular nature of the sector, has established that airlines are entitled to seek redress when a loss incurred is due to a third party and the airline, as the party responsible for providing the service, has had to compensate the passenger for the loss. This option has not yet been explored by the airlines in circumstances where the third parties can be identified: these include airport authorities, air traffic control, ground-handling service providers, travel agents and tour operators.

3.2.4 Instances of extraordinary circumstances on account of natural causes, as set out below, are a separate question.

3.2.4.1 A series of cases has arisen in recent years where liability could not be established and which were declared to be 'extraordinary circumstances', such as the volcanic eruptions in Iceland, heavy snow in early 2010 and 2011, etc. They have generated a large number of incidents affecting EU airlines, with the ensuing economic cost and losses to users.

3.2.4.2 The scope, definition and identification of what is covered by the term 'extraordinary circumstance' is one of the areas of disagreement in interpreting the Regulation, since it entails obligations for airlines such as the right to receive assistance.

3.2.4.3 The Court of Justice of the European Union (CJEU) has pointed out that, in addressing the issue of extraordinary circumstances, the list drawn up by the Community legislator is purely indicative. This lack of precision gives rise to confusion and, crucially, legal uncertainty for both airlines and users.

3.2.4.4 It must be made clearer what is understood by an extraordinary circumstance as well as how far certain of the airlines' obligations extend. This situation should be made uniform in the next amendment of the Regulation.

3.2.4.5 An alternative approach to the issue might be to draw up an open list by means of which the factors constituting an extraordinary circumstance could be detailed, whenever such problems are caused by events which, by their nature or origin, do not form part of the normal operation of the airline concerned and are not within the effective control of the airline.

3.2.5 Applications for preliminary rulings appearing in recent months before the CJEU suggest that it is now becoming necessary to update the rules.

3.2.5.1 Moreover, in its judgments the CJEU has clarified some important aspects, which should now be unarguable, in order to boost user confidence in the air transport sector and to increase legal certainty for airlines. A number of judgments by national courts also provide clarification, such as the recent judgment by the commercial tribunal of Namur which declared certain general conditions of a travel contract to constitute unfair terms.

3.2.6 The reasons for revising Regulation 261/2004

3.2.6.1 The Communication from the Commission (COM(2011) 174 final) makes a detailed and precise assessment of the application of this Regulation, which was a milestone in the protection of air transport users.

3.2.6.2 Developments in the sector in recent years make a revision of the Regulation necessary. A number of improvements that should be considered in any future modification of the current text are suggested below:

— Incorporating solutions contained in CJEU judgments into the future text.

— Defining the practical scope of the term 'extraordinary circumstance'.

— For certain exceptional cases, establishing the precise extent and limits of the right to assistance, defining how the legitimate rights of passengers may be safeguarded through alternative mechanisms, settling such cases by means of decisions that are binding on the parties and are taken within a reasonable period of time.
— Regulating situations currently arising in connection with flight rescheduling.

— Regulating issues arising from missed connecting flights caused by delays to the initial flight provided by a point-to-point only operator.

— Regulating the obligation to provide care at connection points.

— Dealing with the right to compensation, including arrangements for regular updating of the current standardised and immediate compensatory measures, which date from 2004.

— Including ground-handling agents, who work on behalf of airlines in providing the services set out in the Regulation.

— Specifying which authority is competent to deal with users’ complaints and enforcing compliance with the Regulation.

— Monitoring and publishing, at Community and Member State level, complaints regarding non-compliance with the Regulation, broken down by company and type, and providing for companies which have been granted an air operator’s certificate to be audited in each Member State in this regard.

— Correcting the inconsistency in the wording of paragraphs 1 and 2 of Article 14 of the Regulation.

— Making passenger compensation compulsory if an airline declares bankruptcy, under the principle of ‘shared liability’ for repatriating passengers by other airlines that have seats available, and setting up a fund to compensate passengers based on the ‘market player pays’ principle.

— Introducing the possibility of transferring the travel contract to a third person.

— Prohibiting the current practice by airlines of cancelling the return flight if a passenger has not used the outward flight on the same ticket.

3.3 Second question: On the side of passengers, are the information and services provided to passengers sufficient and adequate? If not, what can be done to improve them?

3.3.1 The EESC considers that information is a vital element in both decision-making and in demanding the rights that are granted to beneficiaries by the rules. The Regulation makes the airline responsible for providing information.

3.3.2 Although the right to information is apparently upheld, airlines do not always comply with the existing obligations.

3.3.3 The current text does not include an obligation for air carriers to inform passengers in the event of arrival at the final destination with a delay of three hours or more, as in the CJEU judgment in the Sturgeon case.

3.3.4 Quite apart from resolving inconsistencies and introducing some novelties, the Regulation should also extend the obligations under Article 14 to the boarding area, and not only the check-in area.

3.3.5 Efforts to publicise passengers’ rights could be extended and shared with other actors in the chain, by means of cooperation with national airport authorities, consumers’ organisations, travel agencies and tour operators, European Consumer Centres and the authorities responsible for enforcing the Regulation, in addition to the work already being carried out by the Commission.

3.4 Third question: On the side of industry, it might be valuable to assess proportionality of some current obligations, like the unlimited liability regarding the right to care under extraordinary circumstances beyond the carrier’s control such as major natural disasters or extreme weather conditions.

3.4.1 The Regulation gives no role to any actor other than the airlines, as they are ultimately responsible for providing the service and subject to contractual obligations. There are however other actors who have an impact on airlines: some of them could contribute to improving service and others to notifying air transport users of their rights.

3.4.2 The first group includes airport managers, who are involved in circulating operational information from the airlines. They can provide advice and receive complaints in the absence of airline representatives and help, through their facilities, to provide assistance in situations of force majeure or extraordinary circumstances. They bear responsibilities concerning luggage logistics, and could use their own means to provide information in emergencies in order to prevent congestion or public order difficulties in their installations, etc.

3.4.3 Those in charge of air traffic control also have a key role. Their work is important in keeping to the slots allocated to airlines and traffic management, among other aspects.

3.4.4 The second group includes travel agencies and tour operators, who could assist in publicising passenger rights and circulating messages communicated to them by the airlines in the event of flight cancellations or rescheduling.
3.4.5 The possible role of ground-handling companies in terms of passenger protection should be highlighted. The Regulation allocates no role to these companies, but they should be legally involved in the area of passenger care. Their role could be incorporated either through the present Regulation or by revising Directive 96/67/EC on access to the ground-handling market at Community airports.

3.4.5.1 Ground-handling companies, who in practice provide passenger care, should be under an obligation to do so. In addition, the application of the Regulation should be improved by imposing an obligation on companies to have contingency plans and procedures in place – via the local agent – in the event of flight disruptions, that ensure that assistance and re-routing are offered. This could be done by means of an obligation to grant them the legal and financial capacity to provide this service, making them the company's 'voice' vis-à-vis airport managers and national authorities.

3.4.5.2 This measure would apply only in airports with annual passenger throughput of more than two million. Each carrier would have to have a representative, or arrange to be legally represented by its handling company. This assistant would have to be empowered to enter into financial and legal commitments on the airline's behalf insofar as necessary for the proper application of Articles 8 and 9 of the Regulation.

3.4.5.3 Airlines bear the sole and exclusive responsibility for compliance with the obligations under Article 13 of Regulation 261/2004 with regard to passengers. This means that they may, on occasions, seek compensation from third parties, unconnected with the travel contract, who have caused delay or cancellation. The compensation may consequently partly or even fully offset the financial cost to airlines resulting from such obligations.

3.4.5.4 Consideration should be given to an actio in rem verso introducing a European procedure to simplify, accelerate and reduce the costs of proceedings in cross-border cases concerning payments arising from actions for recovery. Another possible solution would be to include this type of claim within the scope of Regulation No 1896/2006 (2) creating a European order for payment procedure.

3.5 Fourth question: Concerning cooperation among national enforcement authorities, what can be done to ensure more uniform interpretation and application of passengers' rights throughout the European Union? Do you believe the CJEU rulings on Regulation 261/2004 should be incorporated into legislation?

3.5.1 The Communication from the Commission has much to say on the need to improve cooperation between the national authorities in order to ensure uniform interpretation and application of the Regulation.

3.5.2 The Commission has a crucial guiding and driving role to play. The legislator has chosen to use the legal instrument represented by a regulation, which is directly applicable in all EU Member States by any authority or private individual: there is no need for internal transposing legislation to make it fully effective. Similarly, private individuals may claim legal protection before national or Community courts.

3.5.3 Not all existing instruments to improve consumer and user protection in the field of air transport have been employed, such as Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

3.5.4 Regulation 2006/2004 could be extremely useful for aspects lying outside the strict scope of Regulation 261/2004, and in particular issues that concern the notification of unfair commercial practices or breach of contractual terms on the part of companies.

3.5.5 The problem with the applicability of the former instrument lies in the fragmented nature of consumer protection bodies concerning air passenger rights in the different Member States.

3.5.6 There should be no doubt regarding the last question as to whether CJEU case-law should be incorporated into Regulation 261/2004, since the Court guarantees compliance with law in interpreting and applying the Treaties and secondary law. Evidence of the lack of precision in certain aspects lies in the excessive number of preliminary rulings concerning Regulation 261/2004.

3.6 Fifth question: Are there any issues relating to interpretation of some definitions that should be addressed by the legislators (e.g. interpretation of a definition of persons with reduced mobility (PRM), or the right of an air carrier to deny PRM access on board for safety reasons)? Also is there a need to revisit who is responsible for the provision of PRM services, the airports, the airlines or the ground-handling agents?

3.6.1 Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air is a benchmark for social integration, aimed at ensuring that disabled persons or PRM have the right to travel by air in a similar way to other citizens. However, the regulation is not being applied as it should by airport managers or airlines in terms of the assistance to be rendered to such persons from the moment they enter the airport until the moment they leave. This may be due to the lack of a description of the full package of appropriate services, which should be provided to disabled persons and PRM, in Annex II. Furthermore, the lack of implementation of strict quality standards in the area is jeopardising equal treatment.
3.6.2 It lacks, however, a sufficiently clear definition of what is understood by a disabled person or a person with reduced mobility, as its purpose is to provide broad assistance to the relevant groups requiring special assistance.

3.6.3 Given the possible difficulty of introducing a definition of disabled persons or PRM into legislation, the Commission should draw up defining guides to interpretation or guidelines in cooperation with the authorities responsible for enforcing the Regulation and with organisations representing stakeholders, including representative organisations of disabled people. Common European standards should be established to ensure that the security checks applicable to air passengers who use mobility equipment or medical devices are clear and comprehensive, and that the personal dignity of the passengers in question is respected.

3.6.3.1 These guides should cover areas such as the quality of service and information provided by ground-handling services and should seek consistency between Regulations 261/2004 and 1107/2006. In any case, in the event that the guidelines do not lead to the effective application of PRM rights, the EESC would advocate an immediate revision of Regulation 1107/2006.

3.6.4 The Regulation establishes that boarding may not be denied on the grounds of a passenger's disability or reduced mobility, but the following Article 4 provides for a derogation from the principle in order to meet safety requirements or if the size of the aircraft or its doors make the embarkation or transport of the person with a disability or reduced mobility impossible.

3.6.5 The preceding question is neither impartial nor neutral, since it is the air operators, on the basis of their risk analyses, who propose operational safety rules, which are generally accepted by the relevant aviation authority. The principle of non-discrimination is, in consequence, subject to the criteria of one of the parties. Airlines must be required to explain the denied boarding of disabled persons of PRM, including internal policies dealing with this issue, with reference to concrete evidence. This evidence should be scrutinised by the relevant aviation authority on the basis of the principle that it is up to the airline to demonstrate the concrete safety risk, and not the responsibility of disabled persons to demonstrate the opposite.

3.6.6 The minimum needed in this area would be a policy of transparency regarding the possibilities of access to aircraft by means of clear and transparent information when booking tickets.

3.6.7 One of the most controversial aspects is compensation for mobility equipment in the event of damage or loss. Under the present Montreal Convention this is not enough to offset the loss incurred by persons with reduced mobility, not to mention the moral damage which may be caused by the resulting loss of autonomy. Hence, sufficient compensation levels must be guaranteed by the airline policies, and ultimately by revision of legislation.

3.7 Sixth question: Is there a need in the area of passenger rights for a more transparent system of charging for a ticket including the issue of add-on charges?

3.7.1 Regulation 1008/2008 on common rules for the operation of air services in the Community stipulates that the final price must be indicated to the users of air services.

