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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

537TH EESC PLENARY SESSION, 19.9.2018-20.9.2018

Opinion of the European Economic and Social Committee on ‘Artificial intelligence: anticipating its impact on work to ensure a fair transition’

(own-initiative opinion)

(2018/C 440/01)

Rapporteur: Franca SALIS-MADINIER

Plenary Assembly decision 15.2.2018
Legal basis Rule 29(2) of the Rules of Procedure
Section responsible Single Market, Production and Consumption
Adopted in section 4.9.2018
Adopted at plenary 19.9.2018
Plenary session No 537
Outcome of vote 183/1/2
(for/against/abstentions)

1. Conclusions and recommendations

1.1. Artificial intelligence (AI) and robotics will expand and amplify the impact of the digitalisation of the economy on labour markets (1). Technological progress has always affected work and employment, requiring new forms of social and societal management. The EESC believes that technological development can contribute to economic and social progress; however, it feels that it would be a mistake to overlook its overall impact on society. In the world of work, AI will expand and amplify the scope of job automation (2). This is why the EESC would like to give its input to efforts to lay the groundwork for the social transformations which will go hand in hand with the rise of AI and robotics, by reinforcing and renewing the European social model.

1.2. The EESC flags up the potential of AI and its applications, particularly in the areas of healthcare, security in the transport and energy sectors, combating climate change and anticipating threats in the field of cybersecurity. The European Union, governments and civil society organisations have a key role to play when it comes to fully tapping the potential advantages of AI, particularly for people with disabilities or reduced mobility, the elderly and people with chronic health issues.


(2) D. Acemoglu, op.cit.; Employment Council (2017), op. cit.
1.3. However, the EU has insufficient data on the digital economy and the resulting social transformation. The EESC recommends improving statistical tools and research, particularly on AI, the use of industrial and service robots, the internet of Things and new economic models (the platform-based economy and new forms of employment and work).

1.4. The EESC calls on the European Commission to promote and support studies carried out by European sector-level social dialogue committees on the sector-specific impact of AI and robotics and, more broadly, of the digitalisation of the economy.

1.5. It is acknowledged that AI and robotics will displace and transform jobs, by eliminating some and creating others. Whatever the outcome, the EU must guarantee access to social protection for all workers, employees and self-employed or bogus self-employed persons, in line with the European Pillar of Social Rights.

1.6. The Commission has proposed reinforcing the European Globalisation Adjustment Fund so that it can assist employees who lose their jobs and self-employed people who have to wind up their businesses as a result of the digitalisation of the economy (3). The EESC sees this as a step towards the establishment of a fully-fledged European transition fund which would help manage the digital transformation in a socially responsible way.

1.7. The EESC recommends applying and reinforcing the principles, commitments and obligations set out in the existing texts adopted by the European institutions and the social partners on informing and consulting workers (4), particularly when deploying new technologies, including AI and robotics. The EESC calls for a European programme that takes an inclusive approach to AI, is founded on these texts and on the European Pillar of Social Rights, and involves all stakeholders.

1.8. The EESC recommends that the ethical guidelines on AI to be prepared by the Commission should draw a line in the sand for interaction between workers and intelligent machines so that humans never become the underlings of machines. With a view to inclusive AI, these guidelines must establish principles of participation, responsibility and ownership of production processes so that, as stressed by the ILO constitution, work gives those who perform it the satisfaction of giving the fullest measure of their skill and attainments and making their greatest contribution to the common wellbeing.

1.9. The EESC also recommends that these guidelines factor in principles of transparency when using AI systems for recruitment, assessment and supervision of workers for management purposes, along with principles of health and safety and improving working conditions. Lastly, the guidelines must safeguard rights and freedoms with regard to the processing of workers’ data, in accordance with the principles of non-discrimination.

1.10. The implementation of the ethical guidelines on AI must be monitored. A European observatory focusing on ethics in AI systems could be assigned responsibility for acting as watchdog, including in businesses.

1.11. The EESC recommends that engineers and intelligent machine designers be trained in ethics to avoid establishing new forms of digital Taylorism, where humans are relegated to following orders dictated by machines. Spreading best practice and exchanging experiences in this field should be encouraged.

1.12. The EESC calls for the principle of legal responsibility to be clarified. In the interaction between man and machine, emerging health and safety risks must be tackled more ambitiously under the umbrella of the Product Liability Directive (5).

1.13. Given the danger of social polarisation in the digital transformation, the EESC is calling on the EU institutions to begin a debate on financing public budgets and social protection systems in an economy with increasing numbers of robots (6), as taxation on labour is still the main source of tax revenue in Europe. In order to apply the principle of fairness, this debate should consider the redistribution of the benefits of digitalisation.

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(4) Directive 2002/14/EC; Joint Declaration of Intent by UNICE, ETUC and CEEP on social dialogue and new technologies, 1985; Joint opinion of the social partners on new technologies, the organisation of work and the adaptability of the labour market, 1991; Reference guidelines for managing change and its social impact, 2003.
2. Introduction

2.1. The development of AI has been patchy since the concept first appeared in 1956, and throughout the second half of the 20th century. It has been the cause of high hopes alternating with crushing disappointments. However, it has seen a significant new upsurge in the last few years, made possible by the collection, organisation and storage of amounts of data that are unprecedented in human history (big data) and by the exponential increase in computing power and algorithm capacity.

2.2. The EESC drew up an opinion on AI in 2017 (7), which addressed a considerable number of issues. As pointed out in that opinion, there is no precise definition of AI. For the purposes of the present opinion, we will consider AI to be a discipline which sets out to use digital technologies to create systems capable of autonomously reproducing human cognitive functions, including in particular grasping data, a form of understanding and adaptation (problem solving, automatic reasoning and learning).

2.3. AI systems are now capable of solving complex problems which are sometimes beyond the scope of human intelligence. AI applications would seem to be potentially unlimited: in banking, insurance, transport, healthcare, education, energy, marketing and defence, along with sectors such as industry, construction, farming, crafts etc. (8). AI is expected to render production processes for goods and services more efficient, make businesses more profitable and help promote economic growth.

2.4. This renewed surge forward in AI also means that a number of questions regarding its potential role in society, its level of autonomy and its interaction with human beings have surfaced again. As pointed out in the EESC’s 2017 opinion on AI (9), these questions focus particularly on ethics, security, transparency, privacy and labour standards, education, accessibility, legislation and regulation, governance and democracy.

2.5. The different approaches need to come together in the debate on AI in order to look beyond the purely economic considerations which sometimes fetter it. A multidisciplinary framework of this sort would be valuable when analysing the impact of AI on the world of work, since this is one of the main areas in which humans and machines interact. Work has always been affected by technology. The effects of AI on jobs and work therefore need to be considered very carefully at political level, as part of the institutions’ role involves making economic changes socially sustainable (10).

2.6. This own-initiative opinion aims to shine a spotlight on how AI will affect work, including the nature and organisation of work and working conditions. As the EESC has already pointed out (11), we need better statistics and research to be able to deliver accurate forecasts of developments in the labour market and clear indicators of particular trends, particularly as regards the quality of work, the polarisation of jobs and income, and working conditions during the digital transformation. The EU has insufficient data on what is referred to as the ‘sharing’ economy, on-demand work platforms and the new models of online subcontracting, as well as on the use of robots in industry and services to individuals, the internet of Things, and the use and spread of AI systems.

3. AI and developments in the number of jobs

3.1. The question of how the deployment of AI and robotics across production processes will affect the number of jobs is controversial. Many studies have endeavoured to find an answer but failed to reach a scientific consensus, and the range of findings (from 9 % to 54 % of jobs at risk (12)) reflects the complexity of choosing a methodology and the way in which this shapes the outcome of the research.

3.2. Accurately predicting what will happen is no easy task, because the technical potential of automation is not the only factor which comes into play: political, regulatory, economic and demographic changes — along with social acceptability — also have a bearing. The availability of cutting-edge technology is no guarantee that it will be used and become widespread.

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(8) For instance, see https://www.techmergence.com.
3.3. Lastly, it is still impossible to predict the net number of jobs that can be automated in each sector without taking into consideration the changes in professions and the pace of job creation. The development of AI systems will require new jobs in engineering, IT and telecommunications (engineers, technicians and operators) and in big data: data officers, data analysts, data miners, etc.

3.4. Public authorities will need to ensure that this digital transformation, which could affect both the number and quality of jobs, is socially sustainable (\(^1\)). One of the risks flagged up by experts is the danger of jobs becoming polarised, with highly successful people — who have skills useful for the digital economy — on the one side and people who are losing out — whose qualifications, experience and expertise will be gradually rendered obsolete by this transformation — on the other. In its recent communication (\(^2\)), the European Commission proposed a response to this challenge, rooted largely in education, training and improving basic writing, reading and numerical skills, along with digital skills. This response should be supported by the economic and social stakeholders, including in the context of national, European, interprofessional and sectoral social dialogue (\(^3\)).

3.5. The EESC considers however that this focus will not be able to meet all the challenges, particularly uncertainty as regards job trends. Three additional pathways are worth exploring: ‘inclusive’ AI, anticipating change, and finally — when redundancy plans are unavoidable — socially responsible and managed restructuring.

4. Inclusive and smart AI and robotics

4.1. The EESC supports the principle of a programme of inclusive AI and robotisation. This means that when new processes using new technologies are introduced in businesses, workers should be involved in the practicalities of how these processes work. As pointed out by the WRR (\(^4\)), ‘inclusive and smart’ deployment of new technologies, where workers remain central to the processes and are involved in improving them, can help promote improvement in production processes (\(^5\)).

4.2. Given the impact of algorithms on recruitment, working conditions and professional evaluation, the EESC supports the principle of algorithmic transparency, which does not involve revealing codes but rather ensuring that the parameters and criteria used to make decisions are understandable. There must always be provision for appeal to a human.

4.3. AI which places workers at the centre takes account of the views of those people who will be working with the new technological processes, clearly defines the tasks and responsibilities which will stay in the hands of workers, and retains some forms of work ownership by workers so that workers do not become mere underlings.

4.4. The principle of legal responsibility must be clarified. Industrial or service robots collaborate with humans on an increasingly frequent basis. AI enables robots to ‘climb out of their cages’, and accidents can happen (\(^6\)). This is why the responsibility of autonomous systems in the event of accidents must be clearly pinned down, and there must be provision for covering the health and safety risks to which workers are exposed. The European Commission is beginning to explore these emerging risks in connection with the Product Liability Directive (\(^7\)). A more ambitious approach is needed with regard to safety in the workplace.

4.5. The principle of fairness applied to the world of work consists of not alienating workers from their work. Some experts stress that there is a risk that AI may contribute to a form of de-skilling of workers. This is why steps must be taken to ensure that, as the ILO constitution puts it, work gives those who perform it the satisfaction of giving the fullest measure of their skill and attainments and making their greatest contribution to the common wellbeing. From a management point of view, this is also a way to keep workers motivated.

\(^1\) http://www.oecd.org/employment/future-of-work/.
\(^3\) OJ C 367, 10.10.2018, p. 15.
\(^4\) The Dutch scientific council for government policy.
\(^6\) See work on Emerging risks by the European Agency for Safety and Health at Work (https://osha.europa.eu/emerging-risks). According to the agency, ‘Current approaches and technical standards aiming to protect employees from the risk of working with collaborative robots will have to be revised in preparation for these developments.’
\(^7\) COM(2018) 246 final.
5. **Anticipating change**

5.1. Many studies over the last few years have shown that European — and even national — social dialogue is being eroded, despite efforts by the Commission and the European Council to reinvigorate it. However, social dialogue is one of the most effective tools for coping with the social challenges of digitalisation. The EESC therefore calls vehemently for this dialogue to be kept up in businesses and at all relevant levels, in order to prepare for the transformations in a socially acceptable way. The EESC would point out that social dialogue is one of the best guarantees of a peaceful society and reduced inequality. Above and beyond political pledges to revive social dialogue, the EU institutions have a clear duty to encourage and contribute to this form of dialogue.

5.2. Particularly when introducing these technologies, this dialogue must make it possible to discover how production processes will change in businesses and sectors and to assess what new skills and training will be needed. However, it should also be an opportunity to explore early on how AI can be used to improve organisational and production processes and boost workers’ skills, and how the resources freed up by AI can be optimised to develop new products and services or to improve the quality of customer service.

5.3. **Socially responsible restructuring**

5.4. When redundancy plans are deemed inevitable, the challenge is to manage the social impact of corporate restructuring. As the European social partners have pointed out in their *Orientations for reference in managing change and its social consequences* (20), many case studies stress the importance of exploring all possible alternatives to layoffs, such as training, re-skilling and start-up support.

5.5. In the event of restructuring, informing and consulting with workers must make it possible, in line with relevant European directives (21), to improve risk anticipation, facilitate employee access to training within the undertaking, make work organisation more flexible while maintaining security, and promote employee involvement in the operation and future of the undertaking.

5.6. Lastly, as the European Commission quite rightly points out, the EU must guarantee that everyone, including employees and self-employed or bogus self-employed persons, has access to social protection ‘regardless of the type and duration of their employment relationship’, in accordance with the European Pillar of Social Rights (22).

6. **AI and developments in working conditions**

6.1. On 25 April 2018, the European Commission proposed a European approach to promote investment policies in AI development and establish ethical guidelines. It stressed that AI technologies have the potential to radically change our society, particularly in the sectors of transport, healthcare and manufacturing.

6.2. This transformative potential affects production processes and the tasks involved in work. The impact can be positive, particularly as regards the way in which AI can improve these processes and the quality of work. The same positive knock-on effect may be felt in the form of ‘flexible’ work structures, with greater weight being attached to shared decision-making, independently organised teams, workers who perform a variety of tasks, a horizontal management structure and innovative and participatory work practices (23).

6.3. As pointed out by the EESC (24) and the Commission itself, AI can help workers perform repetitive, difficult or even dangerous tasks, and some AI applications can improve employees’ wellbeing and make their daily life easier.

6.4. However, this approach raises new questions at the same time, particularly as regards the interaction between AI and workers, and developments in the tasks involved in work. In factories, businesses and offices, just how autonomous will intelligent machines be and how will they complement the work performed by human beings? The EESC points out that in the new world of work, the definition of the relationship between people and machines is crucial. An approach centred on humans controlling machines is fundamental (25).

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6.5. As a matter of principle, it is not ethically acceptable for a human being to be controlled by AI or seen as the underling of a machine which issues orders regarding which, how and when tasks should be performed. However, at times it would seem that we have already crossed that particular ethical Rubicon (26). This is why AI ethical guidelines must draw a line in the sand.

6.6. The EU must now make it a priority to avoid new forms of digital Taylorism shaped by the developers of intelligent machines. This is why, as the EESC recently pointed out, European researchers, engineers, designers and entrepreneurs who are involved in the development and marketing of AI systems must act in accordance with ethical and social responsibility criteria. One good response to this imperative could be to incorporate ethics and the humanities into training courses in engineering (27).

6.7. Another question touches on oversight and monitoring by management. Everyone agrees on the need for reasonable oversight of production processes and thus of the work carried out as well. Currently, new technological tools would potentially make it possible to deploy intelligent systems to monitor workers in every respect and in real time, with the risk that this oversight and monitoring could become disproportionate.

6.8. The reasonable and proportionate nature of the monitoring of work performed and performance indicators, and the relationship of trust between managers and subordinates, is therefore an issue which should also be included on the agenda for social dialogue at national, European, interprofessional and sectoral level.

6.9. The issue of algorithm and learning data bias and potentially harmful discrimination is still controversial. Some people feel that algorithms and other predictive recruitment software can reduce recruitment-related discrimination and promote ‘smarter’ recruitment, while others consider that recruitment software will always run the danger of reflecting, even involuntarily, the bias of the people who programmed these recruitment robots. Some experts feel that algorithmic models will only ever be opinions embedded in mathematics (28). This is why it is imperative to ensure that there is provision for appeal to a human (in connection with the principle of transparency considered above: the right to request the criteria on which decisions are made), and that the collection and processing of data are in line with the principles of proportionality and specific purpose. In any event, data may not be used for any purpose other than the one for which they were collected (29).

6.10. The General Data Protection Regulation gives Member States the option to establish more specific rules (through legislation or collective agreements) to guarantee the protection of rights and freedoms with regard to the processing of employees’ personal data within the framework of employment relationships, and this provides genuine leverage that the states and social partners must use (30).

6.11. It should be pointed out here that these dangers do not apply solely to employees. The development of online subcontracting, platform-based work and various forms of crowdworking also goes hand in hand with new automated systems for managing performance and attendance, which sometimes seem to exceed the bounds in terms of ethics (for instance, the worker’s webcam is activated by the platform and screenshots are taken remotely).

6.12. The algorithms used by these platforms, which establish how much freelancers are paid, their online reputation and access rights among other things, are often opaque. Workers are not told how the algorithms operate and do not have access to the operational criteria applied.

7. Laying the groundwork for a fair transition

7.1. In the medium term, the danger of social polarisation stressed by many experts calls for in-depth discussion on the future of our social models, including the way they are financed. The EESC calls on the Commission to launch a debate on taxation and the financing of public budgets and collective social protection systems in an economy with rapidly increasing numbers of robots (31), as taxation of work is still the main source of tax revenue in Europe. This debate should also touch on the redistribution of the benefits of digitalisation.

(26) Several European media outlets have reported on working conditions in certain logistics centres where the workers are totally controlled by algorithms telling them which tasks need to be performed within set timeframes, and where their performance is assessed in real time.


(29) For instance, see the work carried out by the French CNIL (Comment permettre à l’homme de garder la main? Les enjeux éthiques des algorithmes et de l’intelligence artificielle — How can we make sure that humans stay on top? The ethical issues of algorithms and artificial intelligence, https://www.cnil.fr/sites/default/files/atoms/files/cnil_rapport_garder_la_main_web.pdf).


7.2. The Commission proposes reinforcing the European Globalisation Adjustment Fund (FEM), partly with a view to assisting employees whose jobs become obsolete and self-employed people who have to wind up their businesses as a result of the digitalisation and automation of the economy (32). The EESC sees this as a step towards the establishment of a fully-fledged European transition fund which would help anticipate and manage the digital transformation and the restructuring it will bring about in a socially responsible way.

7.3. National debate is increasingly coming to focus on the social — and more broadly, societal — aspects of AI. Recent discussions in the UK Parliament (33) and the French Senate have illustrated the need to promote an ethical approach to AI, based on a number of principles such as loyalty, transparency and clear explanations of algorithm-based systems, the ethics and responsibility of AI applications, and raising awareness among researchers, experts and specialists as regards the potential for misuse of their research findings. In France, the Villani report claims that it aims to give meaning to AI (34). Many experts from Yale, Stanford, Cambridge and Oxford universities warn against the ‘unresolved vulnerabilities’ of AI and flag up the imperative need to anticipate, prevent and mitigate them (35). Similarly, Quebec’s Research Fund (FRQ) has been working with the University of Montreal for several months on a project to establish a global observatory on the societal impact of AI and digitalisation (36).

7.4. All these initiatives show that the debate on AI needs to look beyond purely economic and technical considerations, so that public discussion explores the role that society would like to see AI play, including in the world of work. This debate will be a way to avoid falling into the trap of a ‘false dichotomy’ between a totally naive and optimistic view of AI and its impact, and the expectation of widespread disaster (37). Launching the debate at national level is a useful first step, but the EU also has a role to play, particularly in setting ethical guidelines, as the Commission has already begun doing.

7.5. Responsibility for enforcing these guidelines will have to be entrusted to an observatory focusing on ethics in AI systems. We need to ensure that AI and its applications promote the wellbeing and empowerment of people and workers with due respect for fundamental rights, and do not contribute, either directly or indirectly, to loss of ownership, de-skilling and loss of autonomy. The principle of humans being in the driving seat in every situation, including work, must be applied in practice.

7.6. This principle must also apply to other sectors, such as health professionals, who provide services closely linked to human beings’ life, health, security and quality of life. Only through rigorous ethical rules will it be possible to guarantee that workers, along with consumers, patients, clients and other service providers will be able to make the most of the new AI applications.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

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(33) https://www.parliament.uk/ai-committee.
Opinion of the European Economic and Social Committee on ‘Trust, privacy and security for consumers and businesses in the internet of Things (IoT)’

(own-initiative opinion)

(2018/C 440/02)

Rapporteur: Carlos TRIAS PINTÓ

Co-rapporteur: Dimitris DIMITRIADIS

Plenary Assembly decision 15/02/2018
Legal basis Rule 29(2) of the Rules of Procedure
Own-initiative opinion
Section responsible Single Market, Production and Consumption
Adopted in section 04/09/2018
Adopted at plenary 19/09/2018
Plenary session No 537
Outcome of vote 182/3/2
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The internet of Things (IoT), thanks to its interconnectivity of persons and objects, offers a vast range of opportunities for individuals and businesses. These opportunities must be backed by a series of safeguards and controls so as to ensure introduction of the IoT is problem-free.

1.2. Since one of the pillars of the IoT is that decisions are taken automatically with no human input, it must be guaranteed that decisions do not undermine the rights of consumers or entail risks of an ethical nature or that are contrary to fundamental principles and human rights.

1.3. The EESC calls on the European institutions and EU Member States to:

1.3.1. ensure that security and privacy are protected by building appropriate regulatory frameworks that contain strict monitoring and control provisions;

1.3.2. clearly define the liability of all operators in the product supply chain and the related information flows, preventing legal loopholes occurring when several producers and distributors are involved at the same time;

1.3.3. introduce appropriate resources and effective coordination mechanisms between the European Commission and the Member States in order to guarantee consistent and harmonised application of both legislation subject to review and new rules, at the same time addressing the international scene;

1.3.4. monitor the development of emerging technologies associated with IoT, to guarantee high security, full transparency and fair accessibility;

1.3.5. promote European and international standardisation in order to guarantee product reliability, availability, resilience and continuation;

1.3.6. monitor the markets and protect a level playing field for the IoT’s implementation, avoiding a concentration of transnational economic power with the new technology players;
1.3.7. undertake to promote awareness-raising and digital capacity-building initiatives reflecting basic research and innovation in the field;

1.3.8. guarantee the full implementation and effective use of alternative dispute resolution mechanisms both online and off-line (ADR and ODR);

1.3.9. encourage the existence, implementation and effective functioning of a European group action system that is able to put a stop to and obtain compensation also for situations where the use of the IoT causes damage or loss of a collective nature, as will be the case under the New Deal for Consumers.

1.4. Consumer confidence will result from strict compliance with the relevant legislation and the communication of best business practice concerning privacy and security, and the institutions are duty-bound to incorporate them into corporate social responsibility and socially responsible investment strategies.

1.5. The social and economic impact of the IoT will increase to the extent that it is sufficiently interlinked with the implementation of socio-environmental policies as part of the collaborative economy, the circular economy and the functional economy.

2. Background and context

2.1. The internet has burst onto the scene over the last 15 years, triggering transformations in every area of everyday life, impacting on various consumer habits. It is now forecast that over the next 10 years, the internet of Things (IoT) revolution will spread to the energy, farming and transport sectors, as well as to the more conventional sectors of the economy and society. This entails devising comprehensive policies that address this technological disruption with a smart approach.

2.2. The IoT concept first emerged from the Massachusetts Institute of Technology (MIT), basically meaning a world full of devices that are fully interconnected in such a way that the different interoperable processes can be jointly automated. The European Union has, for its part, been preparing to tackle digital convergence and the new challenges of the IoT, from the launch of ‘i2010 — A European Information Society for growth and employment’ plan (1), up to the recent IoT Action Plan (see Advancing the internet of Things in Europe, accompanying the 2016 Communication on Digitising European Industry — Reaping the full benefits of a Digital Single Market) (2).

2.3. The EESC has frequently discussed the fourth industrial revolution, marked by the convergence of digital, physical and biological technologies, and would draw particular attention to its 2017 opinion (3) on the subject. The IoT is effectively the ideal field for the most advanced forms of AI and is where the principles outlined by the EESC are put to the test, particularly the principle of the ‘human in control’.

2.4. IoT devices often lack authentication standards which will keep user data safe. This results in the emergence of problems, since devices, data and supply chain partners are exposed to security breaches.

2.5. Emerging technologies like blockchain can solve security and trust issues; this can be used to track sensor data measurements and prevent not only duplication with any other malicious data but also safeguard the integrity and traceability of changes; a distributed ledger can provide IoT device identification, authentication and seamless secure data transfer; IoT sensors may be used for the exchange of data through a blockchain rather than a third party; device autonomy is enabled through the use of smart contracts, and also individual identity, integrity of data; creation and operation costs are reduced since there is no intermediary; finally, IoT devices on the blockchain provide a history of connected devices, which is valuable for any troubleshooting that may be required (4).

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(2) COM(2016) 180 final.
2.6. In contrast, open-code distributed ledger technologies are being developed for the exchange of information and value between IoT devices. They do not allow data mining but use an architecture based on a mathematical concept known as a directed acyclic graph (DAG), avoiding commissions and ensuring that the network expands its capacity as the number of users increases.

2.7. In brief, we are faced with something that offers huge economic (5) and social potential, and great opportunities but also serious challenges associated with implicit risks, of a multi-disciplinary, cross-cutting nature that affects businesses and consumers, administrations and individuals equally. There should consequently be a shared approach to this issue but which at the same time recognises the specific character of different situations. It is worth mentioning United Nations estimates in this regard that by 2020 between 50 billion devices will be interconnected, providing consumer applications through televisions, refrigerators, security cameras, vehicles, etc.

2.8. IoT applications are already providing economic and social benefits as part of a globalised world, including services that are more responsive to the socioeconomic context, shorter feedback cycles, remote repairs, decision-making support, better allocation of resources and remote control of services. However, a number of related and highly sensitive factors arise, such as privacy and security, information asymmetry, the transparency of transactions, complex responsibilities, the blocking of products and systems and also the rise of hybrid products that can affect ownership, exposing consumers to the remote application of contracts, with the consequent weakening of guarantees.

2.9. The huge legal challenges faced by the EU and its Member States stem from the fact that many of the specific features of the IoT (high levels of complexity and interdependence, the element of autonomy, the components of data generation and/or processing, and an open dimension) are shared with other emerging digital technologies such as blockchains, 3D printing and cloud computing. In the EESC’s view, the European Commission’s Staff Working Document (6) on liability for emerging digital technologies is a further step in the right direction.

2.10. Ultimately, maximising the benefits and minimising the risks associated with the IoT means providing accessible, clear, concise and accurate information, promoting in particular digital inclusion and connectivity for more vulnerable consumers by designing fully traceable products and services that incorporate integrated trust, privacy and security standards.

3. Consumer and business trust in the IoT

3.1. The IoT is a complex ecosystem that enables devices from different manufacturers, distributors or software developers to be interconnected. This can lead to difficulties in identifying responsibility where regulations are breached or when third parties or systems suffer material loss or other damage caused by defective products or by products that are misused by third parties, excluding end-users, via the internet. It is indeed possible that many operators involved in the global product value chain are not sufficiently knowledgeable or experienced in terms of security or data protection for online devices.

3.2. A new focus on responsibilities is therefore needed, aimed at ensuring that both consumers and businesses adopting IoT applications are protected in an environment in which properly-configured products may become defective and unsafe as a result of digital security incidents or unauthorised misuse (such as hackers). This environment should make it possible to anticipate, prevent and protect against automated decisions that may erode universally recognised ethical principles and human rights.

(5) Digital McKinsey estimates that the IoT possesses a potential economic impact of between USD 3.9 and 11.1 trillion annually.

(6) SWD(2018) 137.
3.3. The EESC welcomes both the revision of the application of the 1985 Directive on liability for damage caused by defective products (7), together with the recent creation of the multistakeholder expert group on liability and new technologies, with a view to ensuring a fair balance between the interests of producers and of consumers. A new framework of responsibilities should make clear provision for the traceability of responsibility and safety at every stage of the product value chain and throughout its estimated lifecycle, incorporating sustainability as a new factor that will make product updating, improvement, portability, compatibility, reuse, repair or adjustment a requirement.

3.4. Where the IoT is concerned, specific consideration must also be given to identifying the liability of all operators in the product supply chain, preventing legal loopholes occurring when several producers and distributors are involved at the same time. The EESC considers it essential to clearly specify the procedures to be followed by consumers in each case, promoting alternative dispute resolution (ADR) mechanisms.

3.5. The EESC stresses the importance of pre-contractual information, transparent contract clauses and clear operating instructions for devices; possible associated risks and safeguards should be explicitly highlighted.

3.6. The interoperability and compatibility of devices and associated software must be ensured, in order to prevent problems and make it possible for the consumer to compare providers. The EESC stresses that this factor is also key to establishing a level playing field between large companies and SMEs.

3.7. Finally, the EESC advocates respect for net neutrality and urges the Commission to carry out strict monitoring of market behaviour.

4. Consumer privacy in the IoT

4.1. The ability of consumers to check their personal data and privacy preferences has been improved with the new General Data Protection Regulation (GDPR) (8). The user of a device must have control over how the data generated are to be used and who may have access to them, since the diversity of data, as well as their accumulation and links with other data, mean that there is a serious risk to privacy in the IoT ecosystem.

4.2. The effect that the multiplicity of products, services or entities may have on privacy and data protection, when data are transferred autonomously due to their interconnectivity, must not be overlooked. Similarly, in cases where information is processed or reformulated using initially harmless data, a clear picture of individuals’ habits, locations, interests and preferences could be built up, making the user profile easier to access and trace.

4.3. Legal guarantees must ensure that users are fully able to exercise their rights to privacy and personal data protection without any restriction. This would avoid potential harm such as discriminatory practices, invasive advertising, loss of privacy and breaches of security. Consumers, for their part, must have information on the economic value of their data and reserve the right to share them.

4.4. As provided for in the GDPR, businesses and regulators must regularly review the scope of personal data collection and assess the extent to which processed data are proportionate and necessary to the provision of the service. The various aspects and impacts of privacy must be evaluated at every stage in the conception, design and development of any connected product and the online ecosystem in which it operates (privacy by design). Hence, the principles of privacy by design and privacy by default must be implemented consistently in the IoT.

4.5. All connected products must consequently be configured according to a pre-determined model based on the highest level of protection of privacy (by design and by default), preventing the unwanted tracing of user behaviour and occupations.

(8) In force since 25 May 2018.
4.6. In any case, consumers must have reliable knowledge of the data compiled, who has access to them and the purpose to which they are to be put while the link to the product or service remains active, and also of the applicable privacy policy, and must know if the algorithms used affect quality, price or access to a service.

5. Consumer and business security in the IoT

5.1. The interconnectivity of devices that characterises the IoT ecosystem may foster the development of unlawful or undesirable technological practices, becoming a space in which vulnerability can flourish and propagate virally. There must therefore be a comprehensive approach to security covering each and every component of the system.

5.2. The supply of products and cybersecurity-related updates will have to be justified and provide cover not only for individual devices, but must also be extended to security risks arising from interconnectivity with other devices in the IoT: quality standards for security should not be watered down due to the number of such devices.

5.3. In this regard, the proposal for a Regulation on the EU Cybersecurity Agency (9) contains a certification framework for the information and communication technologies which will provide for voluntary safety certification and labelling for different types of products, including those on the IoT. While the EESC welcomes this measure, it also expresses concern that it is not compulsory.

5.4. Cybersecurity measures should cover risks arising from any kind of vulnerability, particularly hacking, unauthorised access or misuse and the risks surrounding payment methods and financial fraud. In this regard, the EESC agrees with the remit given to the multistakeholder expert group on liability and new technologies.

5.5. The safety and security of individual users must also be addressed given risks such as the use of proximity, shared bandwidth, exposure to electromagnetic fields and possible interference with connected life-sustaining devices. The EESC backs the application of supervisory and preventive product-withdrawal arrangements for risks to consumers’ health and safety or to their private, economic interests.

5.6. Businesses must adopt standards aligned with best practice, such as security by design and by default, and accept external, independent evaluations. In the event of security incidents or data breaches, businesses will be obliged to report such incidents, including information on liability for damage and non-compliance with legislation.

5.7. Businesses must give consumers simple, accessible information that enables them to take appropriate decisions and to adopt safe practices, providing the necessary security updates throughout the lifecycle of the product.

5.8. The lack of consistent standards related to IoT networks must be addressed. Advanced broadband and new generation technologies must be implemented to improve current infrastructure.

6. Proposals for action in the framework of public policy (10)

6.1. The public authorities, in exercising their powers in the various territories of the European Union, must actively engage in developing IoT policies and action plans with the aim of achieving a balance of interests of the various stakeholders, anticipating and guarding against possible adverse impacts. The EESC advocates:

6.1.1. creating sand boxes, i.e. physical spaces, clusters, etc., to run pilot projects and proofs of concept. These should aim not at testing just technologies, but also regulatory models (11);
6.1.2. financing technology infrastructure that allows the development of innovative IoT projects under the new Horizon Europe programme;

6.1.3. appointing independent institutes and agencies as facilitators and caretakers of IoT projects. The EESC welcomes the relevant measures set out in the 2017 Regulation on cybersecurity and calls on the Commission to effectively promote standardisation processes in the digital industry using appropriate budgetary resources (12);

6.1.4. promoting public-private cooperation platforms and partnerships, bringing in the scientific community, industry and consumers;

6.1.5. fostering investment in the development of local business models harnessing the benefits of the IoT and making it easier to tackle complex aspects such as data protection and ownership;

6.1.6. carrying out capacity-building in the business world with a view to co-responsibility. It should be ensured that security and privacy by design and by default are built into ITC products and services, in keeping with the principle of ‘duty of care’ advocated in the new Cybersecurity Regulation. In this connection, the EESC welcomes the planned drafting of codes of conduct to complement regulation;

6.1.7. encouraging European and international standardisation initiatives to ensure the essential characteristics of IoT systems, i.e. reliability, safety, availability, resilience, maintainability and use. In particular, standardisation is essential for the rapid realisation of highly digitised industrial manufacturing processes;

6.1.8. ensuring that IoT users, especially the most vulnerable or those living in sparsely populated areas, have affordable, high-quality access;

6.1.9. promoting awareness-raising campaigns and education programmes to facilitate adoption of the IoT by businesses and consumers, enabling them to acquire the necessary capacities and skills (13), paying particular attention to vulnerable groups and diversity;

6.1.10. launching initiatives in the educational sphere to ensure sufficient prevention, given young children’s early entry into digital environments;

6.1.11. launching diagnostic analyses and studies of the impact of IoT on areas such as new models of sustainable production and consumption;

6.1.12. guaranteeing the full implementation and effective use of alternative dispute resolution mechanisms both online and off-line (ADR and ODR);

6.1.13. encourage the existence, implementation and effective functioning of a European group action system that is able to put a stop to and obtain compensation also for situations where the use of the IoT causes damage or loss of a collective nature, as will be the case under the New Deal for Consumers.

6.2. The EESC also calls on the Commission to evaluate the rules directly or indirectly related to the IoT and, where necessary, to improve the existing legislation. In this connection, the New Deal for Consumers should also focus on interconnected devices, networks and their security, and the data associated with such devices.

6.3. Finally, the EESC stresses the importance of establishing cooperation and coordination mechanisms between the Member States for the efficient and uniform application of the planned rules and for the agreements that the European Union must draw up beyond its borders due to the places of establishment of companies and suppliers, with particular emphasis on the exchange of best practice. International policy on cross-border data flows must be coordinated so that the countries involved can establish equally high standards of protection in their national law, both substantial and procedural.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on ‘Indicators better suited to evaluate the SDGs — the civil society contribution’

(own-initiative opinion)

(2018/C 440/03)

Rapporteur: Brenda KING

Co-rapporteur: Thierry LIBAERT

1. Conclusions and recommendations

1.1. Ever since the adoption of the UN 2030 Agenda for Sustainable Development by the European Institutions in 2015, the EESC has been calling on the Commission to establish an overarching European Sustainable Development Strategy with concrete objectives, targets and actions in order to achieve the 17 Sustainable Development Goals (SDGs). Despite the fact that the EU played a leading role in the adoption of the 2030 Agenda and that the SDGs reflect EU core values which are to promote greater social, political, economic and environmental harmony, the European Commission has failed to develop an overarching strategy. The Reflection Paper ‘Towards a Sustainable Europe by 2030’ to be published by the end of 2018 is an opportunity to emphasise the importance of adopting an overarching European strategy.

1.2. The current lack of a European Sustainable Development Strategy is a risk for the coherent implementation of the 2030 Agenda in the EU and at national level. Divergences in the approach to addressing the SDGs may occur, as several Member States are already preparing their national sustainable development strategies while there is no European strategic framework or common implementation guidelines.

1.3. The EESC welcomes Eurostat’s first annual 2017 Monitoring Report of the SDGs (1), which is based on a set of 100 indicators using rigorous data criteria. However, the EESC identified a number of deficiencies regarding the current set of indicators, which future publications of Eurostat’s annual SDG Monitoring Report should consider.

1.4. The EESC calls for indicators that can provide a basis for policy planning and policy shaping. The current set of indicators fails to measure the distance to targets or to provide an appropriate progress review. Specific EU policy targets for SDGs need to be established and indicators need to be able to monitor their achievement. In the absence of specific EU policy targets, the EU could assess national performance in comparison with best and average performance.

1.5. The EESC also identifies certain technical limitations that need to be addressed in order to ensure the best indicators are used. For example, the use of cross-cutting indicators remains insufficient to provide information about synergies and dilemmas among the goals. The spillover effects on partner countries’ sustainable development and monitoring policy coherence between important external and domestic policy objectives are also not fully integrated.

1.6. Eurostat and the national statistical offices need to ensure they are applying a coherent framework of indicators. A comprehensive and integrated system of indicators should be in place to guarantee that the monitoring exercise on SDG implementation at European and national level is reliable.

1.7. Eurostat and national statistical offices have limited human and financial resources for collecting new data and therefore it is not always possible to produce new and more targeted indicators. The EESC calls for adequate resources to be ensured to overcome this relevant limitation.

1.8. EESC calls for the major involvement of civil society in the definition of indicators and in assessing the EU’s progress towards the goals. The cross-cutting nature of the SDGs requires integrated multi-stakeholder cooperation.

1.9. The EESC recommends that the set of indicators is complemented by a qualitative shadow report, developed in close collaboration with civil society organisations to increase all stakeholders’ sense of ownership of SDGs. Qualitative information can highlight trends that would otherwise not be captured solely with quantitative metrics. The EESC proposes to take the lead on coordinating the preparation of the complementary qualitative report. In addition, the EESC proposes that the European Commission cooperate in the organisation of a European SDG Summit as a stocktaking exercise involving all relevant stakeholders.

1.10. A coherent strategic framework also requires that other EU indicators (e.g. the indicators included in the Social Scoreboard or the European Biodiversity indicators) need to be coherent with the 2030 Agenda framework. An overarching strategy should provide this overview of the interlinkage between the SDGs, EU policies and the different sets of indicators.

1.11. The EESC calls for the current EU governance system to be adapted to the implementation of the 2030 Agenda. An overarching, sustainable EU development strategy fully aligned with 2030 Agenda would guarantee that SDGs are mainstreamed into all EU policies and provide the framework for coordination and monitoring of EU and national implementation of the SDGs. For example, the European Semester machinery should be monitoring and contributing to the implementation of the SDGs. Additionally, EU policy formulation and evaluation (e.g. The Better Regulation agenda) should be adapted to fully incorporate the SDGs into the policy cycle. A sustainability test should be applied to all legislation and policy proposals in order to estimate the impact on SDGs and decide on the appropriateness of the proposal.

1.12. The EESC recommends that within the Commission, a Vice-President, with a dedicated team, specific budget and working structure with all Commissioners and Commission departments, should be in charge of mainstreaming the SDGs into EU policies. Furthermore, the president of the European Commission should present progress made and outline further action needed to implement the SDGs in the annual State of the European Union speech.

1.13. Finally, the EESC calls for an agreement on an EU budget that makes sustainable development the core objective. The EESC recalls that the final Multi-annual Financial Framework (MFF) for the 2021-2027 period will signal whether the EU will be able to achieve its 2030 Agenda commitments. The Commission’s proposal of May 2018 goes in the right direction, but ultimately misses the opportunity to make the 2030 Agenda the priority of the European agenda.

2. Lack of EU strategy

2.1. The EU should commit to a greater extent to its leading role in ensuring and promoting sustainable development. In fact, the UN 2030 Agenda is directly in line with the fundamental purpose of the European Union, which is to promote greater social, political, economic and environmental harmony both within Europe and around the globe. However, although the EU and its Member States signed the global Agenda, Europe is lagging behind. So far the EU and a number of Member States have failed to implement a sustainable development strategy to ensure the achievement of the SDGs.
2.2. Recalling Article 3 of the Treaty of the European Union, a reference to sustainable development states: ‘In its relations with the wider world, the Union shall (...) contribute to, the sustainable development of the Earth (...)’. While there are some growing elements of sustainability in various EU policies, such as industrial policy, transport and energy, there remains a lack of ambition and a lack of funding. Overall, the EESC regrets the evident lack of strategy, policy coherence and integration into overall EU policy coordination.

2.3. The EESC is the only institution at the European level that has made sustainable development a main priority. The European Parliament has no structure in place to address sustainable development, though some political groups are including the 2030 Agenda in their political priorities for the European elections of May 2019. Meanwhile, the European Commission has set up the Multi-Stakeholder Platform for the implementation of the SDGs, which is a step in the right direction, but it is not clear whether this platform will continue beyond this Commission. In addition, the EESC advocated in the past a more ambitious and larger civil society forum than the one finally created (2).

2.4. At national level, the degree of SDG planning and implementation is dissimilar (3). Some Member States have already adopted comprehensive national sustainable development strategies, and in some cases, regional and local authorities, as well as concerned stakeholders are also running SDG initiatives to raise awareness. There is the risk of incoherence between national approaches as there is no European framework. The EESC calls for the integration of sustainable development into national policies and for organised civil society to be fully involved in design and implementation in line with an overarching EU strategy.

3. What lies ahead

3.1. On 13 September 2017, President Juncker announced a Reflection Paper ‘Towards a Sustainable Europe by 2030, on the follow-up to the UN Sustainable Development Goals, including on the Paris Agreement on Climate Change’, which will be published during the winter of 2018. In the preparation phase, the Commission is considering the views of the members of the Multi-Stakeholder Platform on the SDGs. The Platform’s members are proposing suggestions on how to improve EU governance in relation to SDGs (e.g. adopting an overarching strategy), policy recommendations and how an EU toolbox should evolve to coordinate policies, monitoring and accountability.

3.2. The implementation of the SDGs includes economic, social, political and environmental objectives that will require fundamental changes in European societies and within the EU institutions.

3.3. Debates about the future of Europe ahead of the 2019 European elections are crucial to raise awareness among citizens on sustainable development. European political parties must take a stand and address sustainable development within their manifestoes for the elections.

3.4. Moreover, the EESC considers that the future European Commission and the new European Parliament emerging from the 2019 European elections should make it a priority to better mainstream the SDGs into EU policies. The EESC urges the European Parliament to strengthen its capacity to monitor and supervise SDG progress and to take responsibility for the goals. With regard to the Commission, reinforcing the leadership of the Vice-President in charge of sustainable development and restructuring the portfolios of the DGs to make it clear who is accountable for each of the SDGs are also recommended.

3.5. The final decision on the Multi-annual Financial Framework (MFF) for the 2021-2027 period will signal whether the EU will be able to achieve its 2030 Agenda commitments. The MFF is crucial to ensuring mainstreaming of the SDGs. The European Commission’s proposal published in May 2018 goes in the right direction, but misses the opportunity to make the 2030 Agenda the priority of the European agenda. Beyond the limited proposed increase in the climate mainstreaming target, the new MFF should allocate relevant financial resources for sustainable development and also ensure that no

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(2) EESC opinion on the next steps for a sustainable European future (OJ C 345, 13.10.2017, p. 91).
(4) The EESC develops a mapping of the sustainable development initiatives at national level. A country summary for each Member State will be made available on the EESC website.
funding undermines the implementation of the SDGs. Funding needs to be made available to SDG implementers, including Member States, local authorities, business and NGOs for innovative, scalable projects.

3.6. The EU is undergoing a major political and institutional crisis and faces challenges such as growing social inequalities; environmental problems; and loss of trust in government and the EU (4). To overcome this situation, the EU needs to develop a new narrative that is able to provide tangible solutions to the challenges our societies are facing. The ongoing debates on the future of Europe should contribute to this new narrative, taking the 2030 Agenda and the 6th Scenario of Europe (5) into account, so that the EU becomes a driver for sustainability. Greater leadership from the European Heads of State to make the SDGs a central part of their political discourse and vision for Europe is required.

3.7. The 2030 Agenda is based on Europe’s core values of democracy and participation, social justice, solidarity and sustainability, respect for the rule of law and human rights, both within Europe and around the globe. The new sustainable development narrative should provide citizens with answers on how public administrations and organised civil society plan to address their aspiration of economic, social and environmental wellbeing.

4. The issue of indicators

4.1. The EESC considers that the approach taken with the EU SDG indicators must go beyond mere evaluation by contributing to policy formulation and policy shaping, rather than just being a reporting tool. The indicators should help EU policy-makers in defining future policies and planning how to better achieve the SDGs. The indicators must also help policy-makers to identify deviations in progress towards the SDGs and introduce necessary policy changes on time in order to achieve the goals by 2030.

4.2. From the EESC’s perspective, Eurostat’s 2017 Monitoring Report of the Sustainable Development Goals in an EU context is a good start, but there is room for improvement. It needs to be built on by improving the indicators. The current method of evaluating progress (i.e. 1% positive change) in the absence of EU quantified targets is potentially misleading, as it provides no information about the distance to the SDGs, unlike other reports. For example, while Eurostat concludes that there is significant progress in Europe on SDG12 (6), others sources, such as the OECD, come to different conclusions (7). The monitoring report needs to do more to make clear the integrated nature of the agenda, where efforts need to reinforce each goal rather than undermine any of them. While valuable, the use of cross-cutting indicators remains insufficient to provide information about synergies and dilemmas among the goals. Moreover, the report should assess the spillover effects on partner countries’ sustainable development and monitor policy coherence between important external and domestic policy objectives. Finally, indicators should be able to show comparisons between European countries, identify divergences in MS implementation and be frequently updated so that they are based on the best available science/knowledge/information.

4.3. In order to have a coherent set of indicators providing a clear overview of SDG implementation at EU level, it is crucial to create a comprehensive system of indicators covering the European and national level. First, the current indicators used for different policy areas at EU level need to be harmonised or at least interlinked with the EU SDG indicators. For example, relevant sets of indicators such as the Social Scoreboard or the European Biodiversity indicators need to be linked to the EU SDG indicators and their relationship needs to be clearly defined. Secondly, national sustainable development strategies should use the same indicators or at least indicators comparable to the EU SDG indicators. If this is not the case, there will be a high risk of inconsistency between the different approaches taken among Member States. Thirdly, the EU needs to ensure a comprehensive process for reporting to the UN High-Level Political Forum on Sustainable Development. The European Commission should be able to provide a clear overview of SDG implementation at EU level and in all Member States.

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(4) EESC opinion on the transition towards a more sustainable European future, SC/047 (OJ C 81, 2.3.2018, p. 44).
(6) SDG12. Responsible consumption and production.
4.4. The EESC considers that certain limitations need to be addressed regarding the process of defining indicators. Eurostat and national statistical offices have limited human and financial resources for collecting new data and therefore it is not always possible to produce new and more targeted indicators. According to the 2017 Annual Report by the European Statistical Governance Advisory Board to the European Parliament, the cost of Europe’s statistical system amounts to 0.02% of GDP, and following cuts to human resources linked with budgetary austerity, the number of staff has not returned to pre-economic-crisis levels (8). To improve the set of indicators, greater priority must be given to developing sustainability indicators, and adequate funding for sustainability indicators must be allocated to Eurostat and national statistical offices, in line with targets concerning SDG17. This will make it possible to add new indicators that could require additional data collection.

4.5. On the current set of indicators from Eurostat, the EESC identifies a number of deficiencies, which need to be addressed, ideally by the publication of Eurostat’s 2018 Monitoring Report on progress towards the SDGs. Areas of improvement include:

— A more objective visual presentation of overall results, to avoid a mistaken impression of Europe being mostly on track with the SDGs, contradicting other qualitative or thematic research as well as perceptions from citizens,

— Greater attention to the spillover effects of Europe’s current development model, for instance by building on Eurostat’s existing work on footprints, as well as Europe’s contribution to supporting partner countries in achieving the SDGs,

— A more innovative approach to grasping the indivisibility of the SDG agenda, beyond cross-cutting indicators, which on their own do not indicate imbalances and contradictions between the different dimensions of sustainability and lack an appropriate framework to assess policy coherence,

— More data regarding business, local authority and NGO performance,

— More information regarding Member States’ performance on the SDGs, as averages provide an incomplete picture. Providing national level information is also important given that Member States have exclusive competence regarding a number of SDGs,

— Better indicators of accountability for delivery on SDGs, in line with SDG16 (9) and 17 (10), for instance regarding civil society space in Europe (11) and innovative partnerships,

— More robust methodology for measuring progress for the SDGs where there is no European target, by for instance comparing average performance with the best performers among European Member States or proxy targets derived from other international commitments or available research.

4.6. While long time series are useful, indicators should be reviewed and improved based on the identification of new challenges and the progress of scientific knowledge, including new data. While Eurostat’s efforts to include new indicators in 2018 go in the right direction, clarity about the process and timelines for including ‘on hold’ indicators is crucial. For instance, there should be an action plan and timeline indicated for the proposed indicator ‘Extent of homelessness in the EU’, recommended by FEANTSA (European Federation of National Organisations Working with the Homeless), which is currently listed as ‘on hold’.

4.7. The role of organised civil society in relation to the Eurostat annual report needs to be enhanced. Eurostat should consult more with civil society on the process of defining indicators and on assessing the progress of the indicators. Generally, civil society needs to be consulted early enough in the process for recommendations to be taken on board and Eurostat needs to explain why the recommendations of civil society have, or have not, been taken on board.

(10) SDG17. Partnerships for the Goals.
(11) Building on existing methodologies such as CIVICUS monitor, https://civicus.org/index.php/what-we-do/innovate/civicus-monitor
4.8. What is monitored and what is not monitored, in particular, the design and choice of indicators, has substantial political implications (12). Therefore, the process by which Eurostat prepares the annual report should allow civil society to contribute with a qualitative interpretation of the indicators. This should be accompanied by a frequent survey from Eurobarometer, to assess citizens’ perceptions of the progress being made.

4.9. The EESC realises that civil society has limited statistical capacity to propose new indicators that can meet Eurostat statistical robustness criteria. Civil society is, however, capable of defining useful indicators that use other sources beyond Eurostat data. An example of this is the indicators that are being developed by the Sustainable Development Solutions Network. Nevertheless, the EESC considers that it is necessary to support civil society organisations with capacity-building measures to ensure that they are able to contribute better to the discussion with Eurostat.

4.10. In order to ensure the strong new narrative based on sustainable development mentioned above, the EESC calls for an improvement in the way the European Commission and Eurostat communicate on the SDGs’ progress. The Eurostat report is not fully reader-friendly and has not been widely communicated, and therefore new ways should be explored to raise awareness of it among non-specialised audiences and citizens. Other research and communication products should also be explored as part of an ambitious awareness-raising strategy. For example, providing a ‘civil society monitoring’ section on the Eurostat SDG website would allow for interactive co-ownership of the monitoring of the goals.

4.11. The EESC acknowledges that Eurostat’s annual report does not and cannot incorporate qualitative information. In order to cover this gap (as well as to enhance civil society involvement), the EESC proposes that the monitoring of SDG implementation should be complemented by a separate, independent qualitative shadow report, developed in close collaboration with civil society stakeholders. This shadow report should focus on: a) providing a reflection on and analysing the Eurostat report; b) complementing the Eurostat report with qualitative information coming from organised civil society; and c) providing organised civil society’s interpretation of the progress towards implementation of the SDGs. The EESC is currently conducting a study on civil society involvement in SDG monitoring (expected to be finalised by November 2018), which will specifically explore and propose a methodological approach for the preparation of this complementary report to Eurostat’s annual report.

4.12. Accountability is at the heart of the SDG agenda. An ambitious SDG strategy needs to be complemented by a strong accountability framework where organised civil society plays a key role. This requires raising the awareness of citizens across the Union as well as opinion surveys and other citizen feedback mechanisms. In this regard, the European Commission (in collaboration with the EESC) should organise an SDG Summit to carry out an annual stocktaking event with Member States, the European Parliament, civil society, businesses and regional and local authorities, and to commit to an inclusive and regular dialogue with stakeholders. Finally, the exchange of good practices of civil society involvement in SDG assessment should be promoted. The EESC could play a key role in supporting civil society organisations in exchanging these types of experience, creating synergies, increasing knowledge and raising awareness, and promoting collaboration.

5. Integration of the SDGs into EU governance

5.1. The current EU governance system should be adapted so that it contributes to the implementation of the 2030 Agenda. In order to achieve this, all EU institutions should take steps to ensure coordinated work on progressing towards the SDGs.

5.2. In spite of the leadership of the Vice-President of the European Commission, it is apparent that there is a low level of buy-in among several Commission departments, which hampers progress. The same is true of the Parliament, which must establish a credible process across committees to discuss SDG implementation. Finally, the working party on SDGs within the European Council, which is welcomed, needs to ensure adequate mainstreaming of the SDGs in all matters of the European Council, e.g. the future of the CAP, the cohesion policy, the transport policy (13), external relations (14) and the next MFF for 2021-2027.

(13) EESC opinion on the Role of transport in realising the sustainable development goals, and consequent implications for EU policy-making (OJ C 367, 10.10.2018, p. 9).
5.3. A future overarching EU sustainable development strategy should play a crucial role in mainstreaming the SDGs into all EU policy and provide the framework for coordination and monitoring of EU and national implementation of the SDGs. As mentioned, the strategy should establish targets, the means to address them and a coherent set of indicators to be used to monitor progress. The EESC agrees with the Council on the need to develop a reference indicator framework (15).

5.4. As mentioned, this reference indicator framework should integrate all relevant European indicators currently used in different policy areas and define the interlinkages between the existing indicators and the SDG indicators. For example, the European Commission should ensure complete alignment and coherence between the Social Scoreboard and the EU SDG indicators. Currently, of the 12 indicators of the Social Scoreboard; eight are included completely or partially in the EU SDG set.

5.5. The coordination and monitoring of the SDGs should be integrated into the European Semester process, as the EESC has repeatedly called for (e.g. EESC opinions NAT/693 (16), NAT/700 (17), SC/047 (18), SC/050 (19)). This should include a scrutiny process for the adequacy of SDG implementation strategies at the Member State level. National authorities should receive common guidelines and should be monitored so all efforts go in the same direction. Moreover, exchanging best practices among Member States should be promoted. The European Semester should fully extend its scope beyond the traditional economic dimension and completely integrate the social and environmental dimensions at the same level of importance in the context of a future overarching sustainable development strategy. Consequently, the country-specific recommendations should be consistent with the SDGs as well as the analysis carried out in the country reports within the European Semester process.

5.6. The recently created Structural Reform Support Programme (SRSP) aims to help Member States implement institutional, structural and administrative reforms. It is expected that the SRSP will play a relevant role in the next years. As already stressed by the EESC (20) and the Falkenberg report (21), the SRSP should assume that any supported reform needs to be coherent with the 2030 Agenda and the SDGs.

5.7. In order to ensure that the SDGs are mainstreamed in all EU policies, the Better Regulation agenda needs to be adapted accordingly to ensure a comprehensive and holistic approach to the SDGs. The EESC considers that the SDG principles should be explicitly referred to in the Better Regulation guidelines and toolbox. Additionally, Better Regulation methodologies should be revised to ensure that they are capable of assessing long-term objectives and measuring the distance towards achieving the SDGs. Finally, greater attention needs to be paid to policy coherence as a tool for SDG implementation, by using, for instance, the OECD’s framework on Policy Coherence for Sustainable Development (PCSD).

5.8. When proposing new legislative or policy initiatives, the European Commission should clearly indicate which SDG is targeted and run a sustainability test to assess the expected impact on the SDGs (as part of the impact assessment process, aimed at assessing the economic, social and environmental dimensions of proposals). The main problems in the implementation of the SDGs that the proposed policy aims to tackle should be identified. As well, the monitoring and evaluation of ongoing EU policies need to be adapted to measure the progress towards achieving the SDGs and to recommend policy modifications that have a larger impact in promoting the SDGs.

(18) EESC opinion on the transition towards a more sustainable European future, SC/047 (OJ C 81, 2.3.2018, p. 44).
5.9. The Commission’s Regulatory Fitness and Performance (REFIT) programme should also integrate the sustainable development perspective. The REFIT programme work should ensure that any simplification and update of EU law proposed is coherent and contributes to the SDGs.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
1. Conclusions and recommendations

Conclusions

1.1. The EESC fully supports the designation of 2018 as the European Year of Cultural Heritage and commends all efforts by promoters and organisers at all levels to increase visibility and celebrate Europe’s diverse and rich cultural heritage (1).

1.2. The EESC encourages all stakeholders and participants to adopt the widest possible definition of culture and to be inclusive of all citizens.

1.3. This year should not only be a celebration of the past, but should also promote evolving, new and challenging expressions of human inspiration and skill that often arise out of the traditions embedded in each country’s rural cultural heritage.

1.4. 12 months is a small window, but it is hoped that this extra effort and investment will incentivise citizens to focus on the opportunities around cultural heritage in rural areas. This should enable them to build a re-energised, aesthetic, social and economic treasury of wellbeing for present and future generations. At the mid-way point, over 3 500 projects have received the European Year of Cultural Heritage label, with the percentage of rural projects varying from region to region.

1.5. The EESC endorses the European Alliance for Culture and the Arts’ call, of January 2018, for the European Institutions and Member States to ensure ‘substantial support within the post-2020 Multiannual Financial Framework (MFF)’. It also welcomes the European Commission’s proposed commitment to culture in its draft budget of May 2018 and its commitments through the New Agenda for Culture (2).

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(1) EESC opinion on New Agenda for Culture (not yet published in the Official Journal).
Recommendations

1.6. Rural Cultural Heritage with all its richness and diversity should be formally recognised for its intrinsic artistic value and its economic and social contribution to the wellbeing of all European citizens (3).

1.7. Investment by public funders should be ‘rural proofed’ so that when any new funding streams are designed, these include support for the ongoing contribution of farming families and employees and for non-governmental organisations involving individual creators, as well as folk groups, local action groups, and care farms. This should take full account of the measures needed to enhance the infrastructure of rural heritage.

1.8. Existing EU funding streams, including the Rural Development Programme should increasingly see culture as of horizontal value and should support cultural projects, including those protecting, promoting and enhancing biodiverse landscapes. Restoration of pastoral farming and remote cottages in the Pyrenees, vineyards in Santorini, protection of common grazing in Şeica Mare (Romania) are good examples, as is the Leader cultural project in Lesvos (Greece) to support the integration of migrants. Agri-environment schemes should continue to build farmland habitats and the built environment should reach higher standards of design, respecting traditional cultural patterns while being relevant to modern usage.

1.9. Sustainable woodlands, forests and waterways deserve support measures to avoid degradation and pollution. Resources must be provided to maintain protective strips of trees and shrubs introduced in rural areas in the past (e.g. in Poland based on the Dezydery Chłapowski concept) which reduce soil erosion and CO₂ emissions and help increase yields and enrich the landscape.

1.10. The contribution of farm open days, school rural visits, shows, craft and other fairs and cultural festivals help urban citizens to better understand and appreciate rural areas and deserve public funding support as do measures to build bridges between rural and urban citizens through cultural projects.

1.11. Measures to introduce rural culture and traditions to new generations through innovative modern idioms should be encouraged and the economic and social benefit measured, with good practice shared and celebrated. Artists and other inspiring cultural actors, sometimes from other locations, should be supported to help communities realise the full potential of local cultural assets.

1.12. The serious loss of craft skills needs to be addressed through increased investment in training, so that intergenerational transfers occur building on past knowledge and encouraging innovation. Rural schools should teach the employment potential of rural assets as well as external career opportunities. There is a specific challenge, not just for young farmers, but for all rural young people to be entrepreneurial in their custodial role of embracing their heritage.

1.13. Rural cultural heritage should be promoted sustainably for the purposes of tourism, among other things, so that urban citizens can learn to appreciate the cultural values of rural areas and increasingly opt for rural homes and work in remoter settlements.

1.14. Marketing of rural cultural produce, including gastronomic heritage, should be promoted and geographically-branded status protected, giving assurance on quality and traceability to citizens.

1.15. Volunteering, community participation and social enterprises as well as rural private businesses, should be encouraged to develop and share their cultural activities, including promoting the diversity of languages and dialects, for the benefit of all citizens. ‘Smart’ rural communities should embrace the value and the potential of their local cultural assets and seek opportunities to cooperate with similar groups elsewhere to promote linkages, including enhancing the economic benefit of greater tourism opportunities.

(3) EESC Conference 20 and 21 June 2016.
1.16. While projects to mark the 2018 European Year of Cultural Heritage will likely continue into the future, it is important that a clear stocktake and evaluation of quantifiable investment and outcome be carried out, taking account of economic, social and cultural factors. Some EUR 8 million were allocated to the Year following Trilogue negotiations between the European Parliament and Council in 2017. It would be fair to expect that a quantifiable proportion of this support was available to rural areas.

1.17. More research is needed to quantify and measure the quality of the benefits of heritage and ongoing cultural activity for citizens’ wellbeing and to underpin solutions for future action. Stoic defenders of heritage need support to welcome new migrants and different cultural traditions.

1.18. Urgent action is required on connectivity of transport and digital infrastructure which is essential for settlement in rural areas and for the development of cultural tourism.

2. Introduction

2.1. This opinion specifically focuses on the wide range of assets and talent that rural areas and their citizens have, and will, contribute to Europe’s cultural heritage and on how this wide definition of culture contributes to a more viable and prosperous rurality. We support the Pan-European Charter for rural heritage which promotes sustainable spatial development (4) and the reference in the 2016 Cork Declaration 2.0: ‘Land management has a key role in the interface between citizens and the environment. Policies must incentivise the delivery of environmental public goods, including the preservation of Europe’s natural and cultural heritage’.

2.2. This initiative has to be subject to ‘rural proofing’ and the EESC is concerned that sufficient knowledge about the Year will not reach the small community groups in villages and small towns in time for them to prepare and celebrate the vast array of cultural assets around them. This Year should not only be a celebration of the past, but should also promote evolving, new and challenging expressions of human inspiration and skill that often arise out of the traditions embedded in each country’s rural cultural heritage.

2.3. Listing existing cultural activities and learning from successful projects has real value, but the 2018 celebrations should also include new, innovative cultural events which build on the past and transfer cultural heritage on to new generations in a contemporary way, giving new opportunities to rural areas. Creative Europe has two rural projects, ‘Roots and Roads’ and ‘Food is Culture’ which, if successful, could contribute to learning and development.

2.4. While it is difficult to quantify the economic and social benefits of cultural activity (over 300 000 jobs directly linked to European culture), the OECD believes that culture should be used as an indicator of wellbeing and it is important for the 2018 EYCH organisers to undertake some analysis which could justify future public investment. There should be a clear account of how successful the year was in reaching rural and remote areas and how any legacy of good practice such as the AlpFoodway (5) and the Terract projects (6) can be built upon for future prioritisation at European and regional levels.

3. General and specific comments

3.1. Rural landscapes, the mosaic of natural geological structures and human imprints of agriculture, forestry, lakes, rivers and built settlements provide, perhaps, the greatest cultural heritage there is. From national parks and Natura 2000 sites to urban fringe green spaces, there is a diverse beauty to appreciate, a source of inspiration to generations of artists, musicians, litterateurs, dancers, and to all of us, who fall into none of these categories. The Commission’s New Agenda for Culture is rather brief on rural perspectives. However, it does state that ‘restoration and upgrading of cultural and natural

(4) Resolution No 2 of the European Conference of Ministers responsible for Spatial/Regional Planning of the Member States of the Council of Europe (CEMAT), on the Pan-European Charter for the rural heritage: Promoting sustainable spatial planning — ‘The rural heritage as a factor of territorial cohesion’, adopted at the 15th session of CEMAT, Moscow, Russian Federation, 9 July 2010.
(6) http://www.terract.eu/fr/
heritage contributes to growth and sustainability. Integrated management of cultural and natural assets encourages people to discover and engage with both. The Mayagna people of Nicaragua use the same word for nature and culture. This is ecological citizenship.

3.2. Rural communities even add value to the landscapes. It is farm and woodland managers and employees and craftspeople — male and female — who have sculptured these landscapes. Generations of skilled people who harnessed land and water for food, shelter and to generate income. The idea, for example, of belts of greenery and shrubs to preserve the soil developed in nineteenth-century Poland, gave the recent landscape its distinctive features. They shaped field boundaries from stone and branch, erected barns and workshops. They tended, over successive generations, native breeds of livestock suited to terrain and climate and managed vegetation. They developed locally specific gastronomy and folklore traditions. We have also inherited a rich heritage of fine buildings — mansions, castles, churches, but also peasant cottages, small rural mills and shops, such as those carefully restored at the St Fagan Folk Museum in Wales. The upkeep of similar historical architecture is often borne by private investment, with some vital public and charitable support. An innovative project in North Wales utilises renewable energy from the seabed to heat and thus reduce costs at Plas Newydd, a National Trust stately home (7). Celebration of the past and the present should seek to balance the idealistic with the reality of human struggle and effort.

3.3. We appreciate all efforts including those of The European Heritage Alliance, to sensitively retain this heritage. Restoration includes the need for supportive planning authorities ensuring sympathetic building conversions. The REVAB project cofunded by the Erasmus Programme provides training to enhance the potential for re-using redundant agricultural buildings, thus preventing their obliteration.

3.4. Rural people created their own culture, reflecting their work, leisure and social challenges, in all forms of art, sport and general community activity. Rural areas are often important reservoirs for the diversity of minority languages and dialects. Place names of villages, farms and fields have significant meaning which deserve to be understood and respected. They have, and still, create a legacy of value to society generally.

3.5. However, their economic activities also evolve and sometimes disappear. Not all landscapes are pristine. Some bear witness to industrial exploitation, to wars and pillaging, to the ravages of drought, flooding and fire or even to overexploitation caused by excessive, concentrated tourism activities. They all have a story to tell, lessons to learn. Mitigating the impact of climate change will require positive intervention to retain diversity and a choice of experiences. Maintaining links with the past is branded ‘provision of public goods’ and landscapes become degraded if there is not sustainable biodiversity, sensitive planning and managed access. Even the artistic cultural manifest is diluted as rural populations decline below sustainable levels.

3.6. Eurostat 2017 notes that more than a third of Europeans do not participate in cultural activities, which is why developing rural-cultural tourism, linked to health and recreational activities is, and will be, a major bridge between urban and rural peoples. The city of Galway is a good example of rural-urban cultural partnerships and the European Capitals of Culture initiative (e.g. Plovdiv, Bulgaria, and Matera, Italy, in 2019) should always demonstrate rural as well as city cultural characteristics. In Wales, the Heritage Statutory Body, CADW, has an open doors initiative, which is part of a 50-country project to help citizens trace the footsteps of change, to better understand their being — ‘to plan your future you need to understand your past’.

3.7. In Greece, there is another example of shared knowledge, at the Art Farm (8), developed by Sotiris Marinis. In the village of Megali Mantinea in West Mani, he has built tree houses and a training centre, working on the principle that ‘an experience here educates about our rural and cultural heritage’.

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(7) https://www.bangor.ac.uk/studentlife/studentnews/visit-to-plas-newydd-18421
(8) https://www.facebook.com/AgrokinitiaArtFarm/
3.8. Rural cultural tourism is an existing and growing economic and social resource-provider and the basis of joint investment. Responsibility for protecting and supporting Europe's cultural heritage is a national, regional and local competence and having a public sense of pride in place is key. The European Institutions can promote a sense of European common values and incentivise and promote good practice and shared experiences (9). Traditional, regional culinary recipes, beers and wines, costumes and music, as exhibited at Berlin's Green Week (10), attract thousands of international visitors annually and help connect the present with the past. Connecting food and craft produce of rural producers directly with consumers through farmers' markets and internet selling is increasingly popular — for example the REKO local food groups in Finland.

3.9. Places for solitude, listening to and watching birdlife and experiencing woodlands — forest diversity as well as plant species for medical uses — all contribute to wider citizen curiosity, exploration and wellbeing. Broadening the range of opportunities and discovery should help avoid an over concentration of visits to vulnerable sites. This builds added economic and employment value, based on rural core assets, in more remote areas, a value already appreciated by smart villages and communities. In the mountain areas of Lombardy the AttivAre project strengthens people's sense of belonging by reinforcing natural heritage through art. It also works to refurbish hostels and promote availability in remote villages such as Lavenone (11). Travel agencies should be encouraged to work in partnership with geographically remote entrepreneurs and social enterprises promoting sustainable cultural tourism.

3.10. Disseminating and depicting cultural information using digital technology will, creatively, narrow a divide that was increasing between town and country, between young and older generations. Projects such as YourAlps (12) which reconnect youth and mountain heritage are welcomed. There are many emerging examples of innovative ways of portraying cultural traditions, such as the artistic project used in Aasted in Denmark and the village of Pfyn in Switzerland. These are projects resulting from local initiatives and identified local needs, use participative processes, which are themselves part of Europe's cultural tradition. Public and private resources should be available at European, state and regional levels to accelerate investment in similar initiatives.

3.11. New digital tools are also increasingly being used, for example in places of past and present conflict, to recreate important historical sites destroyed by abandonment or warfare. Technology is used to read headstones and fading manuscripts more accurately (13). We welcome the Commission's plans for a 'Digital4Culture Strategy' and expect this to consider any relevant rural aspects. The MEMOLA Project, for example, uses 3D scans of old irrigation areas to educate new irrigation processes.

3.12. More research is needed to understand how cultural activity matters to people and what health benefits are derived for all ages but especially for those with physical or mental illnesses (14), while existing Erasmus Plus Programmes, such as the TEMA Masters, currently fund good research opportunities. The high-level Horizon 2020 EYCH conference on 'Innovation and Cultural Heritage' (15) called for further efforts to develop research work to identify priorities and best practice in promoting cultural activities.

3.13. Initiatives supported by charitable and philanthropic foundations have contributed significantly to preserving natural sites and supporting activities, often through social enterprises, which boost the development of rural areas in a sustainable manner. The Finnish Cultural Foundation supports research into measures to prevent agricultural residues affecting water quality in the Baltic Sea. It works with farmers believing that more biodiversity equals a richer landscape. Other charitable initiatives are welcome, such as the Wales Schools' Cultural Heritage Trust which promotes inter-school

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(9) EESC opinion on New Agenda for Culture (not yet published in the Official Journal).
(10) https://www.gruenewoche.de/
(11) AttivAre project in the Lombardy region.
(13) Project of Andrew Skerrett presented in the Hearing of the study group on 24 July 2018 in Cardiff.
(14) Innovate Trust — Positive outcomes from field days horticulture project.
cultural competitions involving young people in defining and delivering their choice of cultural activity (\(^{16}\)). One example, which enables young people to explore their cultural heritage, is the school in Piscu (\(^{17}\)), Romania, which is both a specialist heritage school and an organiser of workshops and conferences. The EESC, itself welcomed pupils from schools across Europe in March 2018 to discuss their cultural priorities under the ‘Your Europe, Your Say!’ banner (\(^{18}\)). They concluded, ‘I want to live in a Europe that gives value to and protects all forms of culture… we want to avoid elitism and popularise culture… but also have the opportunity to create our own…’. In Giffoni, a village in southern Italy, some 300 students prepared films and videos to promote their region.

3.14. Investment by public funders should be ‘rural proofed’ so that when any new funding streams are designed, these include support for the ongoing contribution of farming families and employees, and for non-governmental organisations involving individual creators, as well as folk groups, Local Action Groups, and care farms. This should take full account of the measures needed to enhance the infrastructure of rural heritage.

3.15. There is scope and demand from cultural tourists for greater thematic and geographical links. Joint branding and joined-up access projects are welcome. Village and small town agricultural shows and national events such as the Royal Welsh at Builth Wells (\(^{19}\)), which attracts some 240,000 visitors, and the Hay on Wye literary festival which brings an estimated £21m into a small rural area, are significant economic and social contributors. Farm open days, fairs, cultural festivals, such as the Llangollen international Eisteddfod, concerts, walking processions, such as the one in Veurne in Belgium, narrow-gauge steam train railways, Nordic walking and traditional dance troupes, all contribute immensely to maintaining and promoting rural cultural heritage. The contribution of volunteers at these events, over many generations, is itself, a significant part of our cultural legacy. The work of the European Volunteer Centre and national and regional voluntary organisations in promoting quality cultural volunteering is applauded and they are encouraged to continue their valuable efforts, including providing health and safety training to ensure safe and enjoyable experiences for volunteers and tourists alike.

3.16. However, there is an increasing shortage of skilled artisans to transfer knowledge and train a new generation in ways to protect and develop this diverse heritage. The JEMA initiative (\(^{20}\)) which originated in France, regularly promotes the work of craftspeople and the need to train new generations. Addressing this need is a good opportunity for intergenerational bonding through, and for, cultural purposes. More practical training and recognition of acquired skills are essential within existing EU and national/regional programmes, concentrating, not only on existing craft and environmental skills, but also on mentoring, developing new techniques and cultural business entrepreneurship. Support is required for artists and others to work with local rural and urban schools, inclusively developing cultural ideas across generations and between ethnic groups.

3.17. Rural cultural heritage is also about participative democracy. There is a strong European tradition of communal solidarity and of tackling isolation and disadvantage through community activities, many of which are based on culture. Building local sustainable leadership and delivering local priorities through community-led local development (CLLD) and the Leader method adds to a legacy of organised civil groups and movements. Social and cultural activities help bind people together in geographical areas with sparse public and private services. A tradition of voluntary sector intervention, sometimes as a deliverer of last resort, sustains sensitive, vulnerable landscapes of human survival. Public support for such activities is vital.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

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\(^{16}\) https://jamesprotheroe.wordpress.com/Darren Park Primary School, Ferndale.
\(^{17}\) http://piscu.ro/piscu-school/#
\(^{19}\) http://www.rwas.wales/royal-welsh-show/
\(^{20}\) Journées Européennes des Métiers d’Art https://www.journeesdesmetiersdart.fr/
Opinion of the European Economic and Social Committee on ‘The impact of subsidiarity and gold-plating on the economy and employment’

(exploratory opinion requested by the Austrian Presidency)

(2018/C 440/05)

Rapporteur: Dimitris DIMITRIADIS

Co-rapporteur: Wolfgang GREIF

1. Conclusions and recommendations

1.1. The EESC welcomes the request of the Austrian Presidency of the Council of the European Union for an exploratory opinion on ‘The impact of subsidiarity and gold-plating on the economy and employment’. It adds value and more aspects to the ongoing debate on Better Regulation to provide legal certainty, clear rules and ‘to ensure that regulatory burdens on businesses, citizens or public administrations are kept to a minimum’ (1). The existing level of protection of citizens, consumers, workers, investors and the environment in Member States must not be questioned when implementing the EU legislation.

1.2. The EESC reiterates its demand that future-related issues including debates on competences and on the level of regulations must be addressed at national and European level with the full participation of social partners and other civil society organisations. This is a fundamental expression of multi-level participatory democracy and must therefore be strengthened in the EU and the Member States.

1.3. The EESC underlines the paramount importance of the principles of subsidiarity and proportionality to provide comprehensive and sound European law-making. It underlines that the EU should focus on areas in which EU law brings a significant added value. The European Commission (EC) should therefore identify issues which really need to be dealt with at EU level in the most efficient way. Whenever the decisions require due account being taken of national, regional and local characteristics, the respective authorities should have room for manoeuvre to specify these, with the active involvement of relevant stakeholders, including social partners.

1.4. There are diverse views within the EESC regarding the term ‘gold-plating’ that reflect differences in the point of views of the various actors. Although there is no clear-cut definition, ‘gold-plating’ generally refers to a situation in which Member States introduce requirements above the minimum set out in EU legislation (mainly directives) in the course of transposition into national law. The EC should set out guidance in order to help the Member State to correctly transpose the respective requirements of a legal act while respecting the proportionality and subsidiarity principles, as well as fair competitive conditions.

1.5. The EESC notes that — particularly in the light of subsidiarity and proportionality and in line with EU law — it is the Member States' sole competence to introduce additional measures other than those foreseen by the EU (minimum) requirements in order to reflect their specific characteristics. Such decisions should be made in a transparent way, after consultation with social partners and stakeholders, and should be in conformity with EU legislation. In this connection, the EESC does not question Member States' sovereignty, freedom and responsibility in establishing national laws and practices.

1.6. The EESC calls on the European institutions and the Member States to strengthen their efforts to reduce unreasonable administrative burdens in order to boost growth and sustainable job creation.

1.6.1. In the framework of the preparation of the Multiannual Financial Framework (MFF) for the period 2021-2027, the EESC urges the EC to swiftly take measures to tackle unnecessary administrative burdens which heavily impede ESIF investments — state aid, procurement compliance, audit practices and delayed or even retroactive adoption of universal detailed guidance.

1.6.2. The EESC underlines that unnecessary regulatory and administrative burden are obstacles to maximising benefits and minimising the regulatory costs to businesses, citizens and public authorities. It reiterates the necessity of simplified, consistent and better quality regulation that should be well understood and implemented, with the equally indispensable involvement of all four levels of governance — EU, national, regional and local.

1.6.3. As in previous opinions (1), the EESC recommends carrying out a thorough SME-test in EC impact assessments.

1.7. The EESC reiterates that European minimum standards, especially in the context of EU social, consumer, environmental policies, aim at an approximation of living and working conditions across the EU towards upward convergence. Minimum standards in EU directives should not be understood as a 'maximum level', never to be strengthened in the course of their transposition into national legal systems. In the EESC's view, popular acceptance of the European integration process, however, should not be jeopardised by regulatory competition through levelling down standards. All decisions must be taken in a transparent way and in an open dialogue with social partners and civil society organisations.

2. Introduction

2.1. The Austrian Presidency of the Council of the EU requested an exploratory opinion from the EESC on 'The impact of subsidiarity and gold plating on the economy and employment'.

2.2. The EESC notes that the request addresses both the principle of subsidiarity and gold-plating and broadens the current debate on Better Regulation on which the EESC has expressed its views in various recently adopted opinions (2).

2.3. The issue of subsidiarity has recently gained new relevance, not least with the White Paper on the Future of Europe. The Task Force on Subsidiarity and Proportionality, established by Commission President Juncker in November 2017, submitted a report with recommendations for improving the application of the principles of subsidiarity (3).

The EESC finds the character of the report to be restricted in some ways and believes that this reflects the limited composition of the Task Force. It therefore, strongly suggests that in the follow-up events representatives of civil society be actively included. The Committee considers it urgent to address the proportionality of European action and, more importantly, the areas in which the EU should intensify, reduce or even freeze its action in line with the interests of citizens, the economy and other societal interests.

2.4. For the EESC, these future-related issues must be addressed at national and EU level with the participation of the social partners and other civil society organisations. Giving them as much room as the local and regional level in the preparation and implementation of national and EU policies would directly contribute to visibly practising horizontal subsidiarity.

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2.5. The EESC welcomes the Austrian Presidency’s acknowledgments of the value of including the broad expertise of social partners and civil society organisations in the design, implementation and evaluation of policy action at national and EU level. This is a fundamental expression of multi-level participatory democracy and must therefore be strengthened in the EU and the Member States.

2.6. In this regard, the EESC calls upon the Task Force to take due account of its opinions on subsidiarity and proportionality, which are also the basis of the comments and recommendations in this opinion.

3. The principle of subsidiarity

3.1. The principle of subsidiarity set out in Article 5 TEU is intended to ensure that EU action does not go beyond what is necessary to achieve the Treaty objectives and that the EU acts only in those areas that do not fall under its exclusive competence if the objectives of a legislative measure can be achieved more effectively at EU level than at national, regional or local level.

3.2. The EESC underlines the paramount importance of these principles in a supranational community such as the EU and expressly welcomes the instruments established by the Treaty of Lisbon for compliance with the principle of subsidiarity — from the subsidiarity review before the adoption of a legislative act to subsidiarity complaints by national legislative bodies.

3.3. The EESC also stresses that all areas foreseen by the TFEU need a well-functioning Europe and that the principle of subsidiarity must not be used to counteract EU action, which has clear European added value, to give a priori precedence to national approaches or even to withdraw the EU from key policy areas in advance. Only rules with European added value should be adopted. The EESC believes that the challenges which the continent is currently facing do not call for renationalisation towards ‘less Europe’ but rather for bold steps towards a better and more citizen-friendly Europe that also promotes cohesion.

3.4. The EESC acknowledges that the role of Member States in the implementation of EU legislation is especially crucial in the case of the transposition of directives, which are binding concerning the result to be achieved but leave to the national authorities the choice of implementing form and methods as well as to decide — in line with EU law — to improve standards if deemed useful. At the same time, transposition should not hinder fair competitive conditions between all Internal Market players, which is important to its correct functioning.

3.5. While Member States are responsible for transposing directives accurately and on time, it is the European Commission’s role as Guardian of the Treaties to ensure proper implementation at national level. This ‘shared responsibility’ should be clearly visible from the very start of the legislative process; good implementation depends on a clear, transparent and comprehensive impact assessment as the basis of a new EU law, clear and simple language of the proposal and realistic implementation deadlines.

3.6. The EESC warns that even when the above requirements are met, however, the implementation at national, regional and local levels can prove to be insufficient and/or ineffective. In this regard, it reiterates its call on the EC to systematically strengthen its efforts in line with its competences to pursue cases more quickly and rigorously where Member States incorrectly transpose EU legislation or fail to do so (5) after having explored all options of cooperation.

3.7. The EESC notes that a number of legal and political commitments have been perceived as overstretching the competence of EU institutions and as interfering with Member States’ domains and choices (e.g. national industrial relations and trade union initiatives; pensions, health and other social security systems or professional regulations, e.g. qualification criteria in the health sector).

Therefore, the EESC equally objects not only to such an overstretching of competences by EU institutions but also to the transfer of important regulatory areas of the TFEU such as, for example, consumer protection, environmental protection standards and European social policy to national level under the pretext of subsidiarity.

4. Avoiding unnecessary regulatory and administrative burden — ‘gold-plating’

4.1. The ‘gold plating’ debate

4.1.1. When transposing EU legislation, Member States sometimes introduce more stringent or advanced measures than those set out by requirements in EU legislation (mainly directives) or they do not use the options offered by the directive for possible simplification. This phenomenon in many documents is called ‘gold-plating’. In the first case it is considered as ‘active gold-plating’ in the second case as a ‘passive gold-plating’.

4.1.2. The EESC has diverse views regarding ‘gold-plating’ that also reflect differences of views among the various actors. For some stakeholders it is seen as an excess of norms, guidelines and procedures accumulated at national, regional and local levels, which creates unnecessary administrative burden and interferes with the expected policy goals to be achieved by transposed regulation. However, other stakeholders are of the opinion that the use of the stigmatised term ‘gold-plating’ would risk questioning some advanced Member States’ standards adopted democratically and introduced to their legal systems, particularly in the fields of labour, consumer and environmental law, as well as regarding the free professions.

4.1.3. The EESC calls for a pragmatic and balanced approach and for the purposes of this opinion will focus on neutral and more precise terminology — in line with the Interinstitutional Agreement on Better Regulation of May 2016.

4.2. Definition of ‘gold-plating’

4.2.1. The EESC suggests defining ‘gold-plating’ more precisely. For cases where Member States transpose the content of EU legislation in a more ambitious way (on substance or procedurally) or strives to be consistent with national legislation expressions like ‘more advanced provisions’, ‘more stringent provisions’ or ‘higher requirements’ might be used. The expression ‘gold-plating’ should be limited to cases of unreasonable and unnecessary add-ons to EU legislation in the course of its transposition into national law, which cannot be justified in light of one or more goals of the proposed measure or which bring additional unnecessary administrative burden. In any case the expression ‘gold-plating’ is very general, its translation into many national languages is misleading and should be replaced by much more concrete term.

4.2.2. Independently of terminology (and even when the term ‘gold-plating’ may be used), the EESC reiterates that this concept should in particular not refer to:

— Restricting established standards in fields such as labour, social, consumer or environmental law when transposing and implementing EU legislation;

— National measures that have no (objective or temporal) connection to the transposition of EU-law;

— Firming up the general provisions of EU law in the course of its transposition (e.g. establishing concrete legal sanctions in cases of infringement);

— Applying one out of several explicit options for the transposition of EU law;

— Advanced national provisions going beyond minimum standards based on ‘non-regression clauses’ in EU law;

— Applying the content of a directive to similar cases so as to ensure coherence and consistency of national laws.
4.2.3. The EESC reiterates that the principle of subsidiarity allows the Member States to introduce more stringent measures, exercising their right to ensure the achievement of different goals (e.g. economic, social or environmental) and to demonstrate their commitment to a high level of protection, to the specific character of legal instruments such as ‘directives’, as well as to certain limits of competences. The EESC underlines that such more stringent commitments should only be taken after a transparent and inclusive debate with the social partners and stakeholders and in a spirit of mutual understanding and a balanced decision-making process.

4.3. ‘Gold-plating’ and Better Regulation

4.3.1. In the context of the Better Regulation agenda, the EC recognises the right of Member States to go beyond the standards set out in EU legislation (‘gold-plating’), but it is concerned about the lack of transparency in this respect. The United Kingdom, the Netherlands, Belgium, Germany and Austria have established their systems to identify the cases of ‘gold-plating’. In the United Kingdom and in the Netherlands, ‘gold-plating’ is regulated by centralised official policies, aimed at fostering economic growth.

4.3.2. The EESC in no way questions existing Treaty provisions, in particular EU or Member State competences, but reiterates the importance of respecting ‘the general principles of Union law, such as democratic legitimacy, subsidiarity and proportionality, and legal certainty’. This means, inter alia, respecting Member States’ democratic sovereignty, freedom and responsibility to design national laws and practices that take due account of the role of social partners in this respect. The EESC has always called for the promotion of simplicity, clarity and consistency in the drafting of Union legislation, as well as greater transparency in the legislative process.

4.3.3. The EESC has repeatedly underlined that European legislation is an essential factor in integration, not a burden or a cost to be reduced. On the contrary, when balanced, proportionate and non-discriminatory it is an important guarantee of protection, promotion and legal certainty for all European stakeholders and citizens (\(^7\)). It reiterates its opinion that legislation is essential in order to achieve the objectives of the Treaty and to create the right environment for smart, sustainable and inclusive growth that benefits the public, business and citizens (\(^7\)). In line with Article 3 TFEU, legislation also helps to improve well-being, protect the public interest and fundamental rights, promote a high level of social and environmental protection and ensure legal certainty and predictability. It should also prevent distortion of competition and social dumping (\(^8\)).

4.3.4. In the course of the transposition of directives, Member States sometimes add elements that bear no clear relation to the EU legislation concerned. The EESC thinks that these add-ons should be made evident either by transposing law or through documents related to them. The legitimacy of Member States to complement EU acts as the result of minimum harmonisation has generally to be recognised as long as it is transparent and respects the principles of non-discrimination and proportionality. There are many examples of non-minimalistic transposition of directives in the Member States that can be seen in gold-plating.

4.3.5. Where harmonisation is minimal, the EESC underlines that Member States are able to draft provisions that seek to achieve job creation, better living and working conditions, adequate social protection, a high and sustainable employment rate and the combating of exclusion (Article 151 TFEU), the promotion and development of SMEs and high standards of health and consumer protection (Articles 168 and 169 TFEU), as well as the protection in the environmental sphere (Article 191 TFEU) — without, however, erecting needless regulatory or administrative burden.

4.4. The EESC believes that the following measures will help to avoid unnecessary regulatory and administrative burden:

— The EC should carry out integrated impact assessments (IAs) in the course of European legislation take due account of unnecessary burden and any other impact for any substantial regulatory text;

— EU laws must be assessed on their own merits, on a case-by-case basis, in order to reach targeted harmonisation which allows, depending on the circumstances, a form of harmonisation that is advanced in some areas and less so in others. It is for the EC, through IAs, to suggest the most appropriate level of harmonisation, taking into account the need for a high level of protection;

\(^6\) See, inter alia, point 1.2. of the EESC opinion on REFIT (OJ C 303, 19.8.2016, p. 45).
\(^7\) COM(2012) 746 final, p. 2.
— When transposing EU legislation, Member States at national and regional level should be fully transparent about any supplementary requirement that could negatively affect the Single Market, competitiveness and growth;

— The fact that one Member State imposes less strict rules than another does not automatically mean that the latter’s rules are disproportionate and incompatible with EU law. It is for the Member State to assess on a case-by-case basis, taking into account the viewpoints of all stakeholders and the entirety of the regulatory context. Impact Assessment could be an important tool to that end;

— Any additional requirements during the transposition of directives should be accompanied by documents stating transparently specific reasons for these additions.

4.5. To avoid putting enterprises and other stakeholders at a competitive disadvantage vis-à-vis their counterparts in other Member States, the EC should set out guidance in order to help Member States to correctly transpose the requirements of a legal act while respecting the proportionality and subsidiarity principles and fair competitive conditions. In this respect, the EESC reiterates its demand for the highest possible involvement of social partners and other relevant interests in the transposition exercises as well as the strong involvement of Member States and national and regional parliaments in the respective ex-post assessments (9).

4.6. EESC recommendations for efficient transposition:

4.6.1. Member States should pay attention to the relevant implementation deadlines in order to allow sufficient time for consultations with all relevant stakeholders:

— When preparing the national framework positions for initial negotiations in the working bodies of the Member States, attention has to be paid to the transposition deadline;

— They should check if EU directives provide for two deadlines, one for producing national implementing legislation and one concerning the date by which the legislation must take legal effect;

— The transposition deadline must be followed and monitored along the whole legislative process;

— The ECs implementation plans provide support and assistance.

4.6.2. Consultations:

— At EU level, EC assistance provided during the implementation process, such as recommendations and discussions in expert groups may be useful and contribute to a common understanding among Member States;

— The European Commission should adjust the existing transposition methodology (guidelines) not only to ensure that the transposition of directives is not conflicting with European law but also to safeguard the effectiveness of the transposition;

— The provision by the EC of specialised web-based platforms (as the existing electronic notification interface) or an electronic database for concrete pieces of EU law to share best practices could be further developed. Multilevel governance should be fostered and include all relevant stakeholders.

4.6.3. Terminology and delegated acts:

— Member States are encouraged to check precise and agreed language along the whole negotiation process in the Council;

— Basic terms and definitions must be clearly defined as soon as possible in the early stage of negotiations;

— Different meanings of terms and definitions in the Member States need to be taken into account by the EC;

— Definitions in a specific piece of legislation should be consistent with those in other EU legislation;

— Delegated acts should be subject to requirements as per Article 290 TFEU, providing clear and explicit definitions in the basic legislative text;

— Delegated acts should only be considered for non-essential elements of the legislative act and only these parts may be supplemented or amended (10).

5. Specific sensitive areas

5.1. European Structural and Investment Funds (ESIF)

5.1.1. The European cohesion policy, namely Structural Funds and the European Social Fund in particular, are implemented in a complex administrative, institutional and regulatory environment and are a specific field where unnecessary and burdensome transposition may have a negative effect on EU policies. In this context, national and/or regional rules often ‘add to’ rather than only ensure that minimum (European) requirements are addressed. Many of these rules lead to additional administrative burden. It should be noted that additional requirements often rest on the assumption that they are important, useful, necessary, and the result of a democratic process.

5.1.2. In the framework of the preparation of the MFF for the period 2021-2027, the EESC urges the EC to take measures swiftly to tackle unnecessary administrative burden which heavily impedes ESIF investments — state aid, procurement compliance, audit practices and delayed or even retroactive adoption of universal detailed guidance. Reducing or avoiding unnecessary administrative burden is a joint responsibility of all players.

5.1.3. Inappropriate practices could generate lack of trust across the overall ESIF implementation system. These include a risk-averse approach at all levels, lack of consistency in interpreting responses from different DGs of the EC, persisting gaps in the harmonisation of ESIF rules at national, local and regional level, fear of non-compliance with state aid rules, different public procurement policy approaches at EU (accent on transparency) and national (accent on value for money) level on and divergent national administrative cultures.

5.1.4. Inappropriate practices could also adversely affect beneficiaries as well as programme bodies and increase administrative costs and burden of ESIF implementation, making it less attractive. Due to the lack of alternative dispute resolution systems, companies and particularly SMEs could be adversely affected by late payment, administrative overload, inappropriate control, refusal of projects, exclusion from collective actions, etc. For these reasons, the EESC calls for the creation of specialised dispute resolution systems.

5.1.5. Recommendations for future action for the period 2021-2027:

5.1.5.1. Reducing administrative burdens in the area of management and control:

— Swift action at EU and national level to identify and, if possible, eliminate redundant practices, processes and procedures and to suggest more effective solutions based on good practices;

— ‘Shared management’ is a substantial cause for the complexity of ESIF. The ‘integrated approach’ where the administration and control of ESIF is carried out on the basis of national standards (‘devolved management’), should be applied;

— Member States to carry out self-reviews of their audit, management and control systems with a view to detecting and eliminating excessive and overlapping rules, while at the same time safeguarding the correct use of EU funds;

— The EC to take better account of the intensity of the aid and the specifics of the different implementation models and mechanisms (i.e. grants, financial instruments, simplified costs, etc.) when developing relevant rules and procedures.

5.1.5.2. The EESC calls for simplifying and streamlining state aid rules, including by removing all sources of uncertainty in their application. Possible amendments should be considered, including to the applicable rules where necessary, so that similar ESIF projects are treated in the same way as those funded from EFSI and programmes directly managed by the EC, such as Horizon 2020. At the same time, the EESC warns that interpretation and guidance notes and questions-and-answer-based documents must be limited, so that they do not become another layer of de facto legislation. It recommends replacing them with a wide dissemination of good practices, and avoiding retro-active application. It calls on the EC to refrain from preparing guidelines which are valid for all Member States on the basis of a request or problems in one or a few Member States.

5.1.5.3. In order to address the different approaches when dealing with public procurement rules, the EESC suggests creating a joint group task force consisting of relevant DGs and Funds representatives consistently interpreting the rules when necessary and providing consistent advice and a uniform approach of financial corrections.

5.1.5.4. The EESC is of the view that subsidiarity should be better applied in the implementation of ESIF, leaving it to national authorities to verify the respect of national rules. It invites the Member States to make full use of the simplification options provided in the new programming period and to refrain from gold-plating, which relates here to all norms, guidelines and implementing procedures which can be deemed unnecessary with respect to the policy objectives set by the Managing Authorities, and to eliminate unnecessary administrative burden.

5.2. Towards Better Regulation

5.2.1. The EESC underlines that unnecessary regulatory and administrative burden are obstacles to for businesses, citizens and public authorities. It reiterates the need for simplified, consistent and better-quality regulation that should be well understood and implemented in a transparent way, with the equally indispensable involvement of all four levels of governance — EU, national, local and regional.

5.2.2. Some Member States have National Committees to which governments have to justify more stringent regulation than minimum levels laid down in EU legislation (‘gold plating’). In Member States where such bodies do not exist it is not necessary to create new administrative bodies, but nevertheless the process of adopting any requirements above EU standards in these countries should be transparent.

5.2.3. As in previous opinions (11), the EESC recommends carrying out SME tests in the impact assessments on proposals for new European legislative acts more efficiently. It calls on the Member States to take advantage of options to grant exemptions to micro companies on certain rules in line with EU law. The EESC reiterates its view that regulatory burden reduction targets should be based on a comprehensive evaluation including civil society and stakeholder dialogue. The existing level of protection of citizens, consumers, workers, investors and the environment in Member State must not be questioned when implementing the EU legislation (12).

5.2.4. The EESC reiterates the parity and homogeneity of the different goals of EU-policies according to the Treaty, underlining in particular a highly competitive socially responsible market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.

5.2.5. The EESC invites the EC, whenever reasonable and justified to take into consideration the use of incentive-based models and international standards and guidelines.

6. Impact on employment, consumer and environmental standards

6.1. In recent decades, a number of EU-wide minimum standards have been established in consumer, environmental and worker protection which aim to bring about upward convergence of living and working conditions in the Union, i.e. more social convergence as per Article 151 TFEU.

6.2. The EU legislator has deliberately left room for minimum standards to be implemented by Member States in line with EU treaty principles, especially while respecting proportionality. As a result, directives provide that Member States can take their higher standards into account in their implementation process. The EESC underlines that, whenever Member States decide to go for more ambitious protection standards, Better Regulation principles could, among other considerations, be taken into account.

6.3. These national standards are the result of democratic negotiation processes involving to a considerable extent European and national social partners and are of benefit to employees, consumers and companies. In line with the objectives of the EU Treaty, setting such minimum standards should aim to ensure the better functioning of the single market and while at the same time not adversely affect higher levels of protection at national level. Minimum standards in EU law often even explicitly include ‘non-regression clauses’ stating that the implementation of the directive may not be used as justification for lowering eventual higher national standards to the European standard. This does not mean, however, that national standards are set in stone and can never be changed.

6.4. In the course of national transposition of EU law, impact assessments could be used by Member States to check social, economic and other effects.

6.5. In social policy as in consumer and environmental protection, EU legislation made sure that higher standards in Member States are not be undermined and should be safeguarded, while including all stakeholders in IAs. In this respect, the EESC has repeatedly expressed the view that the Better Regulation Agenda should deliver high-quality EU laws without undermining key policy objectives or creating deregulation pressure on social and environmental protection standards as well as on fundamental rights (13).

6.6. The EESC reiterates that European minimum standards, especially in the context of EU social policy, aim at an approximation of living and working conditions across the EU towards upward social convergence. Minimum standards in EU directives should not be understood as a ‘maximum level’ not to be exceeded in the course of their transposition into national legal systems.

6.7. The EESC supports the Better Regulation process and recognises its value added. At the same time, it warns that it by no means should be used as an excuse for downgrading requirements, especially in such areas as consumer, environmental and labour law, promoting prosperity growth and sustainable job creation. The EESC warns that this would fuel growing EU scepticism among broad sections of the population. In the EESC’s view, popular acceptance of the European unification process should not be jeopardised by regulatory competition through levelling down standards.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

1. Conclusions and recommendations

1.1. The causes of digital gender gap are multiple, and actions must therefore address different fields: the education system from childhood to adulthood, the labour market, work-life balance, public services and the digital divide in general. It is recommended that a multidisciplinary approach be used that brings together different aspects of innovation (technological, social, cultural etc.).

1.2. The digital gender divide is not merely a technological issue: it is an economic, social and cultural one, to be addressed with multi-level and holistic policies, in order to address gender inequality at its deepest social and cultural roots.

1.3. It is important to take action to increase the number of women in STEM, as this can also improve conditions in other sectors, as well as in the whole of the economy and society. At the same time it is essential to recognise the growing importance ICT-related education, as well as of cross-cutting, entrepreneurial, digital and soft skills (such as empathy, creativity and complex problem-solving) in the digital age in all sectors. Interdisciplinary education and human-centred skillsets will be essential and education systems should take these aspects into consideration.

1.4. It is essential to ensure digital literacy and education for all, with a particular focus on girls, in order to remove the digital gender gap at its roots. More female digital role models are of primary importance in overcoming stereotyping.

1.5. It is necessary to encourage women’s participation in technical and high-level jobs by overcoming educational and professional barriers and stereotypes as well as guaranteeing digital lifelong learning to prevent women’s exclusion from the labour market.
1.6. Teachers and trainers should be provided with the right tools to use ICT at all levels to teach, promoting democracy and more inclusive and personalised education and training systems.

1.7. To prevent the spiral of feminisation of poverty, fair working conditions and access to social protection (1) must be guaranteed. This is especially true in the ‘gig economy’ (2). Social dialogue and collective bargaining play a fundamental role in this regard.

1.8. The presence of women in ICT developers’ jobs may help to overcome the gender bias that may be included in the design of a given technology.

1.9. Female entrepreneurship must be supported by removing barriers to women’s access to self-employment and improving access to and quality of social protection measures (3).

1.10. ‘Smartworking’ and teleworking should be monitored in order to avoid the risks of blurring of boundaries between care, work and private life.

1.11. It is important to enhance labour market participation of women with disabilities, implementing the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (4).

1.12. The digitalisation of the public sector represents a great opportunity for facilitating the participation of women in the labour market and assisting women with care responsibilities as well as for overcoming obstacles related to bureaucracy and access to public services.

1.13. It is important to tackle gender stereotypes: this issue must be considered in every policy and in every field, and should be addressed at its deepest social and cultural roots.

1.14. One of the main obstacles women face in participation in online activities and social networks is cyber-bullying. The Istanbul Convention on preventing and combating violence against women and domestic violence must be ratified and applied.

1.15. All policies at national, European and international level should take into consideration discrimination against women in the digital field, which also has a negative impact on the economy and society in general.

1.16. Public policies should be designed with a gender perspective (mainstreaming). Gender budgeting and gender lens can be useful tools in this regard.

1.17. The EESC encourages the European Commission to strengthen the ‘Women in Digital’ Task Force and the ‘Digital4Her’ initiative. It is important to create and develop European networks of women in the digital field promoting the participation of girls and women in digital studies and careers across the EU.

1.18. The European Commission should recommend that EU countries set national targets and indicators to monitor the situation (annual scoreboard). Improvements or worsening should be measured, also through research conducted by EIGE. Country-specific recommendations in this field could be directed to Member States in the European Semester process.

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(1) SOC/581 — EESC opinion on ‘Access to social protection’ (See page 135 of this Official Journal).
1.19. The social partners at the appropriate levels are committed to, and have a key role to play in, enhancing gender equality in education and the labour market in order to tackle the digital gender gap. In particular the role of collective bargaining is crucial in lifelong learning and in the labour market, in addressing gender roles, promoting the role of women in decision-making and in various bodies, supporting work-life balance and tackling the gender pay gap (5).

1.20. The EESC recommends that the European Parliament support these recommendations for the next EP legislature, this topic being fundamental for the future development of Europe.

2. Introduction

2.1. Gender inequality

2.1.1. In his speech to the European Parliament on the political priorities of the European Commission, Jean-Claude Juncker stated that discrimination should not take place in the European Union, making the area of justice and fundamental rights one of the ten political priorities of the Commission’s work. Gender equality is part of this area, even though the Charter of Fundamental Rights already plays an important role in this field, providing that ‘equality between men and women must be ensured in all areas, including employment, work and pay’ (6). Mariya Gabriel, Commissioner in charge of Digital Economy and Society, has recently outlined actions as part of her strategy to facilitate an increase in the participation of women in the digital sector. It is therefore necessary to ensure the follow-up to the Digital4Her declaration signed by IT companies, providing for an inclusive and gender-balanced work culture and environment.

2.1.2. Women continue to be discriminated against in the labour market and in society in general. The Gender Equality Index — which measures inequality in the domains of work, time, money, knowledge, power, violence and health — shows that progress in these fields is slow: the index increased from 62 points in 2005 to 65 points in 2012 and 66.2 points in 2017 (7). The causes of this discrimination are multiple. To overcome the imbalances arising from this discrimination, the first chapter of the European Pillar of Social Rights concerns equal opportunities and access to the labour market, in recognition of the fact that gender equality and equal opportunities are the fields in which discrimination is more common.

2.1.3. The digital gender gap is a form of inequality arising from discrimination affecting women, which is likely to constitute an unbearable obstacle to women’s participation at European and global level. It slows down the growth of the European economy of the future, characterised by digitalisation. Nowadays, 68% of men and 62% of women use a PC and the internet regularly, 33% of men and 18% of women install software on their devices, and 47% of men and 35% of women use online banking services (8). In addition, despite representing more than half of total graduates, women continue to be under-represented in science and ICT (Information and Communications Technology) courses: they represent about a third of the total employees in the sector, with different percentages depending on the specific job (8% software, 54% in lower level positions among IT operators). This opinion aims to provide recommendations and proposals in order to overcome imbalances in relation to the education system and the labour market.

2.1.4. Women also face more difficulties in going online because of cyber-bullying: online harassment is much more targeted at girls (according to EIGE data, 51% of women face online harassment vs. 42% of men) (9). The Istanbul Convention on preventing and combating violence against women and domestic violence must be ratified and applied.

(5) A Toolkit for Gender Equality in Practice’ by the European Social Partners ETUC, BusinessEurope, CEEP and UEAPME.
(6) Chapter III, Article 23.
(7) EIGE, Gender Equality Index 2017 Report.
(9) EIGE, Youth, digitalisation and gender equality: opportunities and risks of digital technologies for girls and boys, 2018 (forthcoming).
2.2. Digitalisation and digital divide

2.2.1. Digitalisation is not merely a technological process, but an economic, social, societal and cultural one.

2.2.2. According to a European Commission study (10), digitalisation could add EUR 415 billion annually to EU GDP and more women in digital jobs could create an annual EUR 16 billion boost to EU GDP. At the same time, companies face difficulties in recruiting ICT specialists, so there is room for more employment and better education in the digital field.

2.2.3. The digital divide includes not only limited access to an internet connection but also the lack of the basic skills necessary to use ICT tools. One aspect of the digital divide is the digital gender divide. According to International Telecommunication Union gender-disaggregated data for 91 economies, in 2017 overall internet penetration is 44.9% for women compared to 50.9% for men; according to Eurostat data, in 2017 71% of women had daily internet access as against 74% of men, and 49% of women had internet banking as against 54% of men (11). It is important to frame the issue both from the labour market side — digitalisation will concern all workers — and from the user point of view — everyone is a technology user.

2.2.4. Often the digital divide intersects with other kinds of discrimination: being part of an ethnic minority, living in a rural area, being an immigrant, disabled, poor, etc. Technology may help to overcome these barriers, making the world more inclusive for all, but — if this process is not driven by social actors — may also emphasise them.

2.2.5. The digital gender divide is an economic, social, societal and cultural issue, to be addressed with multi-level and holistic policies, as it leads to growing gender inequality. Moreover, gender inequality must be considered in every policy and in every field, and should be addressed at its deepest social and cultural roots.

2.2.6. The qualitative impact of digitalisation on skills needs is also interesting from the gender perspective because women are more represented in some jobs and under-represented in others, including STEM (science, technology, engineering and mathematics). Action is needed to increase the number of women in STEM.

2.2.7. However, it is also essential to recognise the growing importance of soft skills in the digital age in all sectors: the main feature of artificial intelligence (AI) and the internet of Things (IoT) is that machines are becoming more sensitive and smarter, with the result that the human workforce only becomes irreplaceable if it competes based on actual human skills such as the capacity to adapt to changes and to cooperate. Empathy, creativity and complex problem-solving in today’s society are more often taught to and developed by girls rather than boys (12). A multidisciplinary approach is recommended that brings together different aspects of innovation (technological, social, cultural, etc.) in an attempt not only to counter risks but also to seize the opportunities of digitalisation for women.

2.2.8. Special attention must be devoted to people with disabilities — and women in particular — whose situation is ‘not only worse than that of women without disabilities’ (13). That is why it is important to provide ‘equal access to various components of ICT facilities and why the information society should be ensured for women and girls with disabilities’ (14).

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(11) Eurostat data.
(12) Martha Ochoa (UNI Global Union) ‘The path to genderless digitalisation’.
(14) Idem, para. 5.3.6.
3. The digital gender gap in the education system

3.1. The education system is the main policy area to be addressed. There is a decrease in women taking up ICT-related higher education when compared to 2011 (15). Improving digital literacy and skills for women at all levels is therefore essential in order to allow them to participate actively in the development of society and to benefit from opportunities arising from digitalisation and avoid being left behind. Women with disabilities should have the right to an inclusive and high-quality education. Cultural and linguistic stereotypes must be tackled, providing girls with different role models, especially in the media sector. Moreover, ICT tools can be used in teaching and class' activities.

3.2. In primary education, it is essential to ensure digital literacy and education for all, in order to ensure the adaptive capacity of future men and women to the rapidly evolving technologies. According to the Programme for International Students Assessment (PISA), which measures the educational progress of 15-year-olds across OECD countries, there are almost four times as many boys as girls who aspire to a career in STEM (16). According to an EIGE study, across the EU from 3% to 15% of teenage boys aspire to work as ICT professionals, but in only four EU countries did 1% to 3% of teenage girls aspire to work as ICT professionals. Moreover, even if youth digital skills in the EU are equal between boys and girls, boys still feel more confident about their digital skills; again this is a problem of mis-perception and gender stereotypes (17). 'The EESC reminds Member States of the need to invest in non-discriminatory and inclusive education systems' (18).

3.3. It is important to train the trainers to use ICT as a tool for teaching. A focus on girls is of primary importance in order to remove the digital gender gap at its roots and to promote more inclusive and personalised education and training systems. Digital tools may also be useful to reduce the bureaucratic burdens on teachers and trainers (19).

3.4. In secondary and tertiary interdisciplin ary education, girls are still taking fewer STEM courses than boys: less than 1 in 5 ICT graduates are women (20). Interdisciplinary education and human-centred soft skills will also be essential.

3.5. Dual learning and VET (Vocational Education and Training) should be strengthened and take into consideration girls’ access to technical and on-the-job learning (21).

4. Digital gender gap in the labour market

4.1. It is necessary to encourage women's participation in technical jobs and high-level jobs, overthrowing educational and professional barriers and stereotypes. Increased presence of women in ICT could benefit this sector and the whole economy and society.

(16) Dr Konstantina Davaki, author of the study ‘The underlying causes of the digital gender gap and possible solutions for enhanced digital inclusion of women and girls’.
(17) Lina Salanauskaite, European Institute for Gender Equality (EIGE).
(19) Ekaterina Efimenko, European Trade Union Committee for Education (ETUCE).
4.2. To overcome the digital gender gap in the labour market the role of social partners at company, national and European level is of primary importance. Social dialogue and collective bargaining can propose acceptable solutions, taking into account the needs of both employers and workers. Increasing women in STEM and high-level jobs can also contribute to reducing the gender pay gap.

4.3. Lifelong learning is essential to prevent exclusion from the labour market and this is even more important for women. The role of social partners is crucial here.

4.4. Polarisation of the labour market and the ‘gig economy’: even if machines could technically replace low-skilled jobs (both manual and intellectual, due to the IoT, sensors, AI technologies), if these jobs are precarious and no rights are ensured it may be easier for companies to hire people at low cost rather than invest in new machines. This is already true in the so-called ‘gig economy’. In these contexts, no social protection along the lines of standard forms of work is ensured; owing to the informal nature of this kind of job, women risk moving away from traditional employment with social benefits in favour of ‘gig’ work which is more readily available and sometimes more easily managed in terms of working time. To prevent the spiral of the feminisation of poverty, fair working conditions must be guaranteed and a development model based on the ‘high-road’ should be promoted by all stakeholders. Here, the role of the social partners and of collective bargaining is fundamental.

4.5. Technology is not neutral: while software or an algorithm should reduce the subjectivity that is typical of a human process or decision, if a cultural bias (such as gender bias) is introduced into it, then it will always reproduce this kind of discrimination on a structural (rather than casual) basis. That is why people who work in the design of these systems should be as diverse as possible. Nowadays, only 17% of the 8 million people working in ICT are women; moreover, across the EU, only 20% of women aged 30 and over who hold ICT-related degrees decide to stay in the technology industry. Increasing participation of women in these jobs — and thus diversity — may help to overcome bias that may be included in the design of a given technology.

4.6. Break the ‘glass ceiling’ for a more digital economic system: Only 32% of economic leaders are women although it is proved that businesses with women in decision-making positions have better governance styles, which are usually more ‘horizontal’ and encourage diversity and creative and innovative thinking. Hence, if companies develop gender policies in order to promote women to the highest levels of the organisation, the company will benefit in terms of innovation capacity. Applied on a broad scale, this will in turn benefit the whole economic system.

4.7. The European production system is largely made up of SMEs which face more difficulties when investing in new technologies. At the same time, digital technologies facilitate micro-entrepreneurship: through some digital tools (such as e-commerce) it is possible for micro-SMEs to reach global markets, and, in general terms, to remove barriers to access to self-employment. According to the 2nd European Start-up Monitor, only 14.8% of start-up founders are female. This problem is related to weaker business networks, stereotypes and inadequate financial support. Digitalisation can create the right environment for female entrepreneurship, Education and support services must be guaranteed in order to enable women to open their own business using the digital technologies available.

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(22) EESC opinion on ‘EU concepts for transition management in a digitalised world of work’ (OJ C 367, 10.10.2018, p. 15).
(23) EESC opinions ‘For a European Framework directive on a Minimum Income’ (to be adopted in December’s Plenary Session) and ‘Access to social protection’ (See page 135 of this Official Journal).
(25) See e.g. the European social partners’ agreements, as well as the proposal for a Directive on work-life balance and the European Pillar of Social Rights.
(27) Mary Collins, European Women’s Lobby (EWL).
(29) ‘Women in the digital age’, study for the EP.
5. Digitalisation and work-life balance

5.1. According to an EIGE study, in ICT jobs there are longer working hours than in other sectors (30). The first issue to be addressed is therefore the sharing of care work between men and women: it is important to take action toward a more equal sharing of care work between the genders, also by adopting the proposal for a Directive on work-life balance for parents and carers (31).

5.2. ‘Smartworking’ and teleworking are often seen as tools for balancing work and private life taking into account both risks and opportunities. If smartworking can help workers to manage their private lives (especially by removing ‘dead time’ spent travelling to and from work), it is also true that, if not well managed, smartworking may lead to the blurring of boundaries between care, work and leisure time. Smartworking must be managed through specific company collective agreements in order to adapt to the cultural context, the means of production and the organisation of labour. In the longer run, smartworking may also change the way people live in cities (and rural areas) and social spaces.

5.3. Digital tools can also represent an opportunity for those excluded from the labour market. These tools can also facilitate women’s participation in the labour market. Women with disabilities are however much more excluded from the labour market (32). Therefore it is very important to implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (33).

6. Digitalisation of the public sector

6.1. Due to increased life expectancy and low birth rates, the European population is getting older and the burden of care work for middle-aged women is increasing. While it is essential to achieve equal sharing of care work between the genders, it is also important to recognise that digitalisation — and especially robotics — in the public sector represents a great opportunity to facilitate the participation of women in the labour market and to assist women with any care responsibilities they may have.

6.2. Robotics may automate and — more importantly — ease some of the heaviest tasks involved in care work (such as moving an invalid person), help the rehabilitation of injured people, prevent diseases, etc. These technologies may improve the whole society’s quality of life, in particular women’s, as well as women’s participation in the labour market in two ways: it could ease work in the personal care service sector, where women are heavily represented, and may benefit women that provide unpaid care, but only if these technologies are available and guaranteed to all those in need.

6.3. Digital technologies may also have a deep impact on all bureaucratic procedures linked to public services. Some countries are already applying this kind of technology on a broad scale, creating a unique digital identity for all procedures related to the public sector (taxes, health care, education, etc.). Expanding this process could improve the quality of life but it is also important to be aware of (and prevent) the risks related to data control by a single actor (even if this is a public authority), and to privacy, cybersecurity, transparency and ethics (34).

6.4. Public administration should prepare gender budgets for all services and activities, to promote equality and consider the impact of policies on women. Every decision on investment should be taken using the ‘gender lens’ in three domains: gender equality in the workplace, access to capital for women and products and services that benefit women.

(30) Lina Salanauskaite, European Institute for Gender Equality (EIGE).
(32) EESC opinion on ‘The situation of women with disabilities’ (OJ C 367, 10.10.2018, p. 20), para. 5.4.1.
(34) Digital Public Services (e-Government and e-Health).
6.5. While in some countries the digitalisation of the public sector is already advanced, in others this process is only beginning and this could be an opportunity to train and employ more women in the public sector, from a gender perspective.

6.6. In order to develop digitalisation, the necessary infrastructure, such as broadband, 5G etc., should be made available with no geographical discrimination.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on 'Bioeconomy — contributing to achieving the EU's climate and energy goals and the UN's sustainable development goals'

(exploratory opinion)

(2018/C 440/07)

Rapporteur: Tellervo KYLÄ-HARAKKA-RUONALA

Co-rapporteur: Andreas THURNER

Consultation
Austrian Council Presidency, 12.2.2018

Legal basis
Article 302 of the Treaty on the Functioning of the European Union
Exploratory opinion

Plenary Assembly decision
13.3.2018

Section responsible
Agriculture, Rural Development and the Environment

Adopted in section
5.9.2018

Adopted at plenary
19.9.2018

Plenary session No
537

Outcome of vote
180/1/4

1. Conclusions and recommendations

1.1. The EESC considers that the bioeconomy is about creating added value for society by producing, converting and using biological natural resources. The transition to carbon-neutrality and circularity will increasingly act as a driver for the bioeconomy, as a sustainable bioeconomy has the potential to generate economic, social and climate benefits simultaneously.

1.2. The EESC points out that the bioeconomy contributes to climate change mitigation in several ways: by sequestering CO₂ from the atmosphere in biomass, by storing carbon in bio-based products and by substituting fossil-based feedstocks and products with bio-based ones.

1.3. The Committee also points out that the bioeconomy contributes to the EU's climate and energy targets by replacing fossil fuels with bioenergy in electricity production, in heating and cooling and in transport. It also contributes to energy efficiency and the security of energy supply.

1.4. The EESC is convinced that the bioeconomy plays a vital role in achieving the overall economic, environmental and social goals called for in the UN Agenda 2030 (Sustainable Development Goals, or SDGs). The bioeconomy’s role is closely related to goals pertaining to industry and agriculture and to the creation of jobs in these areas.

1.5. The Committee calls for the EU Bioeconomy Strategy to be adapted in order to provide, in line with economic, environmental and social sustainability, the most favourable conditions for the European bioeconomy to create a competitive edge for the EU.

1.6. The EESC emphasises that policymakers must promote sustainable biomass production and mobilisation in the EU and ensure a stable, reliable and coherent framework for investments in the bioeconomy throughout value chains. Furthermore, policymakers should enhance the demand for bio-based products via public procurement, and adopt a coherent framework for technical, safety and state aid rules to provide a level playing field for bio-based products.
1.7. The EESC considers research and innovation to be key for the development of a future-proof bioeconomy. The innovation efforts promoted by the Bioeconomy Strategy should thus be continued, including the Bio-based Industries Joint Undertaking (BBI JU).

1.8. The Committee underlines the crucial role of education, advisory services, knowledge transfer and training for ensuring that workers and entrepreneurs have the necessary information and skills. People should be well-informed about the bioeconomy and made aware of their responsibilities so that they can be active consumers and make sustainable consumption decisions.

1.9. The EESC stresses that proper infrastructure is a prerequisite for the bioeconomy and requires adequate funding. Efficient transport systems are needed to enable access to raw materials and the distribution of products to markets.

1.10. The EESC recommends that the EU should strive for a global pricing system for carbon emissions, which would be a neutral and effective way of promoting the bioeconomy and bringing all market players on board to mitigate climate change.

1.11. The EESC is convinced that involving civil society in bioeconomy initiatives and decision-making processes is paramount. The Committee stresses that it is vital to ensure that the transition to a low-carbon economy takes place fairly.

1.12. The EESC highlights that a sustainable bioeconomy can only succeed by adopting a cross-sectoral approach. Coherence and coordination between the various EU policies and objectives are therefore needed. It is also important to ensure that measures at Member State level are coherent.

2. Background

2.1. The Austrian Presidency of the Council asked the EESC to draw up an exploratory opinion on the role of the bioeconomy in achieving the EU’s climate and energy goals and the UN’s Sustainable Development Goals (SDGs). Meanwhile, the EESC is currently preparing an own-initiative opinion on the new opportunities opened up by the sustainable and inclusive bioeconomy for the European economy (CCMI/160).

2.2. At the same time, the European Commission is updating the 2012 European Bioeconomy Strategy. The EESC is monitoring this process and welcomes the Commission’s efforts. The Commission has defined the bioeconomy as ‘the production of renewable biological resources and the conversion of these resources and waste streams into value-added products, such as food, feed, bio-based products and bioenergy’.

2.3. Generally speaking, the bioeconomy involves replacing fossil fuels and fossil feedstock with bio-based energy and raw materials. The bioeconomy entails economic activities that are based on the production, extraction, conversion and use of biological natural resources. Waste streams, by-products and residues can be another main source for the supply of raw materials.

2.4. Agriculture and forestry, together with fisheries, have a fundamental role to play in producing biomass for further use. A wide variety of industries (such as the forestry, food, chemical, energy, textile and construction industries) convert biomass, including secondary raw materials, into consumer commodities or intermediate products intended for other businesses. As a rule, the bioeconomy is based on extensive value chains, including transport, commerce and other services related to the above-mentioned activities. Additionally, ecosystem services are part of the bioeconomy.
2.5. The EU is committed to reducing its greenhouse gas emissions by at least 40% by 2030 compared to 1990 levels (1), with separate targets and rules for the emissions trading sectors and other sectors. In addition, land use, land use change and forestry, i.e. the LULUCF sector, have been integrated into the 2030 framework, with the requirement that this sector does not generate net emissions but contributes to the aim of enhancing carbon sinks in the long term. This reflects the requirements of Article 4.1 of Paris Agreement, which calls for ‘a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of the century’ (2).

2.6. In keeping with EU energy targets for the year 2030, energy efficiency should be increased by 32.5% compared to projections, and the share of renewable energy in the overall energy mix should be 32%, both expressed as common EU targets rather than Member State targets (3).

2.7. The UN’s 17 Sustainable Development Goals (SDGs) cover the different facets of the economic, social and environmental challenges being faced globally. While none of the SDGs focuses specifically on the bioeconomy, it is nevertheless linked to several of these goals.

3. Contribution of the bioeconomy to the EU’s climate and energy goals

3.1. The transition to carbon neutrality is a huge challenge and requires a considerable reduction in emissions as well as an increase in carbon storage. The sustainable use of bio-based natural resources is a key element here.

3.2. The bioeconomy contributes to climate change mitigation through several mechanisms: sequestration of CO₂ from the atmosphere in biomass via photosynthesis, storage of carbon in bio-based products and substitution of fossil-based feedstocks and products with bio-based ones.

3.2.1. Effective absorption of CO₂ requires sustainable biomass growth. Active and sustainable forest management and the use of wood are key elements in achieving the climate targets (as already outlined in NAT/655 (4) on the implications of climate and energy policy and NAT/696 (5) on effort sharing and the LULUCF sector). One m³ of wood captures around 1000kg of CO₂. As only growing biomass has the capacity to absorb CO₂, it is crucial not to set limits on the use of forests, provided that the harvesting rate does not exceed the replanting and growth rate of forests and sustainable forest management practices are followed.

3.2.2. Several kinds of bio-based products exist and new products are being developed. Such products can store carbon, thereby keeping it out of the atmosphere. Long-lasting wood products such as buildings and high-quality furniture are the most effective means of carbon storage. As long as shorter-living bio-based products are being recycled, they will not release their carbon content either. Moreover, at the end of their lifetime, bio-based products can be used as bioenergy and thereby replace fossil energy sources.

3.3. Bioenergy also contributes to the EU’s energy efficiency goal. District heating in communities and sustainable industrial Combined Heat and Power (CHP) production are good examples of this. As buildings consume a significant amount of energy, the energy efficiency of buildings, together with the energy source used, is very important.

3.4. Transport has a decisive role to play in achieving the climate targets. All kinds of measures that help decrease greenhouse gas emissions are therefore needed, given the different needs and characteristics of the various transport modes (as outlined in several EESC opinions, such as TEN/609 (6) on the decarbonisation of transport).

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(1) Please see the 2030 Climate and Energy Framework available at https://ec.europa.eu/clima/policies/strategies/2030_en
(2) Please see Article 4.1 of the Paris Agreement, available at https://unfccc.int/sites/default/files/paris_agreement_english_pdf
(4) Please see NAT/655 on the Implications of climate and energy policy on agricultural and forestry sectors (OJ C 291, 4.9.2015, p. 1).
(5) Please see NAT/696 on Effort-sharing 2030 and land use, land use change and forestry (LULUCF) (OJ C 75, 10.3.2017, p. 103).
3.4.1. Electrification of transport seems to be a rising trend. To have a positive impact on climate, electricity must be produced using energy sources with low greenhouse gas emissions, including sustainable bio-based energy sources.