3.7.2 The Community legislator's intention has not produced the expected results, leading to frustration on the part of users who are unable to compare the prices of these services.

3.7.3 Air transport users are currently faced with a series of commercial practices that often make it impossible to understand all the elements forming the final price of an air service.

3.7.4 The above-mentioned Regulation enshrines the principle that air carriers shall freely set fares and rates. The principle is unchallengeable, but it is not a reason for failing to provide information that can be compared.

3.7.5 An earlier EESC opinion on consumer information (1) laid down a number of criteria for information to consumers and users: it must be reliable, topical, impartial, precise, relevant, succinct, comprehensible, clear, readable and easily accessible. Without prejudice to the freedom of all airlines in terms of commercial policy, it is crucial to know what elements and components make up their rates, together with the taxes, airport fees and other charges or duties that result in the final price.

3.7.6 In conclusion, the legislator should specify the components of the final cost of air transport prices and define them (2). A further aspect for consideration is that the fact that at present, travel contracts are taken out some time before actually travelling. Operators should be obliged to maintain these prices for a period of at least three months.

3.7.7 As pointed out in communication COM(2011) 174 final, there is a lack of transparency concerning the information that consumers need, such as publication of data on issues such as punctuality, the number of flights affected by disruption, the passenger protection measures applied and the decisions made by the NEBs in application of the Regulation, together with any sanctions that may be applied to airlines for non-compliance.

(2) OJ C 128, 18.5.2010, p. 142.
3.8 Towards enhanced implementation of out-of-court settlement of disputes

3.8.1 The NEBs’ out-of-court system of complaints should be based on uniform, effective and rapidly enforceable rules, guided by the recognised principles of out-of-court consumer complaints, using a common standard multilingual form, in keeping with the ‘harmonised methodology’ adopted by the Commission Recommendation of 12 May 2010. In any case, decisions must be taken within a reasonable period of time and must be binding upon the parties.

3.8.2 The deadlines for the procedure must be set uniformly, in the following cases at least:

— for the response that airlines must give to consumer complaints – a maximum of one month;

— for the enforcement bodies responsible for applying Regulation 261/2004 – two months to settle claims against airlines by consumers;

— for enforcement bodies to publish the content of the sanctions applied to airlines – two months from when they are determined.

3.8.3 All decisions in application of Regulation 261/2004 should be notified by the NEBs or Member State courts to the Commission, in the same way as under Regulation 1/2003, with the Commission being responsible for disseminating this information.

3.8.4 For collective disputes, which frequently occur in connection with issues arising from the provision of air services, collective legal protection must be ensured by representative consumer protection associations. The EESC would once again point to the need for legal proceedings of this kind to be regulated at Community level, and for a compensation fund to be set up to cover the costs of such proceedings for consumer organisations, as air passengers represent one of the groups with the greatest need for this type of protection.

3.8.5 Punitive civil sanctions may prove to be dissuasive, proportional and effective, combined with compensation for damage and loss incurred by groups of passengers as a result of non-compliance with consumer protection legislation, as pointed out by the EESC in previous opinions.

3.8.6 Any revision of Regulation 261/2004 must be carried out in such a way as to maintain the necessary consistency with other existing consumer protection laws, such as the Package Travel Directive and the Unfair Commercial Practices Directive.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union (recast)’

COM(2011) 402 final — 2011/0187 (COD)
(2012/C 24/29)

Rapporteur: Mr HENCKS

On 22 July 2011, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile communications networks within the Union (Recast)


The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 150 votes with 4 abstentions.

1. Conclusions and recommendations

1.1 Regulation (EC) No 717/2007, which sets price caps for the wholesale and retail roaming mobile communications markets, will expire on 30 June 2012 without any healthy competition having developed and with users still being forced to pay excessive prices.

1.2 Fresh EU action is thus required if the Union wishes to achieve the target it has set as part of its Digital Agenda for Europe, in particular that the difference between roaming and national tariffs would approach zero by 2015.

1.3 The EESC approves the new measures which it deems proportionate and appropriate for guaranteeing availability and access to a service of general economic interest at affordable prices. The new proposed cuts in price caps are a step in the right direction, i.e. the removal in the medium term of any specific form of roaming price.

1.4 The Committee also agrees in principle with the provision enabling customers to freely access the roaming services of any other interconnected providers of voice, SMS and data services whilst retaining their call number.

1.5 The EESC nevertheless regrets that the Commission proposal has not been accompanied by an impact assessment of the new measures as regards employment and working conditions in the sector.

1.6 As regards the duration of outgoing roaming calls, the EESC calls for the minimum initial charging period, currently fixed at 30 seconds, to be reduced, whilst taking account of developments in this area in certain Member States.

2. Background

2.1 Reducing the roaming price of mobile communications for users travelling in the European Union has been part of the EU’s electronic communications and industry policies since 2005.

2.2 Since the Commission’s repeated calls to operators to reduce their excessive charges for roaming mobile calls went unheeded, the EU decided to intervene by regulating prices.

2.3 EU regulation (EC) No 717/2007 introduced a price cap per minute (Euro Tariff) for roaming mobile calls (wholesale and retail markets) as of 1 September 2007. This rate was reduced by EUR 0.03 each year up to 2010.

2.4 Despite the fact that the Euro Tariff was set so as to leave a sufficient margin to allow healthy competition between operators, below the maximum permitted level, the Commission has been forced to conclude that, generally speaking, the average prices applied by operators were not far short of the regulated caps.

2.5 Regulation (EC) No 717/2007 was therefore extended until 30 June 2012, whilst the maximum prices for voice calls continued to be reduced each year. At the same time, a cap on charges for SMS (wholesale and retail) and wholesale prices for roaming data transmission was also introduced, but the retail prices for these data services were not regulated.

2.6 Furthermore, to prevent ‘hidden costs’ for customers, they have been billed by the second after the first 30 seconds for calls made and by the second for the whole duration of calls received since 1 July 2009.
3. The new Commission proposal

3.1 Given that Regulation (EC) No 717/2007 will expire on 30 June 2012 and that the report on developments on the roaming market drawn up by the Commission has shown that rates (apart from special price plans) have not shifted sufficiently to guarantee that users are not paying an excessive price compared to competing national rates, the Commission has just launched a new proposal amending the regulation in question.

3.2 Alongside the substantial new reduction in price caps up to 2016 or 2022, the new proposal for a regulation also contains a number of structural measures, namely:

— decoupling the roaming service from the domestic service to allow the customer to choose another operator for roaming services (voice, SMS, data) whilst retaining his call number;

— making it compulsory for network operators to make wholesale roaming provision accessible.

3.3 As regards the provisions on prices, the Commission is proposing extending Regulation (EC) No 717/2007 by 10 years up until 30 June 2022, in the hope that the structural reforms will bear fruit.

3.4 The charge caps for retail prices should be applicable until 30 June 2016, whereas the maximum levels for wholesale prices should be maintained throughout the whole regulatory period, unless competition evolves sufficiently in the near future.

3.5 The retail prices for data roaming services, which are currently the only prices that have not yet been regulated, are still excessive, in some cases seven times the wholesale price.

3.6 A regulation is therefore planned to gradually bring down retail prices per kilobyte for data services up to 2014. Price caps will remain unchanged between July 2014 and July 2016, before being abolished, unless a healthy level of competition develops, making it possible to abolish them sooner.

3.7 Charge caps for wholesale data services will be reduced year on year until 30 June 2015, whereafter they will remain at the same level until the new regulation expires (in theory, in 2022).

4. General comments

4.1 The need to settle the problems associated with roaming in order to complete the single market is also related to the Europe 2020 strategy, the Single Market Act and the Digital Agenda for Europe.

4.2 The EESC points out that electronic communications are a service of general economic interest which, by definition, should be universally available and accessible at affordable prices.

4.3 The EESC therefore approves any measures aimed at ensuring that consumers do not pay excessive rates when making or receiving roaming calls. Moreover, the EESC calls on the Commission to act with the same determination on the excessive profit margins applied by operators of other services of general economic interest with a dominant position.

4.4 One of the main strands of the Digital Agenda for Europe relates to roaming mobile services, where the goal is for the difference between roaming and national charges to be close to zero by 2015 at the latest, in other words, to abolish all forms of specific roaming prices in the medium term.

4.5 However, this stated objective does not appear in the regulation under consideration as a formal provision, although the new cuts in roaming price caps leave hardly any margin between national and roaming rates.

4.6 Although the current approach of imposing rate cuts by creating caps has led to substantial price reductions (see table below drawn up by the EESC), this measure is reaching its limits with the proposal under consideration and is not sustainable.

<table>
<thead>
<tr>
<th></th>
<th>Voice calls euros/minute excl. VAT</th>
<th>SMS euros/sms excl. VAT</th>
<th>Data euros/kilobyte excl. VAT</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Whole-sale prices</td>
<td>Retail prices call made</td>
<td>Retail prices call received</td>
</tr>
<tr>
<td>average price before 1.9.2007</td>
<td>0,7692</td>
<td>0,417</td>
<td>—</td>
</tr>
<tr>
<td>Regulation (EC) No 717/2007</td>
<td>max. price 1.9.2007-31.8.2008</td>
<td>0,30</td>
<td>0,49</td>
</tr>
<tr>
<td></td>
<td>max. price 1.9.2008-30.6.2009</td>
<td>0,28</td>
<td>0,46</td>
</tr>
<tr>
<td></td>
<td>max. price 1.7.2009-30.6.2010</td>
<td>0,26</td>
<td>0,43</td>
</tr>
<tr>
<td></td>
<td>Whole-sale prices</td>
<td>Retail prices call made</td>
<td>Retail prices call received</td>
</tr>
<tr>
<td>---------------------------</td>
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</tr>
<tr>
<td><strong>Regulation (EC) No 580/2008</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>max. price</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1.7.2010-30.6.2011</td>
<td>0,22</td>
<td>0,39</td>
<td>0,15</td>
</tr>
<tr>
<td>max. price</td>
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</tr>
<tr>
<td>1.7.2011-30.6.2012</td>
<td>0,18</td>
<td>0,35</td>
<td>0,11</td>
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<tr>
<td>max. price</td>
<td></td>
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<td>1.7.2012-30.6.2013</td>
<td>0,14</td>
<td>0,32</td>
<td>0,11</td>
</tr>
<tr>
<td><strong>Proposal for a regulation COM(2011)402</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>max. price</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.7.2013-30.6.2014</td>
<td>0,10</td>
<td>0,28</td>
<td>0,10</td>
</tr>
<tr>
<td>max. price</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.7.2014-30.6.2015</td>
<td>0,06</td>
<td>0,24</td>
<td>0,10</td>
</tr>
<tr>
<td>max. price</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.7.2015-30.6.2016</td>
<td>0,06</td>
<td>0,24</td>
<td>0,10</td>
</tr>
<tr>
<td>max. price</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.7.2016-30.6.2022</td>
<td>0,06</td>
<td>Max rate (*) abolished</td>
<td>Max rate (*) abolished</td>
</tr>
</tbody>
</table>

(*) Provided competition has developed sufficiently.

4.7 Reducing prices will not solve the structural problems that persist on the roaming market. Consequently the EESC approves the fact that, alongside the pricing rules, the new proposal for a regulation also contains structural provisions which oblige domestic operators to allow their customers to access the roaming services of any other interconnected service provider for voice, SMS and data as of 1 July 2014.

4.8 Although the EESC welcomes such a provision in principle, it nevertheless fears that this measure will divert too much traffic to large groups enjoying a dominant position, to the detriment of small operators, particularly as their technical and commercial costs for implementing the proposed measures will be proportionately higher because of fixed costs.

4.9 The EESC calls on the Commission to ensure that transparency for the end customer is guaranteed despite more players being involved in setting up mobile communications.

4.10 Although the Commission’s proposal to extend market access for transnational mobile service providers (Mobile Virtual Network Operators/MVNO) could further increase competitiveness, the EESC regrets that the European Parliament’s 2005 call for an assessment of the impact of the regulation on smaller mobile telephony providers in the Community and their position on the Community-wide roaming market has gone unanswered.

4.11 Similarly, the EESC points out that the impact study summary and the impact assessment appended to the proposal under consideration provide no details of the expected repercussions of the new measures on employment and/or working conditions in the sector. The EESC thus calls for further studies.

4.12 As regards the duration of outgoing roaming calls, the EESC calls for the minimum initial charging period, currently fixed at 30 seconds, to be reduced, whilst taking account of developments in this area in certain Member States.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
1. Recommendations and conclusions

1.1 The EESC recommends to the Council and to the European Parliament that the Commission assess as soon as possible whether the EU is likely to achieve the 20% energy-saving target and that efforts be focused on achieving real results.