3.4.2. Fossil fuels in transport are partially replaced by sustainable biofuels. Despite increasing electrification of passenger cars, aviation and shipping as well as heavy road transport and off-road machinery remain largely dependent on fuels. In this respect, advanced biofuels are particularly promising.

3.5. In addition to climate benefits, the use of bioenergy contributes to the availability of energy and the security of energy supply. If properly managed, bioenergy will therefore play a significant role in achieving the basic goals set out in European energy policy.

4. Contribution of the bioeconomy to the Sustainable Development Goals (SDGs)

4.1. The SDGs challenge us to assess the role of the bioeconomy, not only from the climate and energy perspectives, but from the overall economic, social and environmental points of view, while also taking into account a long-term global perspective. Given the broad perspective of the bioeconomy, there are interlinkages with almost all 17 SDGs. However, the bioeconomy contributes particularly to the following SDGs: 1, 2, 6, 7, 8, 9, 11, 12, 13, 14 and 15.

4.2. The bioeconomy has the potential to generate economic growth and jobs, not only in urban areas but also in rural regions. It therefore has a significant role to play in achieving SDG 1 (no poverty).

4.3. SDG 2 calls for zero hunger. Biomass is a limited resource and there are interlinkages between the production of food, feed and fibre. A responsible approach to the sustainable bioeconomy is needed to enable sufficient production for different purposes — food availability being the priority — and to ensure sound ecosystems. The principles of resource efficiency and circularity, as well as transfer towards more vegetable-based diets are all ways to reach these objectives.

4.4. A sustainable bioeconomy contributes to SDG 6 (clean water and sanitation), for instance by maintaining sound forest ecosystems which are a precondition for clean water.

4.5. SDG 7 (affordable and clean energy) is at the core of the bioeconomy. The use of side streams and waste streams provides clean energy and reduces dependency on fossil energy resources.

4.6. On the whole, the bioeconomy has a vital role to play in enhancing economic and social goals. It plays a significant role in achieving SDG 8 (decent work and economic growth). Furthermore, the EU bioeconomy can help to substantially reduce import dependency on fossil commodities while fostering domestic added value and supporting local value chains.

4.7. SDG 9 calls for a significant rise in industry's share of employment and GDP, as well as the retrofitting of industries in order to make them sustainable, together with increased resource use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes. The bioeconomy is closely linked to all of these objectives, and sustainable use of biomass can enhance the EU's industrial leadership. It also has great potential to foster the growth of SMEs and integrate them into value chains.

4.8. The bioeconomy can play an important role in achieving SDG 11 (sustainable cities and communities). The concept of climate-smart cities (7) and well-being in urban areas goes hand in hand with solutions provided by the bioeconomy (for example, timber construction or low-emission transport and district heating).

4.9. The bioeconomy is in a good position to contribute to SDG 12 (responsible consumption and production). By optimising the use of raw materials, applying eco-design and producing long-lasting and recyclable products, the bioeconomy has a remarkable role in the transition to the circular economy. However, raising consumer awareness is seen as an important precondition for informed and responsible consumption patterns and fostering sustainable production.

(7) http://www.climatesmartcities.org/
4.10. The bioeconomy can contribute significantly to global climate change mitigation, as called for in SDG 13 (climate action) and as already outlined in Chapter 3. On top of domestic action, the EU can have a remarkable global impact by exporting bio-based products, climate solutions and expertise.

4.11. Lastly, the bioeconomy has an impact on SDG 14 (life below water) and SDG 15 (life on land). Therefore, the responsible, effective and sustainable use of natural resources must be at the centre of the bioeconomy.

5. Prerequisites for the development of the bioeconomy

5.1. While the bioeconomy contributes in many ways to the achievement of both climate and energy goals and the SDGs, conditions need to be favourable in order to bring this about. On the one hand, the SDGs support and enhance the conditions needed to help the bioeconomy to evolve while, on the other hand, certain SDGs impose requirements which the bioeconomy must meet.

5.2. The EU Bioeconomy Strategy must be adapted to new markets in order to provide, in line with economic, environmental and social sustainability, the conditions most favourable to the European bioeconomy, which is evolving and expanding rapidly.

5.3. Above all, policymakers must promote sustainable biomass production and mobilisation in the EU, and EU regional development policy should provide sufficient support to ensure the development of rural businesses. Policymakers must also ensure a stable, reliable and coherent framework for investments in the bioeconomy, throughout the value chains.

5.4. Policymakers should adopt a coherent framework for technical, safety and state aid rules to provide a level playing field for bio-based products. The public sector also plays a major role in the demand for bio-based products via public procurement. Initiatives such as a 'European Bioeconomy Week' could help boost market uptake and cross-fertilise different projects.

5.5. Research and innovation are key for the development of a future-proof bioeconomy, which could provide a competitive advantage for the EU. This should be considered in the light of the immense potential offered by new kinds of bio-products, from traditional food and fibre products to new kinds of construction and packaging materials, textiles and bio-based chemicals and plastics. The same holds true with regard to the potential of plant breeding and different substances as raw materials for bio-products (e.g. lignocellulose, plant oil, starch, sugar, protein).

5.6. The innovation efforts promoted by the EU Bioeconomy Strategy should be continued, including the Bio-based Industries Joint Undertaking (8). The Bioeconomy Knowledge Centre (9) should also play an important role in promoting the use of knowledge to help grow the bioeconomy. Research and innovation initiatives and programmes should also be made more attractive for businesses.

5.7. The role of education, advisory services, knowledge transfer and training is crucial in order to ensure that workers and entrepreneurs have the necessary information and skills, with the result that the sustainability of current business could be increased and new opportunities in the bioeconomy exploited.

5.8. At the same time, people must be well-informed about the bioeconomy and be made more aware of their responsibilities so that they can be active consumers and make sustainable consumption decisions, taking into account the different levels of willingness of people of all ages to adapt and change. To this end, information campaigns, which strengthen consumers' trust in the bioeconomy and in bio-based products, should be organised.

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(8) https://www.bbi-europe.eu
(9) https://biobs.jrc.ec.europa.eu
5.9. Access to raw materials is one of the basic prerequisites for the bioeconomy. An appropriate business environment for agriculture and forestry is thus necessary to foster biomass availability and mobilisation. Sustainable management of forests, land and marine resources, as called for in SDGs 14 and 15, makes an essential contribution to the security of the supply of raw materials. In this context, the existing legislative and non-legislative framework for sustainable and renewable raw materials in the EU should be acknowledged and promoted. The increasing use of side streams and residues as raw material for new uses also helps to ensure the availability of biomass. In the case of small-scale structures, cooperatives or producer organisations can play an important role.

5.10. Proper physical infrastructure is yet another prerequisite for the bioeconomy, and to this end, adequate funding for energy, transport and digital infrastructure is needed. Efficient transport systems are crucial for enabling access to raw materials and the distribution of products to markets.

5.11. As regards global markets, the bioeconomy is closely linked to SDG 17 which aims to strengthen the global partnership for sustainable development. This goal calls for promotion of a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO. It is important for trade, in both agricultural and industrial bioeconomy products. Meanwhile, cooperation along regional value chains should be strengthened in order to foster regional development.

5.12. In order to stimulate the development of the bioeconomy in a neutral way, the EU should strive for a global pricing system for carbon emissions, which would bring all market players on board and provide a level playing field.

5.13. Involving civil society in the structures of bioeconomy initiatives and decision-making processes is paramount in order to strengthen cooperation between different actors within society and to enhance public awareness of the sustainable bioeconomy.

5.14. While the transition to a low-carbon and circular economy is a huge challenge and implies profound structural changes regarding the jobs involved, it is important to ensure that the transition takes place fairly.

5.15. A sustainable bioeconomy can only succeed by adopting a cross-sectoral approach. Coherence and coordination between the various EU policies and objectives is therefore needed, especially with regard to the climate, the environment, food, agriculture, forestry, industry, energy, the circular economy, and research and innovation. To this end, a high-level multi-stakeholder group on the sustainable bioeconomy should be established and endorsed by the Commission president.

5.16. Progress in achieving the SDGs is measured and monitored by means of 232 indicators. These indicators include climate- and energy-related indicators, but no specific bioeconomy indicators exist. The Commission should therefore develop the most relevant indicators in order to gain a realistic and informative picture of the development of the EU bioeconomy.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

537TH EESC PLENARY SESSION, 19.9.2018-20.9.2018

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions — Artificial Intelligence for Europe’

(COM(2018) 237 final)

(2018/C 440/08)

Rapporteur: Giuseppe GUERINI

Co-rapporteur: Gonçalo LOBO XAVIER

Referral

European Commission, 12.07.2018

Legal basis

Article 304 of the Treaty on the Functioning of the European Union

Section responsible

Single Market, Production and Consumption

Adopted in section

04.09.2018

Adopted at plenary

19.09.2018

Plenary session No

537

Outcome of vote

199/1/2

1. Conclusions and Recommendations

1.1. The EESC believes that artificial intelligence (‘AI’) and automation processes have enormous potential to improve European society in terms of innovation and positive transformation, but they also pose significant challenges, risks and concerns. It is therefore essential that European institutions quickly and comprehensively set about developing and regulating AI fully.

1.2. An advanced approach to AI in Europe needs to cover several areas including: (i) public and private investment in R & D and in advanced digital infrastructures; (ii) implementation of new legislative rules or adaptation of the existing applicable ones; (iii) development of adequate knowledge and awareness among citizens and consumers, and (iv) dedicated training programmes for workers.

1.3. In particular the liability challenges that occur in the context of emerging digital technologies should be systematically identified and dealt with at international, EU and Member State levels and the EESC would like to collaborate closely with the EU institutions in the analysis and evaluation of all the EU legislation on liability, product safety and civil responsibility which deserve adequate changes.
1.4. The EESC agrees with the aim of the Commission’s Communication, namely to strengthen the EU’s industrial and technological capacity in order to spread AI across the internal market. The effort required to keep pace with other global players is so great that coordination among all the instruments and funding available at European and national levels is greatly needed.

Having said that, EU values and principles should not be sacrificed in the name of global competitiveness.

1.5. With regard to the Commission’s aim of bringing AI to all potential users, with a focus on small and medium-sized enterprises, the EESC thinks that addressing the challenge of global competitiveness requires AI to be accessible to as many entities as possible. Hence, it is crucial to make it available to all the different forms of enterprises active across the European single market, including SMEs, farmers, social enterprises, cooperatives, individual businesses, and consumer associations.

1.6. The European Commission and the Member States should work together to develop guidelines on artificial intelligence ethics and should involve all the relevant public and private stakeholders in this effort. These guidelines will need to include principles of transparency in the use of AI systems to hire employees and assess or control their performance. In addition to ethical principles, the EESC suggests that a clear, harmonised and mandatory legal framework be developed at the European level to duly regulate AI and to update the existing rules affected by AI, with particular regard to those relating to producer liability and consumer protection. The EESC would like to collaborate closely with the EU institutions in the analysis and evaluation of the relevant EU legislation, which will, in the future, require changes due to the development of AI.

1.6.1. The European Commission will also have to carry out a careful evaluation of the effects of AI on the labour market. This examination must take into account both the possible replacement of some workers by electronic devices or robots and the fact that certain functions, while not being fully automated, will be profoundly changed by the new technologies.

1.7. For this reason, the EESC recommends that the stated desire that ‘no one should be left behind’ should not remain a mere proposal or exhortation but ought to be translated into concrete facts.

1.8. It is important to highlight the role of educational training programmes in protecting European workers operating in an environment that is being profoundly changed by the gradual emergence of AI. Europe’s citizens should have access to appropriate information enabling them to be responsible and informed users of devices and applications made available by rapid technological developments.

1.9. In cases where new measures enable public administrations to utilise technology in order to make organisational decisions and quicker choices, it will be necessary to address the issue of effective legal responsibility for such decisions within a clear legal framework that guarantees the administration’s full accountability to citizens.

1.10. Special attention should be given to the role of civil society and social economy organisations in increasing people’s active participation in the economic and social processes that, owing to artificial intelligence, will increase participation in our society. Civil society organisations and social enterprises can play an important role in fostering understanding and acceptance of technologies by individuals, in particular through collaborative mechanisms that permit the involvement of people in the current digital transformation.

1.11. The current technological revolution cannot and must not be carried out without the significant and active inclusion of workers, consumers and social organisations, and ongoing technological developments must be directed in such a way as to ensure greater and more responsible participation of fully informed citizens. This is why the EESC recommends that, when setting up the European Alliance for IA, the European Commission should take into account the need to create an inclusive, multi-professional and representative platform for the different stakeholders representing European citizens, including the representatives of workers, who will have to interact with smart machines (1).

(1) See the EESC adopted opinion INT/845 — Artificial intelligence: anticipating its impact on jobs to ensure a fair transition (own-initiative opinion), rapporteur: Ms Salis-Madinier (See page 1 of this Official Journal).
2. General comments

2.1. Digital devices and large-scale learning machines are daily increasing the capacity of algorithms to work with huge amounts of data and this capacity is likely to increase further in the future, owing to 'neural networks' (which are already being used, for example, by smartphones for visual recognition of objects, faces and images).

2.2. Such developments are transforming the traditional mode of 'learning' that AI machines have hitherto employed, in that they are now no longer confined to learning by extracting rules from data, but are also developing a flexible and adaptive learning capacity. This process will increase the capacity of AI to learn and act in the real world.

2.3. In the face of the very rapid technological change underway, it is now crucial that the European Commission and the Member States work together to conduct an in-depth examination of the emerging challenges created by the rapid development of AI and involve all the relevant public and private stakeholders in the process without undermining the opportunities for progress and technological development.

2.4. Commission Communication COM(2018) 237 seeks to strengthen the EU's industrial and technological capacity and to encourage the spread of AI throughout the European economy in both the private sector and public administration. As noted earlier in own-initiative opinion (\(^2\)), the EESC supports the Commission's initiative, which in fact incorporates in its communication a great number of the Committee's earlier suggestions, but urges the Commission to act promptly and decisively.

2.5. Adopting an effective European approach to AI involves encouraging significant investment in research and innovation, including digital infrastructures, which are necessary to prepare for the major socioeconomic challenges that the advances in new technologies will create for European society and markets in the coming years.

2.6. The European Commission and the Member States should work together to frame some guidelines on the ethics of artificial intelligence and involve all the relevant public and private stakeholders in the process.

2.7. At the same time, a harmonised legal framework must be approved at European level in line with the EU Charter of Fundamental Rights and the principles embedded in the EU Treaties. The new regulatory framework should contain precise rules that address the risks that machine learning entail, such as market non-transparency, lack of competition, discrimination, unfair commercial practices, threats to cybersecurity and product safety.

In particular, the regulatory safeguards should be stringent in situations where data driving artificial intelligence systems are automatically retrieved during the utilisation of electronic devices and computers.

2.8. The EESC notes that the Staff Working Document SWD(2018) 137 final attached to the Commission's Communication duly analyses the implications of AI for EU legislation and maps the liability challenges that arise in the context of emerging digital technologies.

2.9. Moreover, comprehensive action plans will be needed to: (i) underpin the modernisation of education and training systems by nurturing the new skills required by the labour market of the future, and (ii) guarantee high-level protection for citizens and workers against the expected challenges (\(^3\)).

2.10. The EESC encourages the Commission to proceed quickly with further action on both regulation and encouragement of investment: the current swift pace of change demands rapid adaptation times.

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3. The European Commission proposal: European support for and investment in artificial intelligence

3.1. The Commission announces in its Communication that it will support the spread of AI with regard to both basic research and industrial applications. In this respect, the EESC stresses the importance of involving all types of players in such a process, including SMEs, service companies, social enterprises, farmers, cooperatives, consumer associations and associations representing older people.

3.2. With regard to the Commission’s aim of ‘bringing AI to all potential users, with a focus on small and medium-sized enterprises’, the EESC thinks that addressing the challenge of global competitiveness requires AI to be accessible to as many entities as possible. In addition to what the Commission has already planned in order to develop an ‘AI-on-demand platform’, it is also important to establish appropriate forms of involvement of and consultation with the various stakeholders, including SMEs, social economy networks and civil society organisations (the last-named stakeholder has a crucial role to play in involving European citizens in an informed and active way).

3.3. The Commission has announced that it will support innovation based on artificial intelligence through a pilot project established by the European Innovation Council, which has a budget of EUR 2.7 billion for 2018-2020.

3.4. The EESC believes that this initiative may be useful for the development of AI, but stresses at the same time that research funding should rapidly pass from the experimentation phase to the structural stage. It is also important that the Commission encourage the various research centres currently located throughout the Member States in order to develop a collaborative network at European level which is dedicated to artificial intelligence.

3.5. The EESC notes that the Commission intends to increase investment in AI under the Horizon 2020 programme to around EUR 1.5 billion by the end of 2020. If adopted rapidly in current public-private partnerships, this approach could generate a further EUR 2.5 billion of investment within two years. The same approach must also be adopted in the future Horizon Europe framework programme.

3.6. From a different perspective, it is a good sign that the European Commission and the European Fund for Strategic Investments — which should play a central steering role in supporting the development of AI in the EU — have launched the Venture EU programme, a EUR 2.1 billion venture capital fund to boost investment in innovative firms throughout Europe.

3.7. However, the effort required to keep pace with other global players is so great that coordination and synergy among all the instruments and funding available at European and national levels are greatly needed. It is clear that competing with China and the US in the area of AI necessitates bringing together the forces of all public and private stakeholders operating at European level so as to ensure that the EU plays a leading role on a world scale.

3.8. In order to profitably pursue a competitive role for the EU with regard to AI, it will also be important to invest adequately in appropriate IT software, hardware assets and digital infrastructures that can guarantee a credible role for the EU.

3.9. Investment in AI should take into account the fact that European companies are particularly strong in the areas of automation and robotics. Such sectors, which are part of AI in a broad sense, could therefore prove to be truly important in guaranteeing a significant global role for the EU with respect to the ongoing technological development and therefore they deserve specific attention.

4. Artificial intelligence and its impact on people and workers

4.1. It is indisputable that the development of AI is advancing at a very rapid pace. This is why the European institutions, when assessing the impact of every regulatory measure on artificial intelligence, must adopt a multidisciplinary approach that takes on board not just administrative, legal and economic aspects, but also anthropological, psychological, sociological and technological considerations.

4.2. To support these innovations, but above all to steer them in a direction that ensures human beings remain centre stage, it is important that the European Union acts to achieve a high degree of technological competitiveness without overlooking essential ethical, social and human considerations.
4.3. The EESC thinks that it is therefore crucial that: (i) individual privacy and responsible processing of individuals’ data be governed by appropriate legislation, such as the effective launching of the new GDPR which, if necessary, will need to be constantly updated to keep pace with the rapid development of AI; (ii) important pieces of the applicable EU legislation be evaluated and, if necessary, adapted to the new scenarios occasioned by AI, and (iii) the competences and skills be developed that people, administrations and Europe’s companies need to benefit effectively from the advantages offered by artificial intelligence.

4.4. As a starting point for the analysis to be carried out, it is worth noting that AI is based on the use and processing of large amounts of data, which form the basis of any application grounded in new technologies. This being the case, the main challenge for the European regulator is the establishment of transparent and regulated access to end-user data.

4.5. The better the quality of the data processed, the better the accuracy and performance of AI systems. It must not be forgotten, however, that data concerning individuals must be acquired legally and be used in ways known to those directly concerned, in order to ensure the utilisation of personal data for the predetermined and transparent purposes for which the user has previously granted proper and informed consent.

4.6. It is worth noting that several important parts of European legislation — for example those referring to online advertising, unfair commercial practices, product safety and liability, consumer rights, unfair contract terms, sales and guarantees, insurance, and price indication — may need to be changed and duly adapted to the new scenarios triggered by more extensive and refined utilisation of artificial intelligence in order to protect the end consumers.

4.7. The decisive issue of product safety and liability has been properly taken into account by the Commission in its working document SWD(2018) 137 final by means of analysis of case studies and by putting forward a list of the pieces of EU legislation that deserve further analysis and evaluation. The EESC fully encourages the Commission to continue this work and is willing to make its own contribution in this respect.

4.8. It is important to underline the role of cultural, educational and academic training, on the one hand, and provision of adequate information to the general public, on the other, in order to protect the rights of European citizens vis-à-vis the progress of the AI. In particular, it is important to ensure transparency and correctness in the management of AI algorithms and the databases on which they operate.

4.9. It is therefore crucial that Europe’s citizens receive adequate training, as well as simple and understandable information, thereby enabling them to be responsible and informed users of the devices and applications made available by the rapid technological development that is currently taking place and becoming increasingly widespread at all levels.

4.10. In the light of all of these demands, the EU and Member States must offer clear and effective solutions, namely by promoting a modern education system and by constantly expanding lifelong training in the labour market and civil society.

4.11. The European Commission will have to carry out a careful evaluation of the effects of AI on the labour market. This is a major concern for many European workers who are advanced in their careers, but still far from retirement age and who look upon the changes taking place with mistrust and fear. The examination must take into account both the possible replacement of some workers by electronic devices or robots and the fact that certain functions, while not being fully automated, will be profoundly changed by new technologies. This examination and evaluation should be focused, therefore, not only on the inevitable and expected changes to production lines, but also on rethinking organisational processes and business objectives following a proper social dialogue with workers.

4.12. In some situations, such as those that happen and have happened with many other technologies, it will be advisable to test AI in stages and successive degrees of adaptation prior to full use, in order to enable those involved to feel safe with the new technologies — including through appropriate training pathways — and to remedy any errors in adaptation during the process (4).

(4) See the EESC’s adopted opinion INT/845 — Artificial intelligence: anticipating its impact on jobs to ensure a fair transition (own-initiative opinion), rapporteur: Ms Salis-Madinier (See page 1 of this Official Journal).
4.13. The introduction of new technologies into companies requires social dialogue between the different partners involved. In this regard, workers’ organisations and unions will need to be constantly informed and consulted.

5. Artificial intelligence, public administration and civil society

5.1. AI is a technological and social innovation capable of radically transforming the whole of society and of changing for the better the public sector and the relationship between citizens and the public administration. The opportunities afforded by artificial intelligence could increase both administrative efficiency and the satisfaction of citizens with services provided by the public administration and with the effective running of that administration.

5.2. For these objectives to be achieved, it is essential that civil servants also be prepared to face the changes and the challenges that AI will bring about in European society. Public employers and administration heads — together with teachers, trainers and the university staff referred to above — must be able to fully understand the AI phenomenon and to decide what new tools to introduce into administrative procedures.

5.3. The introduction of AI in the public and private sectors requires the design of procedures that foster understanding and acceptance of technologies by the users through cooperation mechanisms that allow citizens to contribute, if possible through participatory governance systems, to the development of technologies based on IA.

5.4. To obtain significant results on this front, it may be useful to develop increasingly reliable modes of collaboration and partnership between the public and private sectors that are aimed at seizing the opportunities arising from technological applications, artificial intelligence and robotics.

5.5. The challenge for public administrations is particularly difficult in legal and legitimacy terms, since the right balance will have to be struck between public interests (involving the exercise of public power) and individual ones (specific manifestation of the freedom of the individual). On this note, for example, the use of AI by public administrations will require the principle of transparency and publication of administrative documents to be reconciled with the protection of personal data and the individual’s right to privacy within a clear and explicit regulatory framework.

5.6. In cases where new measures enable public administrations to utilise technology in order to make organisational decisions and quicker choices — such as selecting a contractor in a call for tender, managing a waiting list for particular services or recruiting new employees to a public administration — it will be necessary to address the issue of effective legal responsibility for such decisions within a clear legal framework that guarantees the administration’s full accountability to citizens.

5.7. Civil society organisations and social enterprises have an important role to play in fostering understanding and acceptance of technologies by individuals, in particular through collaborative mechanisms that permit involvement in the digital transformation processes. What is important here is the possibility of creating participatory governance systems, for example in a cooperative form, for these instruments, starting with the digital platforms which are already being used to structure new forms of economic relationship in work management.

5.8. Administrative authorities in charge of market monitoring mechanisms should have the expertise and the powers to protect fair competition, consumer rights, as well as the safety and and rights of employees. Public or independent bodies should be placed in charge of algorithmic auditing. At the same time, companies should introduce effective mechanisms for auditing the AI’s use of data.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enabling the digital transformation of health and care in the Digital Single Market; empowering citizens and building a healthier society’

(COM(2018) 233 final)

(Rapporteur: Diego DUTTO)

Co-rapporteur: Thomas KATTNIG

1. Conclusions

1.1. In the course of the changes generated by digital transformation, people must be at the centre of care.

1.2. Digitalisation processes must help healthcare professionals to spend more time with patients. It must be ensured that healthcare professions are appropriately staffed with qualified personnel and equipped with appropriate digital skills.

1.3. The digital transition is changing the nature of work in health and care. Everyone involved should approach this transformation professionally and with an open mind to achieve high quality standards.

1.4. Social dialogue at European level concerning hospitals and healthcare plus social services must be strengthened. Appropriate training and further education programmes are necessary, working conditions and the quality of jobs must be improved and staff data protection must be enhanced.

1.5. The EESC knows that Member States are responsible for the organisation and provision of health and social care. Under the directive on patients’ rights in cross-border healthcare (Directive 2011/24/EU), an online healthcare network (eHealth network) must be set up to advance the interoperability of eHealth solutions.

1.6. Digital tools must be a lever to develop new forms of organisation in health and care systems. They support the potential of individuals, of local communities and social economies. By means of appropriate public investment, values of solidarity and universality must be reaffirmed as the basis of these systems.

1.7. Digitalisation processes are not to be misinterpreted as a savings package for health care budgets. They must not lead to personnel cuts or cuts in services. Care must be considered as a personal service and, especially with ageing populations, new concepts of long-term care need to be developed.
The EESC agrees with the vision outlined in the communication, namely to promote health, prevent and fight diseases, help respond to unmet patient needs and make it easier for citizens to have equal access to high-quality care through appropriate use of digital innovations and social economy.

Health literacy in the social and digital context concerns a person’s ability to acquire, understand and use information responsibly to promote their well-being and stay healthy.

Citizens should have the right to access their health data. They decide if and when to share their data. It is crucial to take account of the General Data Protection Regulation that guarantees citizens control over the use of their personal data, especially health data.

The EESC suggests that a ‘right to (free) copying’ could be an active form of protection. This concerns all data generated by users when interacting with digital health platforms and permits citizens to reuse their own data.

The original data of users is of useful value for algorithms and platforms; it must be regarded as an original product generated by users and be protected in accordance with laws on intellectual property.

The ‘right to (free) copying’ also helps to involve the protection and promotion of competition, which is now being sorely tested by the systems that digital platforms are currently using to expropriate data and personal histories.

The EESC supports (1) the four-pillar process for cross-border joint work on digital transformation in health and care, including joint clinical assessments, joint scientific consultations, identification of emerging health technologies and voluntary cooperation among Member States.

The EESC suggests taking appropriate action to investigate new ethical, legal and social frameworks that consider the risks associated with data mining.

The EESC suggests promoting research and innovation on the integration of digital technologies in order to renew healthcare processes, e.g. artificial intelligence, internet of Things and interoperability. The EESC gives full support to the public in secure access to reliable health data across borders to advance research and disease prevention.

The EESC also endorses the EU’s support for small, medium-sized and social enterprises that are developing digital solutions for person-centered care and patient feedback.

The EESC supports ‘rebalancing’ the socioeconomical asymmetry in data-driven economies by promoting the development of secure platforms and by supporting not-for-profit cooperative organisations to store, manage and share digital copies of all personal data.

Background and general observations

On 25 April 2018 the European Commission published its Communication on the digital transformation of health and care in the digital single market (2), which concerns the reforms and innovative solutions required for health and care systems to become more resilient, accessible and effective in providing quality care to European citizens and to create a healthier society. When properly designed and cost-effectively implemented, digital health and care solutions can increase the well-being of millions of citizens and radically improve the efficacy of health and care services that are delivered to patients. Digitisation can support the continuity of cross-border care (Directive 2011/24/EU), an important factor for those who spend time abroad for business or pleasure. Digitisation can also help promote health and prevent diseases, including

occupational health at work. It can support the reform of health systems and their transition to new patterns of care, based on people's needs, and allow a shift from systems focused on hospitals to integrated and more community-based welfare facilities. In the course of the changes, it must be ensured that citizens are at the centre of care. Digitalisation processes should help healthcare professionals to spend more time with the patient. It must therefore be ensured that the healthcare professions are appropriately staffed with qualified personnel and equipped with appropriate digital skills.

2.2. The transition to digital health and care is transforming the nature of work in these areas. This can only be achieved with a high quality standard if everyone involved approaches the transformation professionally and with an open mind. Social dialogue at European level in the health sector and social services must therefore be further strengthened, so that appropriate training and further education must be developed and working conditions, particularly work-life balance, staff data protection and the quality of jobs must be improved.

2.3. The European Commission points out that European health and welfare systems face major challenges, such as ageing, multimorbidity, vaccines, lack of healthcare professionals because of difficult working conditions and the growing problem of non-communicable preventable diseases caused by risk factors such as tobacco, alcohol and obesity and other diseases, including neurodegenerative and rare diseases. An additional and growing threat is presented by infectious diseases due to increased resistance to antibiotics and new or re-emerging pathogens. Public costs related to health and long-term care are increasing in the EU Member States and this trend is expected to continue. It is particularly important that the associated costs should be used for improving quality of work for healthcare professionals, avoiding promoting poor pay and onerous working conditions. With ageing populations, new concepts of long-term care need to be developed.

2.4. Even when they are available, health data are often tied to technologies that are not interoperable, which is an obstacle to their wide use.

2.5. This is why healthcare systems do not have key information to optimise their services, and why it is difficult for service providers to create economies of scale and so offer efficient digital health and care solutions and support cross-border use of health services. The quantified results based on health data need to generate personalised health insights and be accessible to general practitioners, medical specialists and scientists, such that they can be acted on, to perform clustering and predictive modelling and utilise best practices.

2.6. As the conclusions of the report on the State of Health in the EU show, the use of patient-centred health data is not yet sufficiently developed in the EU.

2.7. It is the Member States that are responsible for the organisation and provision of health and social care. In some Member States, particularly those with federal systems, regional authorities are responsible for the financing and provision of healthcare.

2.8. Under the directive on patients' rights in cross-border healthcare (Directive 2011/24/EU), an online healthcare network (eHealth network) was set up to advance the interoperability of eHealth solutions.

2.9. Cooperation structures have also been developed, such as the European Innovation Partnership on Active and Healthy Ageing, the joint programme to support an active and autonomous life (Active and Assisted Living programme), and public-private partnerships such as the Innovative Medicines Initiative and the Electronic Components and Systems for European Leadership initiative. Regional and national smart specialisation strategies also play a central role in the development of stronger regional ecosystems in healthcare. Since 2004, two eHealth action plans have provided a policy framework for the Member States and the Commission, and the eHealth Stakeholders Group has played an important role.
2.10. With reference also to its positions set out in previous opinions (3), the EESC believes the Commission's proposed action in three areas should be supported. These are: secure access of the public to — and sharing of — health data across borders; reliable data to advance research, disease prevention and personalised health and care, and digital tools for citizen empowerment and person-centred care. As mentioned above, it must be ensured that digitalisation processes are not misinterpreted as a savings package for health care budgets and do not lead to personnel cuts or cuts in services. Staff shortages lead to poor care and increased morbidity risk. It should not be forgotten that the digital transformation is a two-dimensional phenomenon comprising direction and process. In terms of direction, we focus on the external factors for organisations, constantly looking at ‘what’ the digital transformation is addressing. In terms of process, the focus is on the thinking within organisations, with particular attention to ‘how’ the digital transformation is being carried out. This approach absolutely must therefore be taken into account in examining the subject of the opinion in order to guarantee a patient-oriented approach.

2.11. Precisely for this reason, the EESC points out, as it did in its previous opinion (4), that to take advantage of the digital transformation, EU networks and planned support measures should use digital tools to implement and reinforce, not to weaken, our fundamental rights in respect of health and care. Digital tools must support the development of individual potential and of local communities and social economy; they must be a powerful lever in promoting rights and developing new forms of organisation and governance for health and care; and they must help to reaffirm the values of solidarity and universality that are the basis of our healthcare system. This should be ensured by means of appropriate public investment, as set out in a previous opinion (5).

2.12. In line with previous opinions, the EESC believes that equal access to healthcare, one of the main objectives of health policies, can benefit from digital support provided certain conditions are met:

— equal geographical coverage taking into account areas with poor coverage by digital operators (access, broadband);

— bridging the digital divide in terms of use by the public, health professionals and stakeholders in health insurance schemes;

— interoperability between the various components of the digital architecture (databases, medical devices) to promote continuity of care within and between these facilities;

— protection of health data, which may under no circumstances be used to the detriment of patients;

— electronic distribution of product information approved by drug licensing authorities to improve access (as mentioned in a previous EESC opinion (6)).

2.13. The rapid expansion of telemedicine, connected devices and nanotechnology, biotechnology, information technology and the cognitive sciences (NBIC) must not result in patients being seen as mere connected bodies which can be analysed, monitored and overseen remotely by an all-powerful IT programme. The technical development of health in fact encourages the opposite: it places interpersonal relationships and social ties back at the centre of medical practice and care.

3. Impacts of digital transformation

3.1. Impact of digital transformation on health and care

3.1.1. The Commission communication illustrates how the EU can help to achieve the objectives of the Council conclusions, namely by developing the necessary cooperation and infrastructure in the EU and thereby helping the Member States to fulfil their political commitment in these areas. The proposed actions also support the Commission's commitment to achieving the UN sustainable development goal 'Ensure healthy lives and promote well-being for all at all ages' and implementing the principles of the European Pillar of Social Rights.

3.1.2. The EESC agrees with the vision outlined in the communication, namely to promote health, prevent and fight
diseases, help respond to unmet patient needs, and make it easier for citizens to have equal access to high-quality care
through appropriate use of digital innovations and social enterprises.

3.1.3. The EESC believes that it is essential to increase the sustainability of European health and care systems, helping to
maximise the potential of the digital single market through greater use of digital products and services in the areas of health
and care. A further objective of the actions proposed must be to stimulate growth and promote European industry in the
sector, as well as businesses, both profit and non-profit, which design and manage health and care services.

3.1.4. Digital transformation enables in particular access to and exploitation of data that can make it possible to reduce
healthcare costs as the population grows and life expectancy increases, supporting the optimisation of government action
at national and European level.

3.1.5. Health digitisation will contribute to not only reducing time spent in hospital, with a direct positive impact on
healthcare in hospitals, but also assisting the recovery of patients themselves. In the context of international recognition, the
World Health Organization, in cooperation with the International Telecommunication Union (ITU), has proposed the
National eHealth Strategy Toolkit, which essentially provides a method for upgrading and developing national eHealth
strategies, action plans and monitoring frameworks.

3.2. Impact of digital transformation on people

3.2.1. Digital transformation gives citizens the opportunity to widely access innovative and more efficient personalised
healthcare knowledge, infrastructure and services and also to contribute — as service providers, information producers and
data providers — to improving the health of others.

3.2.2. It might also be considered that citizens have the right to access their health data and decide if and when to share
such data. The EESC also believes it is crucial to take account of the General Data Protection Regulation, which came into
force on 25 May 2018 and will guarantee citizens control over the use of their personal data, including health data. In
addition, account should be taken of the statement made by the World Medical Association (WMA) on ethical
considerations regarding health databases and biobanks in its Taipei Declaration, adopted by the 53rd WMA General
Assembly, Washington DC, USA, October 2002, and revised by the 67th WMA General Assembly, Taipei, Taiwan, October
2016.

3.2.3. In this respect, it is essential to challenge the risk of a widening gap in people's digital literacy levels. Health literacy
in the social and digital context concerns a person's ability to acquire, understand and use information responsibly to
promote their well-being and stay healthy. To this end, it is necessary to guarantee a level of skills and familiarity with the
new tools that allow people to improve their own well-being and that of the community through measures to improve
lifestyle and living conditions.

3.2.4. As users are at the centre of design and service, the data they generate should also be considered crucial, with
appropriate regulations laid down concerning ownership of the data and the right of the user him/herself and other parties
to use them. The questions that should be raised are ‘who owns the data?’, ‘who has the right to use them?’, ‘under what
conditions can other parties providing services use the data?’, ‘can the user freely use the data?’, etc. In this regard, an
important distinction should be made between data types: raw data, on the one hand, and data generated by algorithms and
artificial intelligence services, on the other. If another party generates new aggregate data using proprietary algorithms, how
should ownership of the information be managed? How are business models designed to handle the presence of multiple
stakeholders, each providing a fundamental part of the service? A distinction should also be made between business models
based on services only (more traditional, e.g. support with activities of daily living (ADL)), and those based on patient-
centred data with the possibility of developing new services in terms of tele-health (e.g. services for prevention, treatment
support and adaptation).
3.2.5. The authentic — i.e., original — data of each user is the only useful value for algorithms, services and platforms, which means that it can/must be regarded as an original product generated by users (and by them and their biological, cognitive, cultural and behavioural characteristics alone) and as such is an ‘original input’ that must be protected in accordance with similar rules, albeit ones based ad hoc on intellectual property. One suggestion could be an active form of protection through a ‘right to (free) copying’ of all data generated by users when interacting with digital health platforms, so as to permit them to reuse it — if deemed appropriate — by reaggregating it through other services/algorithms. The ‘right to (free) copying’ also helps with another problem involving the protection and promotion of competition, which is now being sorely tested by the systems that digital platforms are currently using — on the basis of contracts or otherwise — to expopriate data and personal histories.

3.2.6. The EU itself has addressed the matter mentioned in point 3.2.5 on various occasions and in some cases has opted for a right to make data available (copying) (see Article 9 of Directive 2012/27/EU on energy efficiency: ‘if final customers request it, metering data on their electricity input and off-take is made available to them or to a third party acting on behalf of the final customer in an easily understandable format that they can use to compare deals on a like-for-like basis’).

3.2.7. The EESC suggests creating a connected IT infrastructure so that patients with a rare disease can be contacted quickly and can make their health and medical data available for global not-for-profit research. The European Union is promoting the creation of a system of electronic health records by supporting the exchange of information and standardisation and the development of networks for the exchange of information between healthcare providers in order to coordinate actions in the event of a public health risk.

3.2.8. This would enable people/citizens/patients/users to take back full control of their digital identity. It would allow them to participate in the acquisition of knowledge obtained from aggregated health data for personalised medicine and prevention, and also to enjoy the considerable economic benefits derived from these aggregated data.

3.3. Impact of digital transformation on social and health systems

3.3.1. The EESC supports (as mentioned in EESC opinion (7)) the four-pillar process for cross-border joint work on digital transformation in health and care.

3.3.1.1. The proposal establishes a coordination group, composed of representatives of the Member States’ Health Technology Assessment (HTA) bodies, and describes the four pillars of future cooperation. The joint work would be led by the Member States through the coordination group and would comprise:

— joint clinical assessments;

— joint scientific consultations;

— identification of emerging health technologies;

— voluntary cooperation among the Member States.

3.3.1.1.1. Joint clinical assessments concern the most innovative technologies that include: i) medicines undergoing the central marketing authorisation procedure, and ii) certain classes of medical devices and in vitro diagnostic medical devices that make it possible to address unmet medical needs, potential impact on patients, public health or healthcare systems, and significant cross-border dimension. Such assessments would be drafted and defined by the Member States’ HTA bodies, pharmaceutical companies or medical devices manufacturers (the ‘developer’), patients, clinical experts and other stakeholders. Once verified by the Commission, the report would be published and then used by the Member States.

3.3.1.1.2. **Joint scientific consultations**, also referred to as ‘early dialogues’, would allow a health technology developer to seek the advice of HTA bodies on the data and evidence likely to be required as part of a future joint clinical assessment. Developers would have the possibility to request a joint scientific consultation from the coordination group. Once approved by the coordination group, the joint scientific consultation reports would be addressed to the health technology developer, but would not be published.

3.3.1.1.3. ‘**Horizon scanning**’, or the identification of emerging health technologies (health technologies that have not yet been adopted in the healthcare system), would help ensure that health technologies that are expected to have a major impact on patients, public health or healthcare systems are identified at an early stage in their development and included in the joint work.

3.3.1.1.4. **Member States** would have the possibility to continue Voluntary cooperation at EU level in areas not covered by mandatory cooperation. This would, among other things, allow for the possibility of performing HTAs on health technologies other than medicinal products or medical devices (such as surgical procedures), as well as for the assessment of non-clinical aspects (for instance, the impact of medical devices on the organisation of care).

3.3.2. **The deployment of novel healthcare solutions enabled by digital transformation raises a number of important multidisciplinary issues**, including ethical, legal and social issues. Although a legal framework already exists for data protection and patient safety, other matters need to be addressed, such as access to broadband, the risks associated with data-mining and automatic decision-making, guaranteeing appropriate standards and legislation to ensure adequate quality of eHealth or mHealth services, and accessibility and quality of services. Similarly, at the level of services, although there are rules at EU and national level governing public procurement, competition and the internal market, novel approaches that take account of digital transformation should be discussed and adopted.

3.3.3. **Digital transformation** will entail a reorganisation of the health care system, with new ways and standards to provide services (e.g. using robots in conjunction with caregivers). Additionally, caregivers should undergo appropriate and specific training programmes (e.g. including social, medical or technical background), and be prepared for new job profiles and transformations in work environments. This will lead to the definition of new service models, support policies, certifications and standards suited to the introduction of digital services and technologies in real care contexts and markets. Their design and development should follow the principles of user-centred design, usability engineering by design, universal design, etc., with users and their needs at the centre of the process avoiding creating digital divide and excluding people from services.

3.3.4. The EESC endorses the Commission’s efforts to support the development and adoption of the European electronic health record exchange format and to develop common identification and authentication measures, as laid down in Article 14(2) of Directive 2011/24/EU.

3.4. Impact of digital transformation on the digital market

3.4.1. **The challenge is that of ‘rebalancing socioeconomical asymmetry in a data-driven economy’** (\(^6\)) by means of:

— a legal right to a digital copy of all personal data (medical and non-medical); data portability (Article 20, EU Data Protection Directive);

— a safe and secure platform where people can store, manage and actively share data on their own terms;

— a not-for-profit cooperative organisational structure of personal data platforms so that they are owned by citizens;

revenues from citizen-controlled secondary use of data being invested in projects and services that benefit members and society at large.

3.4.2. Joint clinical assessments would facilitate faster access, avoid duplication at national level and deliver greater consistency, clarity and predictability for everyone involved in the process. The medical devices industry is overall more sceptical of the proposal. Mandatory cooperation on clinical HTA assessments may slow down market access for devices, rather than streamline it.

3.4.3. As mobile device penetration is growing, eHealth or mHealth solutions will offer novel services with optimised processes. Processes will include facilitating mobility for health and care professionals.

3.4.4. Digital transformation will promote the development of new agile business models, foster participation in the business by various stakeholders and bring about benefits from the quantification of users' experiences. Its success depends on it being customer-centric (or user-centric), in order to ensure that the user perspective is considered from the very beginning of the design process (design thinking).

3.4.5. Digital transformation will enable the widespread use of health and social data, fostering the integration of systems and devices with machine learning services and the necessity of interoperability and interaction capability (M2M) that must take into account the variety of user requirements and preferences, the development of 'future proof' systems, the possibility of integration with existing infrastructure and with local service providers, and any disruptive and unplanned technologies and services with new standardisation requirements.

3.4.6. Novel key enabling technologies, such as 5G, will create opportunities for enhanced mobile broadband products and services, thus supporting the deployment of millions of connections for internet of Things (IoT) devices on a massive scale. With the proliferation of 5G and the IoT, digital transformation strategies are crucial for many stakeholders acting in the healthcare domain, particularly as new consumer behaviour and needs will demand new digitised offerings.

3.4.7. The EESC supports services related to: health information, disease prevention, development of tele-counselling systems, online prescribing, referral, and reimbursement of medical expenses. Existing platforms such Alfred, Big White Wall, Medicine Patient Portal, Empower etc. can be regarded as enabling the digital transformation in the digital single market. Interestingly, on 29 May 2018, it was announced that the European Open Science Cloud would support EU science in world-leading position by creating a trusted environment for hosting and processing research data. The Cloud should be a broad, pan-European federation of excellent existing and emerging infrastructures that respects the governance and funding mechanisms of its component parts; membership in this federation would be voluntary; and the governance structure would include Member State ministries, stakeholders and scientists.

3.5. Impact of digital transformation on service providers

3.5.1. In this context, the EESC agrees on the following objectives:

— a focus on healthcare providers;

— a focus on patients when entering the healthcare system;

— efficient data transfer within primary care (eHealth, Electronic Patient Dossier/EPD);

— patients provide consent to their data being used for research; incentives to provide additional data (mHealth);

— reducing the difficulties of involving patients in research.
3.5.2. Recent technological, social and economic studies highlight that artificial intelligence, internet of Things and robotics will make it possible to design and develop new approaches in the fields of personalised and precision medicine, cognitive frailty and cooperative robotics. Their take-up in healthcare will mean adapting and developing all processes relating to service design, provision and evaluation. In this context, digital transformation represents a fundamental but also an enabling (or ‘accelerator’) factor in the integration of innovative technologies in the healthcare domain.

3.5.3. Digital transformation has the potential to make available a large amount of data allowing the investigation and development of novel and ambitious service solutions based on artificial intelligence. This could be the basis for creating a framework to objectively quantify chronic diseases and identify opportunities in early diagnosis and therapy monitoring. Additionally, recent advances in artificial intelligence would take advantage of data availability to develop systems that can learn and then adapt to the ways in which diseases evolve.

3.5.4. The widespread use of data, and the ability for stakeholders to use and transform them according to users’ needs, open new scenarios for sharing data, knowledge and expertise, as already supported by the European Reference Networks, which provide a governance structure for knowledge sharing and care coordination across the EU in the field of rare diseases. If a specific location (area or country) has no expertise in a specific disease, the network can help doctors to obtain knowledge from other centres of expertise in other locations. Similarly, hospitals all over Europe can make use of the digital connecting systems to share knowledge and provide support to each other.

3.5.5. One obvious consequence of the previous points is that cybersecurity is a key priority. As pointed out in an ENISA report (ENISA Threat Landscape Report 2017: 15 Top Cyber-Threats and Trends, European Union Agency For Network and Information Security), the complexity of attacks and sophistication of malicious actions in cyberspace continue to increase. In the healthcare landscape, where many pervasive systems are connected and significant assets are at stake, for example patient life, sensitive personal information, financial resources, etc., information security is a key issue. In the context of digital transformation, new methods and guidance are needed for modelling cybersecurity assessment frameworks, organisational countermeasures and interoperability conformance based on cybersecurity.

3.5.6. The EESC also endorses the EU’s support for small and medium-sized enterprises that are developing digital solutions for person-centred care and patient feedback. The cooperation will of course involve public authorities and other stakeholders committed to promoting shared or mutually recognised principles for validating and certifying digital solutions for adoption in health systems (for instance, mHealth and independent living).

3.5.7. The EESC also believes that previous initiatives to issue health care cards by the European Member States must continue under the prism of the digital transformation of health and care in the digital market. Given the sensitive nature of the medical data that can be stored in such eHealth cards, they must offer robust privacy protection.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(COM(2018) 184 final — 2018/0089 (COD))


(COM(2018) 185 final — 2018/0090 (COD))

(2018/C 440/10)

Rapporteur: Jarosław MULEWICZ

Co-rapporteur: Antonio LONGO

1. Conclusions and recommendations

1.1. The EESC acknowledges the European Commission proposal regarding the better enforcement and modernisation of EU consumer protection rules and the objective to update existing rules to take into account new consumption habits and to adapt them to the evolution of the digital single market. However, as recommended by the EESC opinion on consumer vulnerability in business practices (1), concerns related to the lack of enforcement of existing rules still need to be addressed.

1.2. The EESC agrees with the European Commission about the need to modernise and simplify EU consumer policy and considers that the new legislative package may contribute to bridging the gap created by the exponential growth of e-commerce, undermining consumer confidence and causing distortions to the single market.

1.3. Overall, the Committee considers that the harmonisation of consumer protection law should not diminish the level of consumer protection in the Member States, while balancing it with traders’ legal certainty. The EESC acknowledges the REFIT conclusions that consumer protection rules are fit for purpose but notes, as well, that an increasing number of consumers are subject to aggressive marketing and misleading business practices.

(1) OJ C 12, 15.1.2015, p. 1.
1.4. The EESC supports the proposal to extend consumer rights to all ‘apparently free’ digital services for which users give personal and non-personal data. It also supports greater transparency and responsibility for online platforms.

1.5. With regard to the review of Directive 2011/83/EU on the protection of consumer rights, two different concerns have emerged within the Committee. Traders are in favour of updating, simplifying and adapting pre-contractual information, whereas consumers consider that this would lower the level of consumer protection.

1.6. The EESC considers that the provisions on digital content, digital services and online sales should be aligned with Digital Single Market legislation.

1.7. The EESC considers the right of withdrawal to be an efficient consumer protection tool that should not be undermined. The Committee members share different views on the Commission proposal. Traders — SMEs in particular — need additional legal certainty on unduly tested goods and early reimbursement. Consumers reject the amendment and call for the status quo to be upheld. The Committee calls on the Commission to reconsider this important provision to provide a compromise between the opposing interests.

1.8. The EESC considers that measures to protect consumers against ‘dual quality products’ are justified and supports the Commission proposal to ensure greater transparency.

1.9. The Committee supports the use of Alternative Dispute Resolution and Online Dispute Resolution mechanisms such as mediation or arbitration that should be promoted at European and national level.

1.10. The EESC calls on the Commission to ensure the effective implementation and enforcement of existing consumer protection rules by the Member States; to support the harmonisation of consumer protection rules; to promote cross-border cooperation of national authorities via the Consumer Protection Cooperation (CPC) channel and to launch a communication campaign to facilitate small and medium-sized enterprises’ compliance with consumer protection legislation.

1.11. The EESC invites the Member States to enact stricter rules to enforce existing consumer protection legislation, tackle national and cross-border infringements and uphold the existing level of consumer protection.

1.12. The EESC supports the proposal for specific criteria for the establishment of fines as an effective consumer protection instrument. It is important to have truly dissuasive penalties for companies that infringe the rules, amounting to a significant percentage of their annual turnover and taking into account EU-wide infringements.

1.13. The EESC acknowledges the proposal for a directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC. However, the Committee regrets that the recommendations of the EESC opinion on a European Framework for collective redress (2) have not been taken into account when drafting the legislative proposal.

1.14. Easy and fast access to justice should be granted to all EU citizens. Consumers should be able to obtain compensation in case of suffered prejudice as a consequence of breach of contract. A tailored redress system for collective prejudice is therefore welcome. It should be pragmatic, cost-effective, provide the relevant safeguards and take into account existing national judicial systems.

1.15. The EESC acknowledges the Commission’s efforts to identify the qualified entities able to claim collective redress, in accordance with the principle of subsidiarity and national legislation.

(2) OJ C 170, 5.6.2014, p. 68.
1.16. Moreover, Member States should support the creation of litigation funds for qualified entities. In cases where prejudice is of a small amount and where it is impossible to track down all people who have suffered prejudice, the EESC supports the Commission's proposal to allocate such amounts for public purposes; however, the Committee calls for clarification on their nature (e.g. consumer assistance, information and education programmes, litigation funds).

1.17. Finally, an important safeguard that should be included in the Directive is the possibility to opt in and opt out from a collective action. In keeping with the recommendation of the EESC opinion on a European Framework for collective redress (3), consumers should be free to decide if they wish to opt in or opt out from collective action.

2. Background information and introduction


Omnibus directive

2.2. The Commission proposal COM(2018) 185 on better enforcement and modernisation of EU consumer protection rules is aimed at completing existing mechanisms for consumer protection, cross-border infringements and e-commerce, as well as reducing the burden on traders. The proposal follows the conclusions of the fitness check in the framework of the REFIT programme on EU consumer rights and marketing (8) law and the assessment on directive 2011/83/EU on consumer rights.

2.3. In particular, the Omnibus Directive proposal contains:

2.3.1. The introduction of effective, proportionate and dissuasive sanctions in a coordinated manner for both national and cross-border infringements;

2.3.2. Enhanced transparency in the Digital Single Market with transparency obligations for online platforms;

2.3.3. The expansion of consumer protection in the sphere of digital services, especially those where consumers do not pay but provide personal and non-personal data which has an economic value and therefore cannot be considered ‘free’;

2.3.4. The reduction of burdens for businesses, allowing professionals to use new means of online communication, such as web forms or chat as an alternative to email;

2.3.5. The revision of certain aspects relating to the right of withdrawal. In particular, the trader is allowed to reimburse the consumer only after having inspected the goods and verified that the consumer has not ‘used’ the goods rather than being limited to testing it;

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(3) OJ C 170, 5.6.2014, p. 68.
2.3.6. The possibility for Member States to restrict unsolicited aggressive and misleading practices in the context of door-step selling and excursion sales;

2.3.7. The explicit inclusion of ‘dual quality’ products and all the marketing actions connected to it, including misleading commercial practices, particularly widespread in the agri-food sector.

Representative actions directive

2.4. The Commission proposal COM(2018) 184 on representative actions for the protection of the collective interests of consumers lays the foundations for a European collective redress mechanism against widespread infringement of consumer protection law. This tool, already available in some EU Member States, should be extended to all. Nevertheless, the subsidiarity principle should apply allowing Member States to define this system at national level while maintaining existing ones.

2.5. Only qualified entities at national level should be able to act on behalf of consumers and should comply with some of the minimum requirements introduced by the European Commission.

2.6. The compensation mechanism is linked to an injunction decision. Qualified entities should be able to initiate a case of collective redress only after a court or an administrative authority has ascertained an infringement of consumer rights. The directive applies to infringements committed at national and EU level, enabling cross-border collective redress for consumers.

2.7. In terms of compensation for prejudice suffered by consumers, the proposal makes a distinction between small amounts where compensation directed to a public cause and substantial amounts where impacted consumers are compensated directly.

3. General comments on the Omnibus directive

3.1. The EESC acknowledges the European Commission’s proposal regarding better enforcement and modernisation of EU consumer protection rules and the objective to update existing rules to take into account new consumption habits and to adapt them to the digital single market evolution. However, as recommended by the EESC opinion on consumer vulnerability in business practices (9), concerns related to the lack of implementation of existing rules still need to be addressed.

3.2. The EESC wishes to refer to the Information Report on Consumer and Marketing law (10) evaluating how civil society organisations across the EU perceive the implementation of EU consumer and marketing law and the EESC Information Report on the Consumer Rights Directive (11) assessing the implementation of the Directive. These information reports have been drawn from three different data collection tools: a questionnaire, an expert hearing and 9 fact-finding missions to Riga, Rome, Warsaw, Madrid, Paris, Athens, Vilnius, Lisbon and Brussels.

3.3. The EESC remarks that the Commission proposal takes stock of the information reports, calling for more awareness-raising, training and coordination efforts with regards to consumer policy and the regulation of online platform and the digital economy. However, the EESC concerns on the harmonisation of consumer policy; the fragmentation of national enforcement; the need to fund awareness campaigns; encourage life-long training; support SMEs; simplifying legal information to consumers and promoting alternative dispute resolution schemes, self-regulation and codes of conduct are not appropriately addressed in the proposal.

3.4. The EESC acknowledges that consumers can find themselves in situations where they are misled or aggressively forced to conclude contracts. Specific issues have been flagged regarding call-centres selling energy, telecommunications or water contracts that are misleading consumers. Likewise, similar pressure sales have been flagged during excursions organised to sell products to certain categories of vulnerable consumers. In these situations consumers should be entitled to withdraw from the sales contract and/or be compensated for the prejudice they suffered.

(9) OJ C 12, 15.1.2015, p. 1.
3.5. As recommended by the EESC opinion on consumer vulnerability in business practices, appropriate individual remedies such as reimbursement, replacement or termination of the sales contract should be offered to consumers. Remedies should also be adapted to the situation of each consumer, enabling them to opt for tailor-made solutions.

3.6. The EESC also believes that the harmonisation achieved by the EU consumer protection legislation should not be lowered. Taking a step backwards is not creating a level playing field; it does not benefit consumers or traders.

3.7. The EESC underlines that aggressive and misleading sales tactics are already banned by the full harmonisation Directive 2005/29/EC on Unfair Commercial Practices Directive. The EESC encourages the European Commission to ensure stricter enforcement of existing rules by the Member States.

3.8. The Committee is divided on the Commission proposal to restrict certain distribution methods. Traders believe these measures should not be limited to door-step selling, stigmatising an entire economic sector, but should target all aggressive practices; consumers support the possibility for Member States to restrict certain sales methods for targeted categories of goods (such as drugs, weapons, pharmaceuticals) for health and safety reasons.

3.9. In that respect, the cooperation between Member States’ Consumer Protection Authorities in the framework of the CPC regulation is key to efficiently tackling malpractices, without penalising legal operators. Information about traders should be accessible for consumers, and awareness campaigns should be promoted at national and EU level.

3.10. With regard to the review of the Directive 2011/83/EU on the protection of consumer rights, two different positions and concerns emerged within the Committee. Traders are in favour of updating, simplifying and adapting pre-contractual information, whereas consumers consider that this would lower the level of consumer protection. The Committee is in favour of a balanced approach between consumer protection and traders’ legal certainty. The EESC considers that the provisions on digital content, digital services and online sales should be aligned with Digital Single Market legislation.

3.11. As regards online platforms, transparency about their identification and responsibility should prevail. The EESC believes that it is essential for a consumer to obtain all relevant information about his counterpart at the time of signing a contract. Furthermore, the transparency of online platforms is a key factor for the development of the Digital Single Market, both for consumers and for businesses (B2B)\(^{(12)}\).

3.12. Furthermore, the EESC also supports the proposal to extend consumer rights to all ‘free’ digital services for which users give personal or non-personal data. As such data has a commercial value, it would be unfair to consumers to consider it ‘free’ and not provide the relevant protection. The set of measures proposed by the European Commission makes it possible to rebalance, at least in part, the relationship between the major global players of online platforms and individual users.

3.13. The EESC is in favour of introducing modern mechanisms of information exchange between traders and consumers (i.e. chatbots, online forms). The Committee considers that these mechanisms should simplify the dialogue between the parties provided that adequate safeguards for consumers are included, such as the possibility to track the information exchange, to obtain additional information and to submit complaints. In particular, it should always be possible to use traditional forms of contact (such as call centres, for example).

\(^{(12)}\) EESC opinion: TEN/662 — Fairness and transparency for business users of online intermediation services (see page 177 of this Official Journal).
3.14. The EESC supports the concept of the right of withdrawal and recognises its role as an efficient consumer protection tool that should not be undermined. The Commission proposal risks limiting consumer rights without providing adequate evidence as to the systematic and widespread abuse of such rights. On the other hand, traders and SMEs in particular, need additional legal certainty on unduly tested goods and early reimbursement. The Committee calls on the Commission to reconsider this important point in order to reach a balanced compromise.

3.15. The EESC welcomes the clarifications around dual-quality products as it appears that some products, food in particular, were labelled identically even if their composition was different with the risk of misleading consumers. Misleading description and labelling of products should be banned to ensure transparency.

3.16. The EESC supports the proposal for specific criteria for the establishment of fines as an effective consumer protection instrument. As pointed out by the European Consumer Consultative Group, it is important to have dissuasive penalties amounting to a significant percentage of the annual turnover of companies that infringe the rules and taking into account the EU-wide dimension of the infringement. The Commission should examine the possibility of aligning the proposal with the provisions of the General Data Protection Regulation.

3.17. The EESC also supports the use of Alternative Dispute Resolution and Online Dispute Resolution mechanisms such as mediation or arbitration, which should be promoted at national level. Out-of-court settlements can be an option prior to court actions and should be supported if relevant. The courts should remain an option of the last resort. The European Commission proposal should further support these options to resolve consumer protection issues.

3.18. Overall, the EESC considers that sustainability and quality should be at the heart of the supply chain, to ensure consumer protection during the entire production life-cycle.

4. Specific comments on collective actions in the EU

4.1. The EESC acknowledges the proposal for a directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC. However, the Committee regrets that none of the recommendations of several EESC opinions on a European Framework for collective redress have been taken into account when drafting the legislative proposal.

4.2. The REFIT Fitness Check evaluation showed that the risk of infringements of EU law affecting the collective interests of consumers is increasing due to economic globalisation and digitalisation. In addition, a number of Member States do not provide for effective collective compensatory redress mechanisms tailored for mass prejudice situations and have not implemented the safeguards provided by the European Commission 2013 Recommendation on collective redress.

4.3. Easy and fast access to justice should be granted to all EU citizens. Consumers should be able to obtain compensation in case of prejudice suffered as a consequence of a breach of contract. However, the same applies to traders, who should not be the target of undue litigation. Collective actions are a judicial tool, a procedural right, a fundamental right to allow diffuse, collective and individual homogeneous interests to be judicially protected under Article 81 of the TFEU that should be neutral and not limited to consumers (environment, workers, SMEs rights, energy, sharing economy, circular economy, platforms, all digital rights, etc.).

4.4. A tailored redress system for collective prejudice is therefore welcome. It should be pragmatic, cost-effective, provide the relevant safeguards and take into account existing national judicial systems (e.g. Norway or Denmark). The EU Directive should define the major guidelines for harmonised EU group action, clearly stating what should be governed by an EU legal instrument and what should be left to Member States, according to subsidiarity; ensure that the scheme contributes to a more efficient, quick, affordable and fair application of justice, enable effective and total compensation for damages and grant the sustainability of this mechanism in terms of adequate funding. The current Commission proposal does not fulfil these objectives.

4.5. The EESC acknowledges the Commission’s effort to identify the qualified entities able to claim collective redress, in accordance with the principle of subsidiarity. It should also be made clear that the place of establishment of the qualified entity should be the place of jurisdiction and should determine the applicable law. Additionally, the EESC considers that the Commission should further elaborate on the role of the judge on deciding the consistency of the claim; the burden of proof and production of evidence; the regime of the ‘ruling’ — ‘inter partes’ or ‘erga omnes’ and the regime of appeals.

4.6. All legal costs of collective actions should be supported according to national judicial aid systems.

4.7. Consumer or civil society organisations should be able to receive adequate funding and legal advice to claim redress. Specific funds should help qualified entities to remunerate legal counsels. Member States should support the creation of litigation funds for qualified entities.

4.8. In terms of compensation, the proposed legislation does not fully address the need to provide actual compensation to consumers for the prejudice suffered. The proposal should clearly refer to the compensation of the total amount lost by consumers, regardless of the prejudice suffered.

4.9. The EESC is concerned about the protection of the rights of entrepreneurs, including the safeguarding of company secrets. Without underlining the protection of consumers who have suffered prejudice, the EESC would welcome the introduction of mechanisms confirming the guarantee of confidentiality of information provided, not only at the stage of the proceedings, but also in final decisions.

4.10. Likewise, traders would welcome the possibility to settle a case within a short timeframe, including through the above-mentioned alternative dispute resolution mechanisms.

4.11. The EESC invites the Commission to incorporate into the proposal for collective redress a recommendation for Member States to use technological innovations as already done by the technologically most advanced ADR- and ODR-entities, in particular with regard to the gathering of participants for a collective action. This measure should enable significant cost savings for the organizers of the collective action and for the consumer organizations that decide to join. The Commission should also encourage the exchange of best practices with a specific focus on data collection concerning all cases that are the subject of a collective action.

4.12. In keeping with the recommendation of the EESC opinion on a European Framework for collective redress (17), the Committee believes that consumers should be free to decide whether they wish to opt in or opt out from collective action. In particular, the EESC believes that an opt-in would be appropriate for cases involving a limited number of victims who have suffered significant prejudice, while an opt-out would be more appropriate for cases involving a large number of victims who have suffered limited prejudice.


The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions — A renewed European Agenda for Research and Innovation — Europe’s chance to shape its future’

(The European Commission’s contribution to the Informal EU Leaders’ meeting on innovation in Sofia on 16 May 2018)

(COM(2018) 306 final)

(2018/C 440/11)

Rapporteur: Ulrich SAMM

Co-rapporteur: Stefano PALMIERI

1. Conclusions and recommendations

1.1. The EESC welcomes the fact that also in the context of the Multiannual Financial Framework 2021-2027, the Commission has made it clear that research and innovation must continue to be an essential EU priority.

1.2. The EESC welcomes the fact that innovation should carry more weight and recalls its call for future funding policy needs to be well-balanced for the whole research and innovation chain, from fundamental to product-driven research. Innovation is key to economic growth and the new instruments will in particular be beneficial for SMEs. The EESC reiterates the importance of public investment in research and development as a key driver for producing and sustaining a spillover effect on the Member States’ economies.

1.3. The EESC also welcomes the aim of further simplifying State aid rules to facilitate the combination of different funds, which can be instrumental to overcoming the large disparities between Member States and regions in terms of the number of successful research and innovation projects.

1.4. Horizon Europe needs to invest in areas where there is particular European added value. Collaborative research projects should be prioritised, as they fulfil this requirement in a way that hardly any other programme does.

1.5. The EESC is convinced that many grand societal challenges can only be solved at a European level and need the concerted efforts of several players, going beyond the scope of individual Collaborative research projects. This is why the idea of missions is supported.

1.6. Supporting the mobility of researchers via Marie Skłodowska-Curie Actions (MSCA) is another key to further strengthening the European Research Area, while EU and national policies must aim to establish adequate and attractive working conditions for professionals to avoid the phenomenon of brain drain which is counterproductive to achieving coherence in the EU.
1.7. The EESC believes it is necessary to increase the volume of EU investment to help European workers to keep abreast of developments in and earn qualifications for digital professions.

1.8. The EESC believes that initiatives helping SMEs to capitalise on and tap the outcome of research and innovation should be supported more effectively.

2. Introduction

2.1. At the informal EU Leaders’ meeting on innovation in Sofia on 16 May 2018, the European Commission invited those present to discuss and give strategic guidance with a view to the next Multiannual Financial Framework in general and the priorities to be given to Research and Innovation in particular. For this purpose, the EC proposed priorities and new initiatives in its communication (1).

2.2. This proposal serves also as a first step towards the definition of the next Framework Programme (FP9 or Horizon Europe) aiming at the continuation and improvement of the successful Horizon 2020 programme (2).

2.3. Equally, activities are proposed to support innovation and boost industrial leadership following the renewed EU Industrial Policy Strategy (3).

3. Gist of the proposal

3.1. The proposal of European Commission intends to ensure that research and innovation continues to be one of the essential EU policies and funding priorities in the future, across different budgetary instruments. More emphasis is given to innovation to make Europe a frontrunner in market-creating innovation.

3.2. The Commission proposes to increase investments in research and innovation by allocating about EUR 100 billion to the future programme Horizon Europe and the Euratom Research and Training Programme (4).

3.3. Equally, the Commission proposed to mobilise around EUR 11 billion for market-based instruments, including financial instruments and budgetary guarantees in a dedicated window under the InvestEU Fund, which in return would mobilise EUR 200 billion of private investment to support research and innovation.

3.4. Member States are urged to take the necessary steps to increase their spending in research and innovation to reach the 3 % of GDP target.

3.5. Launch of a first set of EU-level research and innovation missions with bold, ambitious goals and strong European added value. The missions will encourage investment and participation across multiple sectors throughout the value chains, policy areas (e.g. energy and climate, transport, advanced manufacturing, health and nutrition, digital), scientific disciplines (including social sciences and humanities).

3.6. It is proposed that, whenever reviewing policy and legislation of EU and national regulatory frameworks, the innovation principle should be applied, ensuring that the impact on innovation is fully assessed.

3.7. A European Innovation Council (EIC) will be established to identify and scale up breakthrough and disruptive innovation, focusing on fast-moving, high-risk innovations that have a strong potential to create entirely new markets.

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(4) The proposed budget allocation of EUR 100 billion for 2021-2027 includes EUR 97.6 bn under Horizon Europe (EUR 3.5 bn of which will be allocated under the InvestEU Fund) and EUR 2.4 bn for the Euratom Research and Training Programme.
3.8. Measures to increase private investment in research and innovation and scale-up initiatives:

— implementation of a Pan-European Venture Capital Funds-of-Funds programme (VentureEU);

— transposition of the Directive (5) on preventing restructuring frameworks, second chances and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

3.9. Further simplifying State aid rules to facilitate the seamless combination of different funds and the better use of common assessment standards for research and innovation projects.

3.10. The Commission advocates for a tax system (6) that supports innovation by allowing the costs of research and innovation investment to be tax deductible, with additional allowances for young companies.

3.11. Introduction of an Open Science label for universities and public research organisations to empower them to become more entrepreneurial and interdisciplinary.

4. General comments

4.1. The EESC welcomes the fact that also in the context of the Multiannual Financial Framework 2021-2027 the Commission has made it clear that research and innovation must continue to be an essential EU priority. A strong and successful programme that brings together excellence, joint research infrastructures, collaboration across borders as well as synergies between academia, industry, SMEs and research organisations is a key policy instrument for achieving sustainable European economic growth and competitiveness and to address the major challenges faced by European society.

4.2. The EESC welcomes the fact that innovation should carry more weight and recalls its claim that the future funding policy needs to be well-balanced for the whole research and innovation chain, from fundamental to product-driven research (7). Innovation is key to economic growth and the new instruments will be in particular beneficial for SMEs. The EESC reiterates the importance of public investment in research and development as a key driver for producing and sustaining a spillover effect on the Member States’ economies.

4.3. Regarding the high expectations that are related to the impact of Horizon Europe and its role in securing European competitiveness, the EESC recommends funding of EUR 120 billion, as also proposed by the European Parliament. The European Institutions have to demonstrate that they have grasped the overwhelming importance of research and innovation for the future competitiveness of the EU.

4.4. The EESC believes it is necessary to increase the volume of EU investment to help European workers to keep abreast of developments in and earn qualifications for digital professions. Moreover, the EESC believes that initiatives helping SMEs to capitalise on and tap the outcome of research and innovation should be supported more effectively.

5. Specific comments

5.1. Research along the whole value chain

5.1.1. European Structural and Investment Funds should be used to bring regions into the innovation economy. Synergies should be created with the Horizon Europe Programme, InvestEU Fund, the European Social Fund, the Erasmus+ Programme, the Digital Europe Programme, the Common Agricultural Policy and other programmes.

(6) Anticipated under the Common Consolidated Corporate Tax Base (CCCTB).
(7) OJ C 34, 2.2.2017, p. 66.
5.1.2. The EU is the most open research and innovation area in the world. Not only does it welcome research organisations from all over the world into its projects, but it also collaborates extensively with international partners on joint programmes. Horizon Europe needs to invest in those areas where there is special European added value. Collaborative research projects should be prioritised, as they fulfil this requirement in a way that hardly any other programme does: in order to make further progress on societal challenges that cannot be solved at the national level, these projects bring together the best scientists, as well as the most innovative SME and Industry stakeholders in Europe. By combining their skills and competences across disciplines, collaborative research projects result in valuable benefits for Europe’s citizens.

5.1.3. The EESC is convinced that many grand societal challenges can only be solved at a European level and need the concerted efforts of several players, going beyond the scope of individual collaborative research projects. This is why the idea of missions is supported. The EESC acknowledges that common ambitious goals have the potential to inspire and to create momentum, i.e. the willingness to take action, across various communities, including the public. Missions should offer a long-term funding perspective over the full funding period of Horizon Europe. It is essential that the missions are first and foremost conceptualised as large-scale research missions even if they integrate various stakeholders in their sub-projects. To achieve the missions’ ambitious goals, they need to cover the whole innovation chain and include research activities on all Technology Readiness Levels. The EESC urges not to oversell the mere concept of missions, but to provide them with the adequate funding needed for their goals. These goals should be both reachable and tangible.

5.1.4. One of the strengths of European research framework programmes is their tangible EU-wide commitment to foster a European Research Area that is open to all Member States. Stronger synergies between the next framework programme and structural funds could support this openness. Bridging the gaps between regions more effectively is one of the major political challenges for the coming years, and effective partnerships between research institutions can be one key.

5.1.5. One important instrument in this context are FET Flagships. They are characterised by a strong focus on the development of innovative technologies. This is a unique strength. Europe needs to allow itself large-scale and long-term projects that can bear a level of uncertainty and are yet as innovative as they are forward-looking. FET Flagships should therefore be clearly differentiated from the missions. It is essential that the future FET Flagships start as planned and continue to receive priority funding.

5.1.6. Making research infrastructure accessible all across the EU and beyond is one of the success stories of the framework programmes. Undoubtedly, top research infrastructure attracts top scientists and very often it is only access to research infrastructure that makes breakthrough results possible. Hence, research infrastructure urgently need higher funding at the European level, not the decrease in budget share which the European Commission has provided for in its proposal Securing the access of users from the EU13 countries should be a priority concern.

5.1.7. Supporting the mobility of researchers via Marie Skłodowska-Curie Actions (MSCA) is another key to further strengthening the European Research Area and creating impact that cannot be achieved at a national level. The EESC welcomes any initiative designed to support the mobility of researchers working in SMEs. The EESC is, however, concerned about the phenomenon of brain drain which might even be enhanced by mobility funding and so calls for EU and national policies to focus on establishing adequate and attractive working conditions for professionals to avoid this trend, which is counterproductive to achieving coherence in the EU.

5.1.8. It should be noted that academic stakeholders from public-funded institutions in many Member States are not allowed to take out loans. Horizon Europe should therefore primarily remain focused on co-funding, not on loans.

5.1.9. The EESC joins the plea to the Member States to take the necessary steps to increase their spending in research and innovation to reach the 3% of GDP target.

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(*) Collaborative research with a minimum of three partners from different Member States makes it possible to join forces to tackle challenges that cannot be met by one country alone and creates synergies within the EU research landscape, thus creating significant EU added value, such as those designed and implemented by Eureka.
5.2. Research and Innovation for new markets and cohesion in Europe

5.2.1. As underlined in the 7th report on economic, social and territorial cohesion research & innovation’ in the EU remains highly concentrated in a limited number of regions. In north-western Member States, good interregional connections, a highly skilled labour force and an attractive business environment have made it possible to capitalise on ‘research & innovation’ as tangible drivers to support economic competitiveness and social cohesion. In southern and eastern Member States, the innovation performance is weaker and regions close to centres of innovation — mainly the capitals — do not benefit from their proximity. This calls for policies that connect firms, research centres and specialised business services across regions. The EESC believes that further simplifying State aid rules to facilitate the seamless combination of different funds can be key for this objective.

5.2.2. The post-2020 ‘research & innovation’ programmes have to take into account the economic, social and territorial dimensions that characterise EU regions, avoiding the implementation of ‘one-size-fits-all’ strategies. This approach can be supported by the implementation of strategies based on ‘open innovation’. Concerning the territorial dimension of ‘Research and Innovation’ policies, it is important to build new programmes and priorities, taking into account the economic and social aspects which characterise the territories where the action will be implemented.

5.2.3. The post-2020 ‘research & innovation’ policies and programmes should be consistent with the targets of the Economy for the Common Good — ECG, a sustainable economic model geared towards social cohesion. ECG is a process of ‘social innovation’ and positive entrepreneurship useful to promote and support new ideas that simultaneously solve social needs, create new social relationships and strengthen economic value creation.

5.2.4. Despite the broad commitments made as part of the implementation of the 2014-2020 programmes, SME access to innovation-based growth opportunities has had little impact in terms of competitiveness and job creation. The support framework for research and innovation some regions is still too complex, which discourages micro and small enterprises from participating in EU projects in particular. The EESC, therefore, welcomes the development of a European Innovation Council (EIC) which should accelerate the commercialisation and scale up of innovations by start-ups emerging from Horizon Europe projects. The EIC might become a faster mechanism for completing the final steps in closing the innovation gap.

5.2.5. In order to transform research and innovation opportunities into factors for competitiveness and economic development, it essential to support cooperation between SMEs and R & DI institutions, entrepreneurial start-ups based on the transfer of research and innovation, and coaching and fundraising activities. The EESC considers that it is important to support the transfer and capitalisation of the quintuple helix model (9) to boost public and private partnerships.

5.2.6. SMEs could be the leaders in terms of ‘social open innovations’, in which the human know-how for networking and capacities to co-create, co-design, and co-innovate are fundamental for the complete achievement of the social innovation in all Europe. There is the need to promote appropriate innovation policies for SMEs following what is already done by Eureka initiative. This task could be specifically faced by institutions that can directly support SMEs in engaging in business development and innovation, such as the Chambers of Commerce.

5.2.7. In order to respect the subsidiarity principle and the considerable capacities of regions and Member States in the field of SME support, it however urges to focus on the European added value. This may lie in supporting collaboration of more than two European innovation actors or in providing capital to innovators with concepts too risky to be supported at national level. In addition, the streamlining of instruments mentioned above should lead to more efficiency of the funding landscape. It should therefore be expected that the EIC would require less budget share of Horizon Europe than the financial instruments of Horizon 2020, not the considerable increase provided for in the EC proposal. In the post-2020 ‘research & Innovation’ programmes, greater support should be given to the targets’ qualitative aspects.

5.2.8. The ‘smartness’ of a socioeconomic system cannot be measured solely on the basis of quantitative indicators such as research and innovation spending; use should also be made of qualitative indicators such as the type of innovations brought, advantages for civil society and the number of new jobs created. The EESC, therefore, welcomes that.

5.2.9. The EESC welcomes the fact that under the new MFF, the Commission has included accessibility as an ‘enabling condition’. All EU and national R&I funding must comply fully with accessibility criteria so that outcomes benefit all social groups, including people with disabilities, who represent 15% of the EU population.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EU) No 2017/1129 as regards the promotion of the use of SME growth markets'

(COM(2018) 331 final — 2018/0165 (COD))

(2018/C 440/12)

Rapporteur: Mihai IVAŚCU

Referral
European Parliament, 11.06.2018
Council, 21.06.2018

Legal basis
Article 114 of the Treaty on the Functioning of the European Union

Section responsible
Single Market, Production and Consumption

Adopted in section
04.09.2018

Adopted at plenary
19.09.2018

Plenary session No
537

Outcome of vote
196/1/1

1. Conclusions and recommendations

1.1. The EESC supports the Commission’s proposal to make capital markets a credible alternative for financing and believes that a balance should be achieved between the three main objectives of the proposal: growing the SME markets, alleviating burdens and raising the liquidity level. The European Commission (EC) must not overregulate, but maintain a level of barriers that will discourage unprepared companies.

1.2. The EESC expresses its belief that the current proposal, although a step in the right direction, is not enough to tackle the existing barriers on the SME Growth Markets. While there is indeed a need for a holistic approach, each individual step must carry its own weight.

1.3. Compared with companies in the United States, those in the EU still seek bank loans as a financing option in a much larger number, sometimes even by accepting significant additional costs. Further financial education is needed, as the EU public markets have struggled to attract new issuers and the number of IPOs has not significantly increased.

1.4. The EESC stands by its previous opinions that the low level of communication (¹) and bureaucratic approaches (²) are significant barriers and much more effort must be put into overcoming these obstacles. Communication from Brussels should always target the bottom of the chain — the SMEs themselves — by involving SME associations, social partners, chambers of commerce, and so on.

1.5. The proposal of maintaining only permanent insider lists for SMEs and the proposed two-day extension to the deadline for disclosing managers’ transactions are very much welcomed. Regarding these, the EESC can only suggest that the EC explores further methods of removing burden from the SMEs and move it to other stakeholders, such as the National Competent Authorities (NCAs), for example.

1.6. The alleviated prospectus is indeed a significant reduction in burden, but the EESC considers that further possibilities should be examined of gradually simplifying the transfer prospectus for companies that have proven their maturity by being listed on SME Growth Markets for a significant number of years.

1.7. The EESC is in favour of the proposed changes to the market sounding regime and would like to caution against overly detailed and/or prescriptive explanation requests from the NCAs.

1.8. The EESC advises the EC to look into the possibility of attracting institutional investors, such as private pension funds, to invest in these SME Growth Markets, by providing incentives, especially concerning tax treatment. Member States should explore possibilities for further attractive investment support schemes at national level.

1.9. The liquidity contracts are extremely welcomed, especially for the underdeveloped markets. The EESC believes that the 29th regime on liquidity contracts prepared by the European Commission will create an additional option for issuers, alongside national legislation.

1.10. The EESC would like to point out that a thorough and regular impact assessment is warranted. Done yearly, these assessments could provide valuable information for future changes to the regulatory framework.

2. The European Commission's proposal

2.1. This proposal for a Regulation is part of the Capital Markets Union agenda and focuses on specific changes to the functioning of the SME Growth Markets, which have been regulated as of January 2018. The EU has made considerable progress in terms of increasing sources of funding as firms gradually scale up, and making market-based finance more widely available across the EU. New rules are already in place to boost EU venture capital funds (EuVECA) investment in start-ups and medium-sized companies. Together with the European Investment Fund, the Commission has also launched a Pan-European Venture Capital Funds-of-Funds programme (VentureEU).

2.2. The main goal of the proposal is to make it easier for small and medium-sized enterprises to be listed and to use capital markets to finance their growth. The proposal includes a fine-tuning of the initial framework that represents a step forward towards improved and more effective regulation.

2.3. The proposal will apply to all the companies that are listed on the SME Growth Markets, be they SMEs or not. This ensures, first of all, that fast-growing companies are not penalised for their positive economic performance; and second, that these markets will be able to attract large companies as well. By introducing these new rules, the Commission expects that more Multilateral Trading Facilities (MTFs) will register as SME Growth Markets (so far, only 3 out of 40 have done so).

2.4. The proposal includes alleviations that would:

— lower the burden for SMEs regarding recording and disclosure obligations while preserving market integrity and a comprehensive flow of information to investors;

— create common rules for liquidity contracts on the SME Growth Markets, allowing an increase in the liquidity of shares;

— allow issuers to produce an alleviated prospectus when trying to move to a regulated market (a new category of transfer prospectus will allow issuers who have been listed for at least three years to move more easily to access the main stock exchanges, hence targeting better liquidity and a larger number of investors).
3. General comments

3.1. SMEs account for 99.8% of all non-financial enterprises in the EU, generating about 58% of total added value and employing over 90 million people. However, every year, around 200,000 SMEs go bankrupt, affecting over 1.7 million workers (3).

3.2. According to the EIB Investment Survey 2016/2017, SMEs usually depend on internal funds for investment (over 60%) (4). The remainder is mostly made up of banking instruments. Market-based finance is not fulfilling its potential. The EESC believes that increasing this is crucial for innovative companies, or for those with a high risk-return profile.

Table 1
Source of investment finance in the last financial year, EU28 (5)

<table>
<thead>
<tr>
<th>Source of finance</th>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal funds or retained earnings</td>
<td>71</td>
<td>64</td>
<td>59</td>
<td>57</td>
</tr>
<tr>
<td>External finance</td>
<td>28</td>
<td>35</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Bank loans</td>
<td>60</td>
<td>60</td>
<td>57</td>
<td>54</td>
</tr>
<tr>
<td>Other bank finance</td>
<td>11</td>
<td>8</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Leasing</td>
<td>18</td>
<td>23</td>
<td>24</td>
<td>23</td>
</tr>
<tr>
<td>Factoring</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Loans from family/friends</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Grants</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Bonds</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Equity</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Intra-group funding</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

Note: All firms who invested in the last financial year (excluding don’t know/refused responses).

3.3. The EESC would like to point out the reluctance of SMEs in seeking financing from capital markets and their willingness to suffer the increased costs of financing through bank credit. This cultural characteristic is one of the main differing factors from the more successful US capital markets and the lower dependence of American companies on bank loans. Further financial education is of paramount importance.

(3) Marcin Szczepanski, ‘Helping European SMEs to grow: Start-up and scale-up initiatives for business ventures in the EU’.
3.4. In other opinions, the EESC has already mentioned its belief that a 'bureaucratic approach and the complexity of administrative rules are still prevalent in EU SME policies and the current support mechanisms, despite the constant efforts at EU level to minimise the administrative burden' (\(^6\)).

3.5. The EESC has previously expressed its support for other proposals aimed at reducing the administrative burden of drawing up prospectuses for all issuers, in particular for SMEs, frequent issuers of securities and secondary issuances (\(^7\)). Furthermore, the EESC has explained that 'While bank loans are a reality, access to equity as a financial tool is also needed but is not sufficiently developed in Europe due to punitive tax regimes, lack of equity culture, poor financial literacy and fragmented insolvency regimes' (\(^8\)).

3.6. The EESC is in favour of the European Commission’s initiative to reduce the administrative burden on SMEs, allowing them to have easier access to capital markets and to diversify their financing sources. The EESC also supports the stated objective of this proposal to increase liquidity of shares issued by SME Growth Market issuers.

3.7. Although the advantages for SMEs of being listed on the dedicated markets are obvious, and although this improves and diversifies their financing opportunities, the EU public markets have actually struggled to attract new issuers, and the number of initial public offerings is not increasing significantly. Only 3 000 out of over 20 million existing SMEs are listed and there are only half as many IPOs compared to before the financial crisis. Insufficient liquidity on these markets translates into higher costs for issuers to raise capital and reluctance to invest on the part of capital holders, and means that market intermediaries are less inclined to support small listed companies.

3.8. Equity finance is key for innovative companies that create value and growth, and especially for companies that have a high risk-return profile. Seed and early stage equity finance can boost firm creation and development, whereas other equity instruments, such as specialised platforms for the public listing of SMEs, can provide financial resources for growth-oriented and innovative SMEs. Additionally, equity financing may be more suitable than debt financing for SMEs that lack collateral, have negative or irregular cash flows, or require longer maturities for their investments to pay off (\(^9\)).

3.9. The EU markets are still fragmented and they do not seem able to support a large number of IPOs. Europe seemingly has a strong position in growing innovative high-tech firms, but when these companies are in need of robust capital investments, they usually go bankrupt. Fast-growing companies also often leave the EU market in favour of the United States, searching for more accessible stock option schemes.

3.10. Listed companies are less dependent on bank financing, can access a larger investment base, and have a higher public profile. Despite this, more needs to be done to develop a more conducive regulatory framework to support access to public funding for small and medium-sized enterprises, especially by promoting the SME Growth Market label. The right balance between investor protection and market integrity should also be struck by means of proper regulation.

3.11. SMEs with diversified financing sources are more robust and competitive, benefiting from reduced costs and better development perspectives. This allows for a stronger job market and better opportunities for citizens seeking a job regardless of their level of training.

3.12. The EESC recommends that the European Commission consider further alleviations to the SME Growth Markets rules and requirements, so as to better differentiate them from regulated markets and make them more attractive as entry-level markets.

\(^{7}\) OJ C 177, 18.5.2016, p. 9.
4. Specific comments

4.1. The EESC fully supports ongoing efforts to make capital markets a credible alternative for financing, as part of the Capital Markets Union agenda. However, it still seems doubtful that the current efforts are enough to reduce the considerable barriers that currently exist on the market. SMEs do not seem to be changing their financing behaviour; therefore, more needs to be done. The EC has recognised that it is just one step forward and not a complete solution to all the challenges of the capital markets.

Table 2

<table>
<thead>
<tr>
<th>Types of finance that SMEs wish to see more in the financing mix over the next three years, EU28 (\textsuperscript{10})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank loans</td>
</tr>
<tr>
<td>Overdrafts</td>
</tr>
<tr>
<td>Bond issuance</td>
</tr>
<tr>
<td>Newly issued equity</td>
</tr>
<tr>
<td>Leasing/hire purchase</td>
</tr>
<tr>
<td>Factoring/invoicing</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

4.2. While it remains to be seen if they will indeed reduce compliance costs, alleviate burdens and promote market liquidity — as all these objectives are quite ambitious — the EESC believes that the measures proposed are a step in the right direction.

4.3. The EESC believes that the low number of SMEs that get access to market-based financing is also due to the lack of low-level communication. The messages and tools at EU level are not reaching the bottom of the chain — i.e. the SMEs that are targeted. This is due to several reasons, most importantly the insufficient proactive communication and interaction from Brussels to the Member States and to SME associations, the social partners or chambers of commerce. The EESC warned about this in a previous opinion (\textsuperscript{11}), but has seen hardly any improvements so far.

4.4. On the other hand, the low number of institutional investors in the SME shares and bonds markets can be explained by the lack of incentives provided for these investors, especially concerning tax treatments. The EESC advises the Commission to look into this possibility.

4.5. The EESC welcomes the proposed two-day extension to the deadline to make managers’ transactions public. This is an important tool for preserving the transparency and symmetry of the junior markets, but the three-day deadline was a critical constraint for the SMEs. The EESC believes that the proposed amendment will lead to a more streamlined procedure in more difficult or busy periods for companies. The EESC recommends that the Commission should explore ways to remove the administrative burden from companies and shift it to other actors, such as the NCAs.

\textsuperscript{10} Apostolos Thomadakis, ‘Developing EU Capital Markets for SMEs: Mission impossible?’, ECMI Commentary No 46, 4 September 2017.

\textsuperscript{11} OJ C 345, 13.10.2017, p. 15.
4.6. The EESC has already expressed its full support for simplifying and streamlining the requirements for the prospectus published when securities are offered on regulated markets, making them more cost-effective and more useful for investors in terms of the information they contain. Any new proposal that works towards this goal is more than welcome. Considering the large amount of information that companies on the SME Growth Markets are required to disclose under the Market Abuse Regulation and Directive 2014/65/EU, the EESC considers that a simpler transfer prospectus is sufficient for companies moving to a regulated market.

4.7. Furthermore, the EESC would support the gradual simplification of the prospectus for transferring to the regulated market for companies that have been listed for a reasonable number of years on an SME Growth Market.

4.8. The EESC welcomes the proposal of maintaining only permanent insider lists for companies listed on the SME Growth Markets, as the number of employees with access to insider information is limited and mostly the same. This represents a significant burden reduction.

4.9. The EESC is supportive of the modifications to the market sounding regime as the proposed amendments will facilitate the issuance of corporate bonds by SME Growth Market issuers. Concerning the justifications to be provided by SME Growth Market issuers when the public disclosure of inside information is delayed, the EESC believes that the explanations requested by the NCAs on an ad hoc basis, following notification by the issuer, should not be too detailed or overly prescriptive.

4.10. The Market Abuse Regulation is a source of administrative and legal costs and can be seen by non-EU issuers as a barrier to listing on EU markets. The EESC recommends that further amendments should be made to tailor the requirements for the SME Growth Markets.

4.11. While liquidity contracts are welcomed, especially for undeveloped markets, a proposal at European level would create a level playing field on which local conditions can be built. The EESC believes that the 29th regime on liquidity contracts, which the EC is currently working on, will create the possibility for market issuers to establish a liquidity contract either on the basis of national legislation, where it exists, or on the basis of Europe-wide regulation.

4.12. The EC’s proposal is a definitive step forward. However, the EESC suggests that there should be regular impact assessments with a wide access to non-confidential data and analyses based on quantitative indicators.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

\[(12)\] OJ C 177, 18.5.2016, p. 9.


(2018/C 440/13)

Rapporteur: Christophe LEFÉVRE

Referral
Council, 6.6.2018
European Parliament, 11.6.2018

Legal basis
Article 114(1) of the Treaty on the Functioning of the European Union

Section responsible
Single Market, Production and Consumption

Adopted in section
4.9.2018

Adopted at plenary
19.9.2018

Plenary session No
537

Outcome of vote
191/0/6

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the proposals made by the Commission when amending the Directive on insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability. However, the Committee regrets that the Commission has not taken this opportunity to anticipate the changes connected to driverless motor vehicles, despite the comments included in the impact assessment (1) accompanying the proposal.

1.2. As regards improving the protection of victims of motor vehicle accidents in the event of insolvency of the insurer, the Committee endorses the proposal to compensate victims through the body established in the victim’s Member State of residence. Nonetheless, the Commission excludes recourse to the body if the victim has referred the matter to the insurer directly or initiated legal proceedings. The Committee therefore recommends that this exclusion should not apply if the insurer goes out of business during this period (bankruptcy, winding up proceedings) or if the victim cedes the appeal payout to the body in order to be compensated more quickly. The Committee recommends that the levels of compensation (items of damage) chosen from between the levels in force in the country in which the accident took place and those in force in the country of residence should be those most advantageous to the victim.

1.3. As regards improving recognition of claims history statements, the Committee recommends indicating the name of the driver implicated and his or her degree of responsibility for the accident (full, partial or none). The Committee questions the content of the statement under national legislation covering a vehicle irrespective of the driver, compared to legislation whereby a vehicle is insured for a given driver with the premiums set on the basis of the individual risk profile and accident history, or whereby a driving licence holder is insured regardless of the vehicle used. The Committee asks the Commission to require that these insurance certificates and claims history statements be issued in a form which can be authenticated and to authorise the use of an interconnected database available to law enforcement for the purpose of verifying the validity of the certificates and statements.

1.4. As regards checks on insurance to combat uninsured driving, the Committee welcomes the proposal to use number plate recognition technology to check vehicles without having to stop them as part of a nation-wide system. If the vehicle is not covered by an insurance policy, the Committee recommends immobilising the vehicle until a valid insurance certificate is produced.

1.5. As regards harmonisation of minimum amounts of cover, the Committee recommends that the Commission set a final deadline for completing the implementation of minimum compensation thresholds.

1.6. As regards the scope of the directive, the Committee welcomes the clarification regarding the concept of a means of transport on public or private property, whether stationary or moving, excluding exclusively agricultural use. However, steps will have to be taken to ensure that agricultural vehicles circulating on the public highway are subject to the directive.

1.7. Lastly, as regards consistency with existing provisions in the policy area, the Committee notes that the Commission’s proposals support the free movement of persons and goods and internal market principles ensuring the free provision of services and free establishment by insurers.

2. Background and introduction


2.2. The European Commission aims to improve the currently inadequate protection of the victims of motor vehicle accidents, to reduce unequal treatment of policyholders with regard to no claims discount systems and to incorporate European Court of Justice rulings delivered since the first EU directive on vehicle insurance was adopted in 1972.

2.3. The directive is a legal tool which is vital for the efficient operation of the single market as regards freedom of movement, based on a single premium with no need to take out an additional insurance policy in order to move around in another Member State; it also seeks to guarantee a high degree of convergence with regard to the protection of victims of motor vehicle accidents.

2.4. The legislation is based on the international green card system which was not devised by the EU and which 48 countries have now joined. The key aspects of Directive 2009/103/EC are as follows:

— an obligation on motor vehicles to have a motor third party liability insurance policy, valid for all parts of the EU on the basis of a single premium;

— obligatory minimum amounts of cover which such insurance policies must provide (Member States may require higher cover at national level);

— a prohibition on Member States from carrying out systematic checks of insurance of vehicles normally based in another Member State;

— an obligation on Member States to create guarantee funds for compensation of victims of accidents caused by uninsured or unidentified vehicles;

— protection for victims of motor vehicle accidents in a Member State other than their Member State of residence (visiting victims);

— a right for policyholders to obtain a statement of their claims history for the past five years from their insurer.

2.5. Directive 2009/103/EC was evaluated (3) in 2017 in connection with the Commission’s 2016 work programme and the March 2017 action plan on financial services, and two CJEU rulings were delivered that same year. As a result, the Commission has set out its own position.

2.5.1. Improving the protection of victims of motor vehicle accidents in the event of insolvency of the insurer

2.5.1.1. The Commission proposes that a body be authorised in each Member State to compensate injured persons who normally reside in their territory for at least the amount required of insurance for material damage or personal injuries caused by a vehicle which is insured, if they do not receive, within three months, a reasoned reply to the information provided when making a claim, or if the insurance or reinsurance undertaking is bankrupt or being wound up. This would not apply if the victim has already submitted a claim directly to the insurer or taken legal action.

2.5.1.2. The Commission anticipates that this body would be reimbursed by the body established in the country of the person in the wrong.

2.5.2. Improving recognition of claims history statements, particularly across borders

2.5.2.1. The directive requires that a claims history statement be issued covering the last five years. Insurers are not required to take this into account when calculating the premiums.

2.5.2.2. The Commission recommends standardising the content and form of these claims history statements, which should provide the details needed to adapt the premiums in line with the claims history and to ensure that the statement can be authenticated.

2.5.3. Insurance checks to combat uninsured driving

2.5.3.1. The Commission recommends using number plate recognition technology to check vehicles without stopping them as part of a comprehensive national checking system, which does not interfere with the free movement of people and vehicles.

2.5.3.2. The Commission points out that, in order to verify vehicles’ insurance status when they enter the territory of a Member State, data must be exchanged between Member States.

2.5.4. Harmonisation of minimum amounts of cover

2.5.4.1. The Commission further notes that the minimum levels of compensation differ from one country to another, largely due to the fact that these levels were not adjusted during the transition period. The Commission recommends that the minimum amounts of cover be harmonised, with each Member State nonetheless able to set higher minima.

2.5.5. Scope of the directive

2.5.5.1. By incorporating three CJEU rulings (4), the Commission clarified the scope of the motor third party liability insurance obligation, excluding accidents in which the vehicle was used for exclusively agricultural use: any activity consistent with the normal function of a vehicle as a means of transport on the public highway or on private property, whether the vehicle is stationary or moving.

2.6. Consistency with other EU policies

2.6.1. The Commission notes that its proposals support the free movement of persons and goods and internal market principles ensuring the free provision of services and free establishment by insurers.

3. Comments

3.1. The EESC welcomes the proposals made by the Commission when amending the Directive on insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability. This amendment is the result of feedback provided for under the legislative framework, impact assessments and public consultations and the integration of CJEU case-law.

3.2. Improving the protection of victims of motor vehicle accidents in the event of insolvency of the insurer

3.2.1. The Committee endorses the proposal to compensate victims through the body in the Member State of residence in order to offset the inaction of insurers or in the absence of a reasoned reply within a reasonable timeframe, and supports the fact that the body in the victim’s Member State of residence can apply to the third-country body of the responsible insured party for reimbursement.

3.2.2. However, since the proposal precludes the managing body from compensating the victim if the victim has contacted the insurer directly or if legal proceedings are underway, the Committee recommends that this exclusion should not apply in the following circumstances:

— if during this period the insurer goes out of business (bankruptcy, winding up proceedings);

— should the supervisory authorities withdraw the insurer’s licence to operate;

— if the victim cedes the payout to the body so that the victim can be compensated very quickly.

The Committee recommends that the levels of compensation (items of damage) chosen from between the levels in force in the country in which the accident took place and those in force in the country of residence should be those most advantageous to the victim.

3.3. Improving recognition of claims history statements, particularly across borders

3.3.1. The Committee welcomes the move to issue systematically a standardised statement certifying whether the person has been involved in any accidents over the last five years.

3.3.2. The Committee further recommends indicating the name of the driver implicated and his or her degree of responsibility for the accident (full, partial or none).

3.3.3. The Committee questions the content of the statement under national legislation covering a vehicle irrespective of the driver, compared to legislation whereby a vehicle is insured for a given driver with the premiums set on the basis of the individual risk profile and accident history, or whereby a driving licence holder is insured regardless of the vehicle used.

3.3.4. The Committee does however have questions regarding the situation arising from driverless motor vehicles, or possibly regarding the concept of the responsible ‘driver’ when the motor vehicle is being piloted remotely.

3.3.5. The Committee notes that the Commission does not plan to legislate on document fraud connected to claims history statements or insurance certificates.

3.3.6. The Committee asks the Commission to require that these insurance certificates and claims history statements be issued in a form which can be authenticated and to authorise the use of an interconnected database available to law enforcement for the purpose of verifying the validity of the certificates and statements.

3.3.7. The Committee notes that the Commission does not mention how the implementation of these cross-border interconnected systems will be financed.

3.4. Checks on insurance to combat uninsured driving

3.4.1. The Committee welcomes the proposal to use number plate recognition technology to check vehicles without stopping them, providing that the checks are part of a comprehensive national checking system, are not discriminatory and do not involve stopping the vehicle.

3.4.2. However, the Commission remains silent regarding what action should be taken regarding vehicles identified as not being protected by an insurance policy. The Committee recommends immobilising the vehicle until an insurance certificate is produced which either is still valid or which was valid until less than a month previously.

3.4.3. The Commission points out that this check on vehicles’ insurance status when entering the territory of a Member State requires data to be exchanged between Member States, and that the rights, freedoms and legitimate interests of the people concerned by these data must be safeguarded by the General Data Protection Regulation (GDPR).

3.4.4. However, the Commission has nothing to say regarding the managing operator or how the costs involved in setting up and managing an interconnected database of valid or invalid insurance policies would be covered.
3.5. Harmonisation of minimum amounts of cover

3.5.1. The Committee supports the Commission’s analysis regarding varying minimum thresholds, particularly those thresholds which fail to meet requirements as they are below the thresholds provided for by the directive in nearly half of the EU Member States.

3.5.2. Rather than simply recommending that the thresholds be harmonised (5), the Committee recommends that the Commission set a final deadline (possibly the end of 2019) to finish implementing minimum compensation thresholds, since the deadline has already passed.

3.5.3. The Committee recommends that the levels of compensation (items of damage) chosen from between the levels in force in the country in which the accident took place and those in force in the country of residence should be those most advantageous to the victim.

3.6. Scope of the directive

3.6.1. The Committee welcomes the clarification regarding the concept of a means of transport on public or private property, whether stationary or moving, excluding exclusively agricultural use. However, steps will have to be taken to ensure that agricultural vehicles circulating on the public highway are subject to the directive.

3.7. Consistency with existing policy provisions in the policy area

3.7.1. The Committee would also point out that the Commission’s proposals support the free movement of persons and goods, and that they comply with internal market principles ensuring the free provision of services and free establishment by insurers.

Brussels, 19 September 2018.

The President of the European Economic and Social Committee
Luca JAHIER


(COM(2018) 286 final — 2018/0145 COD)  

(2018/C 440/14)

Rapporteur: Raymond HENCKS

Consultation  
European Parliament, 28.5.2018  
Council, 4.6.2018

Legal basis  
Article 114(1) of the Treaty on the Functioning of the European Union

Section responsible  
Section for the Single Market, Production and Consumption

Adopted in section  
4.9.2018

Adopted at plenary  
19.9.2018

Plenary session No  
537

Outcome of vote  
193/1/2

1. Conclusions and recommendations

1.1 Over recent decades, road safety in the European Union has improved significantly through the tightening of Highway Code rules, provisions on driver behaviour and working and training conditions for professional drivers, through improvement in road infrastructure and in emergency services, and through stricter EU legislation on vehicle safety to which the automotive industry has always responded with new technologies.

1.2 Even so, the number of people killed on EU roads has remained way above the target the EU set itself in the 2011 White Paper on transport, notably moving towards the target of zero fatalities by 2050 and halving fatal road accidents by 2020.

1.3 The majority of road accidents are down to human error alone, mostly involving speeding, distraction or drink-driving. EU citizens must therefore be further encouraged — even required — to shoulder the primary responsibility for their safety and that of other road users in the EU by adopting appropriate behaviour.

1.4 What is needed, then, is a comprehensive approach to road safety that covers driver behaviour, the working conditions and skills of professional drivers, and infrastructure. The on-board safety systems that can prevent or correct human errors are another crucial safety factor.

1.5 The EESC welcomes the Commission’s aim of making a new range of advanced safety measures mandatory for all vehicles in the form of standard equipment for road vehicles, including tyre pressure monitoring, intelligent speed assistance, driver drowsiness and attention monitoring/distraction recognition, reversing detection, emergency stop signal and emergency braking.

1.6 The EESC also endorses the requirement for trucks and buses to be equipped with a detection and warning system for vulnerable road users in close proximity of the front and nearside of the vehicle and to be designed and constructed in such a way as to improve the visibility of vulnerable road users from the driver’s seat and to have a lane departure warning system. It also welcomes the additional obligation to design and construct buses which are also accessible for people with reduced mobility, including wheelchair users.
1.7 However, it wonders why the Commission does not make having an alcohol interlock a requirement and merely plans to facilitate the installation of these devices. The EESC considers that the installation of a breathalyser should be mandatory and not optional.

1.8 The EESC further recommends that event (accident) data recorders should also be required for lorries, trucks and buses, since, even if these vehicles’ tachographs already provide some of the driving data, they do not store the crucial data during and after an accident.

1.9 Finally, the EESC regrets that security systems stricter than those required by European legislation, and which manufacturers voluntarily install, are often confined to high-end models, with cheaper models losing out and lacking advanced, non-mandatory security measures. This means that not all EU citizens have access to cars that are equally safe. To remedy this, the EESC recommends that, as regards the regulation under consideration, and as a rule, the European Commission require European standards to be adapted to technological developments within shorter deadlines.

1.10 This also applies to trucks and buses, in particular as regards the system detecting and warning of the presence of users in the immediate vicinity of the front and right side of the vehicle, which the proposal for a regulation does provide for, but which should also be made mandatory within shorter deadlines.

2. Introduction

2.1 Over recent decades, road safety has improved significantly, mainly through advanced safety systems installed on board vehicles, the improvement in road infrastructure, the tightening of Highway Code rules, awareness raising campaigns for drivers, and the speed and efficacy of emergency response services.

2.2 However, significant disparities remain across Member States, despite the efforts of the European Commission which, through its various programmes and guidelines, seeks to harmonise safety rules throughout the European Union.

2.3 For example:

— road signs and the minimum driving age are not always the same everywhere;

— the use of a mobile phone while driving using a hands-free set is permitted in some countries;

— the maximum permitted blood alcohol level varies, depending on the Member State, between zero tolerance and a more permissive approach;

— speed limits differ;

— the safety equipment required for cyclists (helmet) and for motorists (high-visibility vest, emergency warning triangle, first-aid kit, fire extinguisher) are not the same everywhere.

2.4 In 2017, the number of people killed on EU roads was 25,300, a 2% drop in one year (1), which nevertheless falls well short of significantly reducing the number of road deaths (2), to move towards the target of zero fatalities in road transport by 2050.

2.5 Around 135,000 people were seriously injured last year (3), including many pedestrians, cyclists and motorcyclists, considered by the Commission to be particularly ‘vulnerable’ users.

2.6 According to the European Commission, the socio-economic cost of road accidents is estimated at EUR 120 billion annually (medical treatment, unfitness for work, etc.).

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(2) Commission Press release of 10 April 2018 IP/18/2761.
3. Commission proposal

3.1 The initiative under consideration is part of the third mobility package devoted to ‘Europe on the Move’, which aims to make mobility in the EU safer and more accessible, to make European industry more competitive and European jobs safer, and to adjust more effectively to the need to combat climate change, including by enhancing the requirements relating to safety devices in road vehicles.

3.2 As the current provisions regarding the EU type-approval procedure by type of car in the context of the protection of pedestrians and hydrogen safety have to a large extent been overtaken by technological developments, Regulations (EC) Nos 78/2009 (protection of pedestrians), (EC) No 79/2009 (hydrogen-powered motor vehicles) and (EC) No 661/2009 (type-approval requirements for the general safety of motor vehicles) are repealed and replaced by the equivalent provisions of UN rules and amendments thereto that the Union has voted in favour of or that the Union applies, in accordance with Decision 97/836/EC.

3.3 Overall, the scope of the Regulation on the General Safety of Motor Vehicles is retained, but, in terms of safety features currently applicable to vehicles with corresponding exemptions, the scope is extended to cover all categories of vehicles and eliminate the current exemptions relating to sport utility vehicles (SUVs) and vans.

3.4 The draft regulation sets out the general technical type-approval requirements for vehicles, systems, components and separate technical units and provides a list of safety areas, for which detailed rules are further developed (or need to be developed) in secondary legislation. All UN road safety rules that are applicable on a mandatory basis in the EU are set out in an annex to the draft regulation under consideration.

3.5 The proposal also envisages empowering the Commission to set rules and detailed technical requirements via delegated acts.

3.6 The current scope of the requirement for a passenger car to be equipped with a tyre pressure monitoring system is extended to cover all categories of vehicle.

3.7 A series of advanced safety features, such as intelligent speed assistance, driver drowsiness and attention monitoring/distraction recognition systems, reversing detection, emergency stop signal, alcohol interlock installation facilitation and advanced emergency braking system are made compulsory for all vehicles.

3.8 Passenger cars and light commercial vehicles must also be equipped with:

— an event (accident) data recorder
— lane keeping assist, and
— frontal protection designed and constructed with an enlarged head impact protection zone for vulnerable road users.

Light and heavy lorries (categories N2 and N3) and buses (categories M2 and M3) must be equipped with:

— a detection and warning system for vulnerable road users in close proximity of the front and nearside of the vehicle, designed and constructed in such a way so as to improve the visibility of vulnerable road users from the driver's seat; and

— a lane departure warning system.

Buses must be designed and constructed in such a way as to be accessible to persons with reduced mobility, including wheelchair users.

Hydrogen-powered vehicles must comply with the requirements set out in Annex V of the regulation.

Regarding automated vehicles, rules and detailed technical safety requirements need to be further developed as a basis for their deployment.
4. General comments

4.1 The EESC congratulates the Commission on its move to make a new range of advanced safety measures mandatory standard equipment for road vehicles. However, it also points out that in addition to revisions of the minimum standards required for new cars sold on the EU market, it should also further encourage EU citizens, or even require them, to shoulder the primary responsibility for their safety and that of other road users in the EU, through appropriate behaviour.

4.2 In themselves, these new measures relating to safety devices in vehicles, however useful and necessary they may be, are likely to have only a limited effect on the reduction of serious road accidents, in the absence of other complementary measures with regard to user behaviour, the working conditions and skills of professional drivers, and road infrastructure. The persistence of a large number of road accidents, resulting in a large number of deaths and serious injuries, requires a further dynamic adjustment of road safety policy, as part of which, in addition to the strengthening of requirements for safety devices in road vehicles and preventive measures, dissuasive measures targeting those who do not respect the rules and endanger their lives and the lives of others are also taken.

4.3 The EESC believes that, while we must promote driver-to-driver interaction technologies and intelligent transport systems (ITS), we cannot expect the mobility of the future, in particular intelligent transport systems and fully automated driving, to manage to address current challenges in the short to medium term.

4.4 According to the Commission, the revised framework will be better tailored to improve the protection of vulnerable road users. Article 3(1) of the regulation defines the vulnerable road user as ‘a road user using a two-wheel powered vehicle or a non-motorised road user, such as a cyclist or a pedestrian’. The EESC thinks this definition does not necessarily cover all ‘high risk’ categories, such as those who have an intrinsic frailty due to their age (children, elderly people) or to a disability.

4.5 It is well known that the risks incurred by road users are mainly due to driver behaviour (speeding, alcohol or drug abuse, use of portable electronic devices while driving, lapses in concentration, physical condition of drivers, driving too long, not taking rest periods) and inadequate infrastructure (lack of facilities reserved for pedestrians, lack of appropriate lighting).

4.6 The EESC therefore agrees that in order to prevent some of these dangers, the Commission should require new cars to be systematically equipped with:

- a control system that is adaptive and an intelligent speed assistance system which, in addition to the security aspect, also encourages driving that saves fuel and hence cuts pollution,

- a tyre pressure monitoring system,

- advanced driver drowsiness monitoring and distraction recognition systems.

4.7 It also wonders why the proposal for a regulation does not make having an alcohol interlock a requirement and merely plans to facilitate the installation of these devices. According to a study by Verband der TÜV e.V (\(^4\)), 11 % of accidents in 2016 were due to drivers recognised as being in a state of intoxication. Since the ratio of undetected to detected drink-driving cases is 1 to 600, the number of accidents arising from alcohol abuse is estimated at more than 25 %. The EESC considers that the installation of a breathalyser should not be limited to repeat offenders who have had their licences suspended by the judgement of a court for driving under the influence of alcohol or drugs, but be mandatory across the board.

4.8 The EESC recommends that event (accident) data recorders should also be required for trucks and buses, since, even if these vehicles’ tachographs already provide some of the driving data, they do not store the crucial data during and after an accident.

4.9 According to the Commission’s impact assessment, appended to the proposal for a regulation under consideration, it is expected that over a 16 year period, the introduction of the new safety features will help to reduce fatalities by 24 794 and serious injuries by 140 740. The EESC wonders whether such estimates, quantified to such a precise figure, are not likely to be considered as lacking in credibility, and undermine the added value of the whole impact study.

Finally, the EESC draws attention to the fact that manufacturers are voluntarily developing vehicles with higher safety standards than those required by European legislation. Unfortunately, these improvements are often confined to high-end models that are sold on the main markets of the Member States, with cheaper models losing out and lacking advanced, non-mandatory security measures. This means that not all EU citizens have access to cars that are equally safe. To remedy this, the EESC recommends the European Commission require European standards to be adapted to technological developments within shorter deadlines.

This also applies to trucks and buses, in particular as regards the system detecting and warning of the presence of users in the immediate vicinity of the front and right side of the vehicle (blind spot), which should also be made mandatory within shorter deadlines.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council complementing EU type-approval legislation with regard to the withdrawal of the United Kingdom from the Union' 

(COM(2018) 397 final — 2018/0220 (COD))

Rapporteur: Séamus BOLAND

Consultation European Parliament, 2.7.2018
Council, 3.7.2018

Legal basis Article 114 of the Treaty on the Functioning of the European Union

Section responsible Single Market, Production and Consumption

Adopted in section 4.9.2018

Adopted at plenary 19.9.2018

Plenary session No 537

Outcome of vote 198/0/7
(for/against/abstentions)

1. Conclusions

1.1. The EESC welcomes the European Commission proposal for a Regulation of the European Parliament and of the Council complementing EU type-approval legislation with regard to the withdrawal of the United Kingdom from the Union.

1.2. The EESC believes that the proposal is focused on the practical steps necessary to address real consequences for the vehicle manufacturing and distribution industry and consumers as a result of unavoidable legal changes in the certification of type-approval issues by UK authorities on the basis of EU laws.

1.3. In that context the EESC believes that this proposal should act as a template for many other similar agreements required as a consequence of Brexit.

1.4. The EESC recommends that agreement on this proposal recognise that there is a need for a reasonable lead-in time before full implementation of the new system is enforced. Overall, the cessation deadline of 29 March is far too restrictive and should be extended on agreed terms between the UK and the EU.

1.5. The EESC accepts that following the cessation of UK membership UK type-approval agencies can no longer certify vehicles under EU legislation and that UK-based manufacturers will have to seek approval from any of the 27 EU-based agencies. Noting that the UK government believes that their agency should be recognised in international terms as a type-approval agency, the EESC recommends that any confusion on this point be clarified.

1.6. The EESC notes that this proposal will be implemented within parameters as set out in the overall negotiated cessation agreement. Therefore it recommends that this proposal is not diluted in any way.

1.7. The EESC notes that, within the EU, there may be changes and amendments to directives based on new technology, new information and so on. It therefore recommends that there is the necessary flexibility within agreements so that proper negotiations can take place.
1.8. The EESC recommends that all overall agreements on trade, as well as the cessation of membership, should take account of the huge market that exists in the EU and the UK and that all agreements should ensure that there is no negative disruption of this market.

1.9. The EESC strongly recommends that the necessary information systems, training and advice are well resourced and are transparently available to all sections of the industry including consumer and environmental stakeholders.

1.10. The EESC accepts that, while ‘fundamental rights’ are not affected by this proposal, consumer rights will always be a concern and therefore recommends that this is acknowledged throughout implementation.

2. General

2.1. On 23 June 2016, following a referendum on EU membership, the United Kingdom of Great Britain and Northern Ireland decided to leave the European Union. This decision includes Gibraltar.

2.2. On 29 March 2017, the United Kingdom notified the EU of its intention to withdraw from the Union, as per Article 50 of the Treaty on European Union. Once triggered, a process of negotiation on membership cessation was established, with a view to the successful management of new complex legal arrangements.

2.3. Once agreed it is envisaged that from 30 March 2019, the United Kingdom will no longer be a member of the EU and will become a third country, unless the agreement proposes a new commencement date.

2.4. It is accepted that the withdrawal of membership will create the need to resolve numerous practical matters in relation to EU-wide regulation of goods and services. In particular, type-approval agencies based in Britain will no longer have a role as an EU regulator from the date of cessation of membership. This in turn has consequences for existing and future regulation of goods, including goods already approved.

2.5. However, it should be noted that the exact position of the UK in relation to the UK type-approval agency will be the subject of the overall negotiated agreement still underway.

2.6. Among the many implications will be the disruption of the various product supply chains, which are finely tuned to deliver goods in a cost-efficient and timely manner across all Member States, including Great Britain.

2.7. The proposal is also keenly aware of the need to maintain all quality standards as well as ensuring that environmental and consumer-related standards are not diluted.

2.8. This proposal could easily act as a template for other similar agreements and in that context it is essential that it has the support of all stakeholders and that of the wider public.

2.9. This proposal states that there are no consequences for the protection of fundamental rights. However, the EESC would note that changes in regulation structures affecting goods will always have implications for consumers.

2.10. This opinion will concentrate on the situation pertaining to the type-approval system as applied to motor engines, vehicles involved in the transport of goods, as well as engines for use in non-mobile machinery.

3. Gist of the Commission Proposal

3.1. The Commission proposal seeks to deal with the EU legislative framework governing the type-approval system as it applies to a number of products, which will no longer apply to the United Kingdom on cessation of membership of the Union.
3.2. Specifically, and subject to transitional arrangements that may be made in the cessation agreement, the Commission proposal names the following legislation as being affected:

— Directive 2007/46/EC concerning the type-approval of motor vehicles and trailers (to be replaced by a Regulation which will be applicable as from 1 September 2020),

— Regulation (EU) No 168/2013 concerning the type-approval of two- and three-wheeled vehicles and quadricycles,

— Regulation (EU) No 167/2013 concerning the type-approval of agricultural and forestry vehicles, and

— Regulation (EU) 2016/1628 concerning the type-approval of engines for use in non-road mobile machinery.

3.3. The proposal also makes it clear that the existing UK type-approval authority will no longer be able to continue as such under EU legislation. Therefore, in order to achieve continued compliance with EU legislation and to maintain access to European markets, manufacturers who obtained approvals in the UK will need new approvals from any of the EU 27 type-approval authorities. This includes products already in production.

3.4. While there are considerable implications for the future role of the UK type-approval authority, there are serious concerns for the future of vehicle manufacturing in the UK and conversely within the EU. These concerns centre mainly on the legal uncertainty of UK type-approvals and dilution of one of the main principles of regulation, which is the maintenance of regulatory consistency across all of the European Union.

3.5. The proposal aims to address these issues by the temporary modification of existing rules, so that manufacturers affected can apply to any of the EU-27 for approval with the minimum of inconvenience. Its main points are that it:

— explicitly allows concerned manufacturers to apply to an EU-27 type-approval authority for new approvals for existing types,

— allows that tests underpinning the UK type-approvals do not have to be repeated because the technical service was not designated and notified by the EU-27 type-approval authority before,

— provides that such approvals may be granted if the requirements for new vehicles, systems, components and separate technical units are met rather than those for new types,

— proposes to help identify new type-approval authorities for those products already on the market prior to the withdrawal, to avoid that no authority would be in charge of carrying out in-service conformity checks or issuing a possible future recall.

3.6. The Commission proposal acknowledges the need to protect consumers in terms of vehicle safety and maintenance of environmental standards.

3.7. The proposal makes clear that the work of type-approval authorities does not end with the production or placing on the market of a vehicle, system, component or a separate technical unit, but extends over several years after the placing on the market of those products.

4. Observations

4.1. Car manufacturers require fresh certificates for new models, which are released roughly every seven years, but also for significant design or engine alterations which can happen more frequently. This clearly magnifies the urgency of ensuring that, following Brexit, there is a smooth realignment of the regulatory mechanisms required for their production.

4.2. Around 56% of UK vehicle exports go to Europe; only about 7% of European vehicle exports come to the UK. However, data measuring market functions as applied to the supply of spare parts would suggest a more complex set of arrangements which would require a smooth regulatory regime.
4.3. The EESC notes that despite the publication of this proposal, its effect cannot be assessed due to the huge uncertainty surrounding the current negotiations between the EU and UK.

4.4. The EESC believes that the proposal is more suited to the successful negotiation of an agreement between Britain and the EU whereby there is sufficient agreement to implement measures which allow trading to occur in some form within a customs union and/or a single market.

4.5. The EESC agrees with the following statement as published by the House of Commons (fifth report of session 2017-2019, entitled 'The impact of Brexit on the automotive sector'): ‘It is difficult to see how it would make economic sense for multinational volume manufacturers — the bulk of the UK automotive sector — to base production in the UK in a no deal or WTO tariff scenario.’ Therefore, in the event of a 'no deal' scenario, the proposal will need review in terms that will ensure that is robust enough to be prepared for such a scenario.

4.6. The exact situation concerning the future role of the UK type-approval body is as yet not agreed by the UK and the European Union. The EESC believes that resolution of this issue is essential if the new regulatory regime is to be successful.

5. Challenges

5.1. The EESC welcomes the proposal's objectives, in particular, the intention to reduce costs to the industry, in terms of border delays and unnecessary bureaucracy, while ensuring that the highest standard applies. However, the EESC believes that achievement of these objectives is an enormous challenge, bearing in mind that a whole new regulatory system must now be devised.

5.2. However, the EESC also notes that such a regime will unavoidably contribute to higher costs, mainly because Britain will become a non-member and like other non-members there will be, of necessity, different arrangements.

5.3. Matters covered under regulations such as environment, consumer rights, quality of products and so on are often subject to new or changed internal EU laws and ongoing directives. The EESC believes that both the EU and the UK will need to ensure that the regulatory regime agreement will be flexible enough to manage this, so that the least disruption occurs.

5.4. Within the EU the process for manufacture and distribution of vehicles has developed in a highly integrated manner. There are many complex and efficient supply chains in operation, which in the view of all experts and the EESC will change significantly following the UK's cessation of EU membership. It is also the view of the EESC that such disruption will reduce the efficiency of these systems.

5.5. Because of the high numbers of vehicles manufactured in Britain and exported within the EU, the EESC is particularly concerned that any exclusion of the UK from this market will negatively affect overall competitiveness, which in turn will increase costs to all sections of the economy as well as consumers. Therefore, the Commission's proposal, which advocates that all of these interests are protected, must ensure that there is ongoing commitment to this and it must be enshrined in future agreements.

5.6. The complexity of proposed changes will require strong commitments by both sides to provide comprehensive information and training programmes to the industry as well as each of the type-approval agencies. This represents a considerable challenge in terms of resources and will require significant time. The time requirement will be particularly challenging given the current schedule of the UK's withdrawal as stipulated under Article 50.

5.7. Given the time that the negotiated agreement is taking and the time needed to conform various systems, the EESC believes that a transition period will be required beyond the March 2019 cessation date.

5.8. Given that a favourable outcome is the continuance of the current system, governing the movement of vehicles and associated products between the UK and the EU, the EESC believes that vehicles manufactured in the UK will need to conform to EU regulation. Therefore it is noted that, unless the UK is in some way associated with the customs union or single market or both, this proposal will be extremely difficult to administer.
5.9. The EESC believes that the new status of the UK as a non-member will continually pose challenges to the vehicle, mobile and non-mobile regulatory regime. Therefore, an inability to speedily deal with these problems will eventually force manufacturers to change the nature of their current supply chain, which could affect the continuity of available products and have an impact on the cost to consumers.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products'

(COM(2018) 317 final — 2018/0161 (COD))

(2018/C 440/16)

Rapporteur working alone: János WELTNER

1. Conclusions and recommendations

1.1. The EESC takes note of the fact that the Commission, in its Staff Working Document (SWD), has analysed four options to deal with the current problems arising from the present status of the Supplementary Protection Certificate (SPC).

1.2. The EESC agrees with the European Commission’s (EC) conclusion, which proposes modifications in line with Option 4 (1), i.e. legislation on both export and stockpiling waivers by amending Regulation (EC) No 469/2009.

1.3. The EESC welcomes the fact that this proposal leaves SPC protection intact as regards placing products on the EU market.

1.4. The EESC also welcomes the market exclusivity of EU SPC holders in the Member States during the full period of SPC protection.

1.5. The EESC deems it to be most important that, on those non-EU markets where protection does not exist or has expired, there be fair competition for EU-based manufacturers who bring generics and biosimilars to these markets.

1.6. The EESC strongly supports those safeguards that ensure transparency and protect against a possible diversion onto the Union market of generics and biosimilars (G/Bs) in respect of which the original product is protected by an SPC.

1.7. The EESC supports the Commission’s stance on SMEs, since they play an important role in manufacturing generics and developing biosimilars. SMEs will be better able to plan their market activities if the new SPC comes into force.

1.8. The EESC supports the Commission’s plan for an evaluation of orphan and paediatric legislation, with further analysis in 2018-2019.