1.2 The EESC urges the Commission to publicise and build on the good practices already developed in the Member States, particularly as regards improving the building stock’s energy efficiency.

1.3 The EESC recommends that the Commission find additional European funding for measures that will allow the Directive’s goals to be achieved and support their implementation.

1.4 The EESC calls on the Commission to urgently examine the reasons for the low take-up of available resources and revise the funding rules if necessary, and see how to boost the role of the recently-created energy efficiency Fund, both in terms of funding sources and the criteria for awarding funding, which should help to attain the environmental, social and economic targets.

1.5 Similarly, the EESC calls on the Commission to consider the possibility of extending its Europe 2020 Project Bond Initiative proposal to projects that help achieve the goals of this Directive.

1.6 The EESC calls on the Commission to carry out a swift assessment of the untapped potential in terms of energy efficiency that there might be in industry, in order to draw up the relevant measures to be adopted.

1.7 The EESC advises the Commission to examine to what extent and under what conditions the benchmarking tools for emissions of CO₂ and other pollutants (defined in the BREF documents) could be used as in the Directive on industrial emissions and established in the framework of a governance system involving all the stakeholders concerned, including employers, unions and NGOs.

1.8 The EESC advocates imposing more stringent conditions on any introduction of smart meters, whilst observing the principles of universality and accessibility of energy for consumers and respecting their personal data.

1.9 The EESC requests that the Proposal for a Directive under consideration require Member States to limit the impact of the costs of the measures on end consumers’ bills, particularly if the cost of smart meters is passed on, and to ensure that all of these measures are free of charge to low-income households, according to arrangements to be defined by the Member States.

1.10 The EESC calls on the Commission to help ensure that the remit of European Works’ Councils is extended to include energy efficiency so that the aims of the Directive can be achieved.

1.11 The EESC calls on the Commission to define more precisely the notion of ‘small and medium-sized enterprises’ in terms of size and operating areas, to prevent too broad a definition resulting in a large proportion of businesses being exempted from carrying out energy audits or helping achieve the aims of the Directive.
1.12 The EESC asks the Commission to ensure better integration of the transport sector and that measures be envisaged as part of the directive in question in order to help achieve the desired objective.

1.13 The EESC calls on the Commission to ask Member States to consider increased and possibly binding measures for their entire building stock and appeals for a target figure of this kind to be set, together with appropriate financing and flanking measures and incentives.

1.14 The EESC requests that the Commission encourage the necessary coordination at European level to improve school and university courses and training and R&D programmes, so that they are tailored to the challenges and targets contained in the Directive and foster partnerships to this end.

1.15 The EESC highlights the essential role that local and regional public services can play in terms of energy audits to help and encourage individuals to improve the energy efficiency of their homes.

1.16 The EESC believes that consumers play a key role in reducing energy consumption. The European Commission must ensure that national strategies are put in place to engage and encourage consumers in this direction, in order to secure optimum results for both individual consumers and society. Energy efficiency policies must be backed by appropriate (financial) incentives that are attractive and therefore acceptable to consumers. The needs of vulnerable groups of consumers must be an integral element of all energy efficiency policies.

2. Introduction

This opinion relates to the Proposal for a Directive on energy efficiency (COM(2011) 370 final), based on the directives in force governing cogeneration and energy services and aimed at combining them into a single legislative act of a global nature on energy efficiency in energy supply and final energy consumption.


3.1 The EU has set the target of achieving a 20% reduction in primary energy by 2020, and has made this one of the five major objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth.

3.2 The Commission's most recent estimates that take account of the national energy efficiency targets for 2020, established by the Member States as part of the Europe 2020 strategy, suggest that the EU will only achieve half of the 20% target by that date. The European Council and European Parliament have asked the Commission to adopt a new, ambitious energy efficiency strategy in order to take resolute action to tap the considerable potential that exists.

3.3 With a view to giving fresh impetus to energy efficiency, the Commission presented a new Energy Efficiency Plan (EEP) on 8 March 2011 which sets out measures to achieve additional savings in energy use and supply.

4. General comments on the proposal for a directive

4.1 This opinion is based on and supplements the Committee's opinion CESE 1180/2011 on the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Energy Efficiency Plan 2011 of 14 July 2011. In particular, the Committee points to the positions it adopted in this opinion regarding heat and electricity production, cogeneration (5.3) and energy services (5.4). Moreover, the Committee reiterates its request to examine and, if necessary, amend the current provisions for certifying the energy performance of buildings, eco-labelling of household appliances and smart meters.

4.2 The Committee supports the subject and aims of this proposal, which establishes 'a common framework for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union's target of 20% primary energy savings by 2020 and to pave the way for further energy efficiency improvements beyond that date'. The Committee is convinced of the importance of promoting energy efficiency in the EU, given the untapped potential that still exists and because achieving the set target will be beneficial for the EU from both the environmental, economic and social viewpoints. The EESC recognises that a large number of 'initiatives', legislative and otherwise, regarding 'green buildings' or the 'green' construction products sector have been launched over recent years. However, there is an apparent lack of an overall 'green construction' plan, resulting in uncoordinated measures and wasted resources. It would be helpful for the European Commission to put forward a green paper on green construction including all the initiatives concerning buildings and building materials.

4.3 The Committee welcomes the proposal in that it overhauls Directive 2004/8/EC on cogeneration and Directive 2006/32/EC on energy services, repealing and combining them, since an integrated approach can help achieve synergies, particularly in heat and electricity cogeneration, and thus make it easier to attain the designated goals. The Committee believes that better integration of the transport sector is needed, together with measures envisaged in the context of the directive in question in order to help achieve the desired goal.
4.4 The Committee feels it is crucial to achieve the target of 20% savings in primary energy by 2020. It recommends that, starting in 2013, the Commission be required to assess whether the EU is likely to achieve this target with the provisions in force. The EESC recommends that efforts be focused on achieving real results.

4.5 Given the importance of workplaces for taking forward and implementing the proposed measures, the Committee regrets that there is no reference to the workplace or the importance of encouraging social dialogue there in order to achieve the targets set. The commitment and involvement of workers in the energy efficiency programmes are essential for achieving the goals, as are developing and implementing suitable education and training programmes, together with measures aimed at ensuring good working conditions and health and safety at work. Workers should be informed of and consulted on these aspects as part of the social dialogue, which should be encouraged.

4.5.1 Similarly, following the line of Directive 2009/28/EC on the promotion of the use of energy from renewable sources, the EESC recommends adopting an annex on training leading to the certification or qualification of service providers covered by this Directive.

4.6 The Committee is concerned about the question of funding the necessary investments. Although it seems that in many cases the share of EU funding is too low to act as an incentive, as highlighted in point 6.5.1. of opinion CESE 1180/2011, point 4 of the Explanatory Memorandum for the proposal in question merely stipulates that the proposal for a directive will be implemented using the existing budget and will not have an impact on the multi-annual financial framework. Clearly it is important to use the existing financial instruments as much as possible, but the fact remains that they are currently insufficient given the low take-up of the resources available under the Structural and Cohesion Funds by Member States and regions. The Committee firmly believes that in order to achieve the set targets the Commission must:

— urgently examine the reasons for the low-take-up of available resources and revise the funding rules if necessary. This is all the more urgent and crucial in the light of the current constraints on public finances, which stem from decisions taken at European level as part of the austerity measures;

— look at how to boost the role of the recently-created energy efficiency fund both in terms of funding sources and the criteria for awarding funding, which, in the Committee’s view, must ensure that the environmental, economic and social targets are all attained;

— consider the possibility of extending its Europe 2020 Project Bond initiative to include investment projects for helping to achieve the targets of the proposal in question;

— look at the other possible funding mechanisms, including what are known as third party investor systems that provide the pre-financing and are repaid by the energy savings resulting from the work to improve the energy efficiency of the homes involved. In this respect, the EESC supports the Commission proposal to use Energy Saving Companies (ESCO), particularly for the installation of ‘smart’ meters.

4.7 The Committee emphasises that, according to the Energy Efficiency Plan 2011, public buildings account for only 12% of the EU’s building stock. It therefore points to the importance of the rest of the building stock and proposes that Member States consider increased and possibly binding measures on all of their building stock, and appeals for a target of this kind to be set, accompanied by appropriate funding, incentive and flanking measures. This is all the more necessary given that, as underlined in recital 15 of the proposal, ‘the existing building stock represents the single biggest potential sector for energy savings. Moreover, buildings are crucial to achieving the EU objective of reducing greenhouse gas emissions by 80-95% by 2050 compared to 1990.’ Furthermore, the Committee emphasises that upgrading the energy efficiency of the EU’s building stock:

— would make it possible to create many jobs in Europe. The quality of these jobs should be guaranteed through a stronger social dialogue and should flow from appropriate education and training programmes;

— would thus generate revenue for the Member States (mainly through a reduction in unemployment and an increase in tax revenue);

— would boost recovery in Europe;

— would also make it possible to achieve the social goals, by means of specific measures to be adopted for low and medium income families to help them cut their energy bills by reducing the amounts of energy they need for heating and lighting.

5. Specific comments

5.1 Article 4, which makes it compulsory for Member States to renovate 3% of the total floor area owned by their public bodies each year, refers to a total useful floor area of over 250 m². The Committee feels that these obligations should apply to the buildings housing the European institutions. Moreover, the Committee questions this minimum figure of 250 m² and wonders whether this might not lead in practice to housing associations in particular being exempted from these obligations, given that the living space is often smaller in social housing. Moreover, pursuing the defined energy efficiency targets should also have a social objective, establishing measures to help reduce the energy bills of poorer households through incentives to upgrade the energy performance of their homes.
5.1.1 The present economic situation may, however, mean that the provisions of Articles 4 and 6 are not reached within the given time limit. The EESC feels that the Commission should contemplate European support for those Member States unable to achieve the objective on their own.

5.2 Nevertheless, the energy efficiency obligation schemes provided for in Article 6 would generate costs. The Committee deems it necessary to mitigate the effects of the costs of the measures on end consumers' bills (see point 4.5.5. of opinion CESE 1180/2011). More specifically, it feels that the improvements should be free for low income households, as it stresses in point 6.7.2 of the same opinion.

5.3 Article 7(1), stipulates that Member States should encourage small and medium-sized enterprises, in particular, to undergo energy audits. The Committee therefore feels that it would be appropriate to define 'small and medium-sized enterprises' in Article 2.

5.4 Article 7(2), stipulates that enterprises other than 'small and medium-sized enterprises' must undergo an energy audit by 30 June 2014 at the latest and then every three years from the date of the last energy audit. As explained in point 5.3.1 of opinion CESE 1180/2011, the Committee believes that there is untapped energy potential in industry even if progress has been made in this area and even if European measures such as the emission quota trading system are already targeting energy intensive industries. In order to be able to identify as quickly as possible the untapped potential in industry and define the relevant measures to be adopted accordingly, the Committee proposes:

- implementing early and effectively energy audits;

- widespread support, deployment and dissemination of traditional and new tools facilitating focused and consistent improving of energy efficiency both in energy intensive and in SME installations.

- audits covering both management issues and structural issues. Management changes are relatively easy to implement, but structural changes (floors, roofs, changing function of the building, heavy materials) are expensive and time consuming, especially as implementation of the audit's recommendations requires a cost-benefit study and an implementation plan to prepare a bid with its exact parameters and a budget. On top of these constraints, permits are often required, which makes the renovation process considerably longer. For these reasons, it should be possible to extend the deadline for carrying out changes recommended by the audit which require extensive work.

5.4.1 Worker participation is essential for better energy efficiency. Without their knowledge, experience and commitment results cannot be achieved. Therefore the EESC recommends examining to what extent and under what conditions the benchmarking tools for emissions of CO₂ and other polluting gases (BREF documents drawn up by the IPTS in Seville to support the former IPPC Directive and the 2010 so-called IED Directive on industrial emissions, and also used for the ETS and including energy efficiency benchmarks), could be used in the same way in this directive and established in the framework of a governance system involving all the stakeholders concerned, including employers, unions and NGOs. In this way, it would be possible when drafting the diagnostics and proposals in the context of this governance system to take account of: the costs and benefits of planned energy efficiency measures and also, inter alia, the social-employment aspect, the impact on working conditions, social analyses and regulations, tools for assessing estimated requirements in terms of jobs, qualifications and vocational training and the mechanisms to put in place accordingly.

5.5 Article 8(1) sets out the conditions to be observed if smart meters are brought in. The Committee feels that these conditions are not enough. It calls for each Member State to carry out an in-depth preliminary study of the costs and benefits of such meters, in the context of its own regulatory arrangements, and believes that this study should take account of the technical feasibility and cost-effectiveness for the investor of installation of smart meters, including maintenance, management and replacement costs, and the risks these meters might pose as regards the principles to be observed in terms of the universality and accessibility of energy for consumers and respecting personal data. In the case of electricity, this study forms part of the economic assessment mentioned in point 2 of annex 1 of Directive 2009/72/EC of 13 July 2009.

5.6 Article 10(1) sets out an obligation to establish a national heating and cooling plan. This should include competition aspects so as to address the problems which could be raised by district heating monopolies.

5.7 At a very practical level, the EESC underlines the importance of developing energy services provided by public administrations or proposed by private companies and aimed at implementing the most energy-efficient solutions for businesses, public entities and individuals. European funding should enable them to be developed, making them accessible to individuals and SMEs, in accordance with conditions drawn up in the general interest.

5.8 From a legal viewpoint, the energy performance contracts referred to in the Commission document, albeit in the context of contractual relations with public entities, constitute a tool that can expand the systematic search for greater energy efficiency.
5.9 Article 1 on scope should exclude historic listed buildings as the practical and aesthetic difficulties arising from, inter alia, installation of smart metering are generally far greater in historic buildings. For instance, heritage conservation laws often prevent the owner of a historic building from implementing new energy management systems. Member States should be free to decide on a case by case basis when a specific historic and listed building would require this exemption and the application of a more flexible range of solutions.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: The open internet and net neutrality in Europe’

COM(2011) 222 final
(2012/C 24/31)

Rapporteur: Mr PEGADO LIZ

On 19 April 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — The open internet and net neutrality in Europe


The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 151 votes in favour and 1 abstention.

1. Conclusions and recommendations

1.1 The concepts of an open internet and net neutrality, ‘net freedoms’, are key to any regulation aimed at guaranteeing freedom to use the Internet as a means of communication.

1.2 Guaranteeing an open internet and net neutrality has been recognised as a fundamental political target at EU level, in several important documents, and has been particularly mentioned as political objective in the Digital Agenda, one of the most important pillars of the 2020 Strategy.

1.3 Therefore the EESC welcomes the Communication of the Commission aimed at monitoring the impact of market and technological developments on net freedoms. However, this Communication fails to meet the legitimate expectations of the EESC.

1.4 The Commission recognises certain situations which might lead to the violation of these principles but, instead of taking action to protect them it is advocating a ‘wait and see’ approach.

1.5 Given the acute importance of the issue to the economic and social future of Europe, the EESC strongly recommends that the principles of an open internet and net neutrality should be formally enshrined in EU law as soon as possible, always bearing in mind the evolution of technologies (‘state of the art’) in this field.

1.6 Moreover, the EESC believes that now is the right time to define the principles which would guarantee an open and neutral internet, and the Committee is recommending a set of principles which in its opinion should be adopted, as stated in point 7.12.

1.7 The EESC also believes that these principles are paramount to the future development of the internet as a tool for better citizenship on the grounds of the EU Charter on fundamental Rights and as an essential condition for the fulfilment of the WSIS Targets defined in Geneva (2003) and Tunis (2005).

1.8 The EESC is of the opinion that immediate action in this field will be decisive for the accomplishment of the goals of the Europe 2020 Strategy, the implementation of the Digital Agenda and the further realisation of the internal market, and welcomes recent public statements by Commissioner Kroes in this regard.

1.9 Thus the Committee demands that the European Parliament and Member States follow a proactive approach to safeguard net freedoms and assumes that the Commission will act accordingly.

2. Gist, nature and contents of the Commission Communication

2.1 The Communication is a political document which fulfils the commitment given by the European Commission in its declaration with the 2009 telecoms reform package (1) to ‘… monitor the impact of market and technological developments on “net freedoms” reporting to the European Parliament and the Council before the end of 2010 on whether additional guidance is required’.

2.1.1 In that declaration the Commission stated its strong and unequivocal commitment to ‘… preserving the open and neutral character of the internet, taking full account of the will of the co-legislators now to enshrine net neutrality as a policy objective and regulatory principle to be promoted by national regulatory authorities’.

2.2 We should remember that in its Digital Agenda for Europe, the Commission announced that it would ‘monitor closely the implementation of the new legislative provisions on the open and neutral character of the internet’ (\(^7\)).

2.3 The Communication describes the public consultation and fact-finding process undertaken by the Commission in 2010 \(^3\) and also the joint summit organised by the Commission and the Parliament on 11 November 2010 \(^4\).

2.4 The Commission concludes that no action should be taken now because there is insufficient evidence to recommend that further legislation is needed at this time.

2.4.1 During the consultation process several stakeholders and the Body of European Regulators for Electronic Communications (BEREC) reported that some Internet Service Providers (ISP) have been ‘throttling’, ‘blocking’ and charging discriminatory prices to deliver certain types of traffic \(^5\).

2.4.2 However, the Commission hopes that the rules on contracts \(^6\), transparency \(^7\), switching \(^8\) and quality of service \(^9\) that form part of the revised EU electronic communications framework should contribute to producing competitive outcomes.

2.4.3 Besides, the Commission is of the opinion that sufficient time should be allowed for these provisions to be implemented and to see how they will operate in practice \(^9\).

2.5 The Communication does not explicitly define the key terms as they might be interpreted by European legislation. In fact it states that ‘… there is no set definition of “net neutrality”’.

2.6 The Communication ends with a commitment from the Commission to publish the findings of further investigations by BEREC into the practices of ISPs that might be anti-competitive and against the principles of an open and neutral Internet. If significant and persistent problems are substantiated and the Commission deems that there is a need for further regulation, then it will advise the Council on what action might be necessary.

3. **What are we speaking about?**

3.1 The failure to explicitly define the main terms at issue is a serious problem. Without definition there cannot be clear exposition of the arguments, nor clear guidance to the market and regulators on the intended scope of European law on this matter.

3.2 **The Open Internet**

3.2.1 The open Internet is a concept that dates back to the beginning of the Internet and the creation of the World Wide Web (the Web), which made the content on the public Internet available to everyone in the world with an Internet connection.

3.2.2 The open Internet is the principle that as users we are free to connect to the public Internet without restrictions from governments or ISPs on the content, sites, platforms, the kinds of equipment that may be attached, and the modes of communication allowed.

3.2.3 It is ‘open’ because it uses free, publicly available standards that anyone can use to build websites, applications and services, and because it handles all traffic more or less the same way.

3.2.4 Once you are on the public Internet, you don’t have to ask permission nor pay extra to ISPs to reach others online. If you create an innovative new service you don’t have to get permission to share it with the world.

3.2.5 This freedom to communicate and innovate is the reason for the Internet’s remarkable success.


\(^{\text{c}}\) Throttling: An ISP can throttle their bandwidth to purposely reduce the speed of a particular customer’s service for certain types of traffic. BEREC reported that certain providers in France, Greece, Hungary, Lithuania, Poland and the United Kingdom used ‘throttling’ of peer-to-peer (P2P) file sharing or video streaming services. Blocking: An ISP company can purposely block the IP addresses of specific websites to prevent its Internet service customers access to particular applications and services. BEREC reported that certain mobile operators in Austria, Germany, Italy, the Netherlands, Portugal and Romania were blocking or charging extra for the provision of voice over Internet protocol (VoIP) services.


\(^{\text{f}}\) Paragraph 47 of Citizen’s Rights Directive 2009/136/EC.

\(^{\text{g}}\) Article 22(3) Universal Service Directive as amended by the Citizens’ Rights Directive 2009/136/EC.

\(^{\text{h}}\) On 19 July 2011 the Commission started proceedings against 20 Member States for failure to transpose the revised framework into national law.

3.2.6 In reality today, much of the public Internet is no longer ‘open’. The Web is still open, but the applications we use on our smart phones, the social networking sites we access and the paid content we purchase are part of a closed Internet, accessible only through proprietary interfaces and APIs (12).

3.2.6.1 Increasingly countries (13), companies (14) and network operators (15) are restricting access to the public Internet, or changing how it operates, for political, technological or commercial reasons.

3.2.7 However, the concept of the open Internet is the reason that the Internet has driven economic innovation, democratic participation, free speech and learning online across the world. It is a vitally important concept to our values of freedom, equality and human rights, as stated in the EU Charter of Fundamental Rights.

3.2.8 Without being explicitly named, the principle of the open Internet is dealt with by Article 1 (3a) and Article 8(4) (g) of the framework directive on electronic communications and by paragraph 28 of the Citizens’ Rights Directive 2009/136/EC.

3.3 Net Neutrality

3.3.1 The principle of net neutrality is derived from the concept of the open Internet. Whereas the open Internet relates to open standards and the freedom to connect to and use the Internet, net neutrality deals with the commercial treatment of Internet customers by Internet Service Providers. It seeks to protect the consumer’s rights under the principle of an open Internet without unreasonable commercial interference by the network provider.

3.3.2 The principle of net neutrality means that companies providing Internet service should treat all sources of similar Internet data equally and not discriminate between different types of traffic for commercial motives.

3.3.2.1 It is the principle that Internet users should be in control of what content they view and what applications they use on the Internet; that ISPs should not be permitted to use their market power to discriminate against competing applications or content.

3.3.2.2 This principle can be compatible with traffic management measures, as long as these measures are non-discriminatory, are made transparent to the consumers, and are taken in pursuit of legitimate quality of service goals. Traffic management measures must not, however, create incentives for slowing down network development in order to charge higher prices due to a scarcity of resources.

3.3.3 The principle argues that the market for connectivity should be kept legally separate from the market for content and applications, meaning that companies that operate in both markets must properly separate the management of the respective markets.

3.3.4 However this principle could be under threat (16). ISPs could use their infrastructure to block Internet applications and content (e.g., websites, services, protocols), particularly those of competitors, or to change their business models to reduce the quality and scope of access that different users enjoy. Such changes in business models could result in unfair price discrimination and service quality discrimination.

3.4 Previous EESC Opinions

3.4.1 The EESC in several Opinions took a clear position in favour of these two principles mainly on the grounds of freedom and human rights; data protection and protection of privacy; democratic and collaborative governance; inclusion and empowerment; innovation and economic growth (17).

(12) An application programming interface (API) is programming code inserted between two programmes so that they can link to each other and work together.
(13) China’s ‘great firewall’ already imposes tight controls on internet links with the rest of the world, monitoring traffic and making many sites or services unavailable. Other countries, including Iran, Cuba, Saudi Arabia and Vietnam, have done similar things, and other governments are tightening controls on what people can see and do on the internet.
(14) Users of Apple’s mobile devices access many internet services through small downloadable software applications, or apps, rather than a web browser. By dictating which apps are allowed on its devices, Apple has become a gatekeeper. As apps spread to other mobile devices, and even cars and televisions, other firms will do so too. Economist, 2/9/10.
(15) ISPs and Telecom network operators looking for new sources of revenue are using technology to discriminate between types of Internet traffic on their network so that they can charge extra, degrade or even block certain services.
(16) In its reply to 30 June 2010 EC public consultation BEREC listed three main concerns regarding future developments: 1) the scope for pricing discrimination through the use of techniques like deep packet inspection, combined with economic incentives and the potential for vertical integration, would create anticompetitive effects; 2) the potential for longer-term negative consequences for the internet economy (on innovation, freedom of expression, etc.); 3) Consumer confusion/harm due to lack of transparency.
4. The economics behind the Principles: the link to the 2020 Strategy and the Digital Agenda

4.1 The Digital Economy

4.1.1 Under the flagship programme of the Digital Agenda (19), the Europe 2020 strategy (20) seeks to leverage the tremendous growth potential of the Internet and the digital economy.

4.1.2 Two billion people are now connected to the Internet, and almost EUR 5.5 trillion is transacted in eCommerce each year. Internet related consumption and expenditure is now bigger than agriculture or energy, and in countries with more mature Internet penetration it has contributed 21 % of GDP growth in the last five years (23).

4.1.3 A recent study by McKinsey (22) of almost 5 000 SMEs found that those with a strong Web presence grew more than twice as quickly as those that had minimal or no presence. They also created more than twice the number of jobs as others.

4.1.4 To get the greatest benefit from this powerful engine of growth and transformation every effort should be made to maximise access to the Internet and the freedom to use it, and to minimise the its cost for consumers and businesses.

4.2 SMEs, innovation, employment and growth

4.2.1 A major focus of the Europe 2020 strategy is to especially improve the business environment for SMEs, to reduce transaction costs, to stimulate SME innovation, and to nurture start-ups.