(1) SWD(2018) 240 final, p. 29.
1.9. The EESC understands the Commission’s position that, although it would be advantageous, the Commission will not be tabling a proposal for a unitary SPC at the moment, as the unitary patent package has not yet come into force.

1.10. The EESC supports the amendment of Regulation (EC) No 469/2009, as it is set out in document COM(2018) 317. At the same time, the EESC recommends that the Commission could propose to amend Regulation (EC) No 469/2009, as it is set out in document COM(2018) 317, to ensure that an SPC manufacturing waiver can be immediately applied.

2. Background

2.1. An SPC will extend the period of effective protection for patents on new medicinal products, where an authorisation is required for them to be placed on the market.

2.2. The holder of both a patent and an SPC benefits from a maximum of 15 years of protection from the moment the product in question first obtains authorisation to be placed on the market in the EU.

2.3. The benefits of an SPC for its holder are significant. Since an SPC confers the same rights as a basic patent, the monopoly resulting from the basic (reference) patent is extended and enables its holder to prevent competitors from making use of the invention (manufacturing the medicine, offering it for sale, storing it, etc.) in those Member States in which an SPC has been granted.

2.4. An SPC serves as compensation for the investment put into research. It should also compensate for further research, monitoring and waiting in the period between the patent application being filed and authorisation to place such a product on the market being received.

2.5. In the EU, an SPC can be granted under the following conditions:

2.5.1. On the date of application for supplementary protection the product is protected by a basic patent;

2.5.2. The product has not already been the subject of a certificate;

2.5.3. A valid and first administrative authorisation to place the product on the market as a medicinal product has been granted.

2.6. The Stakeholders’ Views (2) indicate that today’s SPCs place EU-based manufacturers of generics and biosimilars (G/Bs) at a disadvantage vis-à-vis manufacturers capable of producing G/Bs outside the EU.

2.7. In its current form, the EU SPC increases reliance on imports of drugs and pharmaceuticals outside the EU.

2.8. The global pharmaceutical market has changed. Fast-growing economies (pharmerging) combined with ageing populations in the traditional industrialised regions have driven a massive demand for medicines. Total global spending on medicines increased from EUR 950 billion in 2012 to EUR 1.1 trillion in 2017 (USA 40%, China 20% and the EU less than 15%). Biologics will represent 25% of the pharmaceutical market value by 2022. This is being accompanied by a shift towards an ever-greater market share for G/Bs, which could represent 80% of medicines by volume by 2020 and about 28% of global sales.

2.9. According to Medicines for Europe, 56% of medicines by volume currently supplied in the EU are G/Bs.

2.10. The Bolar (3) exemption has eliminated an unintended side effect of strong patent protection, based on the rationale that free competition should be allowed as soon as protection expires. It is a manufacturing waiver for testing and clinical trials purposes, and was intended to ensure that a generic could enter the market as soon as possible after the expiry of patent/SPC protection.

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(2) SWD(2018) 242 final.
2.11. Regarding the SPC manufacturing waiver, EU firms are facing a situation similar to the pre-Bolar one. While the legitimate purpose of an SPC is to prevent the manufacturing of competing products for the purpose of marketing on the EU market while the SPC is in effect, it has two unintended and unforeseen consequences, namely:

2.11.1. Preventing G/Bs from being manufactured in the EU and exported to third countries (where no legal protection applies) during the EU SPC term; and

2.11.2. Preventing them from being manufactured in the EU (and then stored) early enough to be placed on the EU market immediately as of day-1.

2.12. Manufacturers of G/Bs (based in a Member State where the application of a SPC for the reference medicine has been applied) face the following problems:

2.12.1. During the period of protection covered by the certificate of the reference medicine in the EU, manufacturers cannot manufacture that medicine for any purpose, including for export outside the EU to countries where SPC protection for the reference medicine has expired or never existed, while manufacturers based in those third countries can do so.

2.12.2. Immediately upon expiry of the certificate: they are not ready to enter the EU market on day-1, since the EU SPC system does not allow manufacturing in the EU until then. By contrast, manufacturers based in third countries where SPC protection for the reference medicine has expired earlier, or never existed at all, can be ready to enter the EU market as of day-1, via exports, and thus gain a considerable competitive advantage.

2.13. The G/B sector now accounts for 160,000 jobs in the EU (Medicines for Europe). The loss of jobs, especially of highly skilled jobs, loss of know-how and a brain drain to non-EU countries, notably to Asia, must be prevented by an urgent change in the regulation of SPCs.

2.14. The EU was a pioneer in the development of regulatory procedures to approve biosimilars: the EMA authorised the first biosimilar in 2006, while the FDA did so only in 2015. However, there are clear signs that Europe is now losing its competitive edge, with its trade partners catching up. Therefore there is an urgent need for the EU to restore the competitiveness of EU-based manufacturers of G/Bs. Doing nothing or postponing an initiative would further weaken the EU industry and unravel the EU’s pioneering effect and competitive advantage in the biosimilar sector in particular.

2.15. In accordance with the Single Market Strategy, a targeted recalibration of certain aspects of SPCs is needed, aiming to tackle the following problems:

2.15.1. Loss of export markets in unprotected third countries;

2.15.2. Day-1 entry onto Member States’ markets for EU-based manufacturers of G/Bs by introducing an ‘SPC manufacturing waiver’ in the EU SPC legislation, allowing the manufacture of G/Bs within the EU during the SPC term;

2.15.3. Fragmentation resulting from the uneven implementation of the current SPC regime in the Member States that could be solved in connection with the upcoming unitary patent, and the possible creation thereafter of a unitary SPC title;

2.15.4. Fragmented implementation of the Bolar research exemption.

3. General comments

3.1. What can we expect from the new regulation?

3.1.1. Strengthening and retaining manufacturing capacity and know-how in the EU, thereby reducing unnecessary relocation/outsourcing.
3.1.2. Strengthening EU patients’ access to medicines by diversifying geographical sources of supply and thus strengthening home production.

3.1.3. Removing obstacles to starting generic and biosimilar businesses in the EU, especially for SMEs that have more difficulties in overcoming obstacles and which may have difficulties if they have to face non-EU competition.

3.1.4. As manufacturing capacity established for export purposes can, prior to expiry of the certificate, be used with a view to supplying the EU market from day-1, it is also expected to boost, to some extent, access to medicines in the Union by enabling G/Bs to enter the market more quickly after the certificates have expired, thus ensuring the availability of a wider choice of affordable medicines once the period of patent and SPC protection has passed. This should have a positive effect on national health budgets.

3.1.5. The proposal will, to some extent, make medicines more accessible to EU patients, especially in those Member States in which access to some reference medicines (e.g. certain biologics) is difficult, by creating the conditions to help related G/Bs gain more rapid entry into the Union market once the relevant certificates have expired. It will also diversify the geographical origin of medicines available in the EU, thus strengthening the supply chain and security of supply.

4. Specific comments

4.1. The EC may find some way to use EU funds to support the building of manufacturing capacity in Member States for export purposes during the SPC term. This may, for certain products, allow a quicker scale-up of production for entering the EU market on day-1.

4.2. The Commission may support the activities of interested NGOs for developing indicators for monitoring and evaluating the new SPCs for the future development of the EU market share of EU-manufactured generics and biosimilars.


The President of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council amending and correcting Regulation (EU) No 167/2013 on the approval and market surveillance of agricultural and forestry vehicles’

(COM(2018) 289 final — 2018/0142 (COD))

(2018/C 440/17)

Rapporteur: Mindaugas MACIULEVIČIUS

Referral
European Parliament, 28.5.2018
Council, 1.6.2018

Legal basis
Article 114 of the Treaty on the Functioning of the European Union

Section responsible
Single Market, Production and Consumption

Adopted in section
4.9.2018

Adopted at plenary
19.9.2018

Plenary session No
537

Outcome of vote
190/2/3

(1 for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC welcomes this proposal for a Regulation amending and correcting Regulation (EU) No 167/2013 of the European Parliament and of the Council (1). The proposal follows feedback received by stakeholders and Member States in the first implementation period and therefore it should be supported.

1.2. The EESC supports the extension for five more years of the power of Commission to adopt required delegated acts, as there is a continuing need to update various elements of the type-approval process.

1.3. The EESC welcomes the strong commitment of the Commission on consulting various stakeholders and social partners on every initiative in this field.

1.4. The EESC acknowledges the work of the Commission at international level. New standards introduced by delegated acts are defined in close cooperation with international working bodies such as UNECE and OECD dedicated working groups.

2. The Commission proposal

2.1. The Commission proposal upgrades to technical progress Regulation (EU) No 167/2013 by updating certain requirements and correcting certain editorial errors following feedback received by stakeholders and Member States in the first implementation period.

2.2. More precisely, this act introduces clarifications to two definitions of tractor categories and corrects certain terms important for the uniform application of the Regulation without possible interpretations as well as the references to a repealed legislative act.

2.3. Regulation (EU) No 167/2013 empowers the Commission to lay down the detailed technical requirements, test procedures and limit values, where applicable, in four delegated acts on (i) occupational safety (vehicle construction requirements); (ii) functional safety; (iii) braking; and (iv) environmental and propulsion performance. This power has already expired on 21 March 2018.

2.4. The current proposal extends the power conferred on the Commission to adopt delegated acts for 5 more years and sets out its tacit renewal, unless the Council or the European Parliament expressly object to it.

3. General comments

3.1. The EESC welcomes this proposal for a Regulation amending and correcting Regulation (EU) No 167/2013. It responds to the concerns raised by stakeholders and Member States and by upgrading certain requirements and correcting a number of editorial errors it improves the applicability and the clarity of the legal text. This is obviously beneficial for all parties involved.

3.2. On which concerns the extension for five more years of the power conferred on the Commission to adopt delegated acts, the EESC agrees in principle with the proposal and is pleased that, as it had always called for, the Commission has considered it appropriate to extend the delegation for a fixed period, with the possibility of renewal, as long as there are no objections raised by the Council and the Parliament (\(^2\)).

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. A Modern Budget for a Union that Protects, Empowers and Defends. The Multiannual Financial Framework for 2021-2027’

(COM(2018) 321 final)

‘Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 2027’

(COM(2018) 322 final/2 — 2018/0166 (APP))

‘Proposal for a Council Decision on the system of Own Resources of the European Union’

(COM(2018) 325 final — 2018/0135 (CNS))

‘Proposal for a Council Regulation on the methods and procedure for making available the Own Resources based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System and on Plastic packaging waste that is not recycled, and on the measures to meet cash requirements’

(COM(2018) 326 final — 2018/0131 (NLE))

‘Proposal for a Council Regulation laying down implementing measures for the system of Own Resources of the European Union’

(COM(2018) 327 final — 2018/0132 (APP))

‘Proposal for a Council Regulation amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax’

(COM(2018) 328 final — 2018/0133 (NLE))

(2018/C 440/18)

Rapporteur: Javier DOZ ORRIT

1. Conclusions and recommendations

1.1. The EESC recognise the high European added value of the programmes where the Commission’s proposal for the Multiannual Financial Framework (MFF) 2021-2027 concentrates the main increases in expenditure. However, the Committee questions the fact that these increases are made at the cost of strong cuts in cohesion policy (-10 %) and the common agricultural policy — CAP (-15 %), due to the effort to reduce the EU budget, which goes from 1,16 % of the gross national income (GNI) of the EU-27 in the current budgets, to only 1,11 % in the MFF post 2020.

1.2. The EU faces major challenges, including overcoming the negative social and political consequences of the crisis, and the external risks arising from geopolitical instability and economic nationalism. It should be aiming to deploy its considerable economic and political potential to promote advanced and growth-oriented economic, employment and social policies that ensure the fair distribution of growth gains, to the urgent need to combat climate change and to financing a
transition towards a sustainable Europe (in the context of Article 3 of the TEU), and to harnessing the opportunities arising from the rise of artificial intelligence, digitalisation and Industry 4.0. All of this requires a greater budgetary effort. The EESC, in accordance with the European Parliament's position (1), proposes that the expenditure and revenue figure reach 1.3% of GNI. The proposed level of commitments of 1.11% of the EU's GNI is too modest to credibly deliver on the political agenda of the EU.

1.3. In line with the EESC opinion on the reflection paper on the future of EU finances (2), the EESC reiterates that Europeans need more (and better) Europe if the political crisis in the EU is to be overcome. The powers and financial resources currently allocated to the EU have been increasingly misaligned with the concerns and expectations of Europeans.

1.4. The EESC recognises the improvements that the Commission's proposal introduces in the structure, flexibility and capacity to promote synergies, as well as the increase in the percentage of revenue from the EU’s own resources. However, the latter is insufficient. The revenues, in the Commission's MFF post-2020 proposal, only include a part of the proposals of the High Level Group on Own Resources (HLGOR) and the European Parliament (EP) that advocate a wider range of further sources of own resources.

1.5. While understanding the reasons for the Commission proposal, the EESC nevertheless expresses its disagreement with the reduction, at constant prices, of 12% of the amount of the European Regional Development Fund (ERDF) and 46% of the Cohesion Fund (CF) in the proposal for the MFF 2021-2027 with respect to current budgets.

1.6. The EESC disagrees with the reduction in real terms of 6% in the proposed commitment for the European Social Fund (ESF+), especially given the recent inter-institutional proclamation of the European Pillar of Social Rights (EPSR) and the objective of quality job creation in November 2017. In line with its recent opinion on the Financing of the European Pillar of Social Rights (3), the EESC would have expected that the principles of the EPSR and the need for its implementation, especially concerning employment, should have constituted one of the guiding lines in the proposed allocation of planned commitments in the next MFF. A specific programme should be established to assist Member States to implement the Gothenburg Declaration on the European Pillar of Social Rights in order to support them in their efforts to pursue reforms to stimulate the creation of quality jobs in the context of sustainable development.

1.7. The EESC considers that the financing of cohesion policies (the sum of ERDF, CF and ESF) should be maintained in the MFF 2021-2027, at least with the same resources, at constant prices, as in the current financial framework.

1.8. The EESC welcomes the Commission’s mentions of key strategic investments that hold the key to Europe’s future prosperity and its leadership on the global Sustainable Development Goals (SDGs). Nevertheless, the EESC strongly believes that the SDGs and, more particularly, Agenda 2030 should have been mentioned in a more prominent manner, as Agenda 2030 is definitely an overarching strategy for the EU for the years to come.

1.9. The Committee recognises the substantial increases in commitments for Environment and Climate Action (+46%). However, the Committee, having endorsed the UN programme for sustainable development to 2030 and supporting the objectives of the EU to contribute to the transition towards a low carbon economy by 2050, also notes the lack of ambition in the share of the budget dedicated to the transition towards sustainable development and against climate change.

1.10. The EESC thinks that, although establishing an investment stabilisation mechanism for euro area members hit by country-specific shocks within the EU budget is a step in the right direction, the planned commitments both in terms of loan guarantees and in terms of subsidies towards interest payments for the above loans are far too low to make a difference during a crisis. This unique and limited programme of the possible budget for the euro area is not part of any EMU reform strategy that the post 2020 MFF mentions.

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(2) OJ C 81, 2.3.2018, p. 131.
1.11. The EESC questions the proposed cuts (-15% in real terms comparing EU-27 including the EDF between 2014-2020 and 2021-2027) in planned commitments for the common agricultural policy (CAP). These cuts will make it impossible to implement a model of sustainable rural development, a global objective of the new reform of the CAP, and other objectives included in the Commission’s recent communication on the future of food and agriculture.

1.12. The EESC commends the European Commission for the proposition of a basket of new own resources. However, it also thinks that the current proposals are not likely to result in sufficiently high autonomous, transparent and fair own resources. The EESC is, however, in favour of a speedy implementation of a coherent reform of the system such as to increase the share of revenue from own resources and to ensure that methods of raising revenue complement and reinforce the EU’s policy objectives. This reform should be informed by the recommendations of the High Level Group on Own Resources and the European Parliament. The Committee draws the attention of the European institutions to the complexity of making all these own resources operational in the period 2021-2027.

1.13. The EESC hails the proposed elimination of rebates (or cheques), to countries that had been making large contributions to the financing of the EU budget.

1.14. The EESC supports the proposal to make the receipt of EU funds by the Member States conditional upon respect for the principle of the rule of law, a fundamental pillar of values of the Union according to Article 2 of the Treaty on European Union (TEU), and thinks that this conditionality could be extended to the other principles linked to the Rule of Law contained in the EU Treaties. It therefore asks the Commission and the EP to study this possibility.

1.15. The Committee welcomes the support for investment provided through the InvestEU guarantee and the envisaged involvement of other partners, such as national promotional banks and institutions or international financial institutions (e.g. the European Bank for Reconstruction and Development EBRD) but regrets that the level of resources is only sufficient to ensure a continuation of past levels of EIB (\(^4\)) lending, and does not take into account the large EU investment deficit. The Committee also calls for the implementation of changes in the operation of InvestEU to ensure that relatively more funds are channelled towards the lowest-income countries. EU programmes should include promoting convergence, rather than divergence, as a clear aim.

1.16. The Committee expresses its concern that a rigid interpretation of the terms of the Stability and Growth Pact and other macroeconomic conditions, as well as of the co-financing requirements for cohesion policy funds, makes it difficult for the EU Member States in most need to access this funding as necessary.

1.17. The Committee welcomes the proposed large increases in programmes for research and development of the digital economy and society and stresses the necessity for a well-defined strategy to connect innovation with a European sustainable industrial policy based on high quality jobs by, among other things, facilitating the collaboration between academic research, the industrial sector, the social partners and civil society organisations.

1.18. The EESC welcomes the proposed changes related to the significant increases in real terms for programmes under the Migration and Border Management and Neighbourhood and the World instruments. The adoption of a common asylum policy, based on compliance with international law and solidarity towards refugees and between States, is imperative and the establishment of an EU migration policy is also urgent. The EESC insists these issues be paid preferential attention in MFF implementation.

1.19. The Committee reiterates that the European Semester should be at the centre of implementing EU budgets, using as much as possible the flexibility of the new MFF. A reinforced participation of the social partners and civil society in the European Semester will be necessary for a more effective and democratic implementation of the Semester guidelines and for connecting the national and European spheres.

1.20. The Committee urges the EU institutions and the governments of the Member States to intensify the work in relation to the post-2020 MFF, so that it can be approved, according to the planned timetable, before the next European elections.

\(^4\) European Investment Bank.
2. The European Commission's proposal for the Multiannual Financial Framework 2021-2027

2.1. This EESC opinion concerns the package presented by the European Commission on 2 May 2018. This included a communication on the MFF (5), four proposals for four Council Regulations (6) and a proposal for a Council Decision on the system of own resources (7).

2.2. The proposed commitments appropriations ceiling has been set at EUR 1,135 billion for 2021-2027 (in 2018 prices and including the European Development Fund (EDF)) or 1.11% of GNI, up from EUR 1,082 billion (excluding the UK contribution) or 1.16% of GNI for the period 2014-2020. The proposed payments appropriations ceiling for the same period has been set at EUR 1,105 billion (in 2018 prices and including the EDF) or 1.08% of GNI, up from EUR 1,045 billion or 0.98% of GNI.

2.3. Among the proposed changes, there are to be significant increases in real terms compared to the 2014-2020 (EU-27 plus EDF) MFF for programmes under the headings Single Market, Innovation and Digital (+43% to EUR 166.3 billion and 14.7% of total budget, of which EUR 13.1 billion dedicated to the InvestEU programme), Migration and Border Management (+210%, to EUR 30.8 billion and 2.72% of total budget) and Neighbourhood and the World (+14% to EUR 108.9 billion and 9.6% of total budget). However, real cuts will be significant for Cohesion and Values (-12% to EUR 242.2 billion for the Regional Development and Cohesion policy cluster and -10% to EUR 330.6 billion for Cohesion Policy) and Natural Resources and Environment (-16% to EUR 336.6 billion and 29.7% of the total budget), most importantly for cohesion policy (-10%) and the CAP (-15%).

2.4. On the revenue side, the package includes proposals for additional elements to be considered in the Union's own resources system, while the proposal for a Council Decision suggests the ceiling will be increased for annual calls for own resources for payments to 1.29% of GNI and 1.35% of GNI in commitments, in order to meet the higher financing needs from the integration of the European Development Fund and the financing of new priorities, all while ensuring a sufficient safety margin for meeting financial obligations.

2.5. In addition to the proposed increase, the Commission has advocated changes in the structure of EU financing. The share of traditional own resources is to decrease slightly from 15.8% to 15%, and the national contributions from 83% to 72%, thanks to a planned reduction of gross national income-based contributions from 71% to 58%. A reform in the drawing of value added tax-based own resource is to result in an increase of its share from 11.9% to 14%. New own resources are to be introduced, including contributions from the Emissions Trading System, from the proposed new Common Consolidated Corporate Tax Base — once that can be phased in — and a national contribution linked to non-recycled plastic packaging waste. These new resources could contribute 12% of the total EU budget.

2.6. The European Commission proposes that, in order to receive funds from cohesion policies, Member States have to comply with certain macroeconomic conditions, carry out structural reforms and comply with the requirements of the Stability and Growth Pact. Having completed the latter during the previous years is a condition for receiving aid from the new Investment Stability Function. Also, in order to mitigate the significant cuts advocated in the resources for cohesion policies and for the CAP, the Commission proposes that the percentage of co-financing of projects by the Member States should be increased.

2.7. The proposal for a Regulation on budget protection in the event of widespread deficiencies in the rule of law aims to sanction actions in a Member State that affect or threaten to affect the principles of good financial management or the protection of the financial interests of the Union, in particular those deriving from attacks on the independence of the judiciary. Sanctions may lead to the reduction and suspension of EU payments and financial commitments with the Member State concerned. The sanctions will be adopted on a proposal from the Commission, which the Council can reject by qualified majority.

3. General comments

Political context and general objectives

3.1. Given the challenges and risks, internal and external, that the EU will have to face in the next decade, the EU needs a clear political strategy and a strong budget. In line also with its earlier opinion on the Reflection paper on the future of EU finances (\(^8\)) and with the EP resolution (\(^9\)), the EESC thus proposes that commitments for 2021-2027 should reach 1.3% of GNI.

3.1.1. The financial and economic crisis and its management by European policymakers has left its mark in many European countries in terms of competitiveness loss, economic slowdown, poverty, inequality, rupture of social cohesion and, also, divergences between countries.

3.1.2. The citizens’ distrust of national and European democratic institutions is leading to the growth of political movements that question democratic values and principles and the EU itself. Some of these political movements are now part of certain EU Member States’ governments (or are likely to be in the near future) and have triggered the outcome of the Brexit referendum.

3.1.3. The neighbourhood of the European Union is severely affected, inter alia, by: a growing presence of undemocratic and/or authoritarian governments; the Syrian War and its regional and global implications; the serious political instability and armed conflicts in the Middle East and North Africa and the Sahel, and the African demographic pressure and the migratory movements towards Europe that it produces.

3.1.4. One of the consequences of these factors is the flows of refugees and migrants to Europe, through the Mediterranean. The adoption of a common asylum policy, based on compliance with international law and solidarity towards refugees and between States, is imperative. The establishment of an EU migration policy is also urgent. These issues and the strengthening of development cooperation, in particular with the countries of Africa, will require preferential attention from the MFF 2021-2027. It is largely reflected in the Commission’s proposal, although with a predominance of aspects related to security.

3.1.5. The decisions and the unilateral rupture of very important international agreements by the current US government are contributing to global geopolitical instability and conflict with many European policies, including commercial policy, environmental policy and the fight against climate change, neighbourhood policy and the promotion of peace and prohibition of nuclear weapons, multilateralism in foreign relations and support for the United Nations system.

3.1.6. Europe has to face these risks by making the most of its capabilities and developing its potential, in fields such as research, innovation and technological development, its human capital, the competitiveness of its companies and its economy, and its exporting capabilities. It should also maximise and concretise, within the EU and towards the world, its democratic values and full respect for the rule of law, the values that characterise just, egalitarian and solidarity-based societies, and the defence of peace and multilateralism in international relations. For all of this, too, strong EU budgets are necessary.

3.1.7. The Commission and the EP have made proposals for reform of the EU and EMU that, in greater or lesser measure, promote greater integration. The end of this process is uncertain. The Single Market is not complete yet and this, together with a slowdown in innovations and the growing skills mismatches, puts European competitiveness at risk. The European Council approved, in Gothenburg, a Declaration on the European Pillar of Social Rights (EPSR). Reaching all these objectives will require a significant financial commitment from the EU and its Member States and political commitment in terms of effective and efficient investment of the funds available. Success depends on the active involvement of the social partners and organised civil society in the decision-making process.

3.1.8. The main economic risk for the future of Europe is the investment deficit and lagging behind the world leaders in terms of innovations and their market introduction. The investment ratio, in relation to GDP, is far below its pre-crisis level.

\(^8\) OJ C 81, 2.3.2018, p. 131.
3.1.9. Promoting investment to create sustainable, quality jobs, improving productivity and modernising the economy and companies, boosting industry and innovations, promoting convergence among the Member States; dealing with green and digital transitions; developing the Social Pillar, strengthening social cohesion and eradicating poverty; meeting the objectives and commitments of the Paris Agreements and the UN Sustainable Development Goals (SDGs); these should be the main objectives for achieving a European model of sustainable development. For this a strong 2021-2027 budget is needed with tailored programmes that contribute the maximum of European added value.

3.1.10. Taking these and other aspects into account, the EESC considers that the EU needs ambitious budgets that are instruments of policies that develop a clear strategy for strengthening the Union, with more integration, more democracy, stronger support for the social partners and civil society organisations both in the EU and outside, greater support for companies in facing environmental and digital challenges, a stronger social dimension and more support of rural life. Only in this way can the EU contain and overcome internal centrifugal forces and deal with external geopolitical risks.

The expenditure side of the new MFF

3.2. However, the Commission’s proposal seems excessively geared towards preserving the status quo, embodying a mismatch between the nature and scale of the new challenges facing the EU, and its ambitions, and the resources available to achieve them.

3.3. Article 3 of the Treaty on European Union (TEU) stipulates that the EU must promote sustainable growth, respecting the environment. The climate emergency has now been made a top priority, including for the EESC, and it is a global framework for action not only for public authorities, but also for economic players, workers and citizens. As a result, a broad economic, social and environmental transition must be organised and, above all, financed (10).

3.4. The EESC welcomes the changes in the structure of the budget, with the re-organisation of headings and the consolidation of programmes, and the enhancement of flexibility mechanisms which will allow a more agile MFF while preserving the stability it offers.

3.5. While understanding the reasons for the Commission proposal, the EESC nevertheless expresses its disagreement with the reduction, at constant prices, of 12 % of the amount of the European Regional Development Fund (ERDF) and 46 % of the Cohesion Fund, in the proposal for the MFF 2021-2027 with respect to current budgets.

3.5.1. Evidence suggests that the crisis has led to the re-emergence of divergence in income per capita, especially between north and south (11). Although the share of the EU-27 population living in ‘less developed’ regions (with GDP per capita lower than 75 % of the EU average) has been falling since 2010, that of the EU-27 population living in ‘transition’ regions (with GDP per capita between 75 % and 90 % of the EU average) has been rising. However, this is partly because the share of the EU-27 population living in ‘developed’ regions has been falling due to the effects of the crisis (12). Thus, the convergence that has been taking place, is not all upwards income convergence. Further public investments in health, education and social inclusion, especially at the local and regional level, are needed and should be accommodated through the application of the golden rule that the Committee has recommended in several of its latest opinions: that the investment expenses, in particular those that promote long-term sustainable growth, are not counted as regards fulfilment of the deficit objectives of the Stability and Growth Pact, which will in this way still ensure the long-term sustainability of public finances.

3.5.2. In this context, the EESC notes that economic and social conditions vary significantly between regions with some diverging in recent years, even in relatively richer countries. Cohesion policy should reflect this, by introducing new alternative social indicators, such as employment and target groups’ activity rate, as well as poverty and social inclusion measures, in addition to relative per capita GDP.

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(10) See also EESC opinions NAT/735 European pact for climate financing, rapporteur Rudy de Leeuw and ECO/456 Action Plan for sustainable finance, rapporteur Carlos Trias Pinto. Not yet published.

(11) ETUI/ETUC (2018), Benchmarking Working Europe, Brussels: ETUI.

3.6. The EESC disagrees with the proposed real cuts in commitments for the European Social Fund Plus (-6% in real terms for the period 2021-2027 compared to 2014-2020). The real cut will be greater as the Youth Guarantee will be included in the ESF+. This fund should, in fact, remain at least stable in real terms to 2020 values given that it provides the core financial means through which the EU can support the implementation of the European Pillar of Social Rights, a key to strengthening the EU's social dimension and fostering upwards convergence in social standards. Minimum national co-financing rates should not increase, as that would prevent some Member States from investing in some regions, thereby wasting the opportunities of the European Added Value. The implementation of the EPSR can also promote greater resilience among euro area Member States and, consequently, the functioning of EMU. Joint actions of the social partners at European, national and regional level are an indispensible tool to that end. The EESC therefore regrets that these, unlike in the current programming period, are not explicitly mentioned in the draft Regulation and invites the EC to reinstall the provision.

3.7. The EESC considers that the financing of cohesion policies (the sum of ERDF, CF and ESF) should be maintained in the MFF 2021-2027, at least with the same resources, at constant prices, as in the current financial framework.

3.8. The EESC, in line with its opinion on ‘The future of food and farming’ (13), believes it necessary to proceed with a new reform of the CAP which, maintaining its two pillars, reorients them by channelling direct aid to a much greater extent to arable and livestock farmers, small and medium-sized enterprises and family farms, and that funds for rural development should be used to promote a sustainable model that takes into account the commitments of the Paris Agreements and the United Nations SDGs. Funding social infrastructure in rural communities through the European Agricultural Fund for Rural Development has been a very important aspect of the EU’s active policies against rural depopulation and has served inhabitants of rural areas, farmers as well as small businesses and communities. The significant cuts that the Commission proposes for the CAP (-15%) make it difficult to advance in this direction or to achieve the objectives formulated in the Commission communication on the future of food and agriculture.

3.9. The EESC welcomes the proposal to create a stabilisation mechanism for the euro area within the EU budget. This mechanism will aim at protecting investment spending in euro area Member States in the event of country-specific shocks that put pressure on their public budgets. This is a necessary reform to render the EMU more resilient and to avoid setting off divergence dynamics among Member States.

3.9.1. However, the Committee believes that this mechanism, as proposed, will not provide sufficient stabilisation in the event of a crisis. It would only allow for limited back-to-back loans to affected Member States. The amount of EUR 30 billion is insufficient to allow lending to more than one country simultaneously (14). Similarly, the subsidisation of the interest payments by an amount of up to EUR 600 million per year for these low loans would offer negligible relief to Member States and hence insufficient stabilisation in the euro area. A larger margin under the payment commitments, requiring a higher ceiling of contributions, would be a first step towards a stronger stabilisation capacity.

3.9.2. The EESC expresses its concern that the Commission’s proposals on the next MFF do not contain provisions regarding the reform of the EMU and its governance and the budgetary implications of this, in particular with regard to the creation of the European Monetary Fund, or services or benefits that reach citizens such as unemployment insurance, complementary to that of the States, in times of crisis.

3.10. The InvestEU Fund builds on the previous European Fund for Strategic Investment (EFSI), with the same annual contribution and the same estimates for its effects on total investment. Its four Investments will come under four policy areas (sustainable infrastructure; research, innovation and digitalisation; small and medium-sized enterprises; as well as social investments and skills) that all go in the right direction. The EESC particularly welcomes the fourth one, since it can facilitate the financing of projects in crucial sectors such as skills, education, training, social housing, social innovation, and integration of migrants, refugees and vulnerable people. This commitment to guaranteeing credits from the EIB, and possibly other public banking institutions, is to be welcomed, but it will only be enough to enable a continuation of

(14) See Claey s, G. (2018), New EMU stabilisation tool within the MFF will have minimal impact without deeper EU budget reform, Bruegel Blog, 9 May 2018. According to this analysis, EUR 30 billion was about one third of the amount lent to Ireland during the crisis.
previous levels of credit while some Member States with relatively low income per capita may still not benefit. A bigger effort will be needed in order to close the EU’s investment gap.

3.11. The main objective of cohesion policies is to promote upward economic and social convergence between the Member States. Setting rigid conditionalities can hinder access to funds from cohesion policies to the Member States and regions that need them most, those of lower income or more indebted. What was said by the EESC in its opinion on the MFF 2014-2020 (\(^{15}\)), remains valid: ‘… the Committee is, however, opposed to the idea of applying macroeconomic conditionality to the disbursement of cohesion policy funds’. However, the EESC advocates implementation of cohesion policy under the guidelines established by the European Semester, in which there is enhanced participation of the social partners and civil society organisations, both nationally and at European level.

3.12. The co-financing requirements of the ERDF, the CF and the ESF, rigidly applied, prevented their use during the policy of extreme austerity by some of the countries most in need of its financing, thereby promoting divergence. Today, they continue to limit, in some countries, access to these funds, and may do so more in the future, if the post-2020 MFF increases the co-financing percentage of the Member States. The EESC calls for the criteria for co-financing to become more flexible, so that the economic and financial situation of each Member State is taken into account and that what is stated above in this chapter on investment expenditure in relation to the objectives of the Stability and Growth Pact is also taken into account.

3.13. After the experience of some of the structural reforms imposed or promoted during the period of extreme austerity, it seems logical to be suspicious of making access to cohesion policy funds conditional upon the implementation of the aforementioned reforms in a generic way. The EESC does not oppose reforms, but considers it essential to specify what kind of reforms we are referring to. In several opinions, most recently the one on euro area economic policy 2018 (\(^{16}\)), the EESC defends structural reforms that improve productivity growth, job security and social protection, while favouring investment and strengthening collective bargaining, based on the autonomy of the social partners, and social dialogue.

3.14. The Committee welcomes the proposals for large increases in programmes for Research and Innovation and development of the digital economy and society, as they can form the basis for sustainable and robust increases in productivity, wages and standards of living. It would be very important for there to be a well-defined strategy of connecting innovation with a European industrial policy, from which all Member States could benefit, in particular those with lower levels of development. The participation of social partners and civil society is essential for the framing and application of an efficient industrial policy that is well connected to innovation systems. Furthermore, the current context also demands a solid and strong focus on research in societies, democracy, culture and social transformation.

3.15. It is also necessary to emphasise the 92 % increase in the financing of Erasmus+ (to 26 368 million EUR for 2021-2027), one of the programmes that has contributed the most to European identity.

3.16. The EESC welcomes the increased funds for international cooperation and humanitarian aid, but expresses concerns over the reconfiguration of external action towards security and migration pressure — moving from a more long-term bottom-up, needs-driven and country-owned approach — and definition of priorities, which may leave out the most vulnerable regions. The EESC calls for a commitment to support partner countries’ efforts to implement their own plans to pursue the Sustainable Development Goals (SDGs).

**Financing and own resources in the new MFF**

3.17. With the new MFF, the Commission is proposing some changes to the way in which the EU budget is funded, but these are modest when set against proposals from the High Level Group on Own Resources (HLGOR) and from the European Parliament and when set against the need to fund necessary expenditure. The new proposal provides for a gradual shift towards breaking the EU’s dependence on contributions from the Member States and very gradually moving towards financial self-sufficiency. To this end, a small number of new sources of revenue are proposed.

\(^{15}\) OJ C 229, 31.7.2012, p. 32.
\(^{16}\) OJ C 197, 8.6.2018, p. 33.
3.18. The MFF proposal is modest and unambitious, when the need is for a determined effort around a coherent agenda. This should start from the HLGOR and European Parliament proposals for a wide range of further sources of own resources, leading to a significant shift towards reliance on own resources within the period of the coming MFF.

3.19. The EESC reiterates what was expressed in its opinion on the reflection paper on the ‘Future of EU Finances’ (17), which expressed agreement with the analysis in the final report — ‘Future financing of the EU’ — of the High Level Group on Own Resources (HLGOR) (18), chaired by Mario Monti. It is particularly important that in the MFF post-2020 new revenues consist predominantly of autonomous, transparent and fair own resources. These would reach the EU budget directly without going via the Member States but would not exacerbate the tax burden or further penalise either the most disadvantaged Europeans or SMEs.

3.20. As stated in its opinion on the reflection paper on the ‘Future of EU Finances’ (17) some of the new resources proposed by the report of the HLGOR would provide European added value in terms of revenue, being levied at the most appropriate level both to act on transnational mobile tax bases and to counteract the global impact on the environment: taxing corporations, (CCCTB) (19) especially multinationals, financial transactions, fuels and carbon dioxide emissions.

3.21. As argued by the HLGOR, a corporate income tax based own resource has the ‘advantage of improving the functioning of the single market’. At the same time, the Common Consolidated Corporate Tax Base simplifies and harmonises the rules across the EU and limits the scope of the harmful elements of tax competition.

3.22. A digital services tax could, if properly designed, reflect European value added, as the location used for taxation purposes can be quite separate from the location of transactions, but it is an interim solution.

3.23. The Committee draws the attention of the European institutions to the complexity of making all these own resources operational in the period 2021-2027.

3.24. Contributions that are linked to improved environmental standards and to combating climate change also promise European value added and are closely linked to the EU strategic objective of a sustainable development model. Moreover, only common taxes on energy and environmental damage can ensure fair competition within the single market. In this context the Commission is proposing contributions linked to non-recycled plastic waste and the emissions trading system (EU ETS). Sources of revenue should be sought in charges for other areas of environmental pollution that cause costs beyond a single Member State. Examples include road fuel and airline ticket taxes, as suggested by the European Parliament and the HLGOR and the introduction of a carbon tax. Progress towards deciding on and implementing such new sources of revenue, all consistent with the wider EU policy agenda, should be set in motion rapidly.

3.25. The Commission also proposes a simplification of the current Value Added Tax-based Own Resource, which is currently complex, reflecting differences in VAT rates between countries. Simplification to a single levy rate across all Member States would be welcome. The current proposal offers a small increase in revenue. However, the VAT contribution will remain essentially similar to that linked to GNI levels in that it reflects general economic activity within a Member State rather than specific EU policy objectives.

3.26. The UK leaving the EU gives an opportunity gradually to totally eliminate the system of rebates that grew up to also reduce payments from the UK and some other Member States. This is to be welcomed, as is the return to the EU budget taking 90% of customs revenue, in line with the reduced costs of customs collection in Member States. A small further addition could come from the profits of the ECB (seignorage). However, in total, these new forms of own resources remain too small and too uncertain to justify hopes that they will allow a significant reduction in GNI-linked contributions.

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(17) OJ C 81, 2.3.2018, p. 131.
4. Specific comments

4.1. The EESC supports the proposal that makes the receipt of EU funds by the Member States conditional upon respect for the principle of the Rule of Law, a fundamental pillar of the values of the Union according to Article 2 of the Treaty, provided its implementation does not penalise citizens or individual firms currently benefiting from EU funds. Given that the budget is the main instrument for the implementation of all Union policies, the Committee considers that this conditionality could be extended to the other principles linked to the Rule of Law contained in the EU Treaties, and asks the Commission and the EP to study this possibility.

4.2. Flexibility should be used to the maximum to promote the interconnection of spending programmes for the mutual benefit of policies and funds. For example: CAP and Horizon for the technological modernisation of agriculture in vital rural areas and sustainable agrifarming; Research, Development and Innovation (RDI), universities, Erasmus+ and other programmes for young people; investment and cohesion policies, the European Social Fund and a new European Pillar of Social Rights development programme, that the EESC proposes in this opinion, to promote convergence between Member States; etc. The EESC therefore regrets the proposal to amend the rule N+3 rule to N+2 (20) and invites the EC to reconsider.

4.3. Current evaluations of the implementation of the Juncker Plan (Investment Plan for Europe) cast doubt on claims of its effects in raising investment to the initially predicted levels, still less to levels required to reduce significantly the shortfall in investment compared with the pre-2008 period. Several lowest-income Member States still do not benefit sufficiently from the plan. Appropriate mechanisms must be established to correct this trend, which increases divergence between the Member States. The possibility of combining financing from different funds, for example the Cohesion Fund and InvestEU, should be promoted.

4.4. Strengthening social cohesion and restoring the trust of European citizens go hand in hand. The development of the European Pillar of Social Rights (EPSR) could be an important contributor for both purposes by, inter alia, supporting and giving guidance to the Member States pursuing reforms to create sustainable, high quality jobs of high value added. The EESC proposes establishing a specific EPSR programme within the MFF 2021-2027 on the basis of commitments by the Member States that developed the Gothenburg Declaration. The European Social Fund+ would help finance it, according to a system of indicators that would include, inter alia, unemployment and activity rates, schooling and school failure, GDP per capita, indicators of poverty and social inclusion, both those of a general character, as with regional indicators, and those referring to certain disadvantaged social groups.

4.5. The European Semester should play a leading role in the implementation of the EU budgets, making maximum use of the flexibility of the new MFF — for example, to ensure a strong relationship between cohesion policy and other policies, such as innovation, investment and job creation. To this end, the mechanisms for the participation of the social partners and civil society in the European Semester must be properly implemented so that they know how to connect their national spheres with the European. By supporting the implementation of the European Semester, the Commission and the Council would become directly involved in national political issues. It has to be ensured that neither social rights, the rights of workers, nor those of consumers are curtailed through measures supported by EU-funds.

4.6. Priority is to be given to the efforts that the European institutions and national governments, accompanied by civil society organisations, have to make in order for the post-2020 MFF to have more funding and to rebalance their priorities in the way that the EESC proposes in this opinion. The EESC urges them to intensify their work so that it can be approved, according to the planned timetable, before the next European elections.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(20) A portion of the budgetary commitment is automatically decommitted by the Commission if it has not been used or if no payment application has been received by the end of the second year following that of the budgetary commitment (n+2). Source: Commission.
Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments'  
(COM(2018) 374 final — 2018/0199 (COD))  
(2018/C 440/19)

Rapporteur: Henri MALOSSE

Consultation  
European Parliament, 11.6.2018
Council of the European Union, 19.6.2018

Legal basis  
Articles 178 and 304 of the Treaty on the Functioning of the European Union

Section responsible  
Section for Economic and Monetary Union and Economic and Social Cohesion

Adopted in section  
7.9.2018

Adopted at plenary  
19.9.2018

Plenary session No  
537

Outcome of vote  
196/2/5

1. Conclusions and recommendations

1.1. European territorial cooperation (ETC) is a unique instrument of cohesion policy and one of the very few frameworks in which national, regional and local players from different Member States are systematically called upon to carry out joint measures and exchange practices and strategies. It could be said that a little bit of the ‘soul’ of the European spirit is to be found here. Despite numerous cases of added value and growth-generating investment in projects carried out to date, ex post evaluations have in fact revealed a number of shortcomings. The new proposal for a regulation must take these into account at several levels of action:

1.1.1. Simplification of procedures — The EESC asks that a ‘simplification shock’ be administered as regards the size of projects. Cooperation mainly relates to local activities. It is therefore necessary for simplification to be introduced to project assessment forms and methods, as well as for lump sum/flat-rate procedures to be applied as a key element in the new programming period.

1.1.2. Financial framework — Cohesion policy is a key element of support for the 2021-2027 European strategy, which should be given technical and budgetary support as a matter of priority. The EESC would warn against a reduced budgetary allocation, which would undermine this action programme’s effectiveness, profile and reputation. It therefore calls on the European Parliament to propose an increase in appropriations for cohesion policy, especially for the benefit of European territorial cooperation.

1.1.3. Additionality — The EESC is concerned about the new rules which could bring the EU’s maximum funding rate down from 85 % to 70 %. It asks that the 85 % rate be maintained for small projects, the most vulnerable regions and civil society measures. The EESC also supports greater use of private sector participation and InvestEU Fund European financial engineering for measures in support of the manufacturing sector.

1.1.4. Integration of financial instruments — The EESC asks the Commission to set up a genuine strategy for coordinating and integrating the various financial instruments available under the 2021-2027 Multiannual Financial Framework (MFF). It asks the Commission to submit a communication to this effect soon. European territorial cooperation should be the preferred framework for carrying out this essential coordination.
1.1.5. **Genuine partnership with civil society** — The Commission should make it mandatory to involve the social partners and civil society organisations in both the consultation process and implementation of the measures, because it has been observed that the best results are achieved when civil society is involved. The EESC advocates requiring each operational authority to submit a partnership scheme for involving civil society with an alert mechanism.

1.1.6. **Maintaining and developing thematic concentration** — The trend towards thematic concentration of action and investment priorities is welcomed by the EESC, but it remains to be clarified how to:

— take into account the particular features of areas mentioned in Article 174 TFEU (islands, mountainous areas, rural areas, conurbations, etc.) without losing sight of the need for concentration, which ensures a high profile and effectiveness and prevents a scatter-shot approach,

— put sustainable development and climate action at the heart of all of the issues, and

— genuinely bring Europe closer to citizens by taking more action at a local level.

1.1.7. **Maritime zones and island regions** — Given that island regions are, by definition, in maritime zones, the EESC argues that the latter should continue to be able to submit their projects under both cross-border and territorial cooperation. If necessary, a new priority entitled 'island regions' should be created with its own budget.

1.1.8. **Macro-regional strategies (MRS)** — the EESC deems it vital to broaden the development of MRSs to include new areas (Mediterranean, Balkans, Carpathia, etc.) and to ensure they benefit from greater integration of the new European financial instruments.

1.1.9. **Cooperation with neighbouring countries** — The EESC welcomes the establishment of a single implementation framework with neighbouring countries/non-Member States. It would also stress here the value of involving appropriations from both the ETC and external European funds at the same time. The EESC asks the Commission to ensure that territorial cooperation programmes in this framework are opened up to regions of neighbouring countries, even if they do not have a direct border with the EU, so as to avoid creating disruption in the countries concerned.

1.1.10. **Innovation** — The EESC supports the proposal to attach priority to innovation, with an independent budget and procedures enabling direct access for non-state actors. The EESC nevertheless stresses that innovation also has to relate to societal and social matters.

1.1.11. **Digital component of European territorial cooperation** — Nowadays one of the major challenges for players in European territorial cooperation is to be connected. It is necessary to provide resources and initiatives to reduce the digital divide between regions and between urban and rural areas in regions: developing exchanges of experience, reducing the digital divide between regions on the one hand, and between urban and rural areas on the other.

1.1.11.1. To this end, the EESC recommends for the 2021-2027 period that the digital transformation and the requirements of skills improvement be incorporated into the architecture of all the ETC programmes.

1.1.12. **Taking young people into account** — Taking young people into account in Europe is a key element. The EESC suggests using the Erasmus+ methods of youth exchange — for students, apprentices, jobseekers, people with difficulties — to involve young people in territorial cooperation through specific mobility programmes, vocational training and language learning. The EESC proposes making areas for proposals and measures specifically relating to young people, and carried out by young people, part of cross-border and transnational cooperation programmes.

1.1.13. **Measures to help vulnerable sectors of the population and taking account of horizontal criteria** — The EESC stresses the importance of establishing precise rules on the degrees of obligation to respect in compliance with horizontal Community principles and of setting a minimum threshold to this end (10 % of the measure’s support).

1.1.14. **Civil protection and mitigation of major risks** — The EESC urges the Commission to envisage incorporating this component as a major strand in territorial cooperation and to tie it in with the new fund for defence and civil protection proposed by the Commission for the 2021-2027 MFF.
1.1.15. **Publicity** — Given the importance of programmes supported by ETC, the EESC will support any initiative for obtaining a higher profile for them so as to boost a sense of European citizenship and increase awareness of the concrete measures carried out with EU support. It advocates, inter alia, the establishment of information channels in regions benefiting from cooperation programmes, preferably set up in civil society organisations.

2. **Introduction**

2.1. **Territorial and border cooperation, the soul of the European spirit**

2.1.1. Central to the construction of a common European space, European territorial cooperation (ETC) (Interreg), in all its forms — cross-border, transnational, interregional and opening to neighbouring countries — is the cornerstone of European integration. It helps prevent Europe’s borders turning into barriers, brings Europeans closer together, helps to resolve common problems, facilitates the sharing of ideas and assets and encourages strategic initiatives aimed at common goals.

2.1.2. Articles 174 and 24 of the Treaty on the Functioning of the European Union (TFEU) constitute the legal framework for the implementation of economic, social and territorial cohesion policy, aimed at reducing the gap between regional development levels and consequently at supporting European territorial cooperation.

2.1.2.1. Article 174 stipulates: ‘Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions’. The EESC feels that this article amply warrants particular attention being paid by ETC to these regions and asks the Commission and Member States to ensure that this happens.

2.1.3. A priority objective of cohesion policy, ETC (Interreg) constitutes the framework within which public and private operators at national, regional and local levels in the Member States carry out collective initiatives, exchange good practices and shape development policies both within and outside Europe. However, despite many cases and examples of added value and growth-generating investments in projects carried out to date, some shortcomings related to weaknesses in the framework of the various programmes have certain implications and should be analysed in the new 2021-2027 perspective.

2.1.4. The results of the ex post assessments do in fact highlight several aspects:

— an inadequate working definition of the regions in relation to Article 174 TFEU,

— major difficulties in defining and implementing a coherent intervention strategy resulting from the choice of a bottom-up approach to determining the projects to support,

— a near-total absence of synergy between Interreg programmes and other community programmes likely to strengthen the development effects, particularly Erasmus+, Horizon 2020, the European Fund for Strategic Investments (EFSI), Connect-Europe and COSME, and generally not enough of an impact of these measures or their profile, for civil society or for all categories of the public, particularly women, young people, families, disabled people and the elderly.

2.1.5. Some of these aspects have been taken into account in the new proposal for a regulation, which strengthens the procedures for reducing regional priorities across European regions, including the most remote ones, develops new macro-regional strategies and thematic concentrations, steps up initiatives for boosting innovation as well as several other initiatives which, as a consequence, are the subject of analyses and specific remarks. However, several important points of the Commission proposal are worth improving and clarifying.

3. **Priority topics for the EESC’s recommendations to the Commission**

3.1. **Simplification of procedures — Towards a simplification shock** — The Commission is proposing a considerable array of specific provisions aimed at simplifying the rules for positioning and managing the programmes at all of the levels involved: beneficiaries, Member States, managing authorities, participating third countries and the Commission. The EESC can only endorse this approach. However, this is an initiative presented at every new programming period. The Commission has not gone far enough in this process.
3.1.1. As regards simplification and lump sums/flat rates, the regulation establishes a flat-rate approach to certain expenditure as a key element for the next programming period and further develops certain variables such as staff costs (for all projects below EUR 200 000: a lump sum without a requirement to submit invoices). In doing so, the Commission recognises the need to for administrative simplification and stresses the need for a generalised agreement.

3.1.2. Cooperation mainly relates to local activities. It is therefore necessary to have a programme that is much more open to civil society with radical simplification of procedures and the establishment of small units for information and assistance.

3.1.3. The EESC recommends seeking consistency in relation to the size of projects so that the necessary simplification is introduced in project assessment forms and methods, and minimum lump sum/flat-rate procedures are used for administrative and management activities. The ‘simplification shock’ is vital to allow project organisers to concentrate on the outcome of the measures rather than on time-consuming administrative activities.

3.1.4. In fact, as the Commission wishes, the idea of assessing projects by ‘results’ should be seen through to its logical conclusion and operators should be relieved of their obligation to constantly submit activity reports (currently every 6 months).

3.2. Financial framework — The Commission considers that cohesion policy and its corollary in ETC should remain an essential element of the financial package. The EESC endorses this view. A weakened budgetary allocation would undermine this action programme’s effectiveness and profile, as well as its current reputation. The option chosen as of now is to maintain a stable budget in relation to the last period, against the backdrop of cuts of around 10 % to the overall EU budget. This should enable the same level of support to be maintained for the Intergreg programmes, which is a minimum, but the EESC calls on the European Parliament to propose a substantial increase because the political impact and the impact on the public affected by these measures may be considerable, as long as they are allocated significant resources.

3.2.1. In the new regulation on European territorial cooperation, the rate of co-financing has been reduced to 70 % (from the current 85 %). According to the Commission, this development should lead to a greater financial contribution from Member States and promote better conditions for ownership of projects. The EESC fears that this measure, known as additionality, might discourage private players and the least favoured regions from participating. It therefore asks that the 85 % rate be maintained for the most vulnerable regions in the spirit of Article 174 TFEU. Moreover, a concentration of measures by Europe always ensures a higher profile.

3.2.2. New rules for ‘small projects’ — The new regulation has a clear definition accompanied by new measures and simplified rules: redefinition of technical assistance, removal of requirement for annual reports, flat-rate/lump sum approach for numerous items of expenditure and the right conditions for a swifter start-up for the next period. The EESC deems these measures to be going in the right direction.

3.2.3. As regards the administrative burden for small projects, the prospect of setting up a cross-border institution to manage all administration for a group of ‘small projects’, complementing the lump sum/flat-rate, is also a step welcomed by the Committee.

3.2.4. The EESC appreciates the Commission’s commitment to maximising private involvement in territorial cooperation programmes. The EESC reinforces this stance by suggesting that a minimum threshold be set for the involvement of non-state actors (excluding regional authorities), such as private companies, the social partners, the voluntary sector, social and solidarity economy structures and professional chambers.

3.3. Partnership with civil society — The EESC points out that partnership is a key resource when taking horizontal principles into account. Partnership should be put in place everywhere with civil society, the social partners, local authorities and social inclusion bodies. Against this background, the inclusion of civil society in monitoring committees is stipulated in the regulation. Sites which supply information on the implementation and outcome of programmes also provide for the addition of information on failures and projects which do not give an account of their commitments.

3.3.1. It should be pointed out that once the local authorities are appointed, they tend to ignore all the rest.
3.3.2. Involvement of civil society players should not be confined to the consultation procedures. It is essential to involve them in the implementation of measures and grant them responsibilities in this connection, including by choosing civil society organisations as management authorities.

3.3.3. The EESC proposes that, for each ETC programme, the managing authority should submit a partnership blueprint demonstrating the involvement of civil society at each phase in the preparation, implementation and assessment of the measures concerned. This blueprint should include an alert mechanism put in place to allow civil society players to refer cases to the relevant authority in the event of the partnership principle not being respected.

3.4. **New distribution of territorial cooperation support** — The new ETC/Interreg regulation describes the future action programme in terms of five cooperation components: cross-border; transnational; interregional; maritime; involving the outermost regions; and interregional innovation investments. This approach is consistent, even if the fact of withdrawing cooperation on areas including maritime issues from cross-border cooperation does give rise to questions and considerable concern amongst operators in the regions concerned. The Commission justifies this by explaining that there may be overlaps between several cross-border programmes, especially in the context of maritime cooperation, and that it is committed to developing a comprehensive approach to the programmes in maritime areas, including bilateral cooperation, which will have a greater impact.

3.5. **Maritime zones and island regions** — For the EESC, this approach to maritime issues is understandable where continental regions are concerned, but is not warranted in relation to island regions for whom, by definition, all borders are maritime. Moreover, the EESC has often called on the Commission to pay particular attention to the matter of islands which suffer from structural handicaps recognised under Article 174 TFEU. The EESC therefore proposes to re-incorporate European cooperation measures between islands into cross-border cooperation and/or create a sixth category for this with its own budget, particularly for the benefit of a group of islands that belong to the same sea basin, to foster the exchange of experience.

3.6. **A specific move towards innovation** — A new specific heading is proposed, to operate on the basis of calls for proposals for the development of projects Europe-wide, aimed at going further than merely exchanging good practices, and moving towards comprehensive research action (11% of the Interreg budget). The EESC endorses this approach on condition that it also incorporate societal and social innovation for which cooperation between territories can have a considerable impact on the population concerned, and that it enable the direct participation of non-state actors (researchers, businesses, civil society).

3.7. **Opening to the outermost regions (ORs)** — The Commission is proposing to adopt new measures to enable these regions to cooperate, taking into account their specific position, with reference to the Commission communication on *A stronger and renewed strategic partnership with the EU’s outermost regions* (1). This will be a cooperation component for the ORs, between them and their neighbours (3.2% of the Interreg budget). This clearly identified provision is interesting, but EU funds to support non-Member States which neighbour the outermost regions (essentially the European Development Fund (EDF)) will have to be easily mobilised to complement these measures; this is not currently the case. The EESC calls for coordinated interaction between Interreg and the EDF to be formalised and planned.

3.8. **Cooperation with non-Member States** — The EESC deems it positive that henceforth — in a turbulent international context — an identical framework will be established for measures involving neighbouring countries outside the European Union. As regards neighbouring countries, the existing possibility for regions not bordering these countries to participate in cross-border cooperation should be better exploited so as to avoid accentuating the differences within these countries which benefit EU border regions.

4. **New ideas for consideration**

4.1. **Developing thematic concentration** — The EESC recommends clearly focusing these programmes on measures linked to EU priorities such as those defined in the draft 2021-2027 MFF: innovation, research, greener Europe (energy, the circular economy, etc.); connected Europe (transport, agriculture, etc.); a more social Europe (ESF, ERDF, education, health, etc.); and a more local Europe by means of local development strategies. The specific objectives set out in the regulation as regards social matters, education and healthcare should not be forgotten here. Particular attention should also be paid to local development strategies involving all civil society players.

4.1.1. When it comes to thematic concentration, it is essential that the issues of sustainable development and climate action, the circular economy and renewable energy are placed at the heart of all of the issues and explicitly taken into account.

4.2. **Macro-regional strategies (MRS)** — Macro-regional strategies (Baltic Sea, Danube, Alpine regions, Adriatic and Ionian Seas) are generally deemed to be successful. One particular benefit of ETC is its ability to create the conditions conducive to implementing macro-regional development strategies based on:

— the existence of a high degree of cross-border interactions,

— the correspondence between the funding and the strategic priorities.

4.2.1. These arrangements will strengthen the cooperation programmes, particularly in the transnational and maritime components. Experiments could be carried out fruitfully under the MRS for the Mediterranean (west and east) in conjunction with the sea basin strategies put in place as part of the EU’s maritime measures, as well as an MRS for mountain ranges of the south-east of Europe (Carpathia and Balkans) which, in both cases, extend as far as non-Member States.

4.3. **Digital component of European territorial cooperation** — Today one of the major challenges for players in European territorial cooperation is to be connected. It is necessary to provide for resources and initiatives to reduce the digital divide between regions, as well as between urban and rural areas in regions. Digital developments entail several issues:

4.3.1. **Technical and economic issues for territorial development.** Digital technologies bring with them considerable capacity for territorial development in the context of new industrial developments, a more collaborative society, the emergence of new forms of cooperation at work and new means of harnessing local resources.

4.3.2. **An important social issue which affects the development of skills amongst the population and in the regions.** It is vital to develop investment in skills and the usage thereof and not allow the digital social divide to widen. Digital developments are creating a new area of discrimination, in particular rooted in the limited capacity of poorer sections of the population to access the necessary equipment because of their standard of living and cultural aspects related to educational levels and age.

4.3.3. **Account should be taken of the fact that the digital sector is as much capable of constituting an additional factor of exclusion for certain categories of the public as it is of facilitating people’s access to their rights.** This alone leads the EESC to ask the Commission to provide for educational measures in ETC activities, in coordination with local and regional players.

4.3.4. Moreover, the EESC proposes that a large part of innovative measures be devoted to digital matters with calls for specific proposals including the exchange of experience and cooperation in the regions in those domains, with — as a priority — the inclusion of those sectors of the population which are the most deprived and the most vulnerable. This is essential for the regions in the context of the new industrial developments, a more collaborative society, the emergence of new forms of cooperation at work and new means of harnessing local resources. The Commission has presented a draft budget for the 2021-2027 period. Does the budget sufficiently incorporate this digital aspect? If this is not the case, it is not adequate.

4.3.5. **Digitisation and artificial intelligence** — It is essential that the Commission equip itself with tools of digitisation and artificial intelligence for the establishment and evaluation of future programmes (big data, new technologies and investment funds).

4.3.6. The Commission itself feels that the assessment of the impact of EU measures and programmes depends on the prevailing ‘state of mind’. The outcome of a project might sometimes be less important than the way the results are obtained and it is difficult to find indicators (qualitative as well as quantitative ones) to assess that.

4.3.7. The EESC urges the Commission to seek better indicators to assess the immediate results and impact of the programmes and projects.

4.4. **Taking young people into account** — Taking young people into account in Europe is a key element. The EESC suggests using the Erasmus+ methods of youth exchange — for secondary school pupils, students, apprentices, jobseekers, people with difficulties — to involve young people in territorial cooperation through specific mobility programmes, particularly for vocational training and language learning. The EESC’s thinking relates to several non-contradictory possibilities for ensuring that the concept of a region takes on meaning for young people.
4.4.1. The EESC proposes that a certain percentage of ETC envelopes be earmarked for measures for and by young people. In parallel, as part of the future Erasmus+ after 2021, the Commission could opt to devote a share of Erasmus+ to initiatives aimed at specific areas of a region.

4.4.2. In addition, 10% of one or several Interreg components should be earmarked for Erasmus-type mobility and an identical percentage for the budgetary envelope for projects managed under Erasmus+ organised within the EU. Priority could be attached to regions beginning to take real shape, such as a MED macro-region, for example, and/or — as an experiment — to regions in the process of being set up and developed, such as an East MED macro-region.

4.4.3. It is therefore necessary to include one or several sets of specific proposals and measures for young people, carried out by the latter, in cross-border and transnational cooperation programmes. These sets of proposals and measures should facilitate and support the development of straightforward cultural exchanges into the promotion of measures on categories other than those which traditionally benefit from Erasmus+: youth movements and the creation of associations to combat social exclusion and inequalities and to integrate the most vulnerable sections of the population (disabled); action to protect the climate; initiatives to help welcome migrant refugees; and any other topic coming under education and solidarity.

4.5. Measures to help vulnerable sectors of the population and taking account of horizontal criteria — On the account to be taken of vulnerable sectors of the population at all levels when devising and implementing cooperation programmes, particularly in the selection of projects, the Commission’s position is clear as regards absolutely necessary compliance with horizontal Community principles.

4.5.1. A question nevertheless arises about the rules and regulations on this matter as part of ECT, which does not set any quotas. The EESC proposes that a minimum threshold be set for cross-border cooperation (10%).

4.6. Civil protection and the mitigation of major risks — These aspects, which are part of the new European fund for defence and civil protection, as proposed by the European Commission under the 2021-2027 MFF, constitute a major strand with implications for territorial cooperation. We are thinking here, for example, of the prevention and combating of forest fires in the Mediterranean and of flooding in more northerly regions. These are issues where cooperation beyond national borders is clearly needed, and which directly affect people’s lives.