4.2.2 Any policies that abandon the principles of an open Internet and net neutrality to favour the large network operators at the expense of Europe's 23 million SMEs (25) and consumers will hurt Europe's ability to transform the economy and society as envisaged by the Europe 2020 strategy. (18)

4.3 Internal Market and Fair Competition

4.3.1 An open Internet and net neutrality which would guarantee fair competition and stimulate innovation are also essential principles for achieving a strong Digital Single Market (23).

5. Some Network Operators argue against the principle of net neutrality

5.1 Some network operators have been lobbying with national governments, the Commission and the EP to help them increase their share of Internet revenues (26). They argue that unless they are able to create new revenue streams from delivering content they will not be able to afford the capital investment required to provide the high speed broadband that Europe needs (29).

5.1.1 Some privately owned network operators that compete in the marketplace for Internet connectivity and seek short-term returns on investment, are cautious about investing in this area at the moment because they do not perceive a sufficiently profitable business case, especially when talking about peripheral regions.

5.2 However, aided by investment supports from Europe to provide high-speed broadband (27) and the attractive growth rates in demand for bandwidth, new infrastructure providers are entering the market for connectivity. And as a more competitive market is developing in Europe for broadband infrastructure, the availability of bandwidth and the cost of providing it are also being positively impacted by the development of new technologies for both terrestrial and wireless broadband. For example, major projects are underway to provide high speed Internet, especially in rural areas, by exploiting the digital dividend from the switch from analogue to digital broadcasting.

(26) Europe's largest ISPs operators argue that if they upgraded their networks to meet forecast broadband demand to 2014 without any extra revenue, their returns on capital would fall by 3 percentage points to about 9 per cent. A.T. Kearney, 2010 - A Viable Future Model for the Internet.
5.3 The problem is that the proposals from some ISPs to change their business models by negating the principle of net neutrality will increase the cost of content and services on the Internet or reduce the openness of the Internet.

5.3.1 If the principle of net neutrality is successfully undermined thereby allowing ISPs to ‘tax’, throttle or block Internet traffic between customers and service providers, then the cost of Internet services will increase in Europe with detrimental effects on innovation, growth, employment and the Europe 2020 strategy.

5.3.2 Even the fulfilment of the World Summit on the Information Society (WSIS) targets, set up in Geneva (2003) and in Tunis (2005) in line with the Millennium development Goals (MDGs) (29), would be in danger.

6. KPN (30) provokes the creation of net neutrality law in The Netherlands

6.1 In the Communication of the Commission on 19 April it stated that it had insufficient evidence of operators interfering with Internet traffic for commercial advantage to warrant introducing further legislation now to protect the principle of net neutrality.

6.2 However, subsequently, on 10 May the Dutch ISP KPN (30) indicated that from July it was planning to charge customers extra for accessing certain Internet applications such as VoIP (Skype) and the SMS-substitute smartphone application WhatsApp.

6.2.1 It was disclosed that KPN, like other ISPs, had been using a technology called deep packet inspection (DPI) (31) to analyse their customers’ Internet traffic and it was planning to surcharge VoIP calls, WhatsApp traffic and any other content that it wanted to inhibit or profit from.

6.2.2 Because it was in their strategic interest to ignore the principle of net neutrality and because there was no legal requirement to respect the principle, KPN was openly declaring its intent to proceed with ‘taxing’ certain types of Internet traffic.

5.3 The public disclosure of KPN’s actions and future intentions caused a political storm in The Netherlands, resulting in the passing on 22 June in the lower house of the Dutch parliament of Europe’s first laws to protect the principals of an open Internet and net neutrality.

6.4 The statement of intent by KPN proved categorically that some network operators do not view the provisions of the revised Framework on electronic communications nor EU competition law as serious protection of the net neutrality principle.

7. Should the EU take action now or ‘wait and see’?

7.1 In the Communication the Commission advocates a ‘wait and see’ approach.

7.2 The Communication posits that the transposition of the revised regulatory framework into national laws should provide sufficient protection of the open Internet principle. And in the event that an operator breaks the law then the NRA has the clear powers to act decisively.

7.3 However, according to the Communication there would not be any need to enforce the principal of net neutrality. Instead the Commission is proposing that a competitive market for broadband connectivity, coupled with the transparency and consumer switching provisions in the revised framework should be adequate.

7.4 The Communication implies that it would be better to wait and see if the existing laws and competitive conditions will be adequate protection for the principle of net neutrality; that implementing ad hoc legislation now could adversely affect the development of Europe’s Internet economy by deterring investment, or preventing other innovative business models from emerging.

7.5 Advocates for a ‘wait and see’ approach point to Europe’s competitive market for ISP services, saying that if network operators introduce discriminatory pricing for content delivery, then unhappy customers will move to another ISP.

7.5.1 However, this argument underestimates the real difficulty that many customers have in switching carriers (32), and also the insidious effect that collective action by the largest ISPs could have if they all decided to levy discriminatory charges for content delivery.

(30) KPN is the Dutch telecommunications company with interests in numerous European countries. It is the largest ISP in The Netherlands, revenue in 2010 was EUR 13,4 bn with profits of EUR 1,8 bn.
(32) See Ofcom review of switching in the UK (10 Sep 2010) found that, if they have a choice, 45 % of broadband customers find switching ‘too much hassle’ and that consumers are unlikely to move just because one or two of their Internet uses are prohibited or over charged: http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf.
7.6 61% of households in Europe who are currently accessing the Internet now buy their Internet access as part of a bundled offering of Internet, telephony and television. Furthermore, 92% of households with bundled service packages have not switched provider even though 36% have considered it (33). It is clear that by clever marketing practices ISP market power is growing, and this adversely affects customer switching behaviour - smart marketing weakens consumer power. Smart marketing will enable the ISPs to exploit their position and get away with practices contrary to the principle of net neutrality, thus earning excessive profits, weakening competition and innovation; unless legislation prevents them.

7.7 In any case, the process of evaluating the effectiveness of the new electronic communications rules is going to take a considerable amount of time.

7.7.1 Given how long it can take for regulatory action to be considered, drafted, and to take full effect in EU27, and given how quickly the ISPs are apparently moving to introduce new business models, net neutrality might already be an irrelevant concept before any regulations are written.

7.8 The EESC suggests a different proactive approach mainly based on the principles of prevention and precaution described in its previous Opinion on a ‘Proactive approach to EU Law’ (34) and welcomes very recent public statements of Commissioner Kroes, which apparently support this approach.

7.9 According to this approach the principles of open Internet and net neutrality should be unambiguously defined and enshrined in European law as an endorsement of citizens’ rights as defined in the EU Charter of fundamental Rights.

7.10 The Commission should adopt the principles for an open and neutral Internet after careful consideration of various formulations and consultation with all stakeholders and taking into consideration the evolution of technology (‘state of the art’) in this field.

7.11 Although the open Internet principle is more or less adequately covered in EU law by Articles 1 (3a) and 8 (4) (g) of the Framework Directive (35), in conjunction with paragraph 28 of the Citizens’ Rights Directive (36), it could be made more explicit and unambiguous. However, the specific principle of net neutrality is not defined in EU law, nor is it adequately covered by any combination of provisions.

7.12 In the Committee’s opinion, based mainly on a review of principles contained in the Norwegian guidelines for Internet neutrality (37), the BEUC response to the EC consultation on Net Neutrality (38), the Resolution on net neutrality of the Trans Atlantic Consumer Dialogue (TACD) (39) and the recently passed Dutch law (40), the definition of the principles should contain at least the following elements:

i. Freedom and quality of Internet access

The European Commission should agree a common EU standard on ‘minimum quality of service’ according to the principles of general interest, and should ensure that there is effective monitoring of its application.

ii. Non-discrimination between Internet traffic streams

As a general rule, no differentiation be made between the way in which each individual data stream is treated, whether according to the type of content, the service, application, device or the address of the streams origin or destination. This applies to all points along the network, including inter-connection points.

There may be exceptions to this principle, provided they comply with the guidelines set out in proposed recommendation no. iii.

iii. Supervising Internet traffic management mechanisms

Marking exceptions to the principles stated in proposals nos. i and ii, and to limit any possible deviations from these, when ISPs do employ traffic management mechanisms for ensuring the quality of access to the Internet, that they comply with the general principles of relevance, proportionality, efficiency, non discrimination between parties and transparency.

(36) 2009/136/EC.
(38) Consumers should be entitled to:
1. An Internet connection of the speed and reliability advertised to them.
2. An Internet connection that enables them to:
   a. Send and receive content of their choice;
   b. Use services and run applications of their choice;
   c. Connect hardware and use software of their choice that do not harm the network.
3. An Internet connection that is free from discrimination with regard to type of application, service, or content or based on sender or receiver address.
4. Competition among network, application, service, and content providers.
(39) TACD Resolution of April 2010 (doc. n°: INFOSOC 42-09).
iv. Managed services

To maintain the capacity of all players’ to innovate, electronic communications operators must be able to market ‘managed services’ alongside Internet access, provided that the managed service does not degrade the quality of Internet access below a certain satisfactory level, and that vendors act in accordance with existing competition laws and sector-specific regulation.

v. Increased transparency with respect to end users and a defined set of standardised information

There should be clear, precise and relevant information on the services and applications that can be accessed through ISPs: their quality of service, their possible limitations, and any traffic management practices. The EC should guarantee transparency for consumers, including clear information on terms and conditions, the right to use any lawful application and the means of switching providers. The EC should promote more dialogue and effective co-regulatory mechanisms between industry and the national regulators, under the auspices of the EC, in order to agree on EU-wide transparency principles and a set of standardised information.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on the ‘White Paper — Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system’

COM(2011) 144 final

(2012/C 24/32)

Rapporteur: Mr COULON

Co-rapporteur: Mr BACK

On 28 March 2011 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

White Paper – Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system

COM(2011) 144 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 170 votes to 3, with 8 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) broadly welcomes the Roadmap to a Single European Transport Area (White Paper) (hereinafter referred to as the Roadmap). The strategies presented in the Roadmap are to a large degree in line with what the Committee has stated in earlier opinions. Nonetheless, the Committee has reservations in a number of areas.

1.2 The EESC agrees that the 2050 vision goal of a greenhouse gas (GHG) reduction of 60% in the transport sector, although very challenging, is in line with the EU’s overall climate policy aims and that it strikes a reasonable balance between the need for quick reductions of greenhouse gases and the time needed to optimise energy efficiency in a single European Transport Area and develop new and sustainable fuels and propulsion systems in order to reduce dependence on fossil fuels.

1.3 The EESC observes an important gap between the objectives, the ways in which they would be achieved and the financing required to achieve them. The EESC recommends a better articulation between the Roadmap’s strategic measures (up to 2050) and the more practical and immediate measures (2020 and 2030).

1.4 As the Roadmap rightly states, a higher market share of alternative modes requires significant investment in infrastructure. The document, however, mainly deals with financing of the future TEN-T core network and indicates a number of possible ways of raising at least part of the required funding. Charging and private funding are not feasible solutions everywhere. These observations also apply to infrastructure in general, including the still-needed road infrastructure and maintenance. The EESC recommends that sufficient financial means be allocated to transport infrastructure in the Multiannual Financial Framework post-2013. Future projects require better coordination between Member States and the EU institutions regarding criteria for planning and prioritisation and must also include the modernisation of existing infrastructure.

1.5 The EESC supports developing a strategy to provide Europe with transport that is efficient and genuinely sustainable and which takes economic, environmental and social challenges into consideration. Developments in all modes of transport must take greater account of social dialogue and strengthen it. The EESC notes the reference to ‘minimum service obligations’ in the Roadmap. This is however a matter for collective bargaining in each EU Member State. The EESC shares the Commission’s view that social dialogue is essential to prevent social conflicts, fully respecting workers’ rights of collective action, in accordance with Article 151 of the Treaty on the Functioning of the European Union.

1.6 In addition to the emphasis placed on the need to create favourable conditions for quality jobs in the transport sector, measures should be put forward to strengthen training and assist market players in their recruitment efforts. Overall, the social dimension of the roadmap is weak.
1.7 The Roadmap is quite pessimistic as regards the possibility of decarbonising road freight transport. Perhaps it should consider, in addition to promoting the development of new propulsion systems and fuels, giving even more support to measures capable of optimising the use of such transport and reducing the number of journeys while at the same time maintaining overall capacity through e-freight measures, better logistics and vehicles and development of Green Corridors.

1.8 Although the Roadmap relies on combining modes of transport (one aspect of co-modality), it also proposes specific modal shift objectives for road freight transport (i.e. 30% of road freight over 300 km to shift to other modes such as rail or waterborne transport by 2030 and more than 50% by 2050). This proposed ‘one-size-fits-all’ approach lacks adequate scientific basis and neither the White Paper nor the impact assessment explain the rationale of this threshold.

1.9 The Roadmap recommends extending the policy of deregulation, particularly within the rail sector. The EESC members request that a balanced assessment be carried out of the reforms implemented in the various Member States, particularly the arrangements regarding the separation between infrastructure management and train operations, and their impact on increasing passenger numbers and railway use, safety, employment, service quality, production costs and the affordability of pricing for passengers.

1.10 The Roadmap suggests making it compulsory for public service contracts to be awarded on the basis of competitive tendering only. The EESC hopes that, before presenting proposals on this matter and no more than six months after 3 December 2014, the European Commission produces a report on the implementation of Regulation (EC) No 1370/2007, as provided for in Article 8(2) of that document.

1.11 The Committee wishes to emphasise the major issue of urban public transport as part of a sustainable transport policy. There is a huge need to develop urban public transport that is effective, safe, affordable and competitive in comparison with private transport. This is all the more important because of the obvious benefits for emissions, noise and congestion. The Committee therefore supports the aim of the European Union, whilst showing due regard for the principle of subsidiarity, to set targets for the Member States for developing urban public transport and to harness Structural Funds and Cohesion Funds to help develop and modernise this form of transport, at the same time boosting the activities of the urban mobility observatory.

1.12 Lastly, the Roadmap brings up urban goods transport, but in a way that is too low key and defensive. The relevance and possibility of developing a common line of action and proposing mandatory legislation in this domain could have been explored, given that urban last mile distribution is vital for the free movement of goods within the internal market and for encouraging sustainable modal choices.

2. Introduction

2.1 The 1992 and 2001 White Papers largely aimed at making transport more sustainable, through for instance a modal shift from road toward more environmentally friendly transport modes such as sea, inland waterways or rail, by promoting environmentally friendly solutions by making transport pay its real costs to society through internalisation of external costs, but also through endeavouring to reduce the need for transport through efficient planning.

2.2 Over time, and in particular with the 2006 Mid-term review of the European Commission’s 2001 Transport White Paper a change of emphasis has occurred, in that more emphasis has been placed on co-modality, efficient multimodal transport chains, and the need for adequate infrastructure and support systems, as a means to reduce the environmental footprint of transport.

2.3 The Roadmap differs from earlier White Papers in its scope, since it is based on a vision over four decades, up to 2050, with some aims set closer in time, in 2020 and 2030, and in clearly stating that curbing mobility is not an option. Nevertheless, the Roadmap sets ambitious aims as regards sustainability, particularly in terms of energy efficiency, reduced dependence on oil, reduced greenhouse gas emissions and technological development.

3. General comments

3.1 The EESC welcomes the Roadmap as a valuable contribution to the development of an efficient and sustainable transport system in Europe. The strategies presented in the Roadmap are to a large degree in line with what the Committee has said in its earlier opinions.

3.2 It is to be regretted that the list of proposed measures contains very few timing indications. It may be possible to infer some such indications by comparing the list of ten goals under Section 2.5 in the Roadmap, but this would be pure guesswork. In practice, the Roadmap does not clearly relate to strategic measures (up to 2050) with tactical measures (which may be adopted immediately). In particular, the Roadmap should outline a more precise work plan for the period 2013-2020.

3.3 The EESC recognises the vital role of transport as a factor for competitiveness and prosperity, the need to create an integrated European transport system, as well as the need to improve sustainability and promote low carbon transport modes, energy and resource efficiency, security and independence of supply and the reduction of traffic congestion. The EESC can approve the emphasis put on optimised multimodal logistic chains and a more efficient use of transport infrastructure. It also supports the Roadmap’s strategy to make use of a larger share of market-driven measures compared to previous versions of the White Paper.
3.4 In earlier opinions, the EESC has also asked for clear and concrete measures adapted to reach the aims sought. On a number of points the Roadmap could be seen as an important step forward in this regard starting with the general statement in para. 13 that a ‘business as usual’ approach will not lead to adequate results in terms of dependence on oil, CO₂ emissions, accessibility and the social costs of accidents and noise.

3.5 Most of the planned initiatives are directed toward the implementation of a co-modal transport system within a Single European Transport Area. The emphasis put on co-modality is appreciated. The EESC stresses that the co-modality approach upon which the Roadmap is based means optimisation of all modes of transport as well as between them. A number of the planned measures warrant comments, however.

3.6 The Roadmap sets very ambitious goals relating to the greening of the transport system, but lacks realism on how this will be achieved and how much this will cost. The EESC is worried about the gap between the objectives, the ways in which they should be achieved and the financing required to achieve them.

3.7 The long term goal of minus 60 % CO₂ emissions from the transport sector in 2050 is a very challenging objective that could be very central in technical and policy development in the transport sector if it is left standing for the foreseeable future.

3.8 The EESC agrees that the emissions goal is in line with the EU’s overall position on climate protection and that it has struck a balance between the need for quick reductions of greenhouse gases in society and the possibility of rapidly using alternative fuel sources for the important work of the transport sector in the Union’s economy. The Committee suggests that this long-term roadmap objective be accompanied by a number of more specific measurable, medium-term objectives for reducing oil dependence, noise and atmospheric pollution.

3.9 The EESC notes the clear and important statement in paragraph 18 in the Roadmap that ‘curbing mobility is not an option’. It is in the Committee’s view important that this statement is not misinterpreted as being against any measure to make transport more energy efficient and emission saving through e.g. transport optimisation of packages, better logistics to gain higher loading factors, promoting public transport options. These are listed in the Roadmap and are generally welcomed. It encourages change in behaviour and consumption. Striking a balance between achieving the emission goals outlined in the Roadmap and continuing to meet EU society’s mobility needs will obviously be very challenging. That is why EESC finds the statement in paragraph 18 important.

3.10 Regarding road freight transport, the EESC supports the need to efficiently use available resources by coordinating smaller consignments and putting in place optimal logistic multimodal ‘green corridors’ through cooperation between public and private actors. However, the EESC notes that the ambitious decarbonising objective (- 60 % CO₂) might require a broader and bolder range of measures.

3.11 The Roadmap considers the need to enhance the competitiveness of alternative modes to road transport. The Committee supports this aim, as long as it is done by promoting higher quality and quality in rail, inland waterways and short sea shipping as well as efficient intermodal services, and not by hindering development of efficient and sustainable road services within the EU.

3.12 While actively promoting alternative transport modes, the European Commission and the Member States should also make every effort to make road transport more sustainable, in economic, ecological and social terms. The EESC is concerned at the tensions that have occurred owing to diverging social protection and wage levels in the road haulage market. The Committee stresses the importance of social dialogue in this sector, and on the efficient implementation of the surveillance measures provided for in the road transport package, to enter into force on 4 December 2011. The EESC appeals to the Commission to follow closely the implementation of that package by Member States, and for the Commission and Member States to allocate all necessary resources to enforcement and control of the road transport acquis. The EU should also take measures to ensure fair competition, decent working conditions and enhanced road safety, including regarding access to the inner transport market by third-country road haulage operators and the possible risks of market distortion.

3.13 As the Roadmap rightly states, a higher market share of the alternative modes requires major infrastructure investments, including investment in road transport infrastructure. The document does not, however, provide clear indication as to how this is to be financed. The general recourse to private investments and infrastructure charging cannot be considered as a panacea. The Committee is, as stated in a number of earlier opinions, in favour of internalisation in the transport sector. The Committee agrees that according to the concept of ‘polluter pays’, economic instruments are to reflect the true cost of transport for our societies, so as to influence market behaviour in a sustainable direction. In this respect, the revenues from these additional charges should be earmarked to develop sustainable transport and to optimise the whole transport system in order to achieve a genuine sustainable mobility policy. They should also be kept separate from charges that are established for a financing purpose, that is according to the ‘user pays’ principle.
3.14 Regarding the internalisation of external costs, the EESC reiterates that this measure must be applied to all modes of transport alike (1). In a recent opinion the EESC concluded that the EU must implement a gradual substitution of existing taxes in the transport sector by more efficient market-based instruments in order to internalise external costs into the pricing structure.

3.15 The EESC is very doubtful about the appropriateness of the specific modal shift goal of the Roadmap: i.e. 30% of road freight over 300 km to shift to other modes such as rail or waterborne transport by 2030 and more than 50% by 2050. This proposed 'one-size-fits-all' approach lacks adequate scientific basis and neither the White Paper nor the impact assessment explain the rationale of this threshold. Moreover such vision, if implemented, would place a heavy burden on many peripheral Member States, undermining the principle of regional cohesion. The EESC calls on the Commission to pay close attention to this matter, providing all the necessary explanations. The EESC however also notes that around 85% of freight volumes in the EU is short-haul below 150 km, where no real alternative to road transport is likely to emerge in the coming decades.

4. Specific comments

4.1 The EESC supports the trans-European transport networks programme. It notes that the needs of the enlarged Europe in the field of transport infrastructure have grown and some thought has to be given to the matter of how to adapt existing policy and instruments of its implementation to the forthcoming challenges (2).

4.2 The EESC supports the creation of a single European sky, which is a fundamental factor for ensuring the competitiveness of the European aviation sector on the global market. The Committee calls for a stronger commitment from all aviation stakeholders to ensure the complete and rapid implementation of the EU’s ambitious targets for the safety, cost efficiency, capacity and sustainability of its air transport sector.

4.3 The EESC notes that the creation of a Single European Railway Area is necessary to enable sustainable competition with other modes of transport. The EESC stresses the need to establish conditions which ensure market and financing conditions that are as equal as possible between the modes (3).

4.4 The EESC recalls that establishing a single European railway area is heavily dependent on progress in technical interoperability (4).

4.5 The Roadmap recommends extending the policy of deregulation within the rail sector. However, before any other steps in that direction are taken, including structural separation between services and infrastructure, the EESC requests that a balanced assessment be carried out of their impact on rail competitiveness, service quality, employment and production cost, in order to take due account of the fact that the experiences of different reforms among Member States tend to vary to a large extent.

4.6 The EESC recalls the need to find new sources of funding for railway infrastructure, based on objective and comparative cost/benefit analysis. It refers in this regard to its recent opinion on the single European rail area, in which it proposed carrying out studies into incentives for investing, in proposals No 15 (encouraging the creation of project bonds to finance European projects) and 16 (explore measures with the potential to encourage private investment – particularly in the long term – to make a more active contribution towards achieving the objectives of the Europe 2020 Strategy) in the communication Towards a Single Market Act. The EESC can endorse the setting-up of a single transport fund only if that fund is neutral and ensures a level playing-field with respect to all transport modes (5).

4.7 The Roadmap suggests making it compulsory for public service contracts to be awarded on the basis of competitive tendering only. The EESC hopes that, before presenting proposals on this matter and no more than six months after 3 December 2014, the European Commission will produce a report on the implementation of Regulation (EC) No 1370/2007, as provided for in Article 8.2 of that document.

4.8 The EESC emphasises that European shipping is a global leader and is active in many areas of the maritime sector. The global nature of shipping should be taken into account in all areas such as free market access, the competitive position of EU shipping, safety, the environment and labour markets.

(2) EESC opinion on Sustainable development of the EU transport policy and planning for TEN-T, OJ C 248, 25.8.2011, p. 31.
4.9 The EESC notes that EU Member States are urged to ratify the Maritime Labour Convention (MLC) of the International Labour Organization (ILO) to have a level playing field internationally, without prejudice to any higher standards which may exist in the EU. EU legislation should be completely in line with international legislation, particularly the MLC and the Standards of Training and Certification of Seafarers Convention (STCW) of the International Maritime Organization (IMO).

4.10 The ‘Blue Belt’ concept, the common European maritime space promoted by the Roadmap, aims at the reduction of administrative burdens on customs procedures in intra-EU maritime transport. This is to be welcomed. As it does not refer to social standards, the EESC expects that social maritime standards will be given a boost through the imminent application and enforcement of the Maritime Labour Convention 2006 of the International Labour Organization (ILO) by the EU Member States. The EESC urges the European Commission to put in place the necessary measures to ensure the harmonisation of social standards concerning intra-EU traffic, bearing in mind also the need for an international level playing field in this respect.

4.11 As regards the creation of an EU register and an EU flag for maritime and inland waterway transport, the feasibility of an EU register should be carefully assessed. It would be difficult – if not impossible – to link the EU register to a useful system that provides benefits (e.g. reduction in port dues, lower insurance costs or reduced inspections). Indeed, many issues are covered by international agreements between the EU’s Member States that include a ‘national treatment’ clause. Establishing an EU register would require common economic governance at EU level, which does not currently exist.