4.6.1. The EESC therefore recommends that special attention be incorporated in ETC with the possibility of coordination between several funds and that precise recommendations be addressed to authorities in charge of the programmes in order to raise their awareness about the challenges and opportunities of this issue for their territories. Calls for proposals for demonstration could be launched in this connection so as to create peer pressure between regions.

4.7. Integration of different European instruments — The EESC feels that this proposal does not do enough to incorporate the opportunities for synergy between ETC and other current or future EU financial instruments, particularly in terms of youth exchange, digital networks and the digital agenda, research and development, investment, civil protection and steps to mitigate major risks. It urges the Commission to remedy this.

4.7.1. ETC is an appropriate framework for ensuring complementarity between the different European instruments, based on requirements on the ground:

— investments by SMEs, if Interreg measures are successfully combined with the new InvestEU fund proposed by the Commission under the 2021-2027 MFF,

— networks (infrastructure, digital, energy) with the Connect Europe Facility,

— external actions (EDF, neighbourhood policy),

— civil protection funds,

— Erasmus+,

— Horizon Europe (currently Horizon 2020),

— LIFE (environment and climate action),

— European Social Fund,

and others.
4.7.2. The Commission’s proposals remain vague on this point. The EESC urges the Commission, as part of its proposals on the 2021-2027 MFF, to present a communication on the incorporation of financial instruments.

4.8. **Publicity** — Interreg is one of the main means of boosting a sense of European citizenship. It is now time to raise the profile thereof so that people become aware of the EU’s actions. The Commission should issue a publication on the use and achievements of the Interreg programme and ensure that this gains publicity, so that the public is made aware of the concrete measures carried out with EU support. Given the importance of this matter, the EESC proposes that information and cross-border/regional cooperation channels be set up for this purpose, preferably in civil society organisations.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context’

(COM(2018) 373 final — 2018/0198 (COD))

(2018/C 440/20)

Rapporteur: Etele BARÁTH

Consultation: European Parliament, 11.06.2018
Legal basis: Articles 175 and 304 TFEU
Section responsible: Economic and Monetary Union and Economic and Social Cohesion
Adopted in section: 07.09.2018
Adopted at plenary: 19.09.2018
Plenary session No: 537
Outcome of vote: 195/1/3

1. Conclusions and recommendations

1.1. The EESC welcomes the proposal for a regulation presented by the European Commission on a mechanism to resolve legal and administrative obstacles in a cross-border context (hereafter ‘the mechanism’). In the EESC’s view, the proposal reflects a new approach and is likely to strengthen the opportunities for cooperation based on subsidiarity between different Member States, and to contribute to more balanced and sustainable socioeconomic development of border regions and to the growth of EU GDP.

1.2. The EESC considers the argument set out in the proposal to be correct, since, although there are currently several institutional instruments supporting these regions (in particular INTERREG and the EGTC), they do not have the necessary powers to take such legal measures.

1.3. The EESC believes that the implementation of the draft regulation may contribute to the removal of historic obstacles, to the dissemination of day-to-day European practice and to strengthening the sense of European citizenship.

1.4. The EESC encourages the European Commission to clarify all the questions likely to generate legal uncertainty so that a process perceived as complex and offering extensive and excessive guarantees will not have a deterrent effect on potential users of the legislation. It is essential to establish clearly how to encourage two neighbouring Member States to cooperate where their project designs differ or where their approaches are generally different.

1.5. The EESC underlines the importance of continuously monitoring the correct application of the regulation, as it does not regulate solutions, but the process itself, and could offer a framework for countless opportunities for cooperation.

1.6. The advantage of the draft regulation is that it harmonises rather than standardises, and the definition of its territorial scope therefore constitutes a key element of its applicability (see point 2.7.4).

1.7. The proposal for a regulation works on the principle that, in order to solve a given problem, one solution would be to apply the legislation in force on the other side of the border. However, in many cases this approach is not possible. There may be no legislation on either side of the border to help resolve a given problem; the solution may then be along the lines of a model provided by a third country. A mechanism should be proposed to deal with such a situation.
1.8. The EESC welcomes the coordination introduced by the European Commission, and is counting on the Cross-border Coordination Points to disseminate existing good practice (cross-border programmes, etc.) and to regionalise the initiatives (e.g. consistency with integrated macro-regional urban development strategies). To this end, the Committee advocates harnessing civil society organisations’ expertise and capacity for coordination (see point 2.14.2).

1.9. The draft regulation can contribute to further strengthening innovative and responsible European public administration, but the EESC considers it necessary to impose information requirements on participants in order to highlight the opportunities for cross-border cooperation, and it proposes that participation in the process be encouraged and made more attractive by offering e-government facilities.

1.10. The EESC calls for attention to be paid to the significant imbalance which could exist between the potential initiators, which should be compensated for by providing support to facilitate the participation of the partners who are initially the most disadvantaged.

1.11. It is important to avoid any possibility for backward steps in cross-border initiatives and legal practices. Particular attention should be paid to ensuring that none of the parties are penalised or suffer any detrimental effects as a result of such cooperation.

2. General comments

2.1. The EESC welcomes the initiatives aiming to eliminate barriers to the single market and contributing to the achievement of its four fundamental freedoms (1). The EESC considers that the proposal on the creation of a cross-border mechanism, which reflects the effective work of the Luxembourg presidency, is a further step in this direction.

2.2. The European Union has 40 internal land border regions, covering 40% of its territory and nearly 30% of its population. 1.3 million people cross a border each day to work (2).

2.3. These border crossings can create difficulties in terms of employment, improving healthcare, the use of services offered by State institutions and the provision of emergency services. The non-recognition of tax and pension systems and other rights and standards, as well as the absence of joint emergency services, could cause serious problems. Most of the remaining barriers arise from divergent national legislation on the two sides of a border, incompatible administrative procedures or simply the lack of joint territorial planning (3).

2.4. However, as a general rule, border regions fare less well economically than the other regions of the same Member State. Access to public services such as hospitals and universities is generally less easy in border regions. Individuals, businesses and public authorities in border regions experience particular difficulties when it comes to navigating between two different legal and administrative systems. Researchers from the Polytechnic University of Milan have demonstrated that the elimination of the current administrative barriers would boost EU GDP by around 8% (4).

2.5. With regard to the social dimension of this challenge, the EESC feels that it is especially important for mechanisms to be put in place that, through the removal of administrative barriers, will allow citizens to freely choose their employment and will support the development of infrastructure and services of general interest.

2.6. From an economic point of view too, the approach taken by the proposal, which aims to further reduce administrative burdens in the interest of both employers and workers, is welcome.

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(4) Camagni et al., Quantification of the effects of legal and administrative border obstacles in land border regions, European Commission, Brussels, 2017.
2.7. Due to their peripheral location, border areas are often less favoured, both economically and socially (5). Such an initiative could make a valuable contribution to strengthening territorial cohesion, which aims to ensure the harmonious development of regions, and to enable their citizens to make the most of regional strengths. In accordance with the Lisbon Treaty (6), the EESC is of the view that this kind of diversity can be turned into an advantage that contributes to the sustainable development of the EU as a whole.

2.7.1. The EESC regrets the fact that the Commission has not launched a participatory process which would have led to the adoption of an overarching and integrated strategy for a sustainable Europe in 2030 and beyond (7). It is therefore particularly important to place the new mechanism in its context: the EESC considers that, apart from legal harmonisation, the new cross-border coordination points must also ensure the integration of the initiatives into the various territorial processes.

2.7.2. These include, for example, the territorial strategies at different levels (e.g. macro-regional strategies and integrated urban development strategies) as well as the integration of experience derived from the European Territorial Cooperation programmes, and in particular the experience and results of cross-border programmes.

2.7.3. The strength of the text as it stands, compared with ideas formulated previously, is that it does not exclude the possibility of maritime cooperation (which makes the instrument applicable to dynamic maritime cooperation ventures such as those established in the Greater Copenhagen region and between Helsinki and Tallinn, or the burgeoning Italian-Croatian relations).

2.7.4. Although, according to the interpretation of the legislative proposal, the territorial level of application is NUTS 3, the proposal provides for the application of the mechanism to the smallest possible justifiable territory, which should be welcomed. It is, however, important that the regulation should take account of cases where the territorial scope of application has to extend beyond the proposed administrative limits (for example the radio frequency of ambulances must, where necessary, operate over a wider area).

2.8. As reflected in the new EU budget proposal, protection of the environment has today become an undeniable priority: the Commission is proposing to increase funding for the environment and climate action (8). Clearly there are grounds for welcoming any attempt at a coherent approach to the European ecosystem with the potential to protect nature.

2.9. Just as the European Commission, in its Communication on Boosting growth and cohesion in EU border regions (9) (which, through 10 proposals, highlights ways in which the EU and its Member States can reduce the complexity, length and costs of cross-border interaction and promote the pooling of services along internal borders), the EESC is of the view that cooperation should go beyond legal harmonisation (support for multilingualism, etc.).

2.10. Nevertheless there is concern that the establishment of the mechanism on a voluntary basis will result in further fragmentation of legal practice and the administrative set-up in Europe, and that significant differences will emerge between the practices of the more and less developed Member States. The latter encounter not only different legal barriers but also harder challenges, for example from the economic point of view.

2.11. The EESC is aware of the time-consuming nature of legal harmonisation, but nevertheless encourages the Member States to put in place a structure that is as homogeneous as possible. Overall, it appears that the proposal for a regulation aims to shorten the procedural deadlines in order to protect local actors. However, in view of the complexity of the mechanism and of the lengthy bureaucratic procedures, a strong will to cooperate will be needed if the planned deadlines are to be met.

2.12. The configuration of the new multilevel institutional system also raises certain questions. It is important to define the framework for the operation of these institutions so that the obstacles that arise do not impact on the authorities (insufficient capacity etc.).

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2.13. In this respect, the Committee welcomes the coordinating role of the European Commission, made possible by the establishment in September 2017 of the Border Focal Points (10).

2.13.1. The Committee is nonetheless concerned about the lack of European funding, which could be a problem, especially for the less developed Member States. The Committee therefore considers it important to provide for the possibility of a link between the various funds and the mechanism.

2.14. The EESC particularly welcomes the bottom-up character of the initiative, given that it is local actors — i.e. those who actually have experience of facing these barriers — who are at the origin of the harmonisation procedure.

2.14.1. Since it is they who rally the local players concerned, civil society organisations are particularly well placed to pinpoint local problems and formulate proposals. As a consequence, the EESC believes that their participation takes on particular importance and it advocates harnessing their expertise and capacity for coordination (by, for example, making use of the inter-regional indicators of chambers of commerce or cooperation which already exists between trade unions or organisations of various interests). The Committee deems it to be equally important to take account of the work of regional and national economic and social councils.

2.14.2. It is, moreover, important that Member States give broad support to civil society to ensure that economically disadvantaged actors will also be informed about the opportunities and can benefit from them.

2.14.3. In this connection, the EESC proposes that support should be given to the organisations set up by border regions (such as the Association of European Border Regions, the Mission opérationnelle transfrontalière or the Central European Service for Cross-border Initiatives), in order to promote the interests of border areas, the establishment of contacts and the exchange of experience between the various actors, as well as opportunities for cooperation.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

1. Conclusions and recommendations

1.1. The situation of the cross-border labour market presents significant problems for businesses, workers and Member States, in particular with regard to unfair competition, social dumping, illegal activities and various types of fraud relating to tax and social security. In addition, the lack of information for businesses and workers, poor cooperation between the Member States and the general low capacity of the labour inspectorates have aggravated existing problems and disputes. Despite some steps having been taken, the EU institutions, the President of the Commission, the EESC, the social partners and civil society organisations have spoken of the need to increase and improve efforts to overcome this situation.

1.2. The Commission’s proposal for a regulation setting up a European Labour Authority (ELA) is, if adequately implemented, an important step in the right direction towards improving cross-border mobility, enforcing European and national legislation, fostering cooperation between national labour market authorities and improving access to adequate and up-to-date information, tackling illegal activities and strengthening the internal market, provided that the ELA respects national and European competences and the Member States demonstrate their support and cooperation.

1.3. The EESC supports the Commission’s initiative to help solve the problems relating to cross-border mobility. It notes that the Commission is proposing a regulation to set up a European Labour Authority and stresses that a balanced form of structured cooperation between Member States has been established with the aim of seeking innovative solutions and added value for businesses, workers and national labour authorities and inspectorates, whilst preserving the principle of subsidiarity.

1.4. In general, the EESC agrees with the Commission’s effort to improve cross-border cooperation and to avoid illegal practices. In particular, the EESC highlights points of agreement (see 4.1), puts forward comments (see 4.2) and makes a number of proposals (see 4.3) that it hopes will be considered in order to improve the efficiency of the ELA’s activities.

1.5. The EESC recommends that the Commission take great care when incorporating the various bodies into the ELA, so that accumulated experience and know-how are turned to good use and so as to ensure that there is no overlap with other instruments and structures, ultimately with a view to making sure that the ELA’s action is more effective. The independence of the ELA must be guaranteed by granting it its own resources, enabling it to carry out its tasks. However, the EESC warns that the ELA may experience a shortage of resources, which could compromise its effectiveness. Therefore, while noting these concerns and some which have been expressed about its cost-effectiveness, it is important to ensure that its resources are properly managed.
1.6. The EESC singles out the proposal referring to the involvement of the social partners (see 4.3.3) for special attention. It will be easier to find solutions to the problem of cross-border mobility if the social partners are more actively involved at European, national and sectoral level, which is the objective of this EESC proposal. The EESC proposes that the ELA’s stakeholder group become an ELA advisory board and that the involvement of the social partners in this body be strengthened.

2. Background

2.1. There has been a very significant increase in labour mobility in recent years: between 2010 and 2017 the number of people living or working in a Member State other than that in which they were born rose from 8 to 17 million and the number of posted workers rose by 68% from 2010, reaching 2.3 million in 2016. There are also over 2 million workers in the road transport sector who cross intra-EU borders on a daily basis to transport goods or passengers (1).

2.2. One important aspect of the social situation in Europe is that the poverty rate has not significantly decreased and that it affects 23.5% of the population of the European Union (2). Some of these are people who are inactive and demotivated, people with disabilities, immigrants from third countries, Roma and homeless people, with a number of them living in a different Member State than the one from which they originate. Solutions could be more readily found for these people if cross-border labour markets functioned more efficiently, as this would open up more employment opportunities.

2.3. The European institutions have expressed their views on the issue of labour mobility. The Commission states that ‘concerns remain regarding compliance with and effective and efficient enforcement of EU rules, which risks jeopardising trust and fairness in the Internal Market. In particular, concerns have been voiced in relation to mobile workers being vulnerable to abuse or being denied their rights, as well as businesses operating in an uncertain or unclear business environment and unequal playing field’ (3). The European Parliament underlines the ‘need both to reinforce controls and coordination between and by Member States’, including through strengthening of information exchanges between labour inspectorates, and to actively support the exercise of free movement rights’ (4). The Council has stressed ‘the need to improve administrative cooperation and develop assistance and information exchanges in the context of fighting fraud related to the posting of workers, while emphasising the importance of clear and transparent information for service providers and workers’ (5).

2.4. In his State of the Union address on 13 September 2017, Jean Claude Juncker, the president of the Commission, clearly sums up the European institutions’ position: ‘We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It is absurd to have a Banking Authority to police banking standards, but no common Labour Authority for ensuring fairness in our single market’ (6).

2.5. The EESC has already issued a number of opinions (7) on this topic.

2.6. Despite the adoption in recent years of a number of initiatives and proposals to promote fair labour mobility, they are still inadequately implemented and enforced.

2.7. The current situation, which is characterised by abuses and illegal practices in some Member States, is linked to populism and has fostered the anti-European sentiment and growing protectionism that have emerged in recent years in many Member States.

2.8. The findings show that the rights laid down in the Charter of Fundamental Rights of the European Union are not being upheld, particularly Articles 15, 16, 21, 29, 31, 34, 35 and 45.

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(2) Population at risk of poverty or social exclusion, 2016 (EUROSTAT, 2018).
2.9. In addition, recognition of this situation was one of the main arguments for the Proclamation on the European Pillar of Social Rights, which aims at ensuring the citizens' equal opportunities and access to the labour market, fair working conditions and social protection and inclusion (8).

2.10. The comments from the EU institutions are in line with warnings and reports that the European social partners, trade unions, businesses and a number of national authorities have issued over the years, calling for policies to resolve this issue.

2.11. It is recognised that there are significant differences between Member States in terms of labour inspectorates' tasks and resources; in many cases the number of inspectors is lower than that recommended by the ILO (9). Moreover, the decrease in resources allocated to labour inspection, language barriers and variations in the degree of digitalisation have highlighted the poor knowledge of how cross-border labour mobility operates, leading to the need for activities at EU level and assistance to Member States to overcome these shortcomings and be more efficient and proactive in cooperating and voluntarily subscribing to joint initiatives.

2.12. The results of internet-based open public consultations (10) and internal consultations show that there is a gap, particularly in terms of inadequate support and guidance for workers and businesses in cross-border situations, including incomplete and fragmented information available to the public concerning their rights and obligations, insufficient cooperation and coordination among the national state authorities and inefficient implementation and enforcement of the rules. Targeted consultations yielded varied results. The majority of respondents support the creation of a new Authority that focuses on improving cooperation between Member States by facilitating the exchange of information and good practices. At the same time respondents underline that the new authority should fully respect Treaty based national competencies and should not impose additional reporting requirements. There were also critical voices concerning potential duplication with existing administrative structures.

3. General comments

3.1. The EESC supports the Commission’s efforts to combat illegal activities and fraud relating to cross-border mobility. To this end, setting up a European Labour Authority follows on from the political guidelines of July 2014 on building a more social Europe.

3.2. The EESC agrees with the Commission on the need for effective cooperation between national authorities and for a concerted administrative effort to manage a labour market that is increasingly European and to respond, via the ELA, should it be set up, with a clear mandate respecting subsidiarity and proportionality in a fair, simple and effective manner to major challenges that arise in relation to cross-border mobility (11).

3.3. The EESC supports the view of the Commission that ‘cross-border labour mobility in the EU benefits individuals, economies and societies as a whole’ and that such benefits ‘depend on clear, fair and effectively enforced rules on cross-border labour mobility and social security coordination’ (12).

3.4. Having examined the Commission’s proposal, the EESC considers it to be in line with the following requirements: the principles of subsidiarity and proportionality, the common Parliament and Council agreement on the rationalisation of decentralised European agencies, the better regulation principle and the relationship between the proposed initiative and the Platform on undeclared work.

\(^{(9)}\) According to ILO Convention No. 81, the recommended allocation is one inspector per 10 000 workers in industrialised market economies (ILO 297th Session, November 2006).
\(^{(11)}\) The European Commission lists these challenges as follows: — cases of social dumping, non-enforcement of existing legislation and fraudulent practices in cross-border situations; — inadequate information, support and guidance for workers and employers in cross-border situations concerning their rights and obligations; — insufficient access to and sharing of information between national authorities responsible for different aspects of labour mobility and social security coordination; — insufficient capacity on the part of national authorities to organise cooperation with authorities in other Member States; — weak or absent mechanisms for cross-border enforcement and compliance activities; — the lack of a cross-border mediation mechanism between Member States covering all aspects of labour mobility and social security coordination.
3.5. The EESC believes that the Commission’s decision to opt for an operational solution — namely setting up a new agency based on cooperation between the Member States and building on the existing structures — is, out of the various possibilities considered (13), the right one and responds to actual needs at the current time. It shares the Commission’s view that this way of implementing the ELA — i.e. through regulation, if approved — would provide greater legal security and it is therefore the most appropriate option.

3.6. The EESC considers that, with cooperation and support from all Member States, setting up the ELA can address the significant shortcomings identified above. The EESC underlines that the ELA should focus on improving labour mobility, enforcing the rules, tackling illegal activities and strengthening the internal market by boosting cross-border cooperation between Member States. The more focused the work of the ELA, and the clearer its objectives, the better it will be able to fend off misrepresentations or negative interpretations of its significance.

3.7. Broadly speaking, the EESC supports the Commission’s proposal for a regulation, particularly the objectives (Article 2), tasks (Article 5), the information on cross-border labour mobility (Article 6), access to cross-border labour mobility services (Article 7), cooperation and exchange of information between the Member States (Article 8) and cooperation in the event of cross-border labour market disruptions (Article 14) as these define the ELA’s tasks, which could contribute to ensuring equal labour and social rights in the host country, tackling social dumping, promoting healthy competition between companies and combating fraud relating to cross-border mobility, problems that the Member States cannot resolve alone.

3.8. The EESC believes that the objectives and tasks explain the legitimate doubts raised about the effective functions of the ELA and the nature of its role.

3.9. The EESC believes that the ELA’s activities meet all the conditions needed to make a positive impact, insofar as it will contribute to providing the Member States and social partners with effective operational and technical support to combat illegal activities, abuse or fraud relating to labour mobility. Enforcement of workers’ and citizens’ rights to equal treatment, access to employment opportunities and to social security will be ensured through the provision of relevant information and services to workers and employers, cooperation and exchange of information between national authorities, the carrying out of joint and concerted inspections, and collaboration in the event of disputes and disruption of the labour market with cross-border implications, such as the restructuring of companies affecting several Member States.

3.10. The EESC would like the ELA to be a source of inspiration and encourage growth in the capacity of national authorities, in particular labour inspectorates and their staff, as well as providing information and advice to help European businesses and workers to understand which rules apply in cross-border situations.

3.11. The EESC stresses the importance of new forms of work that result from technological and digital innovation in businesses and the labour market. They will inevitably emerge in situations of cross-border mobility and the ELA will therefore have to take account of this new reality.

3.12. The EESC hopes that the potential synergies resulting from pooling experience, skills, capacity and tasks, and from cooperation planned under the ELA, will be effective, avoiding duplication and lack of clarity, given that:

3.12.1. It will include a number of existing bodies, such as the European Employment Service Network (EURES), the Technical Committee on the Free Movement of Workers, the Committee of Experts on the Posting of Workers, the Technical Commission, Audit Board and Conciliation Committee of the Administrative Commission for the Coordination of Social Security Systems and the European Platform on Undeclared Work.

3.12.2. It will cooperate with existing European Agencies in the area of labour, Cedefop (14), the ETF (15), EU-OSHA (16), Eurofound (17), the Administrative Commission for the Coordination of Social Security Systems, the Advisory Committee for the Coordination of Social Security Systems and the Advisory Committee on Freedom of Movement for Workers.

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(13) SWD(2018) 68 final and SWD (2018) 69 final, Chapter B.
(14) European Centre for the Development of Vocational Training.
(15) European Training Foundation.
(16) European Agency for Safety and Health at Work.
(17) European Foundation for the Improvement of Living and Working Conditions.
3.12.3. However, the EESC hopes and anticipates that this integration and reinforced cooperation will result in effective progress being made in terms of efficiency, and that the good practices and the existing work in the various areas will not be undermined. The EESC notes the good examples in the Benelux countries, the Platform on undeclared work, and the introduction of European identity cards in the construction industry. These initiatives should be safeguarded and replicated as far as possible and, building on these capacities, other innovative initiatives of the same kind can be launched. An example of such innovative initiatives is the creation of a European social security number, to be implemented following the ongoing updating of Regulation (EC) No 883/2004 on the coordination of social security systems(18) and the completion of work for the Electronic Exchange of Social Security Information (EESSI).

3.13. The EESC stresses the importance of providing for the involvement of the social partners in the running and governance of the ELA (Article 24). However, the EESC underlines that the way in which this involvement has been provided for is clearly inadequate. It hopes that this involvement will meet the conditions needed to be effective in providing genuine added value in solving real labour mobility problems.

3.14. The EESC believes that the ELA should respect the principle of subsidiarity and should not be allowed to interfere with the functioning of Member States’ labour markets, particularly regarding their industrial relations and collective bargaining systems, at all levels, with the autonomy of the social partners and with the running of labour inspectorates.

4. Specific comments

4.1. The EESC draws attention to and supports:

4.1.1. The promotion of joint and concerted inspections with national authorities whenever instances of non-compliance, fraud or abuse arise, though these should be in accordance with the legislation of the Member States concerned. These inspections should be voluntary so as to respect the competencies of the Member States. Nevertheless, attention is drawn to the fact that the possible failure to participate on the part of a Member State — which should always be substantiated — could undermine the effectiveness of the ELA’s activities.

4.1.2. The fact that ELA does not have the power to initiate joint and concerted inspections, as this falls within the remit of the national authorities. However, it can suggest that Member States carry out joint inspections when it detects instances of non-compliance with legislation, abuse or cross-border fraud.

4.1.3. The ELA’s assumption of responsibility for the European Job Mobility Portal in collaboration with the Single Digital Gateway, under the framework of the Internal Market Information System (IMI) and the Electronic Exchange of Social Security Information (EESSI).

4.1.4. The ELA’s recognition and encouragement of the autonomy of the social partners and of collective bargaining, and in particular the importance of involving them in order to achieve its own objectives.

4.1.5. The importance of the ELA’s support, particularly in the field of information and technical support to trade unions and businesses, as well as in cases of cross-border labour disputes, thus recognising the key role they play in enforcing legislation.

4.1.6. The ELA’s role in mediating in disputes between national authorities, particularly those relating to social security issues, a process that needs to be clarified.

4.1.7. The fact that the national liaison officers, as a link with the Member States, will certainly make the ELA more effective. However, its operational links with the Member States of origin should be clarified, not only with the authorities but also with the national social partners.

4.1.8. The independence of the ELA must be guaranteed by granting it its own resources, enabling it to carry out its tasks. However, the EESC warns that the ELA may experience a shortage of resources, which could compromise its effectiveness. There are also a number of concerns about its cost-effectiveness and it is therefore important to ensure that its resources are properly managed.

4.2. In view of the role attributed to the ELA, the EESC notes that:

4.2.1. Disputes between national administrations in the area of labour mobility and coordination of social security may be resolved by means of mediation carried out by the ELA upon request by, and in agreement with, the national authorities of the Member States.

4.2.2. The mediation may not call into question possible appeals launched by any of the parties involved to the competent courts.

4.2.3. There is a need to clarify the ELA’s interaction and cooperation with EU agencies and other bodies linked to issues relating to work and to compliance with, and enforcement of, legislation.

4.2.4. Setting up the ELA should not incur additional administrative costs for companies and workers.

4.3. In view of the need to achieve the objectives underpinning the establishment of the ELA, the EESC suggests that the Commission’s proposal for a regulation include the following:

4.3.1. The obligation on Member States to cooperate with the ELA, providing information, assistance and access to national databases in the areas of legislation, social security and taxation has to be made clearer. The way that the costs will be shared out among the various Member States, including for joint inspections, should also be clarified.

4.3.2. The work of the ELA should help combat fraud by working closely, where relevant, with Europol and Eurojust.

4.3.3. Article 24 of the Regulation on the involvement of the social partners should be amended, as it is clearly inadequate, proposing instead that:

— an ELA Consultative Committee be set up, to replace the ‘Stakeholder Group’;

— in addition to what has already been set out in this article, this committee should be tasked with giving its opinion on the activity plan for the duration of the mandate and for the year in question, the activity report and the Management Board’s proposal on the appointment of the Executive Director;

— this committee should be composed of 17 members, 12 from the European social partners (including relevant sectors such as construction, agriculture and transport), 3 from the Commission, the Chair of the Management Board, who will chair the Consultative Committee, and the Executive Director;

— this committee will meet at least three times a year.

4.3.4. The ELA should establish an up-to-date database for the information provided by the Member States, comprising those companies that commit unlawful acts in relation to cross-border mobility.

4.3.5. The ELA should be involved in introducing the European social security number, although the power of initiative resides with the Commission.

4.3.6. The ELA should draw up an annual report on cross-border mobility, with an assessment of risks and potential, particularly in the most vulnerable geographical areas and/or sectors.


The President
of the European Economic and Social Committee
Luca JAHIER
The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 39 (2) of the Rules of Procedure):

**Point 1.1**
Amend as follows:

1.1. The situation of the cross-border labour market presents significant problems for businesses, workers and Member States, in particular with regard to unfair competition, social dumping, illegal activities and various types of fraud relating to tax and social security. In addition, the lack of information for businesses and workers, poor cooperation between the Member States and the general low capacity of the labour inspectorates have aggravated existing problems and disputes. Despite some steps having been taken, the EU institutions, the President of the Commission, the EESC, the social partners and civil society organisations have spoken of the need to increase and improve efforts to overcome this situation.

**Outcome of the vote:**
For: 93
Against: 124
Abstentions: 13

**Point 3.7**
Amend as follows:

3.7. Broadly speaking, the EESC supports the Commission’s proposal for a regulation, particularly the objectives (Article 2), tasks (Article 5), the information on cross-border labour mobility (Article 6), access to cross-border labour mobility services (Article 7), cooperation and exchange of information between the Member States (Article 8) and cooperation in the event of cross-border labour market disruptions (Article 14) as these define the ELA’s tasks, which could contribute to ensuring equal labour and social rights in the host country, tackling illegal practices, social dumping, promoting healthy competition between companies and combating fraud relating to cross-border mobility, problems that the Member States cannot resolve alone.

**Outcome of the vote:**
For: 96
Against: 121
Abstentions: 11
Opinion of the European Economic and Social Committee on 'Proposal for a Council Recommendation on access to social protection for workers and the self-employed'

(COM(2018) 132 final)

(2018/C 440/22)

Rapporteur: Giulia BARBUCCI

Referral
European Commission, 14.5.2018

Legal basis
Article 292 in conjunction with Article 153(1)(c), Article 153(2), subparagraph 3, and Article 352 of the TFEU

Section responsible
Employment, Social Affairs and Citizenship

Adopted in section
19.7.2018

Adopted at plenary
20.9.2018

Plenary session No
537

Outcome of vote
148/39/32


1. Conclusions and recommendations

1.1. The EESC, in accordance with fundamental international instruments, believes that each person should have the right to a decent life, social protection and protection against all major risks at work and throughout life, including healthcare and the right to a dignified retirement in old age. A proper coverage of workers in non-standard forms of work and the self-employed would contribute to this objective in line with the principles outlined by the European Pillar of Social Rights which now have to become reality. Their access and contribution towards healthcare, maternity and parental, handicap and old age benefits should be guaranteed.

1.2. The EESC recalls that access to social protection systems is a key element for fairer societies and a fundamental component of a productive, healthy and active workforce. Restoring social sustainability (1) as a principle in the definition and implementation of EU policies, with the broader objective of creating a level playing field in the social area, where everyone under the same rules and at comparable conditions can enjoy access to social protection, should be a shared objective of institutions at all levels, organised civil society and social partners.

1.3. The EESC recommends that Member States implement the Recommendation where needed and report, by way of specific action plans based, among other things, on the gaps outlined by the impact assessment of the European Commission (supporting the Recommendation) and with full participation of social partners and organised civil society.

1.4. The EESC welcomes the key expected impacts of the implementation of the Recommendation as they will be beneficial for citizens, workers and companies: increasing the mutualisation of risk, income security, labour market dynamism, higher productivity, better allocation of resources, and reducing insecurity and poverty for individuals, among others.

1.5. The EESC believes that a comprehensive solution to the problems related to the recognition of social security entitlements for workers in the new forms of employment could be found by overhauling the way in which the system is funded. The EESC calls on the Member States to explore ways of funding social security systems that not only ensure the sustainability of those systems, but also meet the need to provide access to them to people engaged in the new forms of work (2).
1.6. The EESC recommends that initiatives undertaken in the framework of the Recommendation should provide adequate benefits and provisions, including safety nets for those who are not able to reach minimum entitlement thresholds, in particular for those who are unable to work and their families. The EESC regrets that basic income has been discarded from the Recommendation, as stated in the Commission Staff Working Document — Impact Assessment (3). The EESC as early as 2013 called for a European directive establishing a European minimum income, considering that this ‘would help to ensure economic and territorial cohesion, protect the fundamental rights of the individual, guarantee a balance between economic and social objectives and redistribute wealth and income fairly’ (4).

1.7. Age and gender play a significant role in the exclusion of people from social protection schemes: these factors should be particularly taken into account when defining actions in the spectrum of the Recommendation.

1.8. The EESC notes that effectiveness in the coverage and access of the systems should be provided for and pursued, above all when action at the national level is defined and implemented: transferability of social rights should be taken into account when individuals transit between different labour market employment relationships, and across schemes and rights aggregations.

1.9. The EESC believes the regulatory complexity and other administrative aspects should be addressed in order to ensure full transparency in order to increase people’s awareness and knowledge of their obligations and rights; this could also be done by enhancing the quality of statistical data (disaggregated by type of employment relationship, age, gender, disability status, nationality, etc.).

2. Introduction

2.1. The Recommendation on social protection is one of the initiatives undertaken by the Commission under the European Pillar of Social Rights. The Recommendation and its leading principles are in line and coherent with several of the twenty key principles of the EPSR and of its Staff Working Document. In particular, principle twelve states that ‘regardless of the type and duration of their employment relationship, workers and, under comparable conditions, the self-employed, have the right to adequate social protection’ (5).

2.2. The main objective of the initiative is to grant every worker, especially those in atypical forms of work and the self-employed, to concretely and effectively access social protection measures. It also aims at supporting and complementing Member States in closing gaps and granting fair and proportionate access to social protection to all people at work, independently of their employment status (6).

2.3. Firstly, the Recommendation aims at ‘eliminating or reducing obstacles which impair social protection systems from providing people with adequate social protection regardless of their type of employment relationships or labour market status, while respecting Member States’ competences in designing their social protection systems’ (7).

2.4. The Recommendation also aims at ensuring that an adequate level of social protection is accessible to all: ‘income and time thresholds (qualifying periods, waiting periods, minimum working periods, duration of benefits) may constitute an unduly high obstacle to access social protection for some groups of workers in non-standard employment and for the self-employed’ (8).


(6) See also ILO Recommendation 202, which provides guidance for establishing and maintaining social protection floors as a core element of their national social security systems.

(7) See Recommendation on social protection, pages 8, 14, § 10, 15 § 4, 23 § 8, 10.

(8) See Recommendation on social protection, page 17 § 18.
2.5. The EESC regrets that basic income has been discarded from the Council Recommendation. A recent OECD study \(^{9}\) stated that: 'In view of rapid changes in the labour market, the ongoing discussions on basic income do, however, provide a valuable impetus about the type of social protection that societies want.' The EESC previously stated \(^{10}\) that a 'European minimum income will help to ensure economic and territorial cohesion, protect the fundamental rights of the individual, guarantee a balance between economic and social objectives and redistribute wealth and income fairly'; it also called for the adoption of a framework directive and 'to examine funding possibilities for a European minimum income'.

2.6. Measures and principles outlined in the Recommendation will on the one hand aim to guarantee **access to social protection for all people in employment** (in particular for workers in non-standard forms of work and the self-employed), and on the other, it will make sure that **adequate social protection is guaranteed** in all circumstances.

2.7. European and national social partners have extensively tackled the issue of ensuring adequate social protection access to all workers in previous agreements, joint declarations and national collective bargaining. For example, the preambles of European social partner agreements on fixed term contracts and on part-time work note the need to 'ensure that social protection arrangements are adapted to fit with evolving flexible forms of employment'. In their work programme 2015-2016 \(^{11}\), the European social partners noted the need to 'ensure the sustainability and accessibility of social protection systems for all citizens'.

2.8. The European social partners expressed concerns in their 'In-depth employment analysis' negotiated in 2015 \(^{12}\), where they recommended that 'Member States and the European Commission should better work together to tackle corruption, tax fraud and tax evasion, which have a detrimental effect on welfare systems, responsible businesses and individuals'. Furthermore, they recommended that Member States should review where there are shortfalls in the sustainability and adequacy of their social protection systems, in collaboration with social partners, and strive to ensure that such systems continue to meet the needs of people in the future, in particular those most vulnerable and at risk of social exclusion \(^{13}\).

3. General remarks: Context

3.1. A changing world of work: **digitalisation, demographic change, energy transition, globalisation and new forms of work** can bring both opportunities and challenges for governments, organised civil society and social partners.

3.2. Changing labour markets: structural labour market reforms have diversified the labour markets and some contractual arrangements are at the moment excluded from basic social protection measures in some Member States. There is an increasing **variety of contractual arrangements and significant national differences** in terms of context and systems: in 2016 in the EU 14% of workers were self-employed, 8% full-time temporary employees, 4% part-time temporary employees and 13% part-time permanent employees \(^{14}\).

3.3. There are different social protection systems in different countries but all are facing **similar challenges**: transformation of the labour market and changes in the legislation; ageing of the workforce and tendency to increase statutory retirement age; low participation of young people and women in the labour markets in terms of quality and quantity; inclusion of people who are furthest/most likely to remain excluded from the labour markets: digitalisation and new forms of work. Some social protection systems are constructed in such a way that social protection contributions are part of the worker's salary. This needs to be taken into account when tackling these new challenges.

\(^{9}\) Basic income as a policy option: Technical Background Note Illustrating costs and distributional implications for selected countries, OECD, 2017.

\(^{10}\) OJ C 170, 5.6.2014, p. 23.

\(^{11}\) http://resourcecentre.etuc.org/EU-social-dialogue-5.html

\(^{12}\) 2015 In-depth employment analysis — ETUC, BUSINESSEUROPE, CEEP, UEAPME.

\(^{13}\) See footnote 12.

\(^{14}\) EUROSTAT 2016.
3.4. The gender impact on access to and remaining in the labour market as well as inclusion/exclusion in the access to social protection needs to be assessed. Along with young people and migrants, women are often over-represented in new forms of work (\(^{15}\)) with knock-on effects on social protection entitlements.

3.5. Age is also an important factor in terms of access to social protection: younger generations tend to be more subject to atypical forms of work (‘the proportion of younger workers aged between 20 to 30 years old in temporary contractual arrangements or with “other or no contract” is twice that of the other age group’ (\(^{16}\))). Transitions from education into standard forms of employment have become longer and may produce a scarring effect both in terms of access to social protection and of future pension entitlements including due to the extreme fragmentation of the working career (\(^{17}\)).

3.6. Gaps in access to social protection, due to labour market status and to the type of employment relationship, may hinder the take-up of opportunities to move from one labour market status to another, if this means losing entitlements, and ultimately may result in lower labour productivity growth. Thus, they may also not be supportive of entrepreneurship and hinder competitiveness and sustainable growth.

3.7. These gaps also may result in abuse of employment statuses and create unfair competition between companies that continue to contribute to social protection and those that do not contribute.

3.8. In the long run, it is the social and economic sustainability of national social protection systems that is at stake, especially given the current demographic trends and unemployment rates.

4. Specific remarks: Gist of the Recommendation

4.1. The EESC notes that previous legislation at European level (amongst others Directives 2010/41/EU, 2014/50/EU, (EU) 2016/2341) has attempted to close the gaps in social protection systems, but preliminary findings — for instance on Directive 2010/41/EU — show that it has failed in some cases to ensure effective access to social protection by the self-employed (\(^{18}\)).

4.2. The EESC also notes that the European Commission insists in the 2018 AGS that income replacement via social protection is crucial to close inequality gaps, foster social cohesion and inclusive growth (\(^{19}\)).

4.3. The number of self-employed in Europe has overall slightly decreased (\(^{20}\)) in the last few years. One of the reasons behind this is the insufficient/lack of level of protection of these workers in the event of illness and other reasons connected to personal life (maternity, paternity, family care, etc.). Thus, a proper level of protection could lead to more and better self-employment. Nevertheless, it is absolutely crucial that institutions at all levels counter all forms of bogus self-employment, including transnationally.

4.4. The EESC welcomes and supports in this respect the decision included in the Recommendation to go further than initially proposed in the impact assessment, i.e. to recommend ‘extending formal coverage on a mandatory basis to all workers and ensuring that the self-employed have access to social protection by extending their formal coverage on a mandatory basis for sickness, healthcare benefits, maternity/paternity benefits, old age and invalidity benefits, as well as benefits in respect of accidents at work and occupational diseases and on a voluntary basis for unemployment benefits only’. The EESC believes that low rates of enrolment in voluntary schemes by the self-employed (less than 1% to 20%), where they exist, justify enhanced action to promote wider coverage and protection.

\(^{15}\) ILO: INWORK Issue Brief No 9, May 2017.
\(^{16}\) See Recommendation on access to social protection, pp. 2-3.
\(^{17}\) OJ C 367, 10.10.2018, p. 15.
\(^{19}\) 2018 European Semester: Annual Growth Survey.
4.5. Measures aimed at a full coverage of the self-employed are therefore welcome. This includes — where needed — assisting spouses, i.e. the spouse or partner who works as self-employed, where the assisting spouse contributes in a regular and active way to the activity of the self-employed person in a way that can be considered as the principal activity of the assisting spouse.

4.6. All citizens should have access to social protection systems able to deliver adequate benefits. Systems can be tax- and/or insurance-based, to which people contribute equally and proportionally to their capacity (or are exempted from such contributions) and benefit from according to their needs, at least regarding adequate minimum provisions and fallback safety nets.

4.7. The sustainability and financing of access to adequate social protection to accompany the changes in the labour markets (21) must be ensured in order to serve inclusiveness, adequacy, fairness and equality in a wider perspective of societal and economic growth.

4.8. Action at EU and national level should be designed in advance to achieve equal treatment and opportunities: Social public spending in Europe is ‘part and parcel of the European social model’. Europe has always been a highly attractive continent, thanks to the high level of social security when compared with other world regions.

4.9. Social protection schemes should be based on solidarity and equality with no discrimination possible due to different personal conditions/backgrounds and/or employment statuses.

4.10. When defining social protection measures for persons with disabilities, this should be done on the basis of a human rights approach in the light of the CRPD (Convention of Rights of Persons with Disabilities, UN). Persons with disabilities who cannot work and their families should be protected ‘from the risk of poverty and guaranteed adequate standards of living’ (22).

4.11. The EESC requests that the Recommendation is fully implemented by Member States so that workers in non-standard employment and the self-employed will benefit from better protection. Social protection systems should be (re) designed to be more and more inclusive, also in line with the AGS 2018 recommendations ‘Better complementarity between labour market and social integration systems will help all vulnerable groups, generate increased prosperity for all and create stronger social cohesion’.

4.12. Countering unfair competition in the European Union and taking action against undeclared work (also in line with the actions carried by the European Platform against Undeclared Work) will benefit businesses as increased social protection and reduction of unfair competition could have a positive impact on productivity.

4.13. Universal access to healthcare is another key element of the Recommendation, in line with Principle 16 of the European Pillar of Social Rights (23). As demonstrated by the Impact assessment of the Commission in a few countries, due to contractual arrangements or labour market regulation, workers in non-standard employment and the self-employed may face limited access to healthcare. Access to healthcare for all people in employment and self-employment should be mandatory.

4.14. The EESC also welcomes the announced increased cooperation with Eurostat for the creation of appropriate indicators to register progress towards formal coverage, effective coverage and transparency, etc. and the work that will be undertaken by the Commission in the Social Protection Committee to establish a benchmarking framework for social protection. This will help to overcome the lack of a sound database and a more accurate assessment of the impact of the policies implemented in relation to the Recommendation.


The President
of the European Economic and Social Committee
Luca JAHIER

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(21) See BUSINESSEUROPE’s position paper on ‘Council Recommendation on access to social protection’ page 1, 1 (19 April 2018).


(23) EPSR, Principle 16: ‘Everyone has the right to timely access to affordable, preventive and curative health care of good quality’.
The following amendments to points 1.6 and 2.5, which received at least a quarter of the votes cast, were rejected during the discussion:

**Point 1.6**

Amend as follows:

1.6. The EESC recommends that initiatives undertaken in the framework of the Recommendation should provide **adequate benefits and provisions**, including safety nets for those who are not able to reach minimum entitlement thresholds, in particular for those who are unable to work and their families. The EESC notes regrets that basic income has been discarded from the Recommendation, as stated in the Commission Staff Working Document — Impact Assessment (1) for a number of reasons such as coverage criteria and preference for addressing the problems in the framework of existing social security systems in the Member States. However, the EESC welcomes the ongoing discussion in the Member States on basic income and other safety nets aiming at active inclusion in labour markets and society at large. The EESC as early as 2013 called for a European directive establishing a European minimum income, considering that this ‘would help to ensure economic and territorial cohesion, protect the fundamental rights of the individual, guarantee a balance between economic and social objectives and redistribute wealth and income fairly’ (2).

**Reason**

To be given orally.

**Outcome of the vote**

<table>
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<tr>
<th>In favour</th>
<th>Against</th>
<th>Abstentions</th>
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<td>91</td>
<td>112</td>
<td>10</td>
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**Point 2.5**

Amend as follows:

2.5. **EESC notes that basic income has been discarded from the Recommendation, as stated in the Commission Staff Working Document — Impact Assessment for a number of reasons such as coverage criteria and preference for addressing the problems in the framework of existing social security systems in the Member States. The EESC regrets that basic income has been discarded from the Council Recommendation.** A recent OECD study stated that: ‘In view of rapid changes in the labour market, the ongoing discussions on basic income do, however, provide a valuable impetus about the type of social protection that societies want.’ The EESC previously stated that a ‘European minimum income will help to ensure economic and territorial cohesion, protect the fundamental rights of the individual, guarantee a balance between economic and social objectives and redistribute wealth and income fairly: it also called for the adoption of a framework directive and ‘to examine funding possibilities for a European minimum income’.

**Reason**

The scope of the Recommendation does not cover benefits for minimum subsistence. The main focus is to facilitate access to social security for those groups of workers who are likely not to be covered by social security systems in Member States. Hence there is no need for regretting that the notion of basic income was discarded from the Commission proposal. However, the EESC could note the ongoing discussion in the Member States and on other fora such as OECD. Regarding the former EESC opinion on minimum income there should be also a link to the statement of the Employers’ Group to clearly indicate the divergence of views in this issue. The reference to the statement of the Employers’ Group has been previously used, e.g. in the EESC opinions SOC/542 (European Pillar of Social Rights) and SOC/564 (Impact of the social dimension and the EPSR on the Future of the EU).


Outcome of the vote

In favour 92
Against 113
Abstentions 13
1. Conclusions and recommendations

1.1. The EESC acknowledges that the Visa Code is a core element of the common visa policy, by establishing a common set of legal provisions and operational instructions.

1.2. The EESC supports the proposed harmonised procedures and conditions established by the Visa Code, allowing for the elimination of situations where similar cases are dealt with differently by EU Member States, while also allowing differentiated treatment based on ‘visa track record’. The EESC also considers that there should be efforts towards establishing harmonised appeal procedures in cases of visa rejection.

1.3. The EESC welcomes the harmonisation solution for multiple-entry visas, which allow their holders to travel repeatedly to the EU during the visa’s period of validity, as this could contribute to economic growth, cultural and social development and exchanges, as well as enhancing support and understanding between people.

1.4. The single-entry visas to be issued at external borders, introduced in the Visa Code in order to promote short-term tourism, demonstrate the flexibility and pragmatic approach taken by the Member States, and the EESC encourages adopting this approach in dealing with several other aspects related to visa issuing, in order to ensure that one-stop shop facilities are offered.

1.5. As the European Union should pursue in a proactive manner the observance of full visa reciprocity in its relations with third countries, the EESC urges the Commission to conduct a swift consultation and propose a clear set of actionable proposals that address both facilitation and security.

1.6. However, the EESC fully supports the proposal that the Commission should, before taking any decision to temporarily suspend visa exemption for nationals of a third country, take into account the situation of human rights in that third country and the possible consequences of a suspension of the visa exemption for that situation.
1.7. At the same time, the EESC recommends that all efforts should be made to collect reliable, relevant and uniform/comparable (as much as possible) data as regards third countries and as regards the situations that allow Member States to decide to temporarily suspend visa requirement exemptions for nationals of a third country listed in Annex II of the Regulation, which lists the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

1.8. The EESC recommends prudence when deciding on the constant (every two years) up-scale revision of the proposed visa fees. This revision should not be automatic, taking into consideration that the proposed cost is already high compared to the growth/development level of some of the third countries concerned.

1.9. The EESC is supporting changes to the Visa Code that relate to the additional possibility of filling in and signing the application form electronically in order to align with technological development. At the same time, the EESC requires all Member States to be in favour of online submission of visa applications and make the necessary developments/changes to support this online procedure, and requests that the Commission includes/presents a realistic deadline for the generalised adoption of online visa submission by Member States.

1.10. The EESC welcomes the Commission proposal to abolish the principle of 'lodging in person' and it supports and, furthermore, requests rules and regulations enabling the online submission of visa applications. The EESC considers that lodging visa applications in the most convenient and fastest way from the place of residence of the visa applicant should be pursued, including wider use of external service providers if needed and provision of better representation services, as well as increasing cooperation between diplomatic missions of the EU Member States.

1.11. The EESC recommends that the Commission reviews the current categories of applicants which benefit from visa waivers and defines them more clearly. Also, the EESC recommends considering offering fee waivers to seniors and representatives of non-profit organisations participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations, without reference to their age or, at least, to consider increasing the age limit.

1.12. As the provisions of the Regulation shall apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States (…), without prejudice to: the rights of free movement enjoyed by third-country nationals who are family members of citizens of the Union, the EESC would like to highlight the importance of establishing a common practice to avoid discrimination in connection with the definition of 'family ties', considering the recent developments in EU Member States as regards the definition of the family.

2. General comments

2.1. The EESC takes note of the Commission Communication to the European Parliament and the Council on the need to adapt the common visa policy to new challenges and in light of this, it supports the two proposals for a regulation on the matter of Community Code on Visas and on listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

2.2. Therefore the EESC acknowledges that the Visa Code has effects that reach beyond the objective of establishing common legal provisions and application procedures and, besides facilitating legitimate travel and tackling irregular immigration, it has an effect on economic growth and job creation, even if this objective was not assigned to the Visa Code from the very beginning. There were 16.1 million applications for uniform visas lodged at the consulates of the Schengen States in 2017 and the trend is growing. Out of this total number of applications, in more than 50% of cases, multiple-entry visas were issued, while the number of visas not issued was 1.3 million, representing 8% of the total requests (1).

2.3. The EESC welcomes the proposed changes meant to make visa processing easier for both applicants and consulates, namely: the possibility to lodge an application 6 months before the intended trip (and 9 months in case of seafarers), the clarifications and extended categories of subjects that can lodge an application on behalf of the applicant and the harmonisation of the supporting documents. Furthermore, the observance of the principle that an applicant should have to go to only one location to lodge an application is most welcome.

2.4. However, the EESC also acknowledges that access to consulates continues to be challenging, especially in third countries where most Member States are present only in the capital city and therefore the applicants have to support the costs (in terms of both time and money) of travelling long distances to reach the consulate. Therefore, the EESC welcomes the proposal to abolish the principle of 'lodging in person' and calls for the Member States to make the necessary adjustments for the online submission of visa applications. Meanwhile, the EESC also welcomes all types of measures introduced in order to lodge visa applications in the most convenient and fastest way from the place of residence of the visa applicant, including wider use of external service providers if needed and provision of better representation services, as well as increasing cooperation between diplomatic missions of the EU Member States.

2.5. Having in mind the recent entry into force of the new rules concerning data protection and privacy (General Data Protection Regulation), the EESC reaffirms the need for external service providers to have the capacity to respect/ensure the safety of the personal data collected. The Member States should take all necessary measures to ensure that the companies that offer visa services (to European nationals, or to non-Europeans for European visas) make the changes in their data protection policies in order to be compliant with the Regulation.

2.6. The new shortened deadlines for lodging visa applications and deciding on applications for visas as well as the harmonization of the possibility to issue uniform visas (especially as regards the decision to issue multiple-entry visas) are both deemed as positive by the EESC, as well as the new proposed Article 25(a) on Cooperation on readmission, meant to increase the cooperation of the third countries on readmission of irregular migrants, by introducing the possibility to introduce a restrictive and temporary application of clearly specified measures. A harmonised approach to how to facilitate the visa application procedure for those applicants who have travelled to the EU before must be elaborated.

2.7. The EESC recognises that coherence between visa policy and commitments made in other policy areas (e.g., trade agreements) should be ensured and viable. The generally accepted solution should be adopted as regards the visa waiver agreements concluded by Member States with certain third countries. The European Union should pursue in a proactive manner the observance of full visa reciprocity in its relations with third countries.

2.8. While understanding the reasoning for the proposed revision of Article 16 of the Visa Code, namely the increase in visa fee levels by 1/3, the EESC is concerned about the possible impediments arising from this increased fee in the case of nationals of some third countries whose development/wealth level is considerably lower than EU Member States'. The comparison of the visa fee level with travel and other costs involved that visa applicants have to cover is not a favourable one, as nowadays widespread low cost travel and accommodation solutions could result in a situation where the cost of the entire trip is lower or equal to the visa fee.

2.9. The EESC believes that the proposal for a revision of the visa fee level every two years should take into consideration the possibility of downsizing this fee, based on the possible implementation of the electronic visa application procedures (which could imply lower personnel and administrative costs for Member States). According to the Commission communication on Adaption the common visa policy to new challenges, most Member States take into consideration the advantages of using digital visas (lower costs for consulates being one of these advantages, along with an efficient and more client-friendly application process compared to the paper-based application system).

2.10. Given the current level of the visa fee along with the proposed level, the EESC considers that the possibility of offering fee waivers to representatives of non-profit organisations participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations should be taken into consideration, without reference to their age or, at least, with consideration given to increasing the age limit (the current legislation takes account of age — aged 25 years or less). Also, seniors should be offered such waivers for supporting the active integration of them in society and contributing to the increased quality of life.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(COM(2018) 171 final — 2018/0081 (COD))

(2018/C 440/24)

Rapporteur: János WELTNER

1. Conclusions and recommendations

1.1. The EESC welcomes the proposed amendment to the Carcinogens and Mutagens Directive (CMD) since it presents objective data for the sake of safer working conditions.

1.2. As in its previous opinion (1), the EESC urges the Commission to carry out an impact assessment of a possible extension of the CMD to include substances that are harmful to reproduction.

1.3. The EESC finds it important, given the reprotoxic effects of many carcinogens and mutagens, that revisions and amendments to the CMD in the near future pay more attention to occupational exposures affecting women and men regarding reproductive aspects, and — in the case of women — especially during the first trimester of pregnancy.

1.4. The EESC welcomes the fact that, in this amendment, the binding occupational exposure limits (BOELs) have been defined on the basis of scientific and statistical evidence. A risk-based approach, as is seen in the background documents, can be easily understood by the stakeholders, and thus provides a good basis for a social compromise.

1.5. The EESC welcomes the evidence-based procedure, under which the Commission sought advice from both the Scientific Committee on Occupational Exposure Limits (SCOEL) (2) and the Committee for Risk Assessment (RAC) (3) of the European Chemicals Agency (ECHA) (4).

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(4) European Chemicals Agency (ECHA).
1.6. The EESC considers it necessary to set up pilot research programmes and, in a second phase, EU-wide programmes to develop life-long health surveillance in the framework of national social security or public health systems for all those who have been exposed to carcinogens, mutagens and reprotoxic compounds. In accordance with the GDPR (5), this surveillance should be conducted in an anonymous manner.

1.7. The EESC stresses that in order to improve workers' protection from carcinogens, mutagens and reprotoxic substances at work, Member States should ensure that labour inspectorates have sufficient financial and human resources to carry out their duties.

1.8. The EESC recommends that all compounds suspected to be carcinogens, mutagens and/or reprotoxic should undergo scientific analysis in this regard, and that they must be included in the CMD if appropriate.

2. Background

2.1. This opinion is linked to the EESC's opinion on ‘The protection of workers from the risks related to exposure to carcinogens or mutagens at work’ (6), which was drawn up in conjunction with the amendment to the CMD in 2017 (7). All of the recommendations of the EESC, except those that have been included in the present amendment, are still current (8).

2.2. The objectives of the proposal are consistent with Article 2 (Right to life) and Article 31 (Fair and just working conditions) of the EU Charter of Fundamental Rights.

2.3. Ensuring a safe and healthy work environment is a strategic goal for the European Commission as mentioned in the ‘EU Strategic Framework on Health and Safety at Work 2014-2020’ (9).

2.4. Cancer is the main work-related health problem in the EU-28, causing almost as much damage to workers' life and health as the two following disease groups combined (musculoskeletal disorders and circulatory diseases). Its negative impact is also far greater than that of work-related accidents (10). It brings suffering to workers and their family and friends, causes poor quality of life, undermines well-being and, in the worst case, leads to death (11).

2.5. The Commission has initiated a continuous process of updating the CMD (12) to keep abreast of new scientific and technical developments. This process is in line with the EU Sustainable Development Strategy, which includes the objective of ensuring that, by 2020, chemicals are produced, handled and used in such a way that they do not pose significant threats to human health and the environment. The aim is to eventually replace substances of high concern with suitable alternative substances or technologies (13).

3. Proposal of the Commission

3.1. In line with this process and based on SWD(2018) 87 and 88, the European Commission has proposed the next amendment to ‘Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work’ in his document COM (2018) 171 (14). Earlier in 2017, the EESC supported the amendment of this Directive; five substances are included in the current amendment (15):

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(5) OJ L 119, 4.5.2016, p. 33, Article 4 and see also paragraphs 35, 45, 52, 53 and 155.
(10) EU-OSHA (2017).
(13) Eurostat ‘Sustainable development in the EU’, p.189.
(14) Procedure 2018/0081 (COD).
3.1.1. **Cadmium and its inorganic compounds under the scope of the CMD**: Occupations in which exposures occur include cadmium production and refining, nickel-cadmium battery manufacture, cadmium pigment manufacture and formulation, cadmium alloy production, mechanical plating, zinc and copper smelting, mining of non-ferrous metal ores, brazing with a silver-cadmium-silver alloy solder, polyvinylchloride compounding and recycling of scrap metal and Ni-Cd batteries. The Commission estimates that about 10,000 workers are at risk.

3.1.2. **Beryllium and inorganic beryllium compounds under the scope of the CMD**: Ten industrial sectors such as foundries, glass and laboratories were identified in which workers are at risk of exposure to beryllium. Copper, aluminium, magnesium and nickel are widely alloyed with beryllium. Approximately 80% of all beryllium is used in copper alloys. Exposure to beryllium causes lung cancer and incurable chronic beryllium disease. The Commission estimates that 54,000 workers are at risk.

3.1.3. **Arsenic acid and its salts, as well as inorganic arsenic compounds under the scope of the CMD**: Exposure to arsenic compounds occurs, for example, in copper and zinc production, as well as in the glass, electronics and chemical sectors. The Commission estimates that 7,900-15,300 workers are at risk.

3.1.4. **Formaldehyde**: Occurs in formaldehyde manufacturing, and in a wide variety of products (adhesives and sealants, coating products, polymers, biocides and laboratory chemicals); exposure may also happen during activities such as building and construction work, and in the manufacturing of leather and fur, pulp, paper and paper products, textile and wood and wood products. Formaldehyde is also used for tissue preservation and as a disinfectant in pathology departments and autopsy rooms. The number Commission estimates that around 1 million workers are at risk.

3.1.5. **4,4’-Methylene-bis(2-chloroaniline) (MOCA)**: Exposed workers work in the plastics sector, where MOCA is used for moulding of polyurethane elastomer parts at 89 sites across the EU. The Commission estimates that 350 workers are at risk.

3.2. **Member States have different approaches.** Some of them have defined BOELs for a large number of carcinogenic, mutagenic and reprotoxic chemicals (CMRs); others for a few only. Five substances are mentioned in this proposal; there is no EU occupational exposure limit (OEL) for any of them. Twelve Member States (BE, BG, CY, CZ, DE, EE, ES, HU, LT, LV, NL, SE) have no OEL for one of the five substances. Three Member States have no OEL for all five (IT, LU, MT). The level of these BOELs can differ from one country to another. The EESC therefore welcomes the proposal amending Directive 2004/37/EC, which sets minimum European BOELs and which, when in force, will ensure equal working conditions for all those workers who are exposed to these harmful substances.

3.3. **Estimates based on a Risk & Policy Analysts Limited (RPA 2018) study** show that, if adopted, this proposal would improve working conditions in the long term for over 1 million EU workers and prevent over 22,000 cases of work-related ill health. The current disease burden, estimated over the past 40 years, includes 24,770 cases of work related ill-health. If no action is taken, the future disease burden will include 24,689 new cases over the next 60 years.

3.4. **According to the Commission Staff Working Document, it is therefore appropriate to consider updating the CMD based on the above information.** The principles are the same as in the CMD and in the previous amendment. This amendment expands the previous list found in the Annex of the CMD with the five compounds listed above.

3.5. **Scientific advice has been provided by SCOEL for cadmium, beryllium and formaldehyde, and also by RAC for arsenic acid and MOCA.** The tripartite Advisory Committee on Safety and Health at Work (ACSH) has adopted opinions on all five.

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(16) Third amendment of the Carcinogens and Mutagens Directive, CMD.
3.6. The OELs for these five carcinogens and mutagens are set based on scientific data and with reference to future health consequences. Different economic consequences are also taken into account.

4. General comments

4.1. The main aim and the scope of this amendment is to extend the list in the CMD, which at present is limited to carcinogens and mutagens. A possible extension to encompass substances that are toxic to reproduction or other bodily functions should be considered later on, as mentioned in the EESC opinion (17).

4.2. This opinion is backed up by Eurostat’s 2017 ‘Monitoring report on progress towards the SDGs in an EU context’ (18): ‘In 2015, 350 million tonnes of chemicals were consumed in the EU. Of these, 127 million tonnes were classified as hazardous to the environment and 221 million tonnes as substances that might harm human health. Although consumption of toxic chemicals declined in the short term and the long term, the share of most toxic chemicals in total chemical consumption remained nearly unchanged.’ (Share of ‘carcinogenic, mutagenic and reprotoxic’ (CMR) substances in total consumption of chemicals in the EU: 2004: 10.7%, 2015: 10.3%).

4.3. The EU strategy against work-related cancers should pay more attention to women.

4.3.1. The pattern of exposure and the pattern of cancer locations may vary between men and women. Breast cancer, for instance, is a very rare disease for men, whereas it is the most common cancer for women. A range of occupational exposures may contribute to breast cancer. To acquire relevant data for decision-making purposes, the incidence of mostly gender-specific cancers should be analysed for women and men separately, and not across the total population of employees.

4.3.2. The Committee urges the Commission to give more systematic consideration to occupational carcinogenic exposures affecting women in further revisions of the Directive. Many types of work in which women are concentrated (health, cleaning, hairdressing, etc.) involve exposure to carcinogenic substances. Binding prevention measures should be set out in this regard (e.g. negative-pressure cabinets for the preparation of cytostatic products for injection by staff in healthcare institutions).

4.4. Regarding the single market, the EESC think it is important for the Commission to define a methodology for the adoption of BOELs in the CMD. This process should involve broad consultation with the social partners, Member States and other stakeholders, including NGOs. In the EESC’s view, two elements require particular consideration: first, the consistency of BOELs with regard to the risk level of the different compounds; second, the need to define BOELs on the basis of scientific evidence, including follow-up of changes in the incidence of work-related diseases. They must take into account different factors, such as feasibility and the possibility of measuring exposure levels. In order to help employers prioritise their prevention measures, they should explicitly refer to the level of risk associated with the exposure level.

4.5. For most of the compounds, there is a long latency period between the first exposure and the emergence of cancer. The EESC considers it necessary to protect workers by offering lifelong health surveillance in the framework of social security or national health systems for all workers who are at risk of exposure. This data can be offered by Eurostat to help refine the Sustainable Development Strategy.

4.6. Public health governance must be based exclusively on evidence-based regulations. Evidence can be obtained from scientific analysis based on good quality and statistically evaluable data. This requirement is supported by the GDPR (19) itself in its Article 9 which is about the processing of special categories of personal data (20). Further juridical aspects must also be taken into account, according to Directive 2011/24/EU of the European Parliament and of the Council (21).

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(20) OJ L 119, 4.5.2016, Art. 9(h) ‘processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee … on the basis of Union or Member State law or …’.
4.7. The EESC recommends again that more efforts should be focused on scientific and statistical studies. Occupational cancer can be multicausal. More attention and funding should be dedicated to researching the consequences and potential interactions of combined exposure to different factors.

4.8. The EESC stresses that one of the main tasks in the area of protecting workers from carcinogens, mutagens and reprotoxic substances in the workplace is to strengthen control over the implementation and application of the CMD. Member States should ensure that labour inspectorates have sufficient financial and human resources to carry out their duties while helping companies, and in particular SMEs, to comply with these provisions. They should strengthen their cooperation with the European Agency for Safety and Health at Work. The widespread use of the OiRA (Online interactive Risk Assessment) web platform can help with risk assessment in this field.

5. Specific comments

5.1. In addition to the essential requirement for prevention and protection of health at work and the need to adapt work to people, provided for by the European legislation, the EESC draws attention to the danger, that ineffective prevention of exposure to carcinogens, mutagens and reprotoxic agents could have negative consequences for businesses, such as higher costs and reduced productivity due to absenteeism, compensation costs to claimants, lost expertise and distorted competition; and for Member States due to increased social security costs and lost tax revenues.

5.2. Member State authorities and employers’ and workers’ representative bodies within the framework of the tripartite ACHS would very much welcome the legal clarity and increased protection that would result from lower OELs on these substances.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on ‘Council Recommendation on strengthened cooperation against vaccine preventable diseases’

(COM(2018) 244 final — SWD(2018) 149 final)

(2018/C 440/25)

Rapporteur: Renate HEINISCH

Consultation European Commission, 17.4.2018
Legal basis Article 29 of the Treaty on the Functioning of the European Union
Plenary Assembly decision 17.4.2018
Section responsible Section for Employment, Social Affairs and Citizenship
Adopted in section 19.7.2018
Adopted at plenary 19.9.2018
Plenary session No 537
Outcome of vote (for/against/abstentions) 136/1/3

1. Conclusions and recommendations

1.1. At European level

1.1.1. Member State cooperation on vaccines should involve consideration of the role of vaccines throughout a person’s life and should explicitly deal with vaccinations for children, adolescents, adults and elderly people across borders. European Centre for Disease Prevention and Control (ECDC) data shows that diseases such as measles, that used to be childhood diseases, are now affecting teenagers and young adults as a result of waning immunity. This, together with cross-border migration flows and the availability of new vaccines targeting specific age groups (e.g. HPV, meningococcal disease, herpes zoster) calls for a life-cycle approach to vaccination.

1.1.2. For today’s children, their parents’ hesitancy with regard to vaccines represents one of the greatest dangers to their well-being — the result of long-standing scientific evidence being undermined to promote an anti-vaccination agenda. This wider trend of suspicion of experts and scientific consensus must be tackled through evidence-based communication, increased transparency and awareness-raising if we are to avoid the epidemics of measles that have gripped the EU and the recent fatal cases of diphtheria. Public engagement in research and innovation programmes such as the 'Science with and for society' programme is one of the tools the Commission should use to educate on the benefits of vaccination.

1.1.3. The EESC calls on the Commission to raise awareness of the role vaccines play in protecting people from debilitating diseases by celebrating European immunisation day. Such a forum should use tailored communication to educate Europeans, in particular parents, children, healthcare professionals, migrants, minority groups and other population groups at increased risk of severe outcomes of vaccine-preventable diseases. All communication channels, including mainstream and social media, should be used to provide science-based and accessible information for citizens and organisations. An intergenerational learning approach in vaccine-related communication would also help promote vaccination across the generations and tackle suspicion.

1.1.4. In an age where information and communication are increasingly digital, and where new technologies provide multiple opportunities to improve vaccination access and uptake, the Union must work towards improving Europeans’ vaccine literacy to tackle hesitancy, and digital health literacy must be improved to enable access to and processing of digital information on vaccines.
1.1.5. It must always be remembered that human and animal health are inextricably linked. The European Food Safety Authority estimates that 75% (1) of infectious diseases that affect humans have their origin in animals. The ever-rising threat of antimicrobial resistance (AMR) also connects human and animal health. In this context, vaccines do not just prevent diseases; they contribute to the fight against AMR by reducing the unnecessary use of antimicrobials. This societal value is not reflected in EU support mechanisms, however, and there is no market incentive for farmers to use vaccines over cheaper products that exacerbate AMR. The EESC recommends that, in the coming revision of the CAP, the Commission includes subsidies for farms that demonstrate the high rate of vaccination coverage needed to mitigate the economic and health threats of AMR.

1.2. At national level

1.2.1. We must ensure that preventable diseases from our distant past or which can be prevented by new generations of vaccines will never again reappear in our future. Healthcare professionals, including pharmacists, nurses, doctors as well as school and workplace medical services, are a cornerstone in tackling vaccine hesitancy as they play a key role in guiding and advising patients. The EESC urges Member States to invest in providing continuous training so as to enable healthcare professionals, and pharmacists in particular, to become ambassadors for vaccination and a bulwark against the dreadful public health consequences of the anti-vaccine movement. Vaccination could also be performed by doctors to ensure that potential acute reactions or anaphylactic shocks are managed safely.

1.2.2. Healthcare professionals are also at risk of exposure to a wide range of diseases. As an advisory body representing workers, employers and other interest groups, the EESC calls on the Member States to ensure full and effective implementation of Directive 2000/54/EC providing that if there is a risk to health and safety of workers due to exposure to biological agents for which effective vaccines exist, their employers should offer them vaccination.

1.2.3. Beyond healthcare professionals, Member State efforts to reach out to population groups at increased risk of severe outcomes of specific vaccine-preventable diseases such as children, pregnant women, the elderly, minority groups and populations with specific underlying health conditions or exposed to sexually transmitted diseases such as human papillomavirus (HPV), hepatitis A and B, must be stepped up. The combination of routine check-ups such as paediatric or occupational health check-ups with immunisation programmes could help tackle sub-optimal coverage rates.

1.2.4. Europe is currently facing a historic and challenging situation as the age structure of the European population has started to go into reverse. Preventive measures such as adult vaccination should be considered as one tool to tackle this challenge while contributing to the European objective of active and healthy ageing.

1.2.5. The EESC notes with concern, however, that despite the 2009 target set by the Council of reaching 75% flu vaccination for older groups, only one Member State has achieved this target. Given that influenza in the elderly is at best debilitating and at worst deadly, Member States should look to redouble their efforts towards reaching this target.

1.2.6. Challenges currently facing Member States range from vaccine hesitancy to demographic changes in relation to population ageing and the increased movement of people, which have an impact on the risks of pathogen exposure across the Union. The EESC calls on the Member States to share best practices and know-how in addressing these challenges.

2. General comments

2.1. The EESC supports the Commission’s three-pillar approach towards strengthened cooperation against vaccine-preventable diseases as a timely response to the urgent health threats facing the EU today, namely vaccine hesitancy, declining coverage for specific diseases, unprecedented outbreaks of vaccine-preventable diseases, discrepancies between national vaccination programmes and vaccine shortages.

(1) European Food Safety Authority, ‘How do animal diseases affect humans?’
2.2. The EESC welcomes the proposed activities to increase synergies between vaccination and related policies, including those on crisis preparedness, e-Health, Health Technology Assessment, R & D and pharmaceutical industry, at national, European and international level. A concerted effort is critical to tackling the challenges that currently hamper the effectiveness of vaccination programmes across the Union.

2.3. Vaccination, the main tool for primary prevention, has been able to make Europe polio-free and eradicate other diseases like smallpox by preventing disease in individuals while interrupting the circulation of viruses. Outside Europe, globalisation has resulted in increased cross-border flows of viruses, pathogens and diseases as well as people. Recent migration flows have accelerated this trend. Vaccination significantly contributes to global health as diseases are not confined within national nor regional borders.

2.4. In the European Union, vaccination programmes fall under the remit of the Member States. As a result, various immunisation strategies co-exist within the EU, with some Member States having implemented advanced programmes targeting specific diseases throughout the life cycle, and/or addressing geographic specificities. Considering that the spread of diseases knows no borders, the EESC supports the Commission's proposal to develop guidelines on an EU common vaccination schedule to facilitate the compatibility of national schedules.

2.5. The lack of harmonisation of vaccine schedules within the Union is also an impediment to freedom of movement and residence that is one of the fundamental rights of EU citizens and their family members. Indeed, as outlined in the Commission communication, it may be challenging for people, particularly for children, to resume vaccination when moving across borders. Such harmonisation should however not result in a reduction of the range of vaccines available.

2.6. In its conclusions of December 2014 (2), the Council recognised that although vaccinations are an effective tool in public health, re-emerging communicable diseases such as tuberculosis, measles, pertussis and rubella, which can cause a high number of infections and deaths, still present a public health challenge. These recent developments make Member State cooperation against vaccine-preventable diseases even more pressing.

2.7. In light of the above, the Council Recommendation on strengthened cooperation between Member States, industry and stakeholders at EU level is a step in the right direction. The EESC fully supports enhanced action in the field of vaccination.

3. Specific comments

3.1. The EESC supports the Commission's view that digital tools such as a common EU citizens' vaccination card, retrievable through electronic immunisation information systems, and a web portal to raise awareness of the benefits and safety of vaccinations, could help meet the objectives outlined in the communication. In this regard, the Commission should work with the Member States to increase Europeans' digital health literacy so as to maximise the benefits of these digital tools.

3.2. Considering the shift in the burden of traditionally paediatric diseases towards later stages in life, as well as the availability of new vaccines that can prevent diseases in adults and the older age groups, Member States are encouraged to consider vaccination programmes across the entire life cycle, taking into account the most cost-effective vaccination strategies to prevent disease according to the needs of various age groups (for instance adolescents, pregnant women, individuals with chronic conditions and minority and older age groups).

3.3. As highlighted by Mr Juncker in his 2017 State of the Union address, children are still dying from vaccine-preventable diseases such as measles. The risk to children from unvaccinated classmates represents a significant threat. School placement may need to be conditional on proof of vaccination to ensure high vaccination coverage rates. In this context, schools and educators should be better informed about the role of vaccines to be able to communicate with parents and children about vaccination. This educational aspect is a critical factor as schools play a central role in the decision-making process of parents.

(2) Council Conclusions on vaccinations as an effective tool in public health, 1 December 2014.
3.4. Vaccine-preventable cancers threaten to burden the adolescents of today with deadly cancers when they grow older. Facing a rising cancer burden, the EU Member States have made the fight against cancer a top priority on their policy agenda. Experience shows that properly-implemented vaccination policies can achieve almost complete elimination of diseases, such as human papillomavirus-related (HPV-related) infections. The provision of HPV vaccination to adolescents should be looked at as a major aspect of cancer control programmes, as they are a unique category of vaccine-preventable cancers.

3.5. Adult vaccination is sometimes the only available preventive solution to tackle a specific disease, such as influenza or herpes zoster, whether to avoid it entirely or to reduce its severity. In the European Union, one in four people will suffer from herpes zoster during their lifetime while up to nearly 40,000 people die prematurely each year due to causes associated with influenza. These figures can only be lowered through vaccination.

3.6. Considering the reported hesitancy among healthcare workers themselves, as well as cases and outbreaks of vaccine-preventable diseases due to transmission from healthcare staff, implementation of and compliance with vaccination programmes for healthcare workers should be carefully monitored and sustained with adequate training, in the interest of patient safety as well as for healthcare workers’ own protection, in line with Directive 2000/54/EC.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(COM(2018) 302 final)
(2018/C 440/26)

Rapporteur-general: Ionut SIBIAN

Referral European Parliament, 02.07.2018
Legal basis Article 304 of the Treaty on the Functioning of the European Union
Section responsible Employment, Social Affairs and Citizenship
Bureau decision 10.07.2018
Adopted at plenary 19.09.2018
Plenary session No 537
Outcome of vote 97/3/0
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The European Economic and Social Committee supports a visa policy that is and should remain a tool to facilitate tourism and business, while preventing security risks and the risk of irregular migration to the EU.

1.2. The EESC supports the further development of the Visa Information System (VIS) as the best technological solution facilitating the short-stay visa procedure and helping visa, border, asylum and migration authorities to rapidly and effectively check the necessary information on third-country nationals who need a visa to travel to the EU.

1.3. The EESC considers that one key objective of action in this field should be the harmonisation of EU Member State procedures, practices and outcomes with regard to visa policy.

1.4. As regards devising specific risk indicators for visa processing, the EESC considers that this is liable to limit applicants’ rights. The EESC urges the EU institutions and Member State authorities to properly inform and train frontline and management staff to avoid possible profiling based on race, gender, ethnicity, religion, sexual orientation and any other personal characteristics.

1.5. The EESC supports the objective of making it easier to identify missing persons. However, lowering the fingerprinting age for child applicants from 12 years to 6 years can be problematic. The proposal did not include input and opinions from child protection agencies and organisations, preventing the EESC from fully assessing the impact of the proposal on children and their protection.

1.6. In relation to this same objective, while storing a copy of the bio-page of the applicant’s travel document in the VIS is acceptable and necessary, building this new data tool to support return procedures, as stated in the proposal, is questionable. The EESC does not consider that the proposed changes would necessarily lead to the return of third-country nationals. Instead, it should be a tool which encourages the Member States to act with due regard for both the legality of stay and the interest and wellbeing of the individuals concerned. The third-country nationals should be encouraged and assisted by the authorities to regularise their stay and consider returning to their place of origin.
1.7. As regards the ancillary objective of this proposal — to allow, under strict conditions, national law enforcement authorities and Europol to access VIS data for law enforcement purposes — the EESC stresses the importance of strict access conditions. Access should ideally require court decisions which would ensure that such access is a necessary limitation of the protection of personal data principle.

1.8. The EESC praises the scope of the consultations organised in relation to this proposal. At the same time, the Committee, other institutions and the general public would have greatly benefitted if more input and insights from the parties consulted had been included in the proposal. It is not clear what kind of input was offered and how far it influenced the final form of the proposal.

1.9. As regards protection of fundamental rights, the EESC welcomes the European Commission’s focus on this point. The Committee recommends that further attention be given to the way Member States use visa applicants’ personal data. As stated earlier, further safeguards are needed against practices which result in discrimination against third-country nationals applying for short or long stay and residence.

1.10. The proposal would have benefitted from more detailed and specific data on the short- and long-stay visas and residence permits, country by country, of both EU Member States and third countries. More information on overstay would also have been very useful when it comes to child trafficking. The data are indispensable for assessing the nature and structure of mobility and the appropriateness of the instruments used.

1.11. The EESC also recommends a more solid commitment to work with the governments and civil society of the third countries in order to inform, prepare and assist their nationals throughout the visa application procedure.

2. General comments

2.1. The EESC supports a visa policy that is and should remain a tool to facilitate tourism and business, while preventing security risks and the risk of irregular migration to the EU.

2.2. While acknowledging the migration and security challenges of recent years, the EESC encourages the Member States and the EU institutions to take a consensual, balanced and proportionate approach with the aim of keeping the EU as open, responsible, engaging and innovative as possible.

2.3. The EESC supports the further development of the Visa Information System (VIS) as the best technological solution facilitating the short-stay visa procedure and helping visa, border, asylum and migration authorities to rapidly and effectively check the necessary information on third-country nationals who need a visa to travel to the EU.

2.4. The EESC supports the overall objectives of this initiative: improving security within the EU and at its borders, facilitating the right of legitimate travellers to cross the external border and freely move and stay within the area without internal border controls, and facilitating the management of the Schengen area’s external borders.

2.5. The EESC supports the specific objectives of this initiative — facilitating the visa application procedure; facilitating and strengthening checks at external border crossing points and within the territory of the Member States; and enhancing the internal security of the Schengen area by facilitating the exchange of information among Member States on third-country nationals holding long-stay visas and residence permits.

2.6. The EESC also supports the closing of the remaining information gaps for borders and security: long-stay visas and residence documents to be included in the VIS.

2.7. As regards enhancing checks on visa processing by means of interoperability, the verification and assessment of the information submitted by applicants and the VIS automatic query for each application against each of the available systems, the EESC sees this as a welcome procedural and technological development.
2.8. As regards devising specific risk indicators for visa processing, the EESC considers that this is liable to limit applicants’ rights. Although the risk indicators would not contain any personal data, they would be based on statistics and information provided by Member States on threats, abnormal rates of refusal or overstay by certain categories of third-country nationals, and public health risks. There is a significant risk that these data and indicators will be used by the visa processing authorities to reject visa applications based on the profiles built into the system and not the individual circumstances of the applicant. The EESC urges the EU institutions and Member State authorities to properly inform and train frontline and management staff as to avoid possible profiling based on race, gender, ethnicity, religion, sexual orientation and any other personal characteristics.

2.9. The EESC supports the objective of making it easier to identify missing persons. However, lowering the fingerprinting age for child applicants from 12 years to 6 years can be problematic. The proposal did not include input and opinions from child protection agencies and organisations, preventing the EESC from fully assessing the impact of the proposal on children and their protection.

2.10. In relation to this same objective, while storing a copy of the bio-page of the applicant’s travel document in the VIS is acceptable and necessary, building this new data tool to support return procedures, as stated in the proposal, is questionable. The EESC does not consider that the proposed changes would necessarily lead to the return of third-country nationals. Instead, it should be a tool which encourages the Member States to act with due regard for both the legality of stay and the interest and wellbeing of the individuals concerned. The third-country nationals should be encouraged and assisted by the authorities to regularise their stay and consider returning to their place of origin.

2.11. As regards the ancillary objective of this proposal — to allow, under strict conditions, national law enforcement authorities and Europol to access VIS data for law enforcement purposes — the EESC stresses the importance of strict access conditions. Access should ideally require court decisions which would ensure that such access is a necessary limitation of the protection of personal data principle.

2.12. The EESC welcomes the efforts of the Commission to commission three independent studies: one on the feasibility, necessity and proportionality of lowering the fingerprinting age for children in the visa procedure and on storing a copy of the travel document of visa applicants in the VIS, and two studies on the feasibility and on the necessity and proportionality of extending the VIS to include data on long-stay visas and residence documents.

2.13. The EESC praises the scope of these consultations, involving all stakeholders, including national authorities that have access to enter, amend, delete or consult data in the VIS, national authorities responsible for migration, return, child protection authorities, police and anti-trafficking authorities, authorities responsible for consular affairs, and national authorities responsible for checks at external border crossing points. Various non-EU authorities and non-governmental organisations involved in children’s rights were also consulted. At the same time, the Committee, other institutions and the general public would have greatly benefitted if more input and insights from the parties consulted had been included in the proposal. It is not clear what kind of input was offered and how far it influenced the final form of the proposal.

2.14. As regards protection of fundamental rights, the EESC welcomes the European Commission’s focus on this point. The Committee welcomes the additional safeguards introduced by this proposal to cover the specific needs of the new categories of data, data processing and data subjects that will be covered by the VIS, as part of the broader effort to protect individuals’ rights of access, correction, deletion and redress of personal data. The Committee recommends that further attention be given to the way Member States use visa applicants’ personal data. As stated earlier, further safeguards are needed against practices which result in discrimination against third-country nationals applying for short or long stay and residence.

2.15. The proposal would have benefitted from more detailed and specific data on the short- and long-stay visas and residence permits, country by country, of both EU Member States and third countries. More information on overstays would also have been very useful when it comes to child trafficking. The data are indispensable for assessing the nature and structure of mobility and the appropriateness of the instruments used.
2.16. The EESC also recommends a more solid commitment to work with the governments and civil society of the third countries in order to inform, prepare and assist their nationals in the visa application procedure.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(COM(2018) 179 final — 2018/0088 (COD))

(2018/C 440/27)

Rapporteur: Antonello PEZZINI

Co-rapporteur: Ester VITALE

1. Conclusions and recommendations

1.1. The EESC has always been a proponent of an EU policy to protect health throughout the food chain at every stage of production, from farmer to consumer. This policy should avoid contamination and food risks with a view to promoting safety and hygiene and clear, transparent and safe product information.

1.2. The EESC supports the Commission’s initiatives aimed at addressing the challenges of transparency, sustainability and effectiveness in the entire food supply chain monitoring system to help give the public, the media and civil society as a whole a better perception of reliability and safety.

1.3. The EESC strongly advocates the need to strengthen EFSA to make sure risk managers have the best possible scientific advice through clear and transparent communication and to ensure greater cooperation with the Member States and other bodies operating in the social ambit in order to provide a coherent, secure and reliable food safety system.

1.4. The EESC has previously pointed out that ‘the EFSA has proved that it is competent throughout its existence. There is no doubt that it plays a very important role in preventing health risks in Europe’ (1).

1.5. The Committee believes that it is vital to maintain both a high level of independence from external influence and optimal scientific expertise within EFSA, maximising risk analysis capacities in order to guarantee a sustainable EU assessment system, which is considered one of the best in the world.

1.6. The EESC believes that EFSA and the Member States, working as a network, should be enabled to develop, in the best possible way, appropriate risk communication capacities — independently but mutually consistent and coordinated between assessors and risk managers — using a clear, interactive approach so that users can grasp the findings and conclusions, while ensuring appropriate levels of confidentiality and protection of intellectual property rights.

1.7. The EESC is strongly in favour of setting up a register of studies, easily accessible online, that includes identification of certified experts and laboratories, sworn declarations of absence of conflict of interest, descriptions of aims, technical and financial resources allocated and sources.

1.8. The Committee believes that a significant improvement is needed in consumers' perception of the risk they face in relation to food, through a targeted food and nutrition culture and selective analysis capacity in relation to the risk.

1.9. In the EESC’s view, the forthcoming general European strategic risk communication plan — if conceived in full harmony with, and respecting the independence of, EFSA — is the lynchpin on which the efforts of the bodies responsible must focus, the aim being to give an effective, unequivocal, timely, interactive and appropriate response to the public’s needs regarding the safety, transparency and reliability of the food chain.

1.10. The EESC suggests boosting structured and systematic dialogue with civil society in which the EESC, with its Sustainable Food Systems bodies, could contribute in a useful and tangible way.

1.11. As far as EFSA governance is concerned, the EESC wholeheartedly backs the proposal for greater Member State and civil society involvement in the management structure and scientific panels, aligning the composition of the management board with the standards established by the Common Approach on Decentralised Agencies.

1.12. The EESC believes that the agreement between EFSA and the Joint Research Centre should be followed up, especially regarding joint activities on food and feed and framing a harmonised scientific quality analysis methodology that ensures transparency, comparability, inclusiveness and fairness for all stakeholders.

2. Background

2.1. General food law (EU legislation on food and feed safety throughout the production chain) is the cornerstone of the EU’s legislative framework on the entire food chain — from producer to consumer.

2.2. This law states that the rules on feed and food must have a scientific basis. This is known as the risk analysis principle, which comprises three separate but interconnected components: risk assessment, risk management and risk communication.

2.3. Regulation (EC) No 178/2002 set up the European Food Safety Authority (EFSA), an autonomous scientific agency tasked with providing the scientific opinions underpinning the measures adopted by the EU throughout the food chain.

2.4. On 6 October 2017, a European Citizens’ Initiative based on a total of 1,070,865 statements of support from 22 Member States was forwarded to the European Commission. The ‘Ban Glyphosate and Protect People and the Environment from Toxic Pesticides’ initiative (2) called on the European Commission to propose a number of measures to the EU Member States. These included ‘ensuring that the scientific evaluation of pesticides for EU regulatory approval is based only on published studies, which are commissioned by competent public authorities instead of the pesticide industry’. The

Commission undertook to present this legislative proposal by May 2018, in order to improve the transparency of scientific assessments and the quality and independence of the scientific studies.

2.5. The assessment of whether the regulation on General Food Law (GFL, No 178/2002) was fit for purpose (3) was completed on 15 January 2018.

2.6. The assessment indicates that the GFL Regulation is still decisive and appropriate for tackling the bulk of current trends.

2.6.1. Overall, the GFL's main objectives have been met: a high level of protection of human health, the interests of consumers with regard to food and the smooth running of the single market.

2.6.2. Establishing EFSA has improved the scientific basis for the measures taken by the EU. Significant improvements have been made to ESFA's scientific capacity, the standard of its scientific findings, the gathering of scientific data and the development and harmonisation of risk assessment methodologies.

2.6.3. EFSA has stepped up both cooperation with national and international scientific bodies and the exchange of information between the Member States.

2.6.4. No systemic inconsistency in the application of the risk analysis principle as such has been identified at EU level.

2.6.5. EFSA's rigorous independence and transparency policies have been finetuned and reinforced on a regular basis. Nonetheless, since not all the Member States are represented on EFSA's board, the agency's governance appears not to be in line with the common approach to the EU's decentralised agencies.

2.6.6. In some cases, the food safety framework established by the GFL Regulation has been a source of inspiration to non-EU countries when framing their own national legislation.

2.6.7. As regards risk assessment, EFSA is bound in the area of authorisation dossiers by confidentiality rules and analytical procedures, which recommend that all available evidence or studies be taken into account. As a result, EFSA not only takes industry studies into account in its opinions, but also bases its scientific findings on a literature review that is as comprehensive as possible. Industrial applicants, on the other hand, must provide their own studies, as part of the dossier, when applying for authorisation.

2.6.8. Recent evaluations (4) indicate that some limitations have been identified in EFSA's current system:

— there have been difficulties in attracting new panel members;

— scientific expertise comes from just a few Member States;

— shrinking budgets for the public administration;

— limited funds for outsourcing EFSA tasks.

2.6.9. What is more, the lengthy authorisation procedures in some sectors slow down the process of bringing new products onto the market. Nonetheless, the centralised authorisation system is more efficient than using a number of different national food authorisation systems.


2.7. The EESC has previously pointed out that ‘the EFSA has proved that it is competent throughout its existence. There is no doubt that it plays a very important role in preventing health risks in Europe’ (5).

2.8. In one of its previous opinions, the EESC, taking into account the influence of scientific studies which do not always agree, recommended that EFSA ‘pay special attention to this practice, since scientific literature is an important reference point for the assessment procedure’ (6) and asked the Commission to systematically publish both the statutory studies used and the related raw data that led to the findings on the agency’s website.

2.9. The EESC has also pointed out (7) that EFSA assessment is based on a scientific study which should demonstrate that a particular product is harmless. Under current legislation, this baseline study has to be presented by the company wishing to put the product on the market. This is the most sensitive aspect, because the findings of scientific studies can differ at times depending on their sources of funding and the methodologies used.

2.10. More generally speaking, the EESC has recently called for a food policy fit for the 21st century that meets a whole raft of criteria: food quality, health, environment, social and cultural values, sound economics, decent jobs, fully internalised costs and good governance (8).

2.11. The European Ombudsman has carried out investigations and initiatives on the EU’s model of risk assessment in the food chain. In a letter to the Commission dated 15 March 2018, the Ombudsman flagged up a number of guiding principles for improving this model, specifically:

— independence and transparency;
— the commitment to publish ‘guideline studies’ when it carries out its scientific assessments;
— greater public scrutiny of its risk assessment duties at an early stage in the process;
— capacity to involve the public and its stakeholders in the process of risk assessment (9);
— enabling stakeholders to take part in meetings. This measure should extend beyond the plenary meetings which are currently open, and clearly uphold confidentiality requirements.

2.12. The Ombudsman also pointed out that ‘The public information tools that EFSA uses to raise awareness about the risks associated with certain substances or products should be available in all 24 official EU languages’, ensuring that ‘the rights of people with disabilities are respected, and that risk communication takes account of their needs’ (10).

3. The Commission proposals

3.1. The Commission has proposed a revision of the regulation on general food law and eight sectoral legislative rules to make them compatible with general rules, boost transparency and increase the guarantees of reliability, objectivity and independence of the studies.

3.2. To improve governance, the proposal is to involve Member States more broadly in EFSA’s governance structure and scientific panels and to step up contributions from national scientific bodies to the provision of data and scientific studies.

3.3. Lastly, the launch of a general communications plan is intended to achieve more and better risk communication to the public, with joint measures to boost consumer confidence and promote public awareness and understanding.

(3) Ibid.
(4) Ibid.
(6) Letter of the European Ombudsman
(7) Ibid.
4. General comments

4.1. The EESC has always been a proponent of an EU policy to protect health throughout the food chain at every stage of production. This policy should avoid contamination and food risks with a view to promoting safety and food hygiene, transparent and truthful product information, plant health and animal health and wellbeing.

4.1.1. The EESC is a strong supporter of the requirement for the EU to guarantee maximum safety standards for the European food chain, by working via EFSA to provide risk managers with the best scientific advice possible, communicating clearly and transparently with the general public about risks, and cooperating with the Member States and other stakeholders to guarantee a consistent and reliable food safety system. It would be beneficial to:

— review the arrangements for authorisation procedures, with a view to making them more consistent and efficient and speeding up market access;

— review exemptions and simplified rules for micro-enterprises, in line with a high level of protection of human health;

— reassess the impact of existing authorisations which exacerbate EFSA's workload;

— simplify processes to ensure greater transparency.

4.2. The EESC believes that it is vital to maintain both a high level of independence from external influence and optimal scientific expertise within EFSA, maximising its ability to assess risk in order to guarantee a sustainable EU assessment system.

4.3. The EESC would point out that thanks to EU legislation, Europeans have the benefits of one of the highest food safety standards in the world. The EESC therefore believes that it is absolutely essential not only to ensure high levels of reliable and independent scientific analysis, full transparency and interactive communication during the entire risk assessment process with the full involvement and shared responsibility of all Member States, but also — and above all — to take forceful and determined action on the mechanisms of risk perception by civil society.

4.4. The EESC considers that it is crucial to provide consumers with safe food and to maintain confidence in order to sustain a positive and reliable relationship with the public and have a beneficial impact on the agrifood market.

4.5. The scientific community must have confidence in EFSA's food safety role and its opinions must constitute key benchmarks to guarantee that the food placed on the market is safe.

4.6. The EESC believes that EFSA is best placed to develop an appropriate risk communication capability, using easily understandable reports and a clear, transparent approach so that users are able to grasp the findings and conclusions, while ensuring appropriate levels of confidentiality and protection of intellectual property rights to avoid hindering innovation and competitiveness.

4.7. A prerequisite — though not sufficient in itself — for guaranteeing that risk communication regarding specific foods is understandable, appropriate, timely and consistent for all target audiences is to reinforce coordination between the risk assessor, the risk manager, the Member States and the stakeholders on the basis of agreed communication principles.

4.7.1. The EESC sees the need to substantially improve consumer perception of the risks of food consumption in terms of harmfulness, cultural eating habits and food consumption patterns.

4.7.2. The EESC maintains that the forthcoming general European strategic risk communication plan — if accompanied by a range of operational measures suitable for individual situations — is the lynchpin for assessing the capacities of all actors at each level, in order to respond in an effective, timely and appropriate manner to people's expectations regarding the safety, transparency and reliability of the food chain.
4.7.3. Uncertainties have to be recognised and described, with any shortcomings in data or non-harmonised methodologies noted. It is essential here that the communications deliver messages that do not contradict one another and that communication channels are interactive, verifiable and subject to continuous monitoring of their effectiveness.

4.7.4. The EESC also considers it essential that communication measures be accompanied by campaigns to combat misinformation and misconceptions in order to prevent proper risk analyses being misused to block innovations, particularly those of SMEs.

4.7.5. It is important to step up coordination with the authorities and the national agencies in order to have an effective warning system, to ensure consistency in communication and to set up structured and systematic dialogue with civil society, within which the EESC, with its Sustainable Food Systems bodies, could contribute in a useful and tangible way.

4.7.6. Lastly, international coordination and cooperation with our biggest trading partners should be stepped up, especially in relation to free trade agreements, to ensure common risk assessment guidelines and to frame methodological assessment criteria that are harmonised and consistent with the coverage of global risks under the Codex Alimentarius.

4.8. EFSA must also undertake to provide clear instructions and information which will establish a stable and predictable framework for businesses submitting applications.

4.9. In order to ensure that EFSA has access to all the key information on a given dossier, it should be more open to dialogue with the businesses when analysing a given dossier, setting out the initial data available to it and supplementing them with information provided by the businesses involved.

4.10. The EESC feels that regulators, which support EFSA’s work, should be made more independent to remind decision makers and the general public of the importance of high quality data, regardless of the source. Greater public scrutiny of EFSA’s risk assessment operations from an early stage of the process, as happens through the Stakeholder Engagement Approach, currently ensures a better relationship with all stakeholders.

4.11. The EESC calls for increasingly streamlined and transparent procedures which will go hand in hand with the challenges to be faced in terms of the intellectual property rights of the owners of the data.

4.12. The EESC supports the recent request from EFSA’s Advisory Forum for more public investment in research on food safety, so that industry-sponsored research does not give preference to interests other than the public interest and to ensure that consumers have complete confidence in the EU’s food risk assessment.

4.13. Where EFSA governance is concerned, the EESC supports the proposal for greater involvement of the Member States in EFSA’s governance structure and scientific panels, thereby aligning the composition of EFSA’s management board with the Common Approach on Decentralised Agencies and at the same time strengthening structured dialogue with civil society.

5. Specific comments

5.1. The EESC welcomes the proposal for a register of studies, provided that it is easily accessible online and includes the identification of the certified experts and laboratories involved, sworn declarations of absence of conflict of interest, the description of the aims and the complexity of the study, the technical and financial resources allocated and their sources, the timescale and procedures for interactive communication adopted, and any verification studies required.

5.2. The reference legislation for laboratory standards is Directive 2004/10/EC, based on the Good Laboratory Practice (GLP) standards drawn up by the OECD (11). The legislation regarding — and operation of — food safety laboratories (12) should be accompanied by audit systems on data processing to ensure that the studies reflect reality.

(11) OECD Principles of Good Laboratory Practice.
5.3. The EESC believes that the agreement between EFSA and the Joint Research Centre should be followed up, especially regarding joint activities on food and feed, alternative methods for protecting animals, combined exposure to chemical substances and mixtures and the collection of basic data for risk assessments. In particular, EFSA and the JRC should develop harmonised scientific methodologies that ensure quality, transparency, comparability, inclusiveness and fairness towards all stakeholders.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
Opinion of the European Economic and Social Committee on ‘Proposal for a directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain’

(COM(2018) 173 final)

(2018/C 440/28)

Rapporteur: Peter SCHMIDT

1. Conclusions and recommendations

1.1. Unfair Trading Practices (UTPs) in the food supply chain originate in imbalances of power between operators across the chain and lead to negative economic, social and environmental effects. The EESC welcomes the Commission proposal to reduce the occurrence of UTPs as a necessary first step to protecting weaker operators, in particular farmers, workers and certain operators, and to improving governance in the food supply chain. A regulatory approach and a legislative framework with effective and robust enforcement mechanisms is the way UTPs can be effectively addressed at EU level.

1.2. The EESC regrets, however, that the Commission has only introduced a minimum common standard of protection across the EU by prohibiting just a specific number of UTPs. A ban on all abusive practices is necessary.

1.3. Regarding limitation of the protection against UTPs to only SME suppliers as regards their sales to buyers which are not SMEs, the EESC believes that this is not sufficient to effectively address the problem of imbalances of power and that this will not have any meaningful impact. Protection should be extended to all operators, large and small, within and outside the EU. Even when large operators are victims of UTPs, the economic effect is frequently passed on to the weakest actors in the chain.

1.4. On enforcement, the EESC welcomes the Commission proposal to create an EU harmonised framework of enforcement authorities. However, the enforcement mechanisms should also be strengthened, for example with a specific ombudsman procedure, class action and law enforcement by the authorities, to protect the anonymity of the complainant. Such mechanisms should also be accompanied by the possibility of introducing sanctions. To facilitate the complaint process, written contracts should be mandatory and would bring more fairness in the negotiations.

1.5. In addition to tackling UTPs, the EESC recommends that the Commission encourage and support business models that play a role in making the supply chain sustainable (e.g. shortening it, increasing transparency, etc.), rebalancing it and improving efficiency, in order to strengthen the balance of power.
1.6. Last but not least, the EESC reiterates that promoting fairer trading practices should be part of a comprehensive EU food policy, ensuring that the food supply chain is more economically, socially and environmentally sustainable, with a view to implementing the UN Sustainable Development Goals.

2. Introduction

2.1. Unfair Trading Practices (UTPs) are defined as ‘business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another’ (1). The food supply chain is particularly vulnerable to UTPs, due to strong imbalances between small and large operators. UTPs can occur at all stages of the supply chain, and UTPs originating at one level of the chain may have effects on other parts of the chain, depending on the market power of the actors involved (2).

2.2. As described in detail in the EESC opinion on ‘A fairer agro-food supply chain’ adopted in October 2016 (3), concentration of bargaining power has led to the abuse of positions of dominance, causing weaker operators to become increasingly vulnerable to UTPs. This transfers economic risk from the market up the supply chain and has a particularly negative impact on consumers and some operators, e.g. farmers, workers and SMEs. The problem of UTPs has been acknowledged by all stakeholders in the food supply chain, and it has been reported that the majority of operators have experienced UTPs (4).

2.3. In particular, the impact on consumers should be highlighted. Price pressures force processors of food to produce as cheaply as possible — which can affect the quality of food available for consumers, as well as food safety. To reduce costs, in some cases companies use cheaper raw materials, which affect the quality and value of foodstuffs — for example, the use of trans fats in many products, replacing healthier oils and fats from Europe (5).

2.4. Pressure on the weakest operators in the food supply chain is increasing. According to recent Eurostat data, the share of gross value added of retailers is still growing. This results from a higher concentration of the retail and processing sector in the food supply chain, due to a misconstruction in the cartel law. Therefore, the functioning of the food supply chain needs to be improved to ensure a fair share of revenue across the supply chain. However, the value of retailers cannot be underestimated, considering their role in supplying daily goods.

2.5. Tackling UTPs is one of the key components for ensuring a better functioning of the food supply chain, along with reducing price volatility in the markets and strengthening the role of producers’ organisations. In June 2016, a European Parliament resolution (6) called on the Commission to propose a legal framework concerning UTPs — a call which was echoed in October 2016 by the EESC and in November 2016 by the Agricultural Markets Task Force.

2.6. In 20 Member States, various legislative initiatives already exist for addressing UTPs. Together with the existing Supply Chain Initiative (SCI), this has raised awareness on the unequal balance of power in the food supply chain. However, very few of the existing national or voluntary approaches have so far solved the issue of UTPs. The Commission decided to come forward with a specific legislative proposal in April 2018, recognising that the patchwork of UTP rules in Member States or the absence thereof is liable to impair the Treaty’s objective of ensuring a fair standard of living for the agricultural community (7).

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(3) OJ C 34, 2.2.2017, p. 130.
(5) OJ C 34, 2.2.2017, p. 130.
(6) EP resolution of 7 June 2016 on unfair trading practices in the food supply chain (2015/2065 (INI)).
3. Commission proposal

3.1. With the proposed directive, the Commission aims at reducing the occurrence of UTPs in the food supply chain by introducing a minimum common standard of protection across the EU, consisting of a list of specific prohibited UTPs, namely: late payments for perishable food products, last-minute order cancellations, unilateral or retroactive changes to contracts and suppliers being forced to pay for wasted products. Other practices will only be permitted if subject to a clear and unambiguous upfront agreement between the parties: a buyer returning unsold food products to a supplier; a buyer charging a supplier payment to secure or maintain a supply agreement on food products; a supplier paying for the promotion or the marketing of food products sold by the buyer.

3.2. The protection against UTPs only applies to the sales of food products by a supplier that is a small and medium-sized enterprise (SME) to a buyer that is not an SME (8).

3.3. In addition, the Commission's proposal requires Member States to designate a public authority in charge of enforcing the new rules. In the case of a proven infringement, the body responsible will be competent to impose a proportionate and dissuasive sanction. This enforcement authority will be able to initiate investigations on its own initiative or based on a complaint. In this case, parties filing a complaint will be allowed to request confidentiality and anonymity to protect their position vis-à-vis their trading partner. A coordination mechanism between enforcement authorities will also be set up and facilitated by the Commission to enable the exchange of best practice.

4. General comments

4.1. The EESC welcomes the Commission's proposal as a crucial first step in starting a legislative process to regulate UTPs across the EU, as it strongly recommended in its 2016 opinion. This is a necessary development to protect weaker operators in the food supply chain, namely farmers and workers, and to make their income less volatile and more stable. In particular, the proposal helps address their lack of bargaining power, thus improving governance of the food supply chain.

4.2. In its document, the Commission acknowledges that the EU-wide Supply Chain Initiative (SCI) is unlikely to develop into a comprehensive governance framework that would make legislative measures, including enforcement, superfluous (9). In this context, the EESC reiterates that the SCI and other national voluntary schemes can indeed be useful only as an addition — not to replace — effective and robust legal enforcement mechanisms at Member State level (10).

4.3. The EESC also welcomes the promotion of an EU harmonised network of enforcement authorities, as recommended in its previous opinion. Ensuring effective cooperation between enforcement authorities is crucial for addressing transnational UTPs that could otherwise be left unchallenged.

4.4. However, the EESC regrets that the Commission has adopted a minimum harmonisation approach, which is not sufficient to address all of the abusive practices occurring across the food supply chain. In particular, the Committee greatly regrets that buyers are the only ones who can commit abusive practices and only a limited number of UTPs are prohibited in this framework, as further explained in chapter 5.

4.5. The EESC also questions the Commission's proposal to limit protection against UTPs solely to SME suppliers as regards their sales to buyers that are not SMEs. To be effective and successful, protection against UTPs should be applicable to all players in the supply chain, regardless of their size, so as to impact all commercial relations. However, the EESC acknowledges the vulnerability of SMEs. The proposal also fails to address the issue of unequal bargaining power and economic dependence, which does not necessarily coincide with the economic dimension of operators.

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(8) SME definition according to Regulation (EU) No 1308/2013.
(10) OJ C 34, 2.2.2017, p. 130.
4.6. The scope of the proposal is not broad enough and should also cover agricultural non-food products, such as horticultural products, as well as feed.

4.7. Addressing UTPs is an essential component (along with reducing market volatility and strengthening the role of producers’ organisations) of making the food supply chain more economically, socially and environmentally sustainable. The EESC reiterates that promoting fairer trading practices should be part of a comprehensive EU food policy with a view to implementing the UN Sustainable Development Goals (SDGs). In particular, such a comprehensive policy should ensure fair prices for producers so that farming remains viable (footnote 11).

4.8. Although this goes beyond the scope of the Commission’s proposal, the EESC again highlights the need to promote a greater appreciation of food by society as a whole and would support the launch of a Europe-wide information and awareness-raising campaign on ‘the value of food’ (footnote 12) and on limiting food waste in collaboration with concerned organisations.

5. Specific comments

List of prohibited UTPs

5.1. UTPs can broadly be defined as practices that significantly deviate from good commercial conduct and are contrary to good faith and fair dealing (footnote 13). This also includes all practices where an unjustified or disproportionate transfer of risk to a contracting party occurs.

5.2. The Commission has only prohibited a specific number of UTPs. The EESC reiterates that a ban on all unfair practices is needed, for example (but not exclusively) the following, as already recommended in its previous opinion:

— unfair transfer of commercial risk;
— unclear or unspecified contractual terms;
— unilateral and retroactive changes to contracts, including price;
— lower product quality or consumer information without any communication to, consultation of or agreement with the buyers;
— contributions to promotional or marketing costs;
— delayed payments;
— listing or loyalty fees;
— charges for shelf-positioning;
— claims for wasted or unsold products;
— use of cosmetic specifications to reject consignments of food or reduce the price paid;
— pressure to cut prices;
— charges for fictitious services;
— last-minute order cancellations and forecast-volume deductions;
— threats of delistings;

(\footnote{12}) OJ C 34, 2.2.2017, p. 130.
— flat-rate charges that companies levy on suppliers as a requirement for inclusion in a list of suppliers (‘pay to stay’).

Member States should have the opportunity to extend the list in line with the specific situation in their country.

5.3. The EESC calls for an effective ban on food retailers selling below cost-price. In particular, the EESC recommends that suppliers, such as farmers, be paid a fair and just price that allows suppliers to receive an income that is adequate for investment, innovation and sustainable production.

5.4. The UTPs explicitly prohibited in the Commission proposal all relate to situations where there is a pre-existing contract. It is much more frequent, however, for cases such as pressure on operators to occur before a contract is entered into. The examples should, therefore, be expanded to include the case of an undertaking (with market power) requiring another undertaking to grant it advantages without any objectively justified reason (see also paragraph 19(2), point 5 of the German Law on Restrictions of Competition (GWB)). This provision in German anti-trust law has proved an appropriate means of combating the abuse of buying power. The decision of the German Federal Court of Justice (BGH) in the ‘Hochzeitsrabatte’ (wedding rebates) case gives an impressive illustration of this in the context of the relationship between a powerful German food retailer and its suppliers.

SME definition

5.5. The limitation of the protection against UTPs solely to SME suppliers is not sufficient to effectively address the problem of imbalances across the food supply chain. The EESC highlights the ‘domino effect’ that may be created when large operators are victims of UTPs. UTPs have a clear negative effect independently of who is responsible. Inevitably, the economic effect is passed on to the weakest actors in the food supply chain, i.e. farmers, workers, certain operators and also to consumers.

5.6. Another argument for extending protection is that large operators in particular may discriminate against SMEs and exclude them from the supply chain, due to the risk of receiving complaints. In this context, the EESC acknowledges again the vulnerability of SMEs.

Enforcement

5.7. With a view to effective law enforcement, a distinction has to be made between private-law enforcement (not yet provided for in the Commission proposal) and law enforcement by the authorities. It should be stressed from the outset that sufficient account needs to be taken of the right of the party concerned to anonymity, as many undertakings would hesitate to take action against abuses for fear of reprisals such as delisting (the ‘fear factor’).

5.7.1. Private-law enforcement

In relation to private-law enforcement, the party concerned should have access to prohibitory and eliminatory injunctions and claims for damages. But because of the ‘fear factor’, such remedies are of rather minor importance. Moreover, all associations concerned should be able to apply for prohibitory and eliminatory injunctions. This would guarantee special protection of the party concerned with regard to anonymity, in the event that the unfair trade practice is directed at several undertakings (e.g. a food operator requiring all its suppliers/buyers to contribute to any additional cost).

The party or association concerned should be given the option of bringing these claims either before a court or an ombudsman. The ombudsman procedure would have the advantage that the dispute would not have to be conducted in public. A specific ombudsman procedure should be established. The ombudsman should also receive specific decision-making powers. Voluntary proceedings would in many cases not be effective or provide real remedies.

(14) OJ C 34, 2.2.2017, p. 130.
In addition to that, the EESC encourages the operators to develop initiatives in order to promote a cultural change and to improve fairness in the supply chain.

5.7.2. Law enforcement by the authorities

Because of the 'fear factor', enforcement by the authorities plays a particularly important role in this area, thus requiring regulation. Authorities such as the Commission and the national competition authorities should therefore be given extensive powers of investigation and enforcement. The competition rules laid down in Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 (now 101) and 82 (now 102) of the Treaty could serve as an example here. (Article 6 of the proposal for a directive is by comparison much weaker.) Article 17 of the regulation in particular provides for investigations into sectors of the economy and into types of agreements. If the authorities were to have the power to carry out levies on profits, this could have a further deterrent effect.

Alternative food supply chains

5.8. The EESC reiterates that alternative business models that play a role in shortening the supply chain between producers of food and the end-consumer, including digital platforms, should be encouraged and supported and that the role and position of cooperatives and producer organisations should be strengthened in order to restore the balance of power (16). This should be the subject of a future EESC opinion.

Brussels, 19 September 2018.

The President
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(16) OJ C 34, 2.2.2017, p. 130.

(COM(2018) 149 final — 2018/0074 (COD))

(2018/C 440/29)

Rapporteur working alone: Gabriel SARRÓ IPARRAGUIRRE

Council referral 12.4.2018
European Parliament referral 16.4.2018
Legal basis Articles 43(2) and 304 of the Treaty on the Functioning of the European Union
Committee Bureau decision 17.4.2018
Section responsible Agriculture, Rural Development and the Environment
Adopted in section 5.9.2018
Adopted at plenary 19.9.2018
Plenary session No 537
Outcome of vote 182/1/2
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC considers the establishment of a multi-annual plan to be an appropriate measure for managing the Western Waters, although the specificities of fisheries in the North Western and South Western Waters should also be taken into account.

1.2. The EESC believes that this regulation should be aligned with the objectives of the Common Fisheries Policy (CFP) and the importance of the socioeconomic component should therefore be mentioned when allocating fishing opportunities.

1.3. The EESC calls for the lists of species affected by this regulation to be updated, through regionalisation, as some of these species hamper the management of mixed fisheries because of their low catch rates, because they are considered to be by-catches or because of the lack of quotas in some Member States. This is particularly important given the imminent entry into force of the landing obligation and the emergence of ‘choke species’, which could in some cases block fishing activities.

1.4. The EESC stresses the need to increase scientific research efforts through the European Maritime and Fisheries Fund (EMFF), with a view to gaining more knowledge about the real status of fish stocks and thus avoiding, as far as possible, applying the precautionary approach, while also ensuring the sustainable use of these resources over time.

2. Summary of the Commission proposal

2.1. The objective of the Proposal for a Regulation under consideration is to establish a single management plan for demersal stocks, including deep-sea stocks, and their fisheries in the Western Waters.

2.2. The plan will ensure that these stocks are exploited according to the principles of maximum sustainable yield (MSY), using the ecosystem approach, in accordance with the precautionary approach. This is intended to provide stable fishing opportunities based on the most recent scientific information and to facilitate the introduction of the landing obligation.
2.3. Stocks should be managed in accordance with the F_{MSY} ranges (where F stands for fishing mortality) recommended by the International Council on the Exploration of the Sea (ICES), ensuring that fishing opportunities for a given species are set within the lowest F_{MSY} range available. However, fishing opportunities may also be established at lower levels than these ranges or, under certain conditions and provided that the stock in question is above the MSY B_{trigger} (the spawning stock biomass), in line with the highest available F_{MSY} available at that time.

2.4. Fishing opportunities will be fixed in any case so as to ensure that the probability of the spawning stock biomass falling below the biomass limit (B_{lim}) reference point is no more than 5%.

2.5. When allocating fishing opportunities, Member States shall take account of the likely catch composition of vessels participating in fisheries.

2.6. The Commission has been granted the power to adopt technical measures relating to the characteristics or limitations of fishing gear by means of delegated act, with the aim of improving selectivity, reducing unwanted catches and their impact on the eco-system, as well as fixing minimum sizes for conservation and provisions for the landing obligation.

3. General comments

3.1. The EESC considers the establishment of a multi-annual plan to be an appropriate measure to guarantee the exploitation of fishing resources in the medium and long term in Western Waters.

3.2. However, the Committee believes that when drawing up the plan consideration should be given to the specific features and differences between fisheries areas in North Western and South Western Waters, depending on the different characteristics of their fleets, fishing activities (types) and the duration of fishing trips.

3.3. The EESC insists that the plan should contribute to achieving all of the CFP's objectives and therefore socioeconomic impact studies and the economic viability thresholds for each of the arrangements subject to regulation must also be considered when fixing fishing opportunities. However, this component is missing from the content of the Proposal for a Regulation.

3.4. The Committee is concerned about the consequences of applying the precautionary approach in cases where there is a lack of scientific data on fisheries and the repercussions of this in terms of a direct reduction in fishing opportunities. The EESC therefore calls on the Member States and the Commission to boost their efforts in research, in order to increase knowledge of these stocks. Moreover, the Committee believes that if scientific assessments of fish stocks are not analytical, the total allowable catches (TACs) should not be reduced significantly until evaluations have improved.

3.5. In the case of mixed fisheries, where problems have been identified involving choke species included in the plan that may block fishing activities relating to the main target species, the EESC believes that the possibility of excluding such species from the TAC system should be considered and alternative management measures should be proposed, through regionalisation, to ensure the good state of stocks.

3.6. The specific features of certain species and zones require a form of fisheries management which, in order to be effective, should facilitate the establishment of management sub-zones within the same ICES division. The Committee calls on the Commission to include this possibility in the regulation.

4. Specific comments

4.1. Article 1 sets out a list of species that make it difficult to manage mixed fisheries, including deep-water species which have their own distinct TAC and quota system. Moreover, this system is biannual and in the Committee's opinion their inclusion therefore creates confusion. In some Member States, these species are rarely caught or not at all, and are regarded as by-catches, as is the case for Alfonsinos (Beryx spp). The red seabream (Pagellus bogaraveo) in subarea IXa also has a number of specific features relating to the fishing zones (the Atlantic and Mediterranean coasts where there is no TAC and quotas) and to participation in fishing fleets from third countries. The EESC is therefore of the view that it does not make sense to include it in the list when the extent to which these countries are ready to align their management with EU principles and interests is unknown.
4.2. There are also species such as sea bass (*Dicentrarchus labrax*) and whiting (*Merlangus merlangus*) in area IXa, which are not subject to a system of TACs and quotas, thus the Committee considers that reference to them should be deleted. For other species such as cod (*Gadus morhua*), whiting (*Merlangus merlangus*) in area VII or haddock (*Melanogrammus aeglefinus*) some Member States have very little quota, and so these species can clearly be limiting for certain fleets. They are therefore considered to be choking species. The Committee also considers it necessary for them to be removed from the list.

4.3. A number of errors have been identified in the definition and scope of the functional units relating to the Norway lobster (*Nephrops norvegicus*) and the EESC therefore believes they should be revised.

4.4. In the Committee’s view, the estimate of fishing opportunities based on the MSY, as provided for in Articles 3, 4 and 5, means that only variables associated with the conservation of fish stocks are taken into account. The plan should contribute to meeting all of the CFP’s objectives, in accordance with Article 2 of Regulation (EU) No 1380/2013 and should not focus solely on environmental variables, but consider social and economic ones as well, thus avoiding abrupt changes in fishing opportunities between consecutive years.

4.5. In order to prevent the annual management of fishing opportunities from impeding multi-annual management and to encourage the involvement of stakeholders in decision-making, the co-legislators should amend Article 4 of the proposal for a management plan by including a legal basis for the approval of operating rules in line with the CFP principles, through regionalisation.

4.6. Article 5(2) establishes that the precautionary approach shall be applied to fisheries management in cases where not enough scientific information is available. The EESC suggests laying down effective mechanisms under the plan, via the EMFF, which are able to increase the collection of scientific information within the time-scale and with the frequency required to avoid the closure of fisheries.

4.7. Article 9 establishes that when allocating fishing opportunities available to them, Member States shall take account of the likely catch composition of vessels participating in mixed fisheries. The Committee believes that this principle goes well beyond what is laid down in Article 17 of Regulation (EU) No 1380/2013 on the criteria for the allocation of fishing opportunities to the Member States.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(COM(2018) 229 final — 2018/0109 (COD))

(2018/C 440/30)

Rapporteur working alone: Gabriel SARRÓ IPARRAGUIRRE

European Parliament referral 2.5.2018
Council referral 14.5.2018
Legal basis Articles 43(2) and 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision 22.5.2018
Section responsible Agriculture, Rural Development and the Environment
Adopted in section 5.9.2018
Adopted at plenary 19.9.2018
Plenary session No 537
Outcome of vote 181/1/3

1. Conclusions and recommendations

1.1. The EESC broadly supports the European Commission proposal, which seeks to transpose Recommendation 16-05 of the International Commission for the Conservation of Atlantic Tunas (ICCAT) into EU law. The recommendation establishes a multiannual recovery plan for Mediterranean swordfish and is aimed at achieving a biomass of that stock corresponding to a maximum sustainable yield (MSY) by 2031, with at least a 60 % probability of achieving that objective.

1.2. The Committee finds that the European Commission has not simply transposed the ICCAT recommendation but introduced a number of points into its proposal that are not reflected in the recommendation and that may put the European fleet at a competitive disadvantage vis-à-vis the fleets of coastal third countries, such as Morocco, Algeria, Tunisia and Turkey, which are also involved in such fishing activities. In light of this, and in order to avoid socioeconomic consequences for European employers and employees that are more serious than those facing other countries, the EESC urges the co-legislator to take into account the specific comments mentioned below.

1.3. The EESC calls on the Commission, the Member States and countries bordering the Mediterranean to use all means necessary to achieve the total eradication of driftnets, the use of which has been prohibited since 1998, with the aim of preventing the illegal capture and sale of Mediterranean swordfish, the impact that this has on the market and the resulting unfair competition for the fleet that complies with the rules.

2. Summary of the Commission proposal

2.1. Given the alarming situation facing Mediterranean swordfish (Xiphias gladius), at its annual meeting in 2016 the ICCAT adopted Recommendation 16-05 establishing a 15-year recovery plan for that species. The recommendation lays down rules for the conservation, management and control of the Mediterranean stock of swordfish so as to achieve a biomass corresponding to an MSY by 2031, with at least a 60 % probability of achieving that objective.

2.2. The proposed regulation that is the subject of this opinion transposes the abovementioned recommendation — which has been directly applicable since 2017 — into EU law so that the EU can comply with its international obligations and provide operators with legal certainty regarding the rules and obligations to which they are subject.
2.3. The main elements of the recovery plan are as follows: the establishment of a total allowable catch (TAC) of 10,500 tonnes, which will be reduced gradually; the establishment of a minimum conservation reference size of 100 cm lower jaw to fork length, or weighing 11.4 kg of round weight, or 10.2 kg of gilled and gutted weight; the establishment of a maximum number of 2,500 hooks that may be set or taken on board; a closure period of three months from 1 January until 31 March each year; limitation of the number of authorised vessels, and control measures similar to the ones that exist for bluefin tuna.

3. General comments

3.1. The EESC agrees that ICCAT Recommendation 16-05 should be transposed into EU law and therefore supports the European Commission’s initiative.

3.2. However, the Committee has noted that the Commission proposal goes beyond the ICCAT recommendation and introduces new requirements that are not included in that recommendation. Bearing in mind that the stock in question is exploited not only by the EU fleet, but also by all other countries bordering the Mediterranean, either through fishing activity specifically aimed at that stock, such as Morocco, Algeria, Tunisia and Turkey, or through incidental catches, the Committee considers it inappropriate to introduce such additional measures unilaterally, as they could discriminate against the EU fleet and have socioeconomic consequences for EU operators that differ from those facing other countries involved in such fishing activities.

3.2.1. Looking to future negotiations, the Committee urges the Commission to work more intensively with third countries within the ICCAT to reach agreements that, without distorting competition between fishermen, accelerate the recovery of the biomass and its transition to the MSY level.

3.3. The Committee reminds the Commission that the use of driftnets to catch Mediterranean swordfish has been banned since 1998. Taking into account the impact on the stock of Mediterranean swordfish of the illegal use, by certain operators, of this prohibited gear and the unfair competition that this entails for operators who comply with the rules, the EESC calls on the Commission, the Member States and coastal countries to use all means necessary to completely eradicate driftnets.

4. Specific comments

4.1. Article 8 establishing a capacity limitation by gear type not only transposes point 6 of the ICCAT recommendation, which stipulates that, ‘A capacity limitation shall be applied for the duration of the Recovery plan. In 2017 CPCs (1) shall limit the number of their fishing vessels authorised to fish for Mediterranean swordfish to the average yearly number of their vessels that fished for, retained on board, transhipped, transported, or landed Mediterranean swordfish over the period 2013-2016. However, CPCs may decide to use the number of their vessels that fished for, retained on board, transhipped, transported, or landed Mediterranean swordfish in 2016, if this number is inferior to the average yearly number of vessels over the period 2013-2016. This limit shall be applied by gear type for catching vessels.’ Rather, it also limits this to the option which results in a smaller number of vessels. The Committee therefore recommends using the literal wording of point 6 of ICCAT Recommendation 16-05.

4.2. The EESC believes that the wording of Article 10(2) might cause confusion and could be interpreted as proposing a complete ban on longline gear, when in reality the aim of the ICCAT recommendation is to prevent juvenile swordfish being caught with the small hooks used by vessels fishing for Mediterranean albacore. The Committee therefore suggests the following wording: ‘In order to protect Mediterranean swordfish, a closure period shall apply to the targeted fishing of Mediterranean albacore (Thunnus alalunga) from the 1 October to 30 November of each year.’

4.3. Article 14(2) is one article where the Commission adopts a more restrictive approach than the ICCAT recommendation, since it stipulates that an additional 2,500 replacement unrigged hooks shall be allowed on board fishing vessels for trips longer than 2 days. Point 18 of the recommendation, on the other hand, allows the hooks to be rigged. The Commission proposal would create an operational problem for vessel crew, who must comply with an ever increasing number of obligations. The EESC therefore recommends that the term ‘unrigged’ be removed from that article and the wording of the recommendation be used: ‘A second set of rigged hooks may be allowed on board for trips longer than 2 days provided that it is duly lashed and stowed in lower decks so that it may not readily be used.’