4.12 Like the EU register, the idea of a European coastguard service is a recurring theme. This is primarily an issue for the EU Member States, as it lies within their exclusive competence. Since coastguard-related activities are dealt with differently in the various EU Member States, the creation of a European coastguard service would appear to be unnecessary or premature at this stage. Efforts should instead be directed towards closer cooperation between the coastguard services of the individual Member States, particularly with regard to issues such as illegal immigration and drug trafficking. Where such cooperative arrangements already exist, efforts should be made to improve them.

4.13 The need for innovation is important when it comes to improving the environmental record of shipping. There might be reasons for the EU to review the application as from 2015 of dedicated rules in the Baltic and the North Sea on the sulphur content of marine fuel, and how to address the distorting effects on competition of this measure, as well as possible effects on modal shift.

4.14 The Roadmap outlines financing road infrastructure with ‘user pays’ and ‘polluter pays’ charges. While it might certainly be a good business idea to operate a road under such conditions in the central parts of Europe that have high transit traffic etc., this type of enterprise would appear to be more risky in the many peripheral Member States. Likewise, high road charges would particularly affect freight from or to peripheral areas and may risk distorting competition, especially among industries competing on a global market. It should be emphasised that infrastructure financing should normally be the business of the State, or the European Union, but that this rule may be deviated from when conditions for private financing are in place under conditions that are reasonable for the user (including economically and physically vulnerable individuals).

4.15 The EESC notes the will to introduce more liberal rules concerning road cabotage. Of course, the Committee agrees that the current limitations do lead to lower loading factors and more empty running and is thus not in line with the general policy of optimising resources outlined in the Roadmap. On the other hand, the Committee would like to stress that the sector is far from having reached the level of social and fiscal harmonisation and enforcement that would be needed for a total opening-up of the market. Liberalising cabotage could accentuate the problems linked to diverging wage and social protection levels. Social dialogue and adequate monitoring in accordance with the road transport package to become applicable as of 4 December 2011 could help remedy such problems which should also be addressed in the work of the current high-level group on road transport, tasked by the Commission to review the workings of this market. The EESC underlines the need for complete enforcement of the provisions of the posted workers’ directive, in particular in the case of road transport cabotage (4).

4.16 The EESC attaches high importance, as a matter of facilitating the free movement of goods and the free provision of international transport services, to adequate and efficient implementation of the European Road Charging System that avoids the multiplication of on-board units and contracts. The EESC favours the creation of an adequate single focal point for users.

(4) EESC opinion on How EU policies have impacted on the job opportunities, the training needs and the working conditions of transport workers (exploratory opinion), OJ C 248, 25.8.2011, p. 22.
4.17 The White Paper sets the goal of halving road fatalities by 50% by 2020 and by 100% by 2050. However, the recently published Policy Guidelines on Road Safety 2011-2020 do not address commercial road transport. The Committee recommends that: 1) the European Commission address all factors that have a negative impact on road safety, including driver fatigue; 2) harmonised and thorough statistics covering multiple aspects of road accidents are produced to tackle the real causes of the high road transport accident rates; 3) there is adequate support and investment in safe, secure, accessible and affordable parking areas and rest facilities for professional drivers; 4) road safety is a primary objective in all future legislative acts adopted at the European level.

4.18 The Committee welcomes the fact that the global context in which the transport sector operates has been taken into account and that emphasis is placed on the need for environmental standards to be as global as possible.

4.19 As regards the European Transport research, innovation and deployment strategy, its aim to support the development and deployment of cleaner and more energy-efficient propulsion systems, support systems for transport operation and logistics seem promising.

4.20 The Committee welcomes the initiative to develop a Strategic Transport Technology plan, in close cooperation with the existing Strategic Energy Technology plan, to ensure the rapid deployment of research results and supports the initiatives already being implemented, such as the Green Cars initiative and the 2010 strategy for the development of clean vehicles.

4.21 The promotion of technological development and measures to influence travel behaviour and freight operation planning are the two main aspects of the second strand of the Commission’s proposed strategy. The measures planned are compatible with the development of a free market and are thus appreciated.

4.22 The Committee stresses that the measures proposed to develop new behavioural patterns in terms of both goods and passenger transport must reflect real transport demand and, in the case of public transport, social realities. For example, while intermodal passenger ticketing might be a useful initiative, the Committee believes that it would be more efficient to proceed with the state-of-the-art ticketless mobile phone technology, enabling the use of different transport carriers thanks to mobile phones that are equipped with Near Field Communication (NFC) cards or chips. A swift standardisation of NFC technology in Europe should be considered, with the aim of permitting smooth travelling across transport carriers and country borders. Attention will have to be paid to reducing the cost of transport through the new measures adopted.

4.23 As regards goods transport, the Committee regards the value of the planned single electronic transport document as positive if it helps to reduce an already too-abundant supply of contractual forms.

4.24 The emphasis on the need to create favourable conditions for quality jobs is an important and positive element for the future development of the transport industry. Measures should therefore be put forward that strengthen training and assist market players in their recruitment efforts, across all transport modes.

4.25 The EESC refers to its recent opinion on the Social aspects of EU transport policy in which it recommends attracting women and young workers to employment opportunities in the transport sector with measures which improve employment quality across all modes of transport, working conditions, training and Lifelong Learning (LLL), career opportunities, operational and occupational health and safety and which contribute to a better work-life-balance (>).

4.26 The EESC recommends a better and stricter use of State Aid Guidelines (SAG) schemes in the maritime sector, in particular examining the possibility of strengthening the link between the granting of public subsidies or tax exemptions and employment guarantees and training obligations.

4.27 The EESC also endorses the need to establish a Social, Employment and Training Observatory in the transport sector.

4.28 Overall, the social dimension of the roadmap is weak. In particular, the document makes no headway on the issue of social and wage dumping, which represents a serious problem for at least three sectors: road haulage, inland waterways and maritime transport. Adequate working conditions and a level playing field can be ensured by pursuing social dialogue and introducing minimum working conditions, as suggested in the Roadmap. However, specific measures, such as dedicated state aid measures, may be necessary for sectors that are directly exposed to low-cost competition. The upcoming review of

(>) EESC opinion on How EU policies have impacted on the job opportunities, the training needs and the working conditions of transport workers (exploratory opinion), OJ C 248, 25.8.2011, p. 22.
state aid guidelines for the maritime transport sector will provide an initial opportunity to use this aid to encourage the development of employment and training for EU and EEA citizens.

4.29 It is useful that the urban transport of both passengers and goods is highlighted in the Roadmap, as more and more people in Europe are living in urban areas. The Roadmap notes that urban transport is outside the EU's legislative mandate and that this limits the possibilities for policy measures. However, at least as far as freight is concerned, it might in fact be worth considering the extent to which urban last mile transport is linked to and relevant for the free movement of goods within the internal market. The EESC suggests that the European Commission explore the possibility of introducing mandatory EU policy measures in this field, if necessary. The Committee again notes that the Roadmap takes up a number of the suggestions made by the Committee in its earlier opinions regarding urban transport, such as coordination systems for passenger transport and logistic centres for freight.

4.30 The EESC takes favourable note of the attention given to the deployment of electric vehicles and the necessary infrastructure to recharge batteries and the standardisation issues related thereto. The Committee has already, in its opinion on this matter (6), expressed its strong support for moves toward the wider uptake of electric vehicles, and in particular of electric cars.

4.31 The Roadmap speaks in general terms of the need to review rules on weights and dimensions to optimise resource efficiency. One of the issues that then arises is the scope for using the European modular system (EMS) for maximum 25.25-metre long road vehicle combinations. This system is already accepted in national transport in an increasing number of Member States. The Committee is well aware of the ongoing debate about the usefulness of such vehicle combinations and regrets that this issue is not clearly addressed in the Roadmap. It considers that the current ban on cross-border transport involving such vehicles between Member States that already permit them in national transport is clearly a regulatory bottleneck, which constitutes a barrier to the free movement of goods across borders and that is not consistent with the aim of enhancing transport efficiency and sustainability through a co-modal approach. The Committee consequently urges the Commission to take the initiative to lift this ban. In a longer perspective, it is to be assessed whether the use of longer road vehicles operating with new fuels etc., could be linked to the development of multimodal corridors envisaged in the Roadmap as part of the core TEN-T network. The same goes, of course, for the introduction of longer and heavier trains in the EU to enhance capacity in the rail links of such multimodal corridors. The Committee is aware that the prerequisite for a positive assessment of any change to load weights on roads is that this change should not have any negative repercussions on the multimodal use of transport units, in particular combined rail/road transport. Any additional infrastructure costs caused by longer or heavier vehicles or trains must of course be accurately evaluated and shared appropriately by users benefiting from the change.

4.32 The EESC regrets the absence in the White Paper of any reference to the problem of more efficient and sustainable solutions for the Alpine passes. Existing rail and road infrastructure do not have enough capacity to meet transport demand for the coming decade. The EESC would like to draw the Commission's attention to this matter.

4.33 The Roadmap asserts the usefulness of coordinating transport planning by operators to optimise resource utilisation. In this respect, the EESC wonders whether guidelines should be issued by the Commission to minimise the risk of conflict with current competition rules.

4.34 In the light of the process of demographic change, the ageing population and the fact that people with disabilities represent 15% of the total population, the Committee recognises that mobility will never be achieved unless every link in the travel chain (including the built environment, means of transport, different types of equipment, information systems, booking systems, services etc.) is accessible to everyone. The Committee therefore fully supports the European Commission’s plans to propose a European Accessibility Act.

4.35 However the Committee recognises that despite the Roadmap’s many positive aspects, the document has overlooked the practical aspects of disability. Key concepts such as sustainability and safety are discussed without making any mention of the issue of accessibility. The Committee believes that in order to achieve better accessibility, it is essential for all stakeholders to work together to produce standards that are fully compatible between all modes of transport to create genuinely barrier-free transport. The regulations on passengers’ rights also need further clarification and harmonisation in a number of areas, such as denied boarding in the case of persons with disabilities, the right to take mobility equipment and assistive devices on board, the provision of information etc.

(6) EESC opinion on Toward the wider uptake of electric vehicles (exploratory opinion), OJ C 44, 11.2.2011, p 47.
4.36 The Committee proposes that the multi-annual financial framework include accessibility as a funding requirement. No EU TEN budget or other EU fund such as the structural funds should be provided unless the projects in question comply with the Design For All principle. To facilitate freedom of movement for people with disabilities, the Committee also proposes the adoption of a European Mobility Card, which could open the door to a number of harmonised concessions in EU countries.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
Opinion of the European Economic and Social Committee on 'Preventive measures for the protection of children against sexual abuse' (additional opinion)
(2012/C 24/33)

Rapporteur: Ms SHARMA

On 20 January 2011 the European Economic and Social Committee, acting under Rule 29(A) of the Implementing Provisions of the Rules of Procedure, decided to draw up an additional opinion on Preventive measures for the protection of children against sexual abuse (additional opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 August 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October 2011), the European Economic and Social Committee adopted the following opinion by 79 votes with 2 abstentions.

1. Conclusions and recommendations

1.1 The EESC strongly condemns all child sexual abuse and welcomes the Commission's commitment to strengthen Europe's resolve to fight child sexual abuse by presenting a new Directive on combating sexual abuse and sexual exploitation of children, as well as child pornography.

1.2 In a previous opinion (1) the EESC made recommendations on the proposed Directive. While prevention is an aim of the Directive, it is insufficiently addressed within it. Prevention on multiple levels is the key to the protection of children. Victims of child sexual abuse suffer not only an intolerable violation of their right to physical integrity but also life-long horrific social, emotional and psychological consequences. The present additional opinion seeks to put forward recommendations for prevention.

1.3 The EESC reiterates its call for all Member States, as well as the European Union, under the new Treaty of Lisbon, to sign and ratify, as a matter of urgency, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse (2) and the Optional Protocol to the UN Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography (3), to strengthen the ability of the EU to prevent child sexual abuse.

1.4 The European Union must build a consistent, unified approach to the prevention of child sexual abuse across Member States. The EESC urges the European Commission to drive the implementation of a European Union Prevention Strategy Against Child Sexual Abuse to establish a firm vision through which the Member States of the European Union aspire to protect and empower its children. The objectives of the Strategy should fall under the following four strands:

1. Education
   — Educational Awareness Programmes for Children
   — Training and Support for Professionals and Volunteers
   — Training for Media
   — Positive Parenting Programmes
   — Safe Internet Usage

2. Law Enforcement and Other Support Structures
   — Vetting
   — Missing Children's Helpline
   — Missing Child Alert System
   — International Law Enforcement System

3. Civil Society's Role
   — Further funding to develop existing programmes
   — Public awareness campaign

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(1) EESC opinion on Combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, OJ C 48, 15.2.2011, p. 138-144.
(2) Czech Republic and Latvia have not signed this Convention; 15 Member States have not ratified it: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=CL=ENG.
4. Research and Standards
— European Clearinghouse
— Views and Opinions of Children
— Internet Security Standards and Removal of Child Sexual Abuse Content.

1.5 The measures contained in this opinion are not exhaustive (4). The EESC commends the work of many civil society actors, particularly NGOs, in putting in place prevention measures. The best practice examples are too many to list here but invaluable for others to learn from. To that end the EESC has produced a database with information (5).

2. Background and Objectives

2.1 The central aspiration of preventive measures must be the eradication of child sexual abuse. All policies must be underpinned by the principles of the UN Convention on the Rights of the Child. In line with the Convention, a child is defined as a person below 18 years.

2.2 Child sexual abuse can take many forms: incest and sexual abuse, pornography, prostitution, trafficking, corruption and sexual assault within children's own peer group (6). Abuse needs to be tackled on multiple levels: local, national, European and global. But preventive measures should be coordinated and consistent across the board. Preventive measures need to be constantly monitored to ensure they are in line with evolving structures and best practice and that they respond to newly-emerging opportunities to abuse children (such as new technologies).

2.3 Children are particularly vulnerable to all forms of abuse and are more likely to be victimised than adults when it comes to general crimes, including assault and rape. Though statistics are lacking, available data suggests that about 1 out of 5 children in Europe are victims of sexual abuse at least once during their childhood (7). It is estimated that the perpetrator is known to the victim in 70-85 % of cases, so preventive measures should take this fact into particular account. Both boys and girls are affected as are all ethnicities and communities. Some research suggests that sexual abuse often starts at the age of 12-13 years yet many child prevention strategies focus mainly on younger children. ‘Vulnerable’ children are typically at highest risk of abuse, including children with disabilities, children in care, separated and trafficked children, children with drug and alcohol related problems, those who are socially deprived and those who have already experienced abuse.

2.4 The EU recognises children’s rights in Article 3 (TEU) of Treaty of Lisbon and in the Charter of Fundamental Rights, specifically in Article 24, which lays down a positive obligation to ensure the protection of children in the child’s best interests. This has been translated into targeted policy on the promotion, protection and fulfilment of children's rights (7).

2.5 The EESC welcomes the recent publication by the European Commission of an EU Agenda for the Rights of the Child. Based on principles of the Charter of Fundamental Rights, the Agenda places the rights of the child at the centre of policy in key areas, including internet safety and protection from trafficking.

2.6 A key objective of this opinion is to highlight that ‘prevention’ measures are possible and much good work is being done in this area by many stakeholders. The EESC commends the work of many civil society actors, particularly NGOs, in putting in place prevention measures. The best practice examples are too many to list in this opinion but invaluable for others to learn from, to build on expertise and mobilise civil society action. To that end the EESC has produced a database with the information (7).

3. General Comments – Preventive Measures

3.1 Preventive measures should be holistic, child-centred and happen as early as possible with a minimum level of intervention. There are many excellent initiatives to be endorsed. The EESC calls on the European Commission to adopt and enforce a European Union Prevention Strategy Against Child Sexual Abuse that harnesses a coordinated vision across Member States, based on objectives contained in the four strands below.

3.2 The EESC acknowledges that fighting the crime of child sexual abuse is extremely challenging. This form of abuse is often invisible due to its inherently clandestine nature and because of low levels of reporting amongst victims out of complex feelings of shame, fear or out of ignorance of their rights. The internet and other technologies provide new opportunities for abusers and for the production and distribution of child pornography. Freedom of travel provides opportunities for abusers to target the most vulnerable children. Abusers are becoming more sophisticated and organised, and younger

(4) They have been produced in consultation with the Children's Rights Alliance Ireland, a coalition of over 90 NGOs working to secure the rights and needs of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child (www.childrensrights.ie) as well as European NGOs working in the field.
(7) Ibid.
(8) See footnote 6.
children are increasingly at risk. Around 10% of cases come to the notice of child protection services (16). Those who sexually abuse children are from all backgrounds and most abusers have not been convicted of any sexual abuse offences (11).

3.3 Primary prevention to intervene before child abuse occurs should be targeted at the most vulnerable children who are at risk of on-going and future abuse. Direct measures such as public education and early intervention are a first step only – measures to prevent secondary victimisation to break the ‘cycle of abuse’ where this occurs, should also be delivered. The treatment of abusers and potential abusers must also be a focus.

3.4 While most abuse occurs within the family or community setting (17), abuse can be a highly-organised crime involving multiple abusers. There are extremely lucrative profits to be made; human trafficking is the third largest international crime globally (18). There are approximately 2.5 million victims of human trafficking worldwide (19). It is estimated that 43% of whom are sexually exploited and almost half of whom are children (13). Child sexual abuse is often a borderless crime that must be dealt with beyond national borders.

3.5 The participation of children and young people is vital to ensure that their views are listened to and integrated into preventive strategies. There are many such models already in operation (20). The use of young people’s language encourages children to talk more openly about the issue and to help break this taboo.

4. Strand 1: Education

4.1 The EESC recommends that all children in Member States are provided with educational awareness programmes on child sexual abuse. It is critical to inform children in an age-appropriate way and empower children to speak out about sexual abuse.

4.2 Education programmes have proven to be a successful primary prevention strategy in other domains. They provide an excellent opportunity for prevention and are ideal ways to promote reporting. Where possible, educational awareness programmes can be integrated into existing programmes, such as the ‘Stay Safe’ (17) and SPHE (18) programmes. Programmes should:

— Be developmentally-appropriate, incorporate healthy sexual development and avoid victimisation to increase the empowerment of children.

— Be specifically targeted at children rather than parents, with a particular focus on older children.

— Allow for targeted prevention approaches for the most at-risk children.

— Link with child-friendly, direct-access counselling, complaints and reporting mechanisms (20).

— Link with necessary back-up services that have sufficient staffing levels.

— Be regularly monitored and evaluated in line with emerging best practice.

4.3 The EESC urges Member States to make child sexual abuse prevention training mandatory for all professionals and volunteers working with children, especially in the law enforcement, health and (formal and non-formal) education sectors. Professional organisations, trade unions and social partners all have a role to play as do religious, sport and recreational organisations. There should be appropriate support mechanisms provided for personnel working with child victims, including regular supervision and psychological support.

4.4 The EESC recommends that the media be provided with education programmes. Ethical guidelines on reporting should also be developed.

4.5 Positive parenting programmes should be available to support parents and families to avoid child sexual abuse from occurring. Parents should be provided with information on preventive measures in pre-natal and maternity care settings.

(18) See footnote 6.
(22) For example, Council of Europe’s ‘Kiko and the Hand’.
4.6 The EESC supports initiatives including the European Commission’s Safer Internet Programme (20), the Insafe (21) and INHOPE (22) networks to promote safe internet usage by children and all members of society (23).

5. **Strand 2: Law Enforcement and Other Support Structures**

5.1 The EESC recommends a consistent approach amongst Member States on law enforcement, information-sharing and cooperation between police services and registered international organisations. This should include bi-lateral cooperation agreements, more effective IT tools for tracking, and better vetting mechanisms. Delays in the courts can act as a deterrent to the reporting of abuse. To avoid lengthy waiting times, priority should be given to cases of child sexual abuse. Serious consideration should be given to having victimless court processes. Appropriate training of law enforcement personnel in the area of child sexual abuse is urgently needed and the creation of interviewing protocols helps avoid secondary victimisation. Consistent Europe-wide standards will help prevent abusers moving across Member States. On a global level, the recent Operation Rescue by Europol and others, identifying more than 200 children (24), showed how the European Union can lead the way.

5.2 It is imperative that there is a consistent approach to the vetting of all those working with children to close loopholes between Member States. There should be mandatory screening of individuals for child protection offences, including screening for ‘soft information’ (information about people who have been identified as a risk to children but who have not got a criminal conviction for child abuse). As in its previous opinion (25), the Committee refers to the Multi-Agency Protection Arrangements Model (26).

5.3 A Europe-wide missing children’s helpline number has been assigned, but is only operational in 16 Member States; the remaining 11 Member States must take immediate action to ensure that a good-quality hotline service is available (27). This service must be adequately resourced and linked with necessary back-up services. Consideration could also be given to extending this service beyond the EU.

5.4 While there are effective working models in individual Member States (28), the EESC recommends the establishment of a coordinated Europe-wide Missing Child Alert System across Europe, similar to Amber Alert in the US (29).

5.5 The EESC reiterates its call for the establishment of an international law enforcement body dedicated to investigate child sexual abuse around the world, to identify victims and prosecute abusers (30).

6. **Strand 3: Civil Society’s Role**

6.1 Preventing child sexual abuse is everybody’s responsibility within society. The EESC recommends that Government agencies and civil society stakeholders continue to work together to implement child abuse preventive measures. The EESC supports initiatives such as the Council of Europe’s ‘1 in 5 campaign’ (31) and ‘The Underwear Rule’ (32). On the NGO level, ‘Stop It Now!’ (33), and specific campaigns such as ‘Cut Them Free’ by Barnardo’s UK (34), as well as ECPAT International and The Body Shop ‘Stop Sex Trafficking of Children and Young People’ campaign (35), are important examples of civil society action.

6.2 Employers, trade unions and other civil society organisations have an important obligation to set a clear standard for workplaces to ensure that child sexual abuse is not tolerated (36). Addressing this crime is a corporate social responsibility matter for employers. Industries, such as the tourism and hotel industry also have an important role to play (37). The EESC is proposing that organisations sign up to the value statement proposed previously by the EESC (38), which is included in the database of good practice in Member States compiled by the

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(21) A European network of Awareness Centres promoting safe, responsible Internet use to young people: www.saferinternet.org.
(23) A similar NGO initiative is run by Child Focus Belgium.
(26) A UK model involving multiple agencies to assess and manage sexual offenders in the community.

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(28) For example, Child Alert in Belgium: www.childalert.be.
(29) www.amberalert.gov.
(30) See footnote 1.
(31) The EESC has agreed to translate documents from this CoE campaign into a variety of languages.
(33) UK & Ireland campaign is managed by the Lucy Faithfull Foundation to prevent child sexual abuse www.stopitnow.org.uk. Also www.lucyfaithfull.org.
(35) This global campaign has secured 2.3 million signatures in the EU (22 June 2011).
(36) Article 3, Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.
(37) For example, Accor Hotels, and World Tourism Organisation.
6.3 There should be a global public awareness campaign on reporting child sexual abuse, supported by a free international hotline with an online reporting mechanism. This could work in a similar way to the network provided by Child Helpline International. Such a hotline should be linked with necessary back-up services.

6.4 Civil society and governments can heighten awareness of child sexual abuse and contribute towards bringing about a culture of prevention through their active promotion of the World Day for the Prevention of Child Abuse, which takes place every year on 19 November.

7. **Strand 4: Research and Standards**

7.1 The EESC calls for increased research to address the lack of data on child sexual abuse, to gain a clearer picture of the profiles of victims and perpetrators and to share best practice. At present, much data is provided by law enforcement agencies. A European Clearinghouse should be established to inform child abuse prevention research, policy and practice, similar to the National Child Protection Clearinghouse in Australia or the Child Welfare Information Gateway in the US. This would build on the work carried out by individual projects, like the European Online Grooming Project or work carried out on a country level, like Child Helpline International. Such a hotline should be linked with necessary back-up services.

7.2 Research on child sexual abuse should be informed by the views and opinions of children.

7.3 The EESC calls for clearly-defined, Europe-wide, internet security standards. In the context of stimulating Internet Service Providers on a voluntary basis to develop codes of conduct and guidelines for blocking access to such Internet pages, the EESC would stress that the priority must be to remove the content at source and only where this is not possible (outside the EU) to block access to those sites. Within the EU this should be made a legal requirement, if the industry, the ISPs, and economic and financial actors, such as credit card companies, are serious about their commitment to fight this abuse. The EESC encourages providers of social networking to sign up to the Safer Social Networking Principles for the EU (2009).

7.4 The EESC asks the European Commission to coordinate action to enable a consistent approach across the EU.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON


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