(1) Contracting parties to the ICCAT Convention.
4.4. Article 18(2) stipulates that, ‘For control purposes, the transmission of VMS (2) data from catching vessels that are authorised to fish Mediterranean swordfish shall not be interrupted when vessels are in port’. The Committee believes that this proposal may generate additional unnecessary costs for fishermen and therefore proposes, on the basis of Article 18(2) of Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, that the VMS can be switched off in port, provided that it is guaranteed to be switched on and on again with the vessel in the same position.

4.5. In Article 20(2), the Commission once again goes beyond what is stipulated in ICCAT Recommendation 16-05, in that it proposes that scientific observers be deployed on at least 20 % of pelagic longline vessels targeting Mediterranean swordfish. However, point 44 of the ICCAT recommendation states: ‘Each CPC shall ensure that national scientific observers are deployed on at least 5 % of its pelagic longline vessels over 15m length overall targeting Mediterranean swordfish.’ The EESC considers the increase in coverage to 20 % unjustified and disproportionate in the case of small vessels, which have problems relating to space and cost and would face serious difficulties in meeting that requirement. Moreover, third country fleets would continue to be able to maintain a coverage of only 5 %. The Committee therefore recommends maintaining the mandatory 5 % required by the ICCAT.

4.6. Article 24(2) specifies that masters of Union fishing vessels under 12 metres in total length shall, at least four hours before the estimated time of arrival at the port, notify the competent authority of the Member State of a number of pieces of information. In view of the problems that this requirement may cause for the small-scale fleet at certain times, the EESC proposes adding a sentence allowing the Member State to amend the notification period of four hours in exceptional cases. For example, a wording similar to the one used in Article 31(3) of Regulation (EU) 2016/1627 on the bluefin tuna recovery plan could be applied: ‘Where Member States are authorised under applicable Union legislation to apply a shorter notification period than that referred to in paragraphs 1 and 2, the estimated quantities of bluefin tuna retained on board may be notified at the thus applicable time of notification prior to arrival. If the fishing grounds are less than four hours from the port, the estimated quantities of bluefin tuna retained on board may be modified at any time prior to arrival.’

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(2) Vessel Monitoring System.
1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Commission’s proposal for a regulation and considers it to be an important first step towards promoting fairness and transparency for business users of online intermediation services. The EESC believes that this proposal is particularly important because it constitutes the first attempt to regulate B2B relations in the area of e-commerce, and recommends that it be approved swiftly in order to plug a clear legislative gap.

1.2. However, the Committee considers that this regulation alone cannot resolve all the digital single market’s problems and that it is unable to close the loop. The cornerstone of the regulation is transparency, but this will not suffice to regulate a highly dynamic and complex market, as is the case with the digital market. The disparities in terms of strength between global players and business users (particularly SMEs) can only be addressed by establishing clearer boundaries and relationships between stakeholders and combating abuse of a dominant position. The Committee also recommends prompt action to tackle the social dimension of digitalisation by triggering social dialogue. Tax dumping, the data economy and data ownership deserve the same level of consideration and should be tackled by means of a holistic approach, as the Commission is already doing in other fields.

1.3. The EESC recommends including in the regulation a ban on price parity clauses, which continue to hinder competition and harm businesses and consumers and which could turn the major online platforms into oligopolies or monopolies. It is vital that consumers be able to buy goods and services at lower prices, that firms be able to build up their business effectively through their own websites and that new online platforms be able to grow and to operate with existing platforms on a level playing field.

1.4. The EESC considers that any differentiated treatment (such as ranking) giving preference to certain businesses (particularly when in exchange for payment) should be spelled out to business users as part of the contractual terms and conditions and be clearly labelled ‘sponsored advert’, ‘content paid for’ or some similar wording so as to be easily recognisable to consumers when they search for products or services online. It is equally important that business users and consumers be informed about the main parameters for building the criteria which determine the ranking of business users.
1.5. The Committee is in favour of introducing mechanisms for settling disputes out of court, and recommends that harmonised criteria be identified guaranteeing the independence of mediators. The EESC believes that chambers of commerce, which already perform these activities effectively at national level, could be a valid option. It is equally important that the mechanisms for bringing injunctions to prevent or stop harm to business users should be straightforward, clear and inexpensive.

1.6. The EESC considers that the EU Observatory on the Online Platform Economy will have a key role to play in implementing both this regulation and all other relevant legislative initiatives. This means that the observatory will be highly politically, as well as technically, important. Drawing on the many opinions it has issued on this matter, the EESC is ready and willing to support the work of the group of experts by sending a delegate to act as observer, to help convey the views of organised civil society.

2. Introduction

2.1. Online platforms and search engines are a fundamental part of the digital ecosystem and have a strong impact on the way it is organised and operates. In recent years, they have taken on a pivotal role in internet development by offering new social and economic models through which they guide the choices and action of individuals and businesses.

2.2. E-commerce is growing exponentially in Europe. The turnover of retail sales in 2017 was estimated at EUR 602 billion (14 % up over 2016), completely in line with the upwards trend of the previous year, with sales equalling EUR 530 billion (15 % up over 2015) (1).

2.3. According to Eurostat (2), in 2016 20 % of EU-28 businesses were active in e-commerce. This figure hides major disparities depending on the size of the business — to be more accurate, 44 % of large businesses, 29 % of medium-sized businesses and only 18 % of small businesses sell online.

2.4. 85 % of businesses active in e-commerce use their own website, but the use of online platforms is continuing to rise: 39 % of businesses (business users) make use of them (3). This is due to two factors; SMEs are becoming increasingly interested in e-commerce and see online platforms as a strategic tool for penetrating the digital market, and social networks are becoming exponentially more influential when it comes to organising users’ real and virtual lives.

2.5. Although over one million European SMEs use online intermediation services, there are relatively few platforms providing these services. This means firstly, that SMEs are completely dependent on online platforms and search engines and secondly, that the platforms and engines have the power to take unilateral action which is prejudicial to the legitimate interests of businesses and consumers.

2.6. According to another Commission study, almost 50 % of European businesses operating on online platforms encounter problems. Moreover, in 38 % of cases, problems arising from contractual relations are not resolved, while in 26 % they are resolved but with difficulty (4).

2.7. Consumers in particular are indirectly affected by the curbing of full and fair competition. This is felt in a range of situations: from a lack of transparency regarding the ranking of goods and services to lack of choice due to business mistrust in the digital market.

2.8. The forms of redress open to businesses are limited, difficult to access and often ineffective. It is no coincidence that the bulk of businesses (93 %) restrict their online sales to their home market — this is largely because legislative fragmentation makes settling cross-border disputes a lengthy and difficult process (5).

2.9. To date, European legislation has focused on defining the relationship between businesses and consumers in online trade (B2C), whereas the relationship between businesses and online platforms (B2B) has never been dealt with decisively.

2.10. This is why the Commission has incorporated into the proposal to review the Digital Single Market Strategy (6) an initiative which aims to build up this area of European legislation in order to guarantee fairness and transparency, and prevent abuse due to the legislative gap or the fragmentation resulting from the various different national legislative systems.

3. Summary of the proposal

3.1. The proposal aims to regulate the intermediation services offered to businesses by online platforms and search engines. This includes online software application services (app stores) and the online services provided by collaborative platforms (social networks).

3.2. The regulation applies to all online intermediation service providers (established inside or outside the EU), provided that the business users or corporate website users are established in the EU and at least part of the transaction involves these users’ offering their products or services to European consumers. The consumers must be located in the EU but it is not a prerequisite that this be their place of residence or that they hold European citizenship.

3.3. In order to guarantee fairness and transparency, the platforms must inform businesses simply and clearly about the terms and conditions of the contract. Businesses must be informed of any amendments at least 15 days in advance and, in particular, briefed on the methods for publishing content and the criteria used for terminating or suspending the service.

3.4. The proposal also stipulates that businesses must be informed about the parameters used to define the ranking of content or websites, even when they are paid for. Any differentiated treatment on the part of the service provider or business users controlled by the provider giving preference to products or services offered to consumers must be spelled out in the terms and conditions of the contract.

3.5. In order to safeguard the rights of small businesses more effectively, the Commission states that online service providers must establish an internal complaint-handling system. Complaints must be handled rapidly and communicated clearly to users. The providers will also be required to publish regular reports on how many complaints are received, what they concern, how long it takes to handle them and what decisions are reached.

3.6. There is also provision for an out-of-court dispute settlement system. A business will thus be able to appeal to a mediator nominated in advance by the service provider as part of the contractual terms and conditions.

3.7. The mediators must be impartial and independent. Providers are encouraged to promote the establishment of associations of mediators, particularly with a view to settling cross-border disputes.

3.8. The compliance costs will largely fall to service providers, whereas SMEs will be exempt (7). The measures described above will not prevent anyone taking legal action; they are designed to tackle and settle disputes effectively and within a set timeframe.

3.9. The new legislative arrangements will be monitored and, accordingly, an EU Observatory on the Online Platform Economy (8) will be set up. It will support the Commission by analysing digital market developments and assessing the regulation’s implementation and impact. The findings will be used in the three-yearly review of the proposal for a regulation.

3.10. The proposal establishes a right for an injunction to be brought by representative organisations, associations or public bodies to stop or prohibit any non-compliance by providers of online intermediation services with the requirements contained in the regulation.

(7) Recommendation 2003/361/EC.
(8) The observatory will be set up under Commission Decision C(2018) 2393. It will comprise between 10 and 15 independent experts selected by means of a competition. They will remain in office for two years and will not be remunerated for their work.
3.11. The Commission calls on online service providers and the organisations representing them to draw up codes of conduct to contribute to the proper application of this regulation, taking specific account of the needs of SMEs.

4. General comments

4.1. The EESC was one of the first to support the digital revolution and the related economic and social processes. Specifically, being aware of the risks and opportunities of digitalisation, the Committee has always urged the Commission to identify a safe, clear, transparent and fair framework for the digital single market.

4.2. In line with its previous opinions (9), the EESC welcomes the Commission proposal promoting fairness and transparency of online intermediation services. The Committee particularly praises the proposal’s flexible approach as it must establish a clear reference framework for a sector which is changing constantly, while also guaranteeing a level playing field.

4.3. The Committee believes that this initiative is essential for protecting SMEs, the primary users of these services (10), and for establishing a legislative framework guaranteeing fair, genuine competition. It is also crucial that SMEs be able to capitalise on the growth opportunities available to them in the digital single market through their own websites and online platforms.

4.4. It is important here to bear in mind that entering the digital market is an extremely complex challenge for SMEs. They need to invest adequately in changing their production and distribution systems and acquiring new expertise and specialised skills; if they do not manage to do so, they will automatically be thrown out of the market and their reputations will be harmed. Further mechanisms (including financial ones) are thus needed to support this transition.

4.5. The EESC considers that ‘price parity clauses’ (also known as ‘most favoured customer clauses’) are a serious obstacle to the development of fair and open competition in the digital single market. These clauses force business users to quote their lowest price — compared to other online platforms or to their own website — on a given online platform. This leads to significant market distortion since it reinforces the position of the scant handful of online platforms currently in operation (thus preventing the development of new platforms), reduces the opportunities available to consumers to access lower prices and binds business users to the platform, keeping them from developing their own distribution network with consumers. This practice has already been prohibited in many EU countries (11) on the initiative of these countries’ competition authorities, a measure which has had a positive impact on the way in which the market operates and so been beneficial to both businesses and consumers. The EESC therefore hopes that these clauses will shortly be prohibited throughout the EU, possibly in connection with the regulation under discussion.

4.6. The EESC would point out that to date, the bulk of the online intermediation services market is controlled by a handful of major players, many of which are based outside the EU. It is therefore important, during the implementation of this regulation, to monitor and guarantee both fair competition between online platforms and opportunities for new (particularly European) platforms to enter the market.

4.7. The EESC is pleased to note that many of the requests and recommendations made in its previous opinions have been incorporated into the regulation. Specifically, the Committee sees strong analogies and continuity as regards the transparency and clarity of contractual terms and conditions, the comprehensive explanation of parameters for ranking and any unequal treatment, the setting of stable mechanisms for making complaints and settling disputes out of court, instilling a responsible attitude in online platforms (codes of conduct) and the monitoring of processes (12). Specifically, the Committee would point out that any differentiated treatment giving preference to products or services offered (often in exchange for payment) must be communicated clearly and in an understandable manner to consumers.

(11) Germany, France, Italy, Sweden, Belgium and Austria.
4.8. The Committee considers that the proposal is fully in line with the broader legislative framework of the digital single market which, however, is still far from complete. Performance levels in the EU are below those of its main global competitors in terms of numbers of online users, businesses and transactions. The EESC therefore calls on the Commission and the Member States to step up efforts to regulate the entire e-commerce sector and, more broadly, e-democracy so as to make the internet and the digital market a safe place which provides opportunities for everyone.

4.9. The data economy is a key part of the digital market. The EESC believes that data ownership in particular cannot be left solely to an agreement settled by means of a contract between two stakeholders. Moreover, the information disclosure provided for by this proposal fails to resolve one crucial issue, regarding the potential use of such data once a private stakeholder comes into possession of them. The EESC therefore recommends that the Commission address this issue as a matter of urgency and take steps to regulate it, in the chief interest of users and of the very concept of the data economy.

4.10. The EESC feels that the digital single market should guarantee a level playing field for all economic players involved, whether they are European or not. The Committee therefore recommends that the Commission combat all unfair trade practices (such as digital tax dumping) by establishing that tax on profits must be paid where the corresponding economic activity takes place and must be consistent with the actual turnover. For instance, it would point out that the ‘Airbnb’ platform paid only EUR 69 000 in taxes in France in 2015, compared to around EUR 5 billion for the entire hotel sector.

4.11. The Committee considers that it is essential that the legislative framework of the entire e-commerce sector be completed as soon as possible, with a view to establishing appropriate guarantees and safeguards for all stakeholders active in the digital single market. Specifically, the EESC feels that it is crucial to tackle the most controversial aspects of the social dimension of digitalisation, including wages, contracts, working conditions and hours of people employed either through digital platforms or to provide services connected to these platforms. The Committee therefore recommends that European social dialogue be triggered rapidly. Furthermore, given the growing body of legislation regulating this sector, the Committee recommends drawing up a Code of EU Online Rights for Europeans.

5. Specific comments

5.1. The EESC is in favour of a comprehensive definition of the concept of online intermediation service providers. The internet and e-commerce are developing rapidly and unpredictably, and so the EESC considers that the means and timeframes for managing such services must be regulated rather than the digital operators which provide them; due to rapid and unpredictable internet development, the nature or roles of these operators could soon change.

5.2. The Committee considers that this proposal tackles a significant gap in legislation and that it is pivotal for addressing the fragmentation resulting from the national legislative systems, currently one of the main issues that creates problems in cross-border disputes. The Committee also considers that the proposal fits neatly into the existing legislative framework comprised of digital single market rules and the handful of rules which currently regulate (directly or otherwise) B2B relationships. The broad legal framework built on the founding values of the EU is able to guarantee ample freedom of manoeuvre for the institutions responsible for enforcing the rules, ensuring that they are able to take effective action.

5.3. The EESC endorses the requirement for online service providers to disclose the main parameters used to rank content and websites. Nonetheless, the Committee would point out that this initiative must be managed carefully as it could promote fraud by business users, something that would be prejudicial to other businesses or consumers, resulting in market distortion.

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(2) OJ C 75, 10.3.2017, p. 119.
(3) OJ C 367, 10.10.2018, p. 73.
(4) INT/845.
(6) OJ C 75, 10.3.2017, p. 119.
(9) OJ C 75, 10.3.2017, p. 119.
5.4. Mediators will play a key role in settling out-of-court disputes. The EESC feels that the defining characteristics of mediators and the arrangements for recruiting them are not completely clear, and would point to the differences between Member States and recommend that harmonised criteria be identified to guarantee their independence. The Committee proposes that consideration could be given to establishing a European professional register in order to boost the confidence of business users. In this context, the Committee would propose tapping the expertise of chambers of commerce and the work they have already successfully achieved at national level.

5.5. The EESC welcomes the introduction of injunctions to safeguard business users; this instrument is very important for overcoming the ‘fear factor’ which often holds back small businesses with regard to major multinationals in the sector. The Committee considers in particular that the mechanisms established to bring an injunction must be clear, straightforward and inexpensive.

5.6. The observatory will be extremely important for monitoring developments in the digital market and the proper and full implementation of the regulation itself. Specifically, the EESC considers that the experts should be selected with great care, guaranteeing their independence and impartiality. The EESC is ready and willing to support the work of the group of experts by sending a delegate to act as observer, who will help convey the views of organised civil society (23).

5.7. Although a regulation, flanked by a harmonised system of penalties, is considered to be the most suitable instrument, the EESC endorses the call for online service providers to draw up codes of conduct guaranteeing that the legislation will be implemented fully and properly.

5.8. The Committee would point out that currently, and primarily in the United States, large platforms employ business practices designed to force other players out of the market, such as free shipping, which undermines parcel delivery companies. In the medium term, this could produce oligopolies which would harm both businesses and consumers. The EESC therefore urges the Commission to keep careful watch on such practices.

5.9. The EESC believes that this proposal will have significant indirect effects on both consumers (by offering them a wider range of products and increasing competition between businesses) and on employment (jobs will be created as more businesses are active in the digital market). It is therefore important that small digital platforms (such as cooperative platforms) also find a niche in the online market.

5.10. The EESC reiterates its call to the Commission and the Member States to support digital innovation by means of appropriate digital literacy strategies flanked by targeted education and training pathways, with a particular focus on young and vulnerable people (24). Moreover, with a view to boosting awareness among business users, the Committee believes that it is crucial to involve industry associations in order to draw attention to and support specific training courses, with particular emphasis on SMEs, so it becomes possible to capitalise fully on the opportunities provided by the digital single market.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

1. Conclusions and recommendations

1.1. Freedom of information and expression is inviolable in the EU, yet this freedom is used to overturn the Union’s principles in order to make debate and critical thinking impossible, and not as a tool to inform or persuade, but as a weapon. Disinformation is used as an extreme form of abuse of media which aims to influence social and political processes and is particularly potent when it is sponsored by governments and used in international relations. Current acute cases are (amongst many others) Russian state-sponsored disinformation, the Brexit campaign that only can be classified as a frontal attack on the EU and intervention in the elections in the USA. All those destabilising actions raise great concerns for European civil society.

1.2. A variety of tools and methods are currently used to undermine European values and external actions of the EU, as well as to develop and provoke separatist and nationalistic attitudes, manipulate the public and conduct direct interference in the domestic policy of sovereign countries and the EU as a whole. Moreover, the growing influence of cyber offensive capabilities and increased weaponisation of technologies to achieve political goals is observed. The impact of such actions is often underestimated (1).

1.3. The EESC agrees with the Commission’s call for more responsibility on the part of social media platforms. However, despite the existence of several studies and policy papers produced by European specialists in the last few years, the communication lacks any practical mandatory steps to ensure this.

1.4. On the basis of available research the EU should ensure and continue research on the impact of disinformation in Europe, including by monitoring Europeans’ resilience to disinformation in future Eurobarometer surveys. Those surveys should not only include generic data on fake news but also identify the true situation of Europeans’ immunity to disinformation. The Commission’s lack of urgency and ambition fails to address fundamental issues like the support schemes for traditional media in order to ensure the fundamental right of citizens to qualitative and reliable information, investigating the feasibility of setting up public-private partnerships to create paid online platforms that offer safe and affordable online services, exploring the opportunities to create more transparency around and supervision over the underlying algorithms of these online systems and looking into the possibility of breaking apart monopolies to restore a level playing field for fair competition, in order to prevent the progressive corruption of society.

(1) Information report REX/432 ‘How media is used to influence social and political processes in the EU and Eastern neighbouring countries’.
1.5. The EESC regrets that both the Communication and the HLEG report fail to mention Russia as the major source of hostile disinformation against the EU. Yet the first step in solving any problem is to admit that there is one.

1.6. Based on the European Parliament Resolution of 15 of June 2017 on online platforms and the digital single market (2), the Commission refers to the EESC calls for the dutiful enforcement of existing legal regulations relating to online platforms. In addition the EESC invites the Commission to finish discussion of the legal liability regime for online platforms and implement targeted regulation of the online platforms with respect to their definition and character. Online platforms and social networks should commit to such measures so as to ensure transparency by explaining how algorithms select the news put forward, and be encouraged to take effective measures to improve the visibility of reliable, trustworthy news and facilitate users’ access to it.

1.7. One of the problems with disinformation is the fact that it is impossible to check the identity of the sources spreading disinformation throughout the internet. It is too easy to operate in cyberspace with a fake identity — and in general that is exactly what those who are active online with malicious intent do. The Commission presents several proposals, which are set out in the Joint Communication on Cybersecurity published in September 2017. The problem is that these proposals are not mandatory. If we really want to make a difference in the fight against disinformation we may need more strict measures regarding identification when people are operating proactively on the internet. After all, that is how the quality media operate, in compliance with the 1954 Code of Bordeaux, which was drawn up by the International Federation of Journalists and sets very clear and strict principles for how to work with sources. The names and addresses of sources always have to be known to the editorial staff.

1.8. The EESC agrees with the Commission that the fact-checking community should work closely together. Similar networks already exist, including one under the umbrella of the East StratCom Task Force. The problem is that they need sufficient funding, an element that is currently missing. The EESC calls on the Commission and Member States to fully support the efforts of the East StratCom Task Force. This should include not only a proper budget, but also active involvement by all Member States in its work, based on sending seconded experts to the East StratCom Task Force and creating contact points. The website presenting the results of this task force’s efforts (3) should be more proactively communicated in order to raise public awareness in the EU of the threats.

2. Gist of the Commission Communication

2.1. A well-functioning, free and pluralistic information ecosystem based on high professional standards is indispensable to healthy democratic debate. The Commission is attentive to the threats posed by disinformation to our open and democratic societies.

2.2. The Commission intends to present a comprehensive approach aimed at responding to those threats by promoting digital ecosystems (4) based on transparency and privileging high-quality information, empowering citizens against disinformation and protecting our democracies and policy-making processes.

2.3. The Commission calls on all relevant players to significantly step up their efforts to adequately address the problem of disinformation. It considers that the proposed actions will, if effectively implemented, materially contribute to countering disinformation online.

2.4. The Commission identifies three main causes of the problem (creation of disinformation, amplification through social and other online media, dissemination by users of online platforms) and presents a number of proposals to tackle it, in five policy areas:

— create a more transparent, trustworthy and accountable online ecosystem,

— secure and resilient election processes,

(2) 2016/2276 (INI).
(3) https://euvsdisinfo.eu
(4) The Commission uses the word ‘ecosystems’ in its document. The word ‘infrastructure’ might be better in place in this context.
— fostering education and media literacy,

— support for quality journalism as an essential element of a democratic society,

— countering internal and external disinformation threats through strategic communication.

3. General remarks
3.1. The growth in organised disinformation from various state and non-state actors presents a real threat to democracy. These destabilising forces include governments of nations bigger than any EU Member State. The EU is the appropriate partner to act if it wants to counter this threat because, unlike any single Member State, the Union has the critical mass and resources that puts it in a unique position to develop and implement strategies and policies to address this complex issue.

3.2. The proper functioning of democracy depends on well-informed citizens who can make educated choices based on reliable facts and trusted opinions. Crucial to this is a system of independent, reliable and transparent media enterprises with a special position for public broadcasters, employing sizeable professional staffs to collect, check, assess, analyse and interpret news sources in order to safeguard a certain level of quality and soundness of the stories published.

3.3. There is a difference between fake news and disinformation. Fake news has existed throughout history: it is a catch-all term encompassing rumours, war propaganda, hate speech, sensation, lies, selective use of facts, etc. The invention of the printing press in the 15th century enabled distribution of (fake) news on a larger scale, and its geographical reach increased further after the introduction of the postage stamp in 1840. Digital technology and the internet have taken away the last barriers to unlimited distribution.

3.4. Disinformation is defined as verifiable false or misleading information that is created, presented and disseminated for economic gain, or to intentionally deceive the public, which may cause harm to democratic processes and influence elections and is a serious threat to society (5).

3.5. There are multiple parties in the chain of disinformation: those who create it, those who consume as well as online platforms that play an overarching role in the whole process by facilitating distribution.

Those who create it (governments, religious institutions, business conglomerates, political parties, ideological organisations, amongst others) do so for various reasons (to influence and manipulate public opinion, confirm their presumed superiority, make or increase a profit, gain power, create hate, justify exclusion, etc.).

Those who distribute it (in particular online platforms, but also traditional media) have different motives including financial benefits or deliberate manipulation.

Those who consume it (internet users) are often not critical enough as consumers and are subsequently deliberately manipulated by the online platforms. The intermediary tech companies like Twitter, Google and Facebook (to mention only a few) facilitate unlimited and uncontrolled sharing of content on online platforms in exchange for collecting private data that enable these platforms to create huge profits with microtargeted advertising that delivers tailor-made commercial messages to strictly defined target groups. Consumers' ignorance concerning digital self-protection contributes to the growth of the problem.

3.6. The tech companies in question have a shared responsibility since they play an overarching role in the process. They do not identify themselves as publishers but as ‘just’ online platforms that distribute information and other content created by established media without having to pay the cost of content creation in the form of editorial staff. The content is distributed from other sources without checking, assessing, analysing or interpreting the material they are publishing. ‘Google is not “just” a platform. It frames, shapes and distorts how we see the world’ was one of the conclusions of the article ‘The great Brexit robbery: how our democracy was hijacked’ published by the Guardian, which analysed how a ‘shadowy, global operation by […] the disparate forces of the Leave campaign influenced the result of the EU referendum’. Because disinformation and reliable news are presented indistinguishably, users find it difficult to separate one from the

other. Thus tech companies should prioritise becoming transparent about the rules and the data. It is especially important how transparent the links are between advertising revenue policies of platforms and dissemination of disinformation. (In this respect the current negotiations on the Code of Practice on Disinformation that should have been published by the end of July 2018 should be closely monitored.)

4. Specific remarks

4.1. Despite the diversity of messages, channels, tools, levels, ambitions and tactical aims, and notwithstanding its rapidly adapting nature, the strategic objective of disinformation campaigns is to undermine liberal democracy, to sow and amplify mistrust in credible sources of information, in the geopolitical direction of a country and in the work of intergovernmental organisations. Disinformation is used to exploit and amplify divisions between different socio-economic groups based on their nation, race, income, age, education and occupation. Besides well recognised forms such as news outlets, usage of online platforms, mass emails etc., it functions through various forms, e.g. public relations agencies, lobbyists, think tanks, non-governmental organisations, elite influencers, party politics, expert community, cultural activities and European far-right and far-left movements which in return receive payment through various ‘independent’ public trusts, off-shore accounts, etc.

4.2. The Russian Government is employing a wide range of tools and instruments in its disinformation campaigns as the European Parliament (6), the European Commission (7) and the European Council (8) already established. These disinformation campaigns should be taken with the highest level of seriousness. It is part of Russian military doctrine and accepted by the top hierarchy of the most important Russian state-owned media. These campaigns are directly aimed at harming liberal democracy, rule of law and human rights, and at silencing those institutions, intergovernmental organisations, politicians and individuals who defend them (9).

4.3. We live in an era characterised by strongly polarised political and democratic relations. According to think tanks such as Freedom House, the Economist Intelligence Unit and others, democracy has been under growing pressure since the global economic crisis in 2008. One of the results of this is a new type of political leadership with a profile that represents a rupture with the democratic tradition we have built in Europe in the last 70 years. Instead of democratically chosen liberal leadership we see more and more ‘strong men’ whose elections are surrounded by penetrating questions concerning the integrity of the processes they were elected in. We were familiar with that kind of leadership outside of the sphere of influence of the EU, for example in Russia and China. But with representatives like Trump, Erdogan and elected ‘illiberal democrats’ in Member States of the EU — who all have become famous because of their preference for disinformation, their contempt for democracy and their cracked relationship with the rule of law — the phenomenon is becoming extremely loud and incredibly close.

4.4. A properly functioning democracy depends on well-informed citizens who make educated choices based on reliable facts and trusted opinions, but ‘reliability’ and ‘trust’ are concepts that are no longer self-evident in our society today. In this kind of highly polarised societal climate, and with an overflow of information, people are very vulnerable to disinformation, which makes it relatively easy to manipulate their behaviour. We have seen such destabilising operations with high success rates in general elections in various Member States and also during other events such as the Brexit campaign, disinformation campaigns concerning the assaults on the Crimea and Ukraine, and the 2014 attack with a Russian military BUK system missile on Malaysian Airlines flight MH 17, in which all 298 occupants were massacred. The Commission is encouraged to search for more proactive ways to educate the public about the threats faced from disinformation campaigns, cyber-attacks, and the overall impact of foreign influence on society. For example by following recent developments in other countries, to provide accessible and attractive information to citizens about urgent cybersecurity issues which include tips and best practices on how best to protect their daily digital surroundings.

(9) ‘The Strategy and Tactics of the Pro-Kremlin Disinformation Campaign’, EEAS.
4.5. The EESC agrees with the Commission that, given the complexity of the matter and the fast pace of development in the digital environment, any political response should be comprehensive, continually assess the phenomenon of disinformation and adjust policy objectives in the light of its evolution. There is no single solution that addresses all the challenges, but doing nothing is not an option. The Commission’s proposals are a step in the right direction but we need to do more and better. Transparency, diversity, credibility and inclusiveness should guide action to tackle disinformation, while simultaneously protecting freedom of speech and other fundamental rights.

4.6. Russia seems to be particularly active in the field of disinformation and hybrid warfare against the West with a focus on the EU. To counter that we urgently need a more transparent, trustworthy and accountable online ecosystem. The EESC would recommend the use of the Prague Manual, a study funded by the Ministry of Foreign Affairs of the Netherlands and the International Visegrad Fund, which gives a clear overview of hostile Russian subversion in the EU and of the threat it represents towards democracy. Even though there are Member States that still doubt the existence of any such threat or that even contribute to its spread, the study is very clear in its judgement that it is absolutely necessary for the EU to take action. The study comes up with concrete proposals on how to design and implement strategies against hostile and subversive influences.

4.7. The role of online platforms has been morally reprehensible in relation to disinformation. In a relatively short period of time these platforms have essentially developed a kind of public utility function similar to that of telephone companies, broadcasters and newspapers in the past. To make ‘free’ use of the services of online platforms, users pay with personal data that enable these platforms to sell an enormous amount of microtargeted advertising as illustrated by the Cambridge Analytica case. This warped (in terms of privacy) revenue model is too lucrative for these platforms to abolish it on a voluntary basis. There have been voices suggesting that platforms like Facebook should also offer a credible and well-functioning Facebook-like service, which would require users to pay an affordable amount of money in exchange for the guarantee that their privacy would be respected. The question arises of whether potential users still have enough faith and confidence in the credibility and integrity of portals like Facebook after the way the company behind it accounted for its behaviour to the US Senate. To increase public confidence in online platforms and protect citizens against this form of abuse, including mistreatment and sharing of personal data, these platforms must be regulated as previously shown by the Code of Conduct on countering illegal hate speech online from 2016, the GDPR or the NIS directives. However, self-regulation, as proposed by the Commission, is only a first step in this regard and should be accompanied by further measures taken by the Commission.

4.8. Andrew Keen, a British entrepreneur and writer who is known as the Antichrist of the Internet, published four very critical books on the development of the internet. He is not against the internet or social media, but he does consider the activities of the big tech companies, aimed at collecting sensitive information about people, as the core of the problem. Privacy is a very precious good, it defines who we are. The so-called free-of-charge business model — where we do not pay with money but with giving up our privacy — will destroy our privacy. Keen draws parallels with the 19th Century, when the Industrial Revolution generated change on a scale that can be compared with the scale of change the Digital Revolution is generating right now. When change is defined as a revolution it usually comes with massive problems. In the 19th Century we managed to solve those problems with tools like innovation, regulation, consumer choices, civil action and education. His message is human intelligence can do it again — not artificial intelligence — and we have to utilise all the resources we used to constrain the previous revolution to ensure we control the Digital Revolution and prevent it from dominating us.

4.9. On the basis of available research the EU should ensure and continue research on the impact of disinformation in Europe, including by monitoring Europeans’ resilience to disinformation in future Eurobarometer surveys. Those surveys should not only include generic data on fake news but also identify the true situation of Europeans’ immunity to disinformation. The Commission’s lack of urgency and ambition fails to address fundamental issues like the support schemes for traditional media in order to ensure the fundamental right of citizens to qualitative and reliable information, investigating the feasibility of setting up public-private partnerships to create paid online platforms that offer safe and affordable online services, exploring the opportunities to create more transparency around and supervision over the underlying algorithms of these online systems and looking into the possibility of breaking apart monopolies to restore a level playing field for fair competition, in order to prevent the progressive corruption of society.

4.10. It could be profitable for instance to look into the possibility of creating an online platform based on a public-private partnership that guarantees the privacy of users. A European platform of this kind with the Commission as a co-funding public partner could be a very attractive and promising proposition as an alternative to Mark Zuckerberg’s Manipulation Machine and other big private and commercial monopolies from the USA and China. Such a platform should guarantee to respect the privacy of its users.
4.11. In a market economy a price has to be paid for everything, but with this alternative the currency would be money instead of privacy. The bulk of the required budget for this semi-public service could be financed with tax money, as all public services are. For the rest of the budget users would have to pay a relative small amount of money to safeguard their privacy against the insatiable private data-hunger of the current 'social' platforms. If the EU and the national governments of the Member States officially declared such a platform to be a preferred partner and used it as an alternative for the current data devouring predators it would have the economy of scale required to have a chance of competing with the current market players. The EU could also use existing search engines that guarantee absolute privacy as their preferred partners, install them as default applications on all computers used by EU institutions and recommend them as default applications to governmental institutions in the Member States. The Commission could also play a more pro-active role and investigate regulatory possibilities relating to algorithms and breaking up monopolies.

4.12. Though fact checking is not the solution to the problem, it is nonetheless of high importance. It serves as the first step towards understanding, exposing and analysing disinformation, which is necessary before further counter-measures can be designed. It also takes a great deal of effort to gain the attention of wider audiences, as not everybody uses social media platforms or even the internet. Inhabitants of remote regions may be especially difficult to reach. Visibility in the media is important. Television is still the most common source of information for people, and regular programmes explaining cases of disinformation in national languages can significantly contribute to public awareness of the problem. It is important for the fact-checking process to be undertaken by professionals, in order to avoid the mistakes that marked the Commission's first attempt recently. Cooperation with publishing houses and media organisations whose journalists are involved in fact-checking can prevent such problems.

4.13. One of the problems with disinformation is the fact that it is impossible to check the identity of the sources spreading disinformation through the internet. It is too easy to operate in cyberspace with a fake identity — and in general that is exactly what those who are active online with malicious intent do. The Commission presents several proposals, which are set out in the Joint Communication on Cybersecurity published in September 2017. The problem is that these proposals are not mandatory: users could choose to only engage on online platforms with others who have identified themselves; the Commission will promote the use of voluntary online systems allowing the identification of suppliers of information, etc. Of course, there is a potential conflict of interest between privacy and full control and it should be possible to maintain anonymity when surfing the internet passively. However, if we really want to make a difference in the fight against disinformation we may need more strict measures regarding identification when people are operating proactively on the internet. After all, that is how the quality media operate, in compliance with the 1954 Code of Bordeaux, which was drawn up by the International Federation of Journalists and sets very clear and strict principles for how to work with sources. There are sometimes valid reasons why traditional quality news organisations publish stories with anonymous sources, but they always include an indication that the name and address of the source are known to the editorial staff.

4.14. Technologies are neither ‘good’ nor ‘bad’ — they are neutral. They can be used in a good or a bad way, but that depends upon the choices made by the people using them. New, emerging technologies such as those now being used in the art of disinformation also have the potential to play a central role in tackling disinformation. The EESC therefore welcomes the Commission's intention to make full use of the Horizon 2020 work programme and its successor Horizon Europe to mobilise research and technologies like artificial intelligence, blockchain and algorithms in order to better identify sources, validate the reliability of information and assess the quality and accuracy of data sources in the future. However, detailed analysis of other funding possibilities for tackling disinformation is crucial, as most of the initiatives are not applicable to the Horizon Programmes.

4.15. Secure and resilient election processes are the basis for democracy in the EU, but the security and resilience of those processes are no longer guaranteed. In recent years, online manipulation and disinformation tactics were detected during elections in at least 18 countries, and disinformation tactics contributed to a seventh consecutive year of overall decline in internet freedom. The EESC welcomes the initiatives the Commission has taken to identify best practices for identifying, mitigating and managing risks to the electoral process from cyberattacks and disinformation with a view to the 2019 European Parliament elections.

4.16. Media and digital skills as well as civic education are crucial building blocks in increasing society's resilience, especially given that young people, who have a high presence on online platforms, are very receptive to disinformation. Education policy is a government responsibility, and thus organising this at all levels of national education systems and training teachers on this topic is a task for national governments. Unfortunately, governments frequently neglect to give media and information literacy education in their national education systems a prominent position on their political agendas. This should be improved in the first instance, but media and information literacy also goes beyond education.
systems. It needs to be promoted and improved among all societal groups, regardless of age. In these areas non-governmental organisations should play a role. Many of these organisations are already working throughout Europe, but most of them operate on a small scale and do not have the necessary outreach. National cooperation initiatives between the non-governmental organisations and national governments could fill this gap.

4.17. Quality news media and reliable journalism play an essential role in providing the public with sound and diverse information. These traditional media are experiencing financial problems, as the platforms are distributing content produced by the traditional media without reimbursing them for the costs they have incurred and then capturing the income from these media by selling advertising. To improve the position of publishers and ensure rights holders will be compensated for their work when the fruit of their labour is used by others for commercial purposes a rapid agreement on the EU copyright reform would be welcome. Moreover, it is recommended that solutions be sought to expand the initiative announced by the European Parliament in September 2018 on the European funding specifically to support investigative journalism in the EU. A strong and reliable press leads to a resilient and defensible democracy where the values of truth and accountability persist. Funding is particularly important for smaller media outlets who are often faced with lawsuits and vexatious claims designed to shut them down.

4.18. To counter internal and external disinformation threats, the Commission set up the East StratCom Task Force in 2015 to focus on proactive strategic communication on EU policies in order to counter destabilising attempts from Russia. The EESC would welcome it if the Commission could be more proactive in communicating the work of East StratCom to the general public and directing them to the information on the task force’s website to raise public awareness of the threats to our democracy and to increase resistance against these threats. It is also necessary to increase the task force’s budget. A budget of EUR 1 000 000 was agreed on by the European Parliament in October 2017. That budget is barely comparable to the financial resources invested by other players such as the Russian Federation. (The US State Department estimates that the Kremlin’s sophisticated influence campaign effort includes a USD 1.4 billion a year internal and external propaganda apparatus, which claims to reach some 600 million people in 130 countries and 30 languages).

4.19. Beside other actions the Commission is encouraged to pay attention to the fact that national institutions and regulations on information security in Member States are often underdeveloped. The regulatory environment is outdated, thus preventing the relevant regulatory agencies from duly scrutinising disinformation channels for compliance with legislative norms. The intra-institutional cooperation is inadequate, there is a clear deficiency of national long-term strategies aimed at combating foreign-led disinformation campaigns and producing coherent narratives towards vulnerable groups of the population. A thorough review of the EU Audiovisual Media Services Directive, which currently allows a media outlet to be registered in any EU Member State as long as one of the media company’s board members resides in that country, is crucial as well, as it allows audiences in European countries to be reached, while exploiting loopholes in EU regulations.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
The following amendment, which received at least a quarter of the votes cast, was rejected during the discussions:

Point 4.3

4.3. We live in an era characterised by strongly polarised political and democratic relations. According to think tanks such as Freedom House, the Economist Intelligence Unit and others, democracy has been under growing pressure since the global economic crisis in 2008. One of the results of this is a new type of political leadership with a profile that represents a rupture with the democratic tradition we have built in Europe in the last 70 years. Instead of democratically chosen liberal leadership we see more and more ‘strong men’ whose elections are surrounded by penetrating questions concerning the integrity of the processes they were elected in. We were familiar with that kind of leadership outside of the sphere of influence of the EU, for example in Russia and China. But with representatives like Trump, Erdogan and elected ‘illiberal democrats’ in Member States of the EU — who all have become famous because of their preference for disinformation, their contempt for democracy and their cracked relationship with the rule of law — the phenomenon is becoming extremely loud and incredibly close.

Outcome of the vote

Votes in favour: 68
Votes against: 82
Abstentions: 24

(COM(2018) 438 final — 2018/0228 (COD))

(2018/C 440/33)

Rapporteur: Aurel Laurenţiu PLOSCEANU
Co-rapporteur: Graham WATSON

Referrals
European Parliament, 14.6.2018
Council of the European Union 3.7.2018

Legal basis
Articles 172, 194 and 304 of the TFEU

Section responsible
Transport, Energy, Infrastructure and the Information Society

Adopted in section
6.9.2018

Adopted at plenary
19.9.2018

Plenary session No
537

Outcome of vote
144/0/1

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) advocates for a stronger budget for the Connecting Europe Facility (CEF) for after 2020, with grants remaining the major component. There are a number of transport, energy and digital infrastructure projects which are vital for the EU’s competitiveness but do not generate the necessary return on investment in order to attract private investors. A strong commitment from the EU and national public authorities in this regard is needed.

1.2. The EESC recommends that the European Commission and the Member States further encourage synergies at project level between the three sectors, which are currently limited because of the rigidity of the budgetary framework as regards the eligibility of projects and of costs.

1.3. The EESC recommends that the Commission continue providing the technical support (CEF Programme Support Action) to promote the eligibility of mature and high-quality projects and support continuity in providing this type of assistance, together with an update of the evaluation criteria to make it easier to identify projects’ added value. Further steps should be taken to simplify administrative requirements, not only for small grants.

1.4. The EESC urges the co-legislators to maintain the commitment in the previous CEF regulation to spend ‘the major part’ of the energy budget on electricity projects. This is essential to ensure that the CEF is in line with the EU’s climate and energy policy and to avoid the CEF becoming a major source of funding for fossil energy projects within the Multiannual Financial Framework (MFF). It is important that this commitment is strengthened rather than weakened in the CEF 2021-2027.

1.5. The EESC considers that the award criteria for projects listed in Article 13 should be expanded to include the security of supply of all energy types (electricity, gas, heat, etc.) and the specific carbon emission reductions delivered by each project.

1.6. The EESC emphasises that CEF has to target energy projects able to ensure greater energy independence and security for the EU. New electricity storage facilities also have to be generated with CEF support.
1.7. The EESC recommends that the financial capacity of the CEF programme under the next MFF should be increased. Concerning the distribution of grants among the three sectors, the EESC recommends to consider the financial requirements of each sector, such as capital intensity and return on investment, giving preference to investments that cannot be funded by the market, in order to maintain high credibility and attractiveness for investors.

1.8. The EESC recommends, therefore, that the total CEF budget allocation should be increased, given the critical nature of these sectors for the internal market.

1.9. The EESC emphasises that both the Commission and the Member States must remain committed to the CEF’s main transport policy objectives: completion of the Trans-European Transport Network (TEN-T) core network by 2030 and the transition towards clean, competitive, innovative and connected mobility, including an EU backbone of alternative fuels charging infrastructure by 2025. Multimodal and cross-border connections are extremely important in this regard.

1.10. The EESC urges that the co-legislators ensure broad and fair competition for projects benefitting from CEF funds by respecting reciprocity in practice and by using contract conditions which combine efficiency and a fair allocation of risks.

1.11. The EESC recommends that the co-legislators ensure that participation in the corresponding tender procedures is open only to companies from countries in which the corresponding markets are open, respecting real reciprocity, and that the standard form of contract used is appropriate to the project’s objectives and circumstances. Contract conditions should be drafted so as to fairly allocate the risks associated with the contract, with the primary aim of achieving the most economic price and efficient performance of the contract. This principle should apply irrespective of whether national or international standard forms of contract are used (based on Article 3.21 of EBRD Procurement Policies and Rules dated 1 November 2017).

1.12. The EESC strongly supports the proposal to include in the CEF 2021-2027 cross-border cooperation on renewable energy generation. The EESC suggests that the overall vision of the actions on renewables in the CEF should be to create a Europe-wide renewable electricity network allowing for a more effective integration of renewable energy technologies and to better reflect the available potential of technologies across the continent.

1.13. The EESC welcomes the inclusion of renewable installations amongst the eligible projects in the energy portion of the CEF and recommends that this should be amended to include both large-scale projects and portfolios of small-scale projects in order to allow all technologies to compete fairly for funds.

1.14. The EESC recommends that the objectives of the CEF listed in Article 3 should be expanded to include not just the facilitation of cross-border cooperation in the fields of renewables, but also explicitly mention the deployment of renewables.

1.15. The EESC notes that land purchase is excluded from eligible costs in Article 15(c) and urges the co-legislators to consider whether this could advantage or disadvantage certain projects and technologies. For sectors such as transport and renewable energy, land purchase is a not negligible part of the investment.

1.16. The EESC reminds the Commission that cross-border energy inter-connectors are key factors in the integration of renewables, not just because they permit the long distance transmission of renewable electricity, fostering the use of cleaner and cheaper sources of electricity across Europe, but also because they act as a source of essential system flexibility.

1.17. The EESC recommends that the opportunities that arise from the digitalisation of energy grids and networks and the creation of smart grids to integrate renewables be fully seized and recommend that the Commission looks into how synergies between the Digital and Energy sectors of the CEF can be exploited on this point. The EESC notes the lack of smart-grid projects in the 2014-2020 CEF, due in part to barriers to funding lower distribution grid level projects, as opposed to high-voltage transmission grid projects.
1.18. The EESC recommends that CEF should also ensure that mechanisms are in place to certify where renewable electricity is used in transport applications, for example with the use of renewable Guarantees of Origin certificates.

1.19. The EESC highlights the need to give priority to large-scale EU-wide projects to digitise transport such as ERTMS (European Railway Traffic Management System), SESAR (Single European Sky ATM Research) and autonomous driving. In order to equip with ERTMS the Core Network by 2030 EUR 15 billion need to be invested. An EU-wide large scale project shall be financed with grants from the different CEF clusters, private funds and blending components from InvestEU.

1.20. The EESC calls for 5G coverage of the TEN-T network which is fundamental.

1.21. The EESC calls for measures such as effective controls, modern overnight accommodation, and sufficient parking spaces with adequate equipment.

1.22. The EESC also believes that consideration should be given to better communication methods regarding the achievements of the CEF. A Communication Budget can be a useful tool in this regard. An enhanced predictability is also to be taken into consideration.

1.23. The EESC recommends additional actions to be considered to release full potential of the programme taking into account that CEF intervention was decisive in launching most of the projects and has proven to be a major catalyst for both public and private investment. An improved complementary link between the CEF and other programmes (such as Horizon Europe, InvestEU and the Cohesion Fund) is to be reinforced in order to avoid overlaps and optimise budgetary resources.

1.24. The EESC believes that the cohesion envelope is key to the completion of the parts of the core networks in the cohesion Member States and recommends the EC and Member States to maintain the share of the Cohesion Fund under the direct management of the CEF in the next MFF. CEF Transport priorities need to be supported by the European Regional Development Fund. In any case, funds shall remain within the eligible Member State.

1.25. The EESC suggests that the evaluation methodology is to be adjusted, because the success of the CEF is not guaranteed solely by the amount of money allocated and the number of projects supported.

The EESC proposes improvements to the CEF evaluation methodology. A real quantitative/qualitative assessment should be performed at the end of the 2014-2020 period for the completed projects and those at an advanced level of construction. The EESC calls for a review, inter alia, of the progress of TEN-T development, as well the changes in passenger and freight traffic flows. The EESC also calls for a socioeconomic cost-benefit analysis of TEN-T projects that takes into account the relevant social, economic, climate-related and environmental benefits and costs.

1.26. The EESC calls for the conclusion of specific measures on general climate protection objectives.

1.27. The EESC calls for metropolises to be taken into account in the main infrastructure projects, whether or not they can receive funding from the Cohesion Fund.

1.28. The EESC recommends concrete measures to ensure the attractiveness of the retrofitting, repowering or upgrading of the existing infrastructure which remains the backbone of the existing network and installed capacity.

1.29. The EESC supports the development of dual-use civilian-defence infrastructure both on physical and technological infrastructures (such as ERTMS and SESAR) under the CEF framework and recommends an open and pro-active approach in the new geopolitical international context (Three seas Initiative etc.).

1.30. The EESC recommends that CEF prioritise investments on TEN-T cross-border infrastructures to achieve coherent capacity and avoid bottlenecks in all modes of transport in order to obtain a fully integrated transport network.
2. Presentation of the Commission proposal

2.1. The proposal aims at establishing the legal basis for the CEF for the period beyond 2020 and is presented for a Union of 27 Member States.

2.2. The Commission proposal (1) of 2 May 2018 for the MFF beyond 2020 includes an amount of EUR 42,265 million for the CEF, listed below:

<table>
<thead>
<tr>
<th>CEF 2021-2027</th>
<th>Figures in current prices — EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport,</td>
<td>30,615,493,000</td>
</tr>
<tr>
<td>Including:</td>
<td></td>
</tr>
<tr>
<td>— General envelope</td>
<td>12,830,000,000</td>
</tr>
<tr>
<td>— Contribution from the Cohesion Fund</td>
<td>11,285,493,000</td>
</tr>
<tr>
<td>— Support for military mobility</td>
<td>6,500,000,000</td>
</tr>
<tr>
<td>Energy</td>
<td>8,650,000,000</td>
</tr>
<tr>
<td>Digital</td>
<td>3,000,000,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>42,265,493,000</td>
</tr>
</tbody>
</table>

2.3. The vision for Europe is to move towards zero-fatalities, zero-emissions and zero-paper mobility, to become a world leader in renewable energy and to be a front runner in the digital economy.

2.4. CEF supports investment in transport, energy and digital infrastructure through the development of the Trans-European networks (TEN) and also promotes cross-border cooperation on renewable energy generation. Those networks and cross-border cooperation are crucial for the functioning of the Single Market and also strategic to implement the Energy Union, the Digital Single Market and the development of sustainable transport modes.

2.5. The 2021-2027 MFF sets a more ambitious goal for climate mainstreaming across all EU programmes with a target of 25% of EU expenditure contributing to climate objectives. A major contribution is expected to be provided by CEF, with a target of 60% of its envelope contributing to climate objectives.

2.6. The future needs for decarbonisation and digitalisation will imply a growing convergence of the transport, energy and digital sectors. Synergies between all three sectors should thus be harnessed to the full extent, maximising the effectiveness and efficiency of EU support. In order to incentivise and prioritise cross-sectoral proposals, the synergy dimension of a proposed action will be assessed under the award criteria.

2.7. CEF aims for transport to contribute to the completion of both layers of TEN-T (the core network by 2030 and the more extensive layer by 2050). It is estimated that the completion of TEN-T core network will generate 7.5 million job-years between 2017 and 2030 with an additional GDP increase of 1.6% in 2030.

2.8. For the first time ever the Union funding for the implementation of the civilian-military dual-use transport projects should be implemented by CEF.

2.9. For energy, the focus is on completing the trans-European energy networks through of the development of projects of common interest relating to further integration of the internal energy market and interoperability of networks across borders and sectors; sustainable development by enabling decarbonisation in particular through integrating renewable energy sources and security of supply, inter alia, through the smartening and digitalisation of the infrastructure.

2.10. For digital, CEF maximises the benefits that all citizens, businesses and public administrations can get from the Digital Single Market.

2.11. Transport, energy and digital infrastructure will be supported to various degrees by a number of EU financial programmes and instruments, including CEF, the European Regional Development Fund (ERDF) and Cohesion Fund, Horizon Europe, InvestEU and LIFE.

2.12. The Programme’s actions should be used to address market failures or sub-optimal investment situations, in a proportionate manner, without duplicating or crowding out private financing and have a clear European added value.

2.13. The results of ex-post evaluations were adopted by the EC on 13 February 2018 (2) according to five criteria: effectiveness, efficiency, relevance, coherence and EU added value. Some extracts follow:

— CEF is an effective and targeted instrument for investment in TEN, transport, energy and digital sectors. Since 2014 it has invested EUR 25 billion which has resulted in approximately EUR 50 billion of infrastructure investment in the EU,

— CEF brings high European added value for all MS by supporting connectivity projects with a cross-border dimension,

— For the first time, a share of the cohesion budget (EUR 11.3 billion for transport) was executed under direct management within the CEF framework,

— CEF has continued to use and develop innovative financial instruments. However, their deployment has been limited due to the new possibilities offered by EFSI,

— CEF has also tested cross-sector synergies, but has been limited by constraints in the current legal/budgetary framework. The sector policy guide lines and the CEF instrument would need to be made more flexible to facilitate synergies and be more responsive to new technological developments and priorities such as digitalisation, while accelerating decarbonisation and addressing common societal challenges such as cybersecurity.

2.14. The Commission proposes to continue the implementation of the new programme, for the three CEF sectors, with direct management by the EC and its Innovation and Networks Executive Agency (INEA).

2.15. The proposed budget will cover all the necessary operational expenditure for the implementation of the Programme as well as the cost of human resources and other administrative expenditure in connection with the management of the Programme.

2.16. Compared to the CEF 2014-2020, a simpler but more robust performance framework will be put in place to monitor the achievement of the objectives and its contribution to EU policy objectives. Indicators to monitor implementation and progress will relate in particular to:

— Efficient and interconnected networks and infrastructure for smart, sustainable, inclusive, safe and secure mobility as well as adaptation to military mobility requirements,

— Contribution to interconnectivity and integration of markets, security of energy supply and sustainable development through enabling decarbonisation; contribution to cross-border cooperation in the field of renewable energy.

— Contribution to the deployment of digital connectivity infrastructure throughout the EU.

3. General and specific comments

3.1. The EESC underlines the strategic importance of the CEF programme from the perspectives of integration of the internal market, smart mobility and the opportunity to deliver tangible added value for citizens, social cohesion and business through this programme, prosperity and added value for EU as a whole.

By the end of 2017 CEF Transport had already allocated EUR 21.3 billion in grants for TEN-T projects triggering EUR 41.6 billion of total investments.

3.2. During 2018 additional grant agreements will be signed for a blending call combining CEF grants with private finance, including from the EFSI (European Fund for Strategic Investment). It is estimated that every EUR 1 billion invested in the TEN-T core network will create up to 20,000 jobs.


3.4. The EESC recognises that CEF is one of the most successful EU programmes and underlines the strategic importance of CEF as regards the integration of the internal market, the completion of the Energy Union, smart mobility and the opportunity for the EU to deliver tangible added value for citizens, social cohesion and businesses.

3.5. The EESC believes that the financial capacity of the CEF programme under the next MFF should be increased and better balanced in order to maintain its high credibility and attractiveness for investors. An insufficient budget would put the completion of the TEN-T and TEN-E networks at risk and this would in fact depreciate investments from public funds already made.

3.6. The EESC emphasises that investment in digital, innovative and sustainable transport projects must be accelerated in order to move towards a greener, truly integrated, modern, accessible-to-all, safer and efficient transport system. Social cohesion at EU level is to be enhanced by increasing the public investments in EU and regional added-value projects.

3.7. The EESC considers that synergies at project level between the three sectors are currently limited because of the rigidity of the budgetary framework as regards the eligibility of projects and of costs.

3.8. The EESC welcomes the technical support provided to promote the eligibility of mature and high-quality projects and supports the continuity in providing this type of assistance together with an update of the evaluation criteria to more easily identify the added value of the projects. Further steps to simplify administrative requirements are to be generated, not only for small grants.

3.9. The EESC emphasises that both the Commission and the Member States have to remain committed to the CEF’s main policy objectives: completion of TEN-T core network by 2030 and the transition towards clean, competitive, innovative and connected mobility, including an EU backbone of alternative fuels charging infrastructure by 2025. Multimodal and cross-border connections are of great importance in this regard.

3.10. The CEF has to target energy projects able to ensure greater energy independence and security for the EU. Electricity storage facilities also have to be generated with CEF support.
3.11. The EESC considers that cross-border energy inter-connectors are key factors in the integration of renewables, not just because they permit the long-distance transmission of renewable electricity, but also because they act as a source of essential system flexibility.

3.12. The role of the European coordinators is to be enhanced in order to generate a thorough assessment of the projects completed or at an advanced level of construction, the real achievements and the remaining bottlenecks. The Commission has to ensure that the priority of the calls reflects their assessment.

3.13. The EESC believes that the transport sector should take full advantage offered by digital and innovative technologies and acknowledges that new innovative transport infrastructure is more attractive for investment, especially from the private sector.

3.14. EESC believes that investing in transport, and in particular in the Trans-European Transport Network (TEN-T), is crucial for Europe’s growth and jobs. This is why it advocates for a stronger budget for the Connecting Europe Facility for after 2020, with grants remaining the major component. Indeed, there are a number of transport infrastructure projects which are vital for the EU’s competitiveness but do not generate the necessary return on investment in order to attract private investors. They therefore require a strong commitment from the EU and national public on this regard.

3.15. EC should preserve the integrity on the CEF financial capacity and not cut anymore in favour of other programmes (EFSI, EDIDP — European Defence Industrial Development Programme).

3.16. The EESC highlights the need to give priority to large-scale EU-wide projects to digitise transport such as ERTMS, SESAR and autonomous driving. To realise these projects, a blending of resources is needed: public funds from the CEF and private funds guaranteed by InvestEU. The 5G coverage of the TEN-T would be equally fundamental. Only 8% of 51,000 km of core network corridors have been equipped with ERTMS between 1995 and 2016; at the current pace more than 200 years will be needed to equip the whole Core Network. The completion by 2030 would require EUR 15 billion investment and a huge acceleration of the programme and would then provide seamless rail traffic in Europe with an increase of capacity, safety and punctuality.

3.17. Electric mobility is a core part of the transition towards sustainable transport and also provides the potential for vehicle-to-grid exchanges where the battery storage capacity of electric vehicles is used as a source of flexibility for the grid. Interoperability in vehicle-to-grid interfaces should be a key priority across the EU. The CEF should also ensure that mechanisms are in place to certify where renewable electricity is used in transport applications, for example with the use of renewable Guarantees of Origin certificates.

3.18. Synergies are key to the successful implementation of the CEF. Examples of such synergies include electric vehicle charging points powered by renewable electricity, solar PV ‘car ports’ and the development of vehicle-to-grid interface technology.

3.19. The electrification of road transport should also be considered. For trucks and buses, EUR 10 billion would be required to electrify around 7,000 km of highways in the reference period.

3.20. The development and rehabilitation of transport infrastructures in the EU is still rather fragmented and represents a major challenge in terms of capacity and financing. It is of strategic importance to ensuring both sustainable growth, jobs and competitiveness and social/territorial cohesion in the EU.

3.21. In Transport infrastructure, there are 11.2 million employees. In general, the needs and working conditions must also be taken into account in the CEF framework. The EESC calls for measures such as effective controls, modern overnight accommodation and sufficient parking spaces with adequate equipment.
3.22. The EESC observes that, as it stands, the Commission proposal represents a weakening of the previous commitment to spend the ‘major part’ of the energy sector on electricity projects. The EESC welcomes the Commission’s expectation that this will be honoured in the current CEF by the end of the programming period. Fulfilling this commitment is essential to ensure that the CEF is in line with the EU’s climate and energy policy.

3.23. Regarding the inclusion of renewable installations amongst the eligible projects in the energy portion of the CEF, this is to be amended to include both large-scale and portfolios of small-scale projects. This is a key part of making enhanced use of EU funds for renewables as described in the recast of the Renewables Directive.

3.24. We acknowledge that in constant prices, the 2021-2027 allocation to CEF and the contribution from the Cohesion Fund represent cuts of 12-13%. A review of this aspect is needed. At the same time, it is important to fulfil the CEF Transport priorities. The share of European Regional Development Fund not committed by the beneficiary Member States in the first three years shall be allocated in the same country according to these priorities.

3.25. The mid-term assessment of the CEF focussed mainly on quantitative aspects, despite the very tangible nature of most of the projects.

3.26. A real quantitative/qualitative assessment should be performed at the end of the 2014-2020 period for the completed projects and the ones at an advanced level of construction.

3.27. An evaluation of the effectiveness of projects is not included in the draft as the European Court of Auditors (ECA) criticised in its 2018 report. The EESC therefore calls for a review, inter alia, of the progress of TEN-T development, as well the changes in passenger and freight traffic flows. In addition, the EESC calls for a socioeconomic cost-benefit analysis of TEN-T projects that takes into account the relevant social, economic, climate-related and environmental benefits and costs.

3.28. The EESC suggests that the success of the CEF is not guaranteed solely by the amount of money allocated and number of projects supported. The evaluation methodology is to be adjusted.

3.29. The EESC also believes that consideration should be given to better communication methods regarding the achievements of the CEF. An enhanced predictability is also needed.

3.30. Europe’s metropolises are those regions within the EU where there is the most traffic; almost all transport has its origin or destination in a metropolis. The EESC calls for agglomerations to be taken into account in the main infrastructure projects, whether or not they can receive funding from the Cohesion Fund.

3.31. The EESC welcomes the fact that the CEF will support civilian-military dual-use transport infrastructure with EUR 6.5 billion for the first time ever, in order to improve military mobility in the EU, in accordance with the Joint Communication of November 2017 (3) and the Action Plan of March 2018 (4).

3.32. The EESC welcomes the objectives set in the document ‘Action Plan on military mobility’ and supports a Defence Union in terms of both improving infrastructure and enabling synergies. Dual-use civilian-defence infrastructure is to be developed along the TEN-T network and also in the regions most exposed to military risk.

Brussels, 19 September 2018.

The President of the European Economic and Social Committee Luca JAHIER

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Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting for the period 2021-2027 (the "Pericles IV programme")'

(COM(2018) 369 final — 2018/0194 (CNS))

(2018/C 440/34)

Consultation
European Commission, 18.6.2018

Legal basis
Articles 133 and 304 of the Treaty on the Functioning of the European Union

Section responsible
Economic and Monetary Union and Economic and Social Cohesion

Adopted at plenary
19.9.2018

Plenary session No
537

Outcome of vote
207/0/1

(for/against/abstentions)

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 537th plenary session of 19 and 20 September 2018 (meeting of 19 September 2018), by 207 votes with 1 abstention, to issue an opinion endorsing the proposed text.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER