

# Official Journal of the European Union

C 288



English edition

## Information and Notices

Volume 60

31 August 2017

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## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

526TH EESC PLENARY SESSION OF 31 MAY AND 1 JUNE 2017

**Opinion of the European Economic and Social Committee on 'Artificial intelligence — The consequences of artificial intelligence on the (digital) single market, production, consumption, employment and society'**

**(own-initiative opinion)**

(2017/C 288/01)

Rapporteur: **Catelijne MULLER**

|                                              |                                                                |
|----------------------------------------------|----------------------------------------------------------------|
| Plenary assembly decision                    | 22/09/2016                                                     |
| Legal basis                                  | Rule 29(2) of the Rules of Procedure<br>Own-initiative opinion |
| Section responsible                          | Single Market, Production and Consumption                      |
| Adopted in section                           | 04/05/2017                                                     |
| Adopted at plenary                           | 31/05/2017                                                     |
| Plenary session No                           | 526                                                            |
| Outcome of vote<br>(for/against/abstentions) | 159/3/14                                                       |

**1. Conclusions and recommendations**

1.1 Artificial intelligence (AI) is currently undergoing a number of important developments and is rapidly being applied in society. The AI market amounts to around USD 664 million and is expected to grow to USD 38,8 billion by 2025. As AI can have both a positive and a negative impact on society, the EESC has undertaken to closely monitor developments surrounding AI, not only from a technical perspective but also specifically from an ethical, safety and societal perspective.

1.2 As the representative of European civil society, the EESC will shape, focus and promote the **public debate on AI** in the coming period, involving all relevant stakeholders: policy-makers, industry, the social partners, consumers, NGOs, educational and care institutions, and experts and academics from various disciplines (including AI, safety, ethics, economics, occupational science, law, behavioural science, psychology and philosophy).

1.3 Although important, the discussion on superintelligence is currently predominating and this is overshadowing the debate on the impact of the current applications of AI. Therefore, the task and objective of this process will, among other things, be to enhance and broaden knowledge of AI and thereby feed into an informed and balanced debate free of worst-case scenarios and extreme relativism. In this connection, the EESC will undertake to promote the development of AI for the benefit of humanity. Nevertheless, an important task and objective of this process is also to recognise, identify and monitor disruptive developments in and around the development of AI, in order to be able to address them adequately and in good time. This will lead to increased social involvement, trust and support with respect to the further sustainable development and use of AI.

1.4 The impact of AI is of a cross-border nature and therefore supra-national policy frameworks will also need to be established. The EESC recommends that the **EU take the lead globally** in establishing clear global policy frameworks for AI, in line with European values and fundamental rights. The EESC is able and willing to make a contribution to this.

1.5 The EESC currently identifies **11 areas** where AI poses societal challenges: ethics; safety; privacy; transparency and accountability; work; education and skills; (in)equality and inclusiveness; law and regulations; governance and democracy; warfare; superintelligence. The EESC makes the following recommendations.

1.6 The EESC calls for a **human-in-command** approach to AI, including the precondition that the development of AI be responsible, safe and useful, where machines remain machines and people retain control over these machines at all times.

1.7 The EESC calls for a **code of ethics** for the development, application and use of AI so that throughout their entire operational process AI systems remain compatible with the principles of human dignity, integrity, freedom, privacy and cultural and gender diversity, as well as with fundamental human rights.

1.8 The EESC calls for the development of a **standardisation system** for verifying, validating and monitoring AI systems, based on a wide range of standards in the areas of safety, transparency, comprehensibility, accountability and ethical values.

1.9 The EESC calls for a **European AI infrastructure** consisting of open-source learning environments that respect privacy, real life test environments and high-quality data sets for developing and training AI systems. The EESC highlights the (competitive) advantage the EU can gain on the global market by developing and promoting 'responsible European AI systems', complete with European AI certification and labels.

1.10 The EU, national governments and the social partners should jointly identify which **job sectors** will be affected by AI, to what extent and on what timescale, and should look for solutions in order to properly address the impact on employment, the nature of work, social systems and (in)equality. Investment should also be made in job market sectors where AI will have little or no impact.

1.11 The EESC recommends that these stakeholders work together on **complementary AI systems and their co-creation** in the workplace, such as human-machine teams, where AI complements and improves the human being's performance. The stakeholders should also invest in **formal and informal learning, education and training** for all in order to enable people to work with AI but also to develop the skills that AI will not or should not acquire.

1.12 It is already necessary to carry out a **detailed evaluation of the EU laws and regulations** in the six areas identified by STOA (Scientific Foresight Unit) that may need to be revised or adapted. The EESC is able and willing to play a role in this evaluation process. The EESC opposes the introduction of a form of legal personality for robots or AI. This would hollow out the preventive remedial effect of liability law; a risk of moral hazard arises in both the development and use of AI and it creates opportunities for abuse.

1.13 The development of **AI applications that benefit society**, promote inclusiveness and improve people's lives should be actively supported and promoted, both publicly and privately. Under its programmes, the European Commission should fund research into the societal impact of AI and of EU-funded AI innovations.

1.14 The EESC supports the call by Human Rights Watch and others for a **ban on autonomous weapon systems**. The EESC welcomes the consultation on this issue announced by the UN, but considers that it should also cover the applications of AI in cyber warfare.

## 2. Artificial intelligence

2.1 There is no single accepted and rigid definition of AI. AI is a catch-all term for a large number of sub(fields) such as: cognitive computing (algorithms that reason and understand at a higher (more human) level), machine learning (algorithms that can teach themselves tasks), augmented intelligence (cooperation between human and machine) and AI robotics (AI imbedded in robots). The central aim of AI research and development is, however, to automate intelligent behaviour such as reasoning, the gathering of information, planning, learning, communicating, manipulating, detecting and even creating, dreaming and perceiving.

2.2 AI is broadly divided into narrow AI and general AI. Narrow AI is capable of carrying out specific tasks. General AI is capable of carrying out any mental task that can be carried out by a human being.

2.3 Good progress has recently been made in the field of narrow AI, in particular with the growth of computer processing power, the availability of large volumes of data and the development of machine learning (ML). ML refers to algorithms that can teach themselves specific tasks without needing to be programmed. This method is based on the processing of 'training data' on the basis of which the algorithm learns to recognise patterns and devise rules. Deep learning (DL), a form of ML, uses structures (neural networks) that are loosely based on the human brain and that learn by means of training and feedback. The result of these developments is that by using algorithms AI systems may now be self-teaching, autonomous and adaptive.

2.4 Research and development in AI have for some time been primarily focused on reasoning, knowledge acquisition, planning, communication and perception (visual, auditory and sensory). This has led to a large number of AI applications: virtual assistants, self-driving cars, automatic news aggregation, speech recognition, translation software, text-to-speech software, automated financial trading, legal eDiscovery, etc.

2.5 The EESC notes that there has recently been an exponential increase in the amount of AI applications and investment. The AI market currently amounts to around USD 664 million and is expected to grow to USD 38,8 billion by 2025.

## 3. Opportunities and threats of AI

3.1 It is virtually undisputed that AI can have significant advantages for society: consider applications in sustainable agriculture, safer transport, a safer financial system, more environmentally friendly production processes, better medicine, safer work, more personalised education, better jurisprudence and a safer society. It may even potentially help eradicate disease and poverty. AI may also make a major contribution to boosting industry and to improving the EU's competitiveness.

3.2 As with every disruptive technology, AI also entails risks and complex policy challenges in areas such as safety and monitoring, socio-economic aspects, ethics and privacy, reliability, etc.

3.3 We are at a crucial point in determining the (framework) conditions for the ongoing and further development and use of AI. The benefits associated with AI can only be achieved sustainably if the challenges surrounding it are also adequately addressed. Policy choices should be made to this end.

### a) Ethics

3.4 The development of AI raises many ethical questions. What impact does autonomous (self-teaching) AI have on our personal integrity, autonomy, dignity, independence, equality, safety and freedom of choice? How do we ensure that our fundamental norms, values and human rights remain respected and safeguarded?

3.5 Furthermore, the development of AI is currently taking place within a homogenous environment principally consisting of young, white men, with the result that (whether intentionally or unintentionally) cultural and gender disparities are being embedded in AI, among other things because AI systems learn from training data. This data should be accurate and of good quality, diverse, sufficiently detailed and unbiased. There is a general tendency to believe that data is by definition objective; however, this is a misconception. Data is easy to manipulate, may be biased, may reflect cultural, gender and other prejudices and preferences and may contain errors.

3.6 The AI systems now being developed will not have any built-in ethical values. We humans must make provision for them in AI systems and in the environments in which they are used. The development, application and use of AI systems (both public and commercial) must take place within the limits of our fundamental norms, values, freedoms and human rights. The EESC therefore calls for the development and establishment of a uniform global code of ethics for the development, application and use of AI.

#### b) **Safety**

3.7 The use of AI in the physical world undoubtedly gives rise to safety issues. A distinction can be made between internal and external safety.

- *Internal safety*: is the AI system robust enough to (continue to) function well? Is the algorithm well programmed? Does it crash? Is it resistant to hacking? Is it effective? Is it reliable?
- *External safety*: is the AI system safe when in use in society? Does it operate safely, not only in normal, but also in unknown, critical or unpredictable situations? What bearing does the self-teaching ability have on safety, including if the system continues to learn after entering into use?

3.8 The EESC believes that AI systems may only be used if they meet specific internal and external safety requirements. These requirements should be determined by AI and safety specialists, businesses and civil society organisations collectively.

#### c) **Transparency, comprehensibility, monitorability and accountability**

3.9 The acceptance and sustainable development and application of AI are linked to the ability to understand, monitor and certify the operation, actions and decisions of AI systems, including retrospectively.

3.10 The actions and decisions of AI systems (through smart algorithms) increasingly intervene in peoples' lives. Examples include the use of AI in information-led policing, when assessing mortgage applications or in the procedure for authorising insurance. The comprehensibility, monitorability and accountability of the decision-making process of an AI system is crucial in this regard.

3.11 Currently, many AI systems are very difficult for users to understand. This is also increasingly true for those who develop the systems. In particular, neural networks are often 'black boxes', in which the (decision-making) processes taking place can no longer be understood and for which there are no explanatory mechanisms.

3.12 The EESC advocates transparent, comprehensible and monitorable AI systems, the operation of which is accountable, including retrospectively. In addition, it should be established which decision-making procedures can and cannot be transferred to AI systems and when human intervention is desirable or mandatory.

#### d) **Privacy**

3.13 The privacy of AI systems is an issue of concern. Many (consumer) products already have built-in AI: household appliances, children's toys, cars, health trackers and smartphones. All of these products transmit (often personal) data to the cloud-based platforms of their manufacturers. Whether or not privacy is sufficiently guaranteed is an issue of concern, particularly given that trade in data is now booming, meaning that the data generated does not remain with the producer but is sold on to third parties.

3.14 AI is also able to influence people's choices in many areas (from commercial decisions to elections and referendums) by analysing large quantities of (often) personal data. Children are a particularly vulnerable group. The EESC is concerned about AI applications that explicitly aim to influence the behaviour and desires of children.

3.15 It is necessary to prevent the application of AI to personal data from restricting people's actual or perceived freedom. The EU General Data Protection Regulation (GDPR) provides for significant privacy protection for digitally collected personal information. In the light of the development of AI, it must be properly monitored whether people's right to informed consent and freedom of choice when submitting data, as well as their right to access, amend and verify data, are reasonably assured in practice.

**e) Norms, standards and infrastructure**

3.16 New standardisation systems based on a broad spectrum of standards should be developed for verifying and validating AI systems, in order to be able to assess and monitor the safety, transparency, comprehensibility, accountability and ethical responsibility of AI systems.

3.17 The EESC calls for the EU to develop its own AI infrastructure consisting of open-source learning environments that respect privacy and high-quality data sets for developing and training AI systems. The EU could also gain a (competitive) advantage on the global market by promoting responsible European AI systems. In this connection, the Committee recommends exploring the potential of European AI certification and labels.

**f) Impact on work, employment, working conditions and social systems**

3.18 Opinions are divided on the speed with which and the extent to which this will occur; however, it is clear that AI will have an impact on employment levels and the nature and character of many jobs, and consequently also on social systems.

3.19 Brynjolfsson and McAfee from MIT refer to the current technological developments (including AI) as the second machine age. However, there are two important differences: (i) the 'old' machines predominantly replaced muscular power, while the new machines are replacing brainpower and cognitive skills, which affects not only low-skilled ('blue-collar') workers but also medium and highly skilled ('white-collar') workers and (ii) AI is a general purpose technology which affects virtually all sectors simultaneously.

3.20 AI can have significant advantages when it is used for dangerous, difficult, tiring, dirty, unpleasant, repetitive or tedious work. Work that can be 'routinised', data processing and analysis or work where planning or prediction plays a major role — work which is often done highly skilled people — can increasingly be carried out by AI systems.

3.21 However, the majority of jobs comprise a variety of activities. The likelihood that all of an individual's tasks can be done by AI or taken over by robots appears to be low. However, most people will be confronted with the automation of parts of their job. The time this frees up can be used for other tasks, provided that public authorities and the social partners make the necessary efforts in this regard. In this connection, it is necessary to bear in mind the impact these developments may have on professionals and managers and to promote their involvement so that they remain in control of these developments and are not the victims of them.

3.22 New jobs will also be created. However, no-one can predict what these will be, how many there will be and how quickly this will happen. Companies such as Google and Facebook manage to generate huge value with a relatively small number of employees. Moreover, these new jobs are not always quality jobs. The concern is that with the further development of AI, soon only low-paid mini-tasks will be left for a growing group of 'flex workers'.

3.23 AI will not only affect the quantity of available work but also the nature of existing work. AI systems offer more and more opportunities to track and monitor workers, raising concerns over autonomy and privacy. Work is now often determined and distributed by algorithms without human intervention, which influences the nature of the work as well as working conditions. There is also the risk of a drop in the quality of jobs and the loss of important skills through the use of AI systems.

3.24 The fact remains, however, that technology is not something inevitable. Governments and the social partners have the possibility of determining how AI is further developed and applied in the workplace and should also seize this opportunity with both hands. In this connection, it is important to focus not only on what AI is capable of doing, but also on what people are capable of doing (creativity, empathy, cooperation) and what we want people to keep doing, and to look for opportunities to enable people and machines to work together better (complementarity).

3.25 Augmented intelligence (complementarity), whereby human and machine work together and support each other, is the most interesting application of AI since it involves human with machine, as opposed to human instead of machine. However, co-creation is of major importance: workers must be involved in developing these kinds of complementary AI systems, in order to ensure that the systems are useable and that the worker still has sufficient autonomy and control (human-in-command), fulfilment and job satisfaction.

**g) Education and skills**

3.26 The maintenance or acquisition of digital skills is necessary in order to give people the chance to adapt to the rapid developments in the field of AI. The European Commission is firmly committed to developing digital skills through its Digital Skills and Jobs Coalition. However, not everyone will be capable of or interested in coding or becoming a programmer. Policy and financial resources will therefore need to be directed at education and skills development in areas that will not be threatened by AI systems (i.e. tasks in which human interaction is vital, where human and machine cooperate or tasks we would like human beings to continue doing).

3.27 When complementarity between human and AI is used (augmented intelligence), education in dealing and working with AI systems will be required for all, beginning at an early age, in order to ensure that people can retain autonomy and control in their work (human-in-command). Education regarding ethics and privacy in particular is important here since AI has a significant impact in these areas.

**h) Accessibility, social (in)equality, inclusiveness and distribution**

3.28 The vast majority of the development of AI and all its associated elements (development platforms, data, knowledge and expertise) is in the hands of the 'big five' technology companies (Amazon, Facebook, Apple, Google and Microsoft). Although these companies are supportive of the open development of AI and some of them make their AI development platforms available open-source, this does not guarantee the full accessibility of AI systems. The EU, international policy makers and civil society organisations have an important role to play here in ensuring that AI systems are accessible to all, but also that they are developed in an open environment.

3.29 Technological changes that favour capital, whereby the innovation primarily benefits those who own it, weaken the position of labour relative to capital. Technological changes can also lead to (income) disparities between people (both locally as well as regionally and globally). AI may further reinforce these trends.

3.30 The important thing is to closely monitor and appropriately respond to these trends. There have already been calls for an AI tax, an AI dividend or shared ownership of AI systems by workers and employers. There is also increasing talk of the need for an unconditional basic income.

3.31 In a previous opinion <sup>(1)</sup> the EESC identified the possibility of a digital dividend to be shared equally with the aim of achieving positive growth effects. The EESC attaches importance to research on all these solutions; however a fair balance should be struck between developing AI that benefits people and potential hindering effects resulting from the solutions. Moral hazard, whereby responsibility for AI systems is transferred to an entity which cannot be held responsible, should also be avoided.

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<sup>(1)</sup> OJ C 13, 15.1.2016, p. 161.

**i) Laws and regulation**

3.32 The implications of AI for existing laws and regulation are considerable. In June 2016, the European Parliament's STOA unit published an overview of EU laws and rules that will be affected by developments in the areas of robotics, cyber-physical systems and AI. The STOA set out six areas — transport, dual-use systems, civil liberties, safety, health and energy — within which as many as 39 EU regulations, directives, declarations and communications, as well as the European Charter for Fundamental Rights, may need to be revised or adapted. This assessment should be tackled quickly and vigorously; the EESC is able and willing to play a role in this process.

3.33 There is a lot of discussion regarding the issue of who can be held liable when a AI system causes damage, particularly if the AI system is self-teaching and continues to learn after entering into use. The European Parliament has drawn up recommendations for civil law on robotics, including a proposal to explore an 'e-personality' for robots so that they can incur civil liability for any damage they cause. The EESC is opposed to any form of legal status for robots or AI (systems), as this entails an unacceptable risk of moral hazard. Liability law is based on a preventive, behaviour-correcting function, which may disappear as soon as the maker no longer bears the liability risk since this is transferred to the robot (or the AI system). There is also a risk of inappropriate use and abuse of this kind of legal status. The comparison with the limited liability of companies is misplaced, because in that case a natural person is always ultimately responsible. In this regard, it should be examined to what extent the current national and EU laws, rules and jurisprudence in the area of (product and risk) liability and own risk provide an adequate answer to this question and, failing that, what kind of legal solutions can be put forward.

3.34 Taking the right approach to laws and regulations on AI will also require a good understanding of what AI can, cannot and will be able to do in the short, medium and long term.

3.35 AI is not limited by borders. It is therefore important to explore the need for global regulations, since regional legislation will be insufficient and will even produce undesirable effects. Given its tried and tested system of product and safety standards, the trend towards protectionism on other continents, the high level of knowledge within Europe, the system of European fundamental rights and social values and the social dialogue, the EESC recommends that the EU take a leading role in establishing uniform, global policy frameworks for AI, and that it promote this process at a global level.

**j) Governance and democracy**

3.36 AI applications can help promote public involvement in public policy and more transparent administrative decision-making. The EESC calls on the EU and national governments to use AI for this purpose.

3.37 The EESC is concerned about the targeted use of AI systems (in the form of smart algorithms) for news aggregation, for example on social media, which seems to have restricted information flow and led to the further division of society (e.g. 'filter bubbles' and 'fake news' on Twitter and Facebook during the US elections).

3.38 The EESC is also concerned about indications that AI systems have been used to influence people's (voting) behaviour. People's preferences and behaviour appear to have been predicted and actively influenced using smart algorithms. This is a threat to fair and open democracy. In the current era of polarisation and dismantling of international institutions, the precision and strength of such propaganda technology may quickly cause further disruption to society. This is one of the reasons why standards are needed for the transparency of (smart) algorithms and the ability to monitor them.

**k) Warfare**

3.39 The United Nations Convention on Certain Conventional Weapons has decided to convene experts in 2017 to discuss the implications of autonomous weapons. The EESC welcomes this and supports the call by Human Rights Watch and others for a ban on autonomous weapon systems. The EESC believes that such a ban should be seriously analysed and considered. However, this is not sufficient to address adequately the possible uses of AI in war and conflict situations. The applications of AI in cyber warfare should also be examined in this UN consultation.

3.40 In addition, it should be ensured that AI does not fall into the hands of people or regimes that aim to use it for terrorist activities.

#### l) *Superintelligence*

3.41 Finally, the question arises as to the possibilities and risks associated with the development of superintelligence. According to Stephen Hawking, the development of general AI may spell the end for mankind. Hawking predicts that, at that moment, AI will continue to evolve at a speed people cannot keep pace with. As a result, there are experts who opt for a 'kill switch' or reset-button, which we can use to deactivate or reset an out-of-control or superintelligent AI system.

3.42 The EESC calls for a human-in-command approach including the precondition that the development and application of AI be responsible and safe, where machines remain machines and people will be able to retain control over these machines at all times. The discussion on superintelligence is important in this connection, but is currently overshadowing the debate on the impact of the current applications of AI.

### 4. AI for the benefit of humanity

4.1 Large commercial players have now launched various initiatives for the open, safe and socially responsible development of AI (such as OpenAI). However, policy-makers cannot leave this to businesses and must play a role here. Targeted measures and support are needed for research into the societal challenges associated with AI and for the development of safe and robust AI systems.

4.2 EU programmes, including Horizon 2020, are well-suited to addressing this challenge. The EESC has noted that funding, particularly under the *Societal Challenges* pillar of Horizon 2020, is below that issued under the two other pillars, *Excellent Science* and *Industrial Leadership*, and is being scaled back. The EESC calls for research on the broad societal challenges as well as on the social applications of AI to have an important place under the Societal Challenges pillar.

4.3 Possible cross-cutting effects of AI should also be addressed. In parallel with funding for the development of disruptive of AI innovations, there should also be funding for research into the societal impact of these innovations and ways of addressing them.

4.4 The research and development of AI that benefits humanity also require a variety of high-quality, publicly available training and test data and real-life test environments. So far, AI infrastructure and a lot of quality data has only been available from and for a limited number of private operators and there are obstacles to testing AI in the public sphere, preventing AI being from applied in other areas. The development of publicly-available, high-quality data and a European AI infrastructure are essential in order to achieve secure, robust and useful AI.

### 5. Monitoring and taking necessary action

5.1 The broad societal impact of AI cannot yet be fully assessed. The fact that the impact will be significant is, however, undisputed. Developments in the field of AI are currently happening at a rapid pace, which calls for critical monitoring from a broad perspective, in order to be able to respond appropriately and in good time to major and disruptive developments, both technical and societal, ('game-changers') in and around the area of AI.

5.2 Technical game-changers may include notable or significant leaps in the development of AI capabilities, which may be precursors to achieving general AI. Societal game-changers may include considerable job losses without jobs to replace them, unsafe situations, system failures, unforeseen international developments, etc.

5.3 Policy-makers, industry, the social partners, consumers, NGOs, educational and health institutions, and academics and specialists from various disciplines (including (applied) AI, ethics, safety, economics, occupational science, law, behavioural science, psychology and philosophy) should work together to closely monitor developments in the area of AI and to draw up a list of these game-changers and keep it up to date, in order to be able to take the right measures at the right time, be they in the form of policy, law and regulations, self-regulation or social dialogue.

5.4 As the representative of European organised civil society, the EESC will shape, focus and promote this multi-stakeholder debate on AI in the coming period.

Brussels, 31 May 2017

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

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**Opinion of the European Economic and Social Committee on 'A possible reshaping of the Common Agricultural Policy'**

**(Exploratory opinion)**

(2017/C 288/02)

Rapporteur: **John BRYAN**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | Commission, 10.2.2017                                              |
| Legal basis               | Article 302 of the Treaty on the Functioning of the European Union |
|                           | Exploratory opinion                                                |
| Bureau decision           | 21.2.2017                                                          |
| Section responsible       | Agriculture, Rural Development and the Environment                 |
| Adopted in section        | 17.5.2017                                                          |
| Adopted at plenary        | 1.6.2017                                                           |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 229/4/5                                                            |
| (for/against/abstentions) |                                                                    |

## **1. Conclusions and recommendations**

1.1 The EESC believes that the Common Agricultural Policy (CAP) is an essential EU policy, which must provide European citizens and the agriculture sector with a truly common policy and which has delivered on its key objectives set out in the Treaty of Rome. While the request for an exploratory opinion speaks of reshaping the CAP, the EESC places emphasis on upgrading the CAP in the interests of stakeholders, adopting a cautious and organic approach. Upgrading the CAP must be approached in a positive way and the CAP budget must be adequate to address existing and new demands, regarding to the agricultural economy as well as social and environmental criteria.

1.2 A reshaped CAP must meet the needs of the new challenges facing Europe, including the EU commitments under the United Nations Sustainable Development Goals (SDGs) and climate change commitments under the 21st Conference of Parties (COP21), bilateral trade deals and market volatility.

1.3 The CAP must strongly support the European Model of Agriculture, with its traditional family farms, farming cooperatives and companies, as well as redress the major income inequality both between rural and urban areas and within agriculture with the involvement of agricultural sectoral organisations.

1.4 In providing a sustainable supply of high-quality safe food for over 500 million EU citizens, and exports worth EUR 131 bn, representing 7,5 % of the EU's total exports, the CAP budget, which amounts to 38 % of total EU budget, must strike a balance, providing value for money. Future funding must be sufficient to address the additional financial demands resulting from Brexit, pressure on farm incomes and the increased demand for public goods.

1.5 The EESC supports the retention of the two-pillar model of the CAP. Direct payments in Pillar 1 must support farm incomes, market management measures and increased delivery of public goods. Rural Development payments in Pillar 2 should focus on economic, environmental and social programmes based on the objectives set down in Cork 2.0 to support vulnerable regions and sectors, and should ensure a targeted approach to the delivery of public goods.

1.6 The valuable contribution that agriculture makes to the environment is underestimated. The carbon sinks in grassland, forestry, peatlands and hedgerows need to be accounted for, protected and enhanced under both the CAP Pillar 1 and Pillar 2 payments.

1.7 Strong targeted programmes which focus on young farmers, especially women, and retirement must be implemented to address the important issue of generational renewal. In addition, programmes aimed at enhancing the role of women in general in agriculture should be adopted.

1.8 Simplification should be a key part of a reshaped CAP with the use of modern technology to simplify and reduce the ever increasing bureaucratic burden facing farmers. Changes should be made to the audit/inspection process encompassing a close out model, the yellow card system, reduced cross compliance requirements and greater tolerances, all focused on simplification and improved delivery of payments.

1.9 A reshaped CAP should maintain the principle of community preference and territorially balanced food sovereignty with EU food for EU citizens. The potential for agriculture must be highlighted in any bilateral or multilateral trade deals without sacrificing the sector to obtain benefits in other areas. All EU food imports must — while respecting the principle of conformity — meet full EU standards on sanitary, phytosanitary (SPS), labour and environmental conditions.

1.10 The farmer's position in the food chain must be strengthened. The positive recommendations from the EU Agricultural Markets Task Force should be adopted and implemented. Further, even stronger, sector and region oriented promotion of cooperation between producers and existing cooperatives and producer organisations (POs), especially small ones, is vital. In particular, specific emphasis should be put on those sectors and regions where cooperation is low.

1.11 Both a strong Pillar 1 and Pillar 2 are essential for a new, reshaped CAP with flexible Rural Development Programmes available across all Member States, including Areas of Natural Constraint (ANC) focused on vulnerable regions and sectors.

1.12 The level of direct aid paid to farmers in the individual EU Member States needs to be further harmonised, in order to create a level playing field for farmers in all Member States and to ensure the balanced development of rural areas throughout the EU.

## 2. Introduction

2.1 Agriculture is more integrated into the EU than any other economic sector. It is the only major sector with a common policy, centrally funded from the EU budget. The farming and agri-food sector is an extremely important employer in the economy, with 11 million farmers, 22 million agricultural workers and a further 22 million related jobs in food processing, food retail and services <sup>(1)</sup>. Many of the jobs are located in poorer rural regions. Farming contributes to economic activity in every Member State and across all regions. Over the past 10 years, the value of EU agri-food and drink exports has grown by an average of 8 % pa, reaching EUR 131 billion in 2016 <sup>(2)</sup>.

2.2 The CAP is an essential EU policy, providing a sustainable supply of safe quality food for 500 million EU citizens at affordable prices. The CAP must also a) ensure a reasonable level of income for EU farmers and b) bring about social, environmental and economic development across rural areas. Farmers and foresters manage over 82 % of the EU land area <sup>(3)</sup> and are thus an essential element of a sustainable agricultural economy that must be multifunctional in nature.

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<sup>(1)</sup> European Commission EU agriculture spending focused on results, September 2015.

<sup>(2)</sup> European Commission Agri-food trade statistical fact sheet — Extra EU 28.

<sup>(3)</sup> Eurostat. Land cover, land use and landscape 2016.

2.3 With a budget of EUR 59 billion, the CAP provides vital support to farmers and their enterprises through direct payments, market support measures and rural development programmes. It should be noted that the CAP support is related to the delivery of public goods and to meeting higher European standards. These Pillar 1 direct payments are indeed linked to cross-compliance and statutory management requirements (SMRs) measures on food safety, animal and plant health and welfare standards, and environmental controls and are essential in helping farmers stabilise incomes and deal with market volatility. Currently 30 % of direct payments are linked to Greening requirements focused on soil quality, biodiversity, and carbon sequestration; nonetheless, there continue to be environmental and social problems that must be solved. Market measures, while seriously eroded in the last CAP reform, are still important, particularly in times of market crisis. New measures are necessary to address volatility. The co-funded Rural Development Programme provides an essential second pillar fund for economic, environmental and social programmes that are implemented at both individual farm level and in rural areas.

2.4 Over the last six decades, despite its shortcomings, the CAP has delivered significant benefits for EU citizens, producers, consumers, taxpayers and broader EU society. However, in some areas, we are facing problems involving biodiversity, the environment and the landscape, and these have to be addressed. It has proven itself to be adaptable and flexible to the demands of the times. The unique structure of CAP Pillar 1 and Pillar 2 has enabled the policy to change and focus on different targets while retaining its overall objective of fostering the European model of agriculture and family farming.

2.5 The compensation payments under the CAP have changed dramatically over the years from mainly market and price supports to decoupled supports with a substantial environmental element. Pillar 2 was introduced to support vulnerable regions and sectors. Pillar II ensures smart and sustainable rural development is at the heart of EU agricultural policy. Agriculture has to have an integrated rural development policy.

2.6 Farming and agriculture under a positively reshaped, modernised and simplified CAP has an essential role to play in meeting European goals on sustainability, the environment and nature, competitiveness, investment, growth and job creation.

2.7 A reshaped CAP must retain the positive aspects of the current policy and adopt new measures to deal with the new challenges which include societal demands for the delivery of public goods, the EU commitments under the United Nations SDGs, climate change commitments under the COP21, bilateral trade deals and market volatility. A reshaped CAP must also get the correct balance between the needs of the consumer, taxpayers and producers.

2.8 Under a reshaped CAP, the EU must continue to strongly support the European model of agriculture and sustainable family farm businesses, as opposed to the industrial model of agricultural production developed in other areas such as Mercosur, the USA and Oceania. Special attention must be given to small and medium-sized farms. On food safety, European farmers operate under the precautionary principle, leaving them at a competitive disadvantage in global trade in basic agricultural products and foodstuffs to farmers in North/South America, Oceania and other areas, who use substances such as hormones and beta agonists, which are all banned in the EU.

2.9 The European model of agriculture is a social contract between EU farmers and society whereby farmers sustainably produce high quality food and other public goods, while ensuring environmental protection and landscape management. In return, the CAP should provide support for the continuation of family farms, cooperatives and companies with sustainable farming models and rural areas. This model has provided goods of immense value to European society as a supplier of diverse, healthy, safe, affordable and high quality food, contributing to territorial balance maintaining rural areas and helping to protect the environment and landscape.

2.10 In addition, the EU needs to work harder to ensure that the CAP and its associated benefits are properly understood and supported by farmers and EU citizens.

### 3. Challenges facing agriculture and the CAP

#### *Farm income*

3.1 The CAP has served Europe and EU citizens well over the last 60 years, delivering substantial benefits to the agriculture sector and good value for money to taxpayers. However, in many EU countries there is a growing inequality of income evident in rural areas versus urban areas, as well as within agriculture. Farm incomes in most Member States are not sufficient and substantially lower than the national or regional average. Agricultural prices have not grown in line with inflation, with increases in input prices such as fertilisers and energy. In recent years, price volatility has caused farm income problems.

#### *Investment in rural areas*

3.2 The current rural development policy with its diverse range of flexible instruments has proven to be essential in supporting rural areas and particularly ANC regions. The strong Rural Development Plan set out under the Cork 2.0 declaration *A Better Life in Rural Areas* must be a key priority for the reshaped CAP. Investing in rural viability and vitality as well as improving job creation in economically vulnerable and remote areas and supporting the diversification of agriculture are major challenges for a reshaped CAP <sup>(4)</sup>.

#### *Budget*

3.3 As a percentage of EU budget, CAP expenditure has gone from 65-75 % in the 1980s down to 38 % currently. However, agriculture is expected to make an increasingly significant contribution to meeting the EU targets in COP21 and the SDGs, in addition to providing high quality affordable food. The UK exit from the EU presents a major challenge to the future funding of the CAP.

#### *Food security*

3.4 With the world population forecast to increase from 7 billion to 9,5 billion by 2050, there is a pressing need to substantially increase world food production in the coming years. One of the core SDGs set by the United Nations is to drastically reduce the prevalence of undernourishment, with studies by the World Health Organisation (WHO) estimating that one in seven people globally are currently undernourished. It is clear that global food production will need to grow in a sustainable way to meet this increased demand for food and help eradicate hunger. The EU and a reshaped CAP has a critical role to play as a responsible world force in food production. The CAP policy must also be responsible in terms of exports and continue to encourage developing countries improve domestic production.

#### *Environmental challenge*

3.5 EU agriculture and the CAP are central to EU commitments for the UN Sustainable Development Goals and to the EU's ambitious targets under the global COP21 climate agreement. Since 1990, EU agricultural carbon emissions have reduced by 23 % and nitrates in rivers have reduced by 17,7 % since 1992 <sup>(5)</sup>. While significant progress has been made under the CAP in terms of environmental delivery, further challenges lie ahead in reshaping the CAP so that agriculture can deliver more and play its vital role in helping Europe reach the targets set by COP21 and the SDGs.

#### *Ecosystem services*

3.6 The agricultural sector delivers vital ecosystem services, contributes to habitat management, biodiversity preservation, animal welfare standards and landscape aesthetics and the protection of soil and water. It must also be acknowledged that the agricultural sector should contribute more with regard to biodiversity, the environment and the landscape. A significant amount of EU food is produced using natural water, that otherwise would be wasted. There is also a large proportion of EU agriculture devoted to grassland and forestry and areas of peatlands, all of which provide a valuable carbon sink. All of these vital ecosystem attributes of agriculture must be captured and encouraged in a reshaped CAP.

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<sup>(4)</sup> Opinion on *From Cork 2.0 Declaration to concrete actions* (not yet published in the Official Journal).

<sup>(5)</sup> Commissioner Hogan, *Working for Europe's Farmers*, 2016.

*Value for Money Food*

3.7 Under the CAP, EU citizens enjoy strong food security and an abundant supply of affordably priced safe food. The percentage of income spent by EU citizens on food has decreased from 50 % in the post Second World War period to 10 % today, despite the significant increase in production costs. A reshaped CAP must ensure that consumers continue to have access to affordable, high quality, safe food produced in accordance with current European standards.

*Generational renewal*

3.8 With the majority of farmers aged over 55 years, there is a major challenge in attracting young people to agriculture and the sector suffers from generational renewal issues. Access to finance and land, low incomes as well as knowledge transfer and access to education are practical problems for young people. In addition, low farm incomes fail to provide for retirement savings. Land abandonment is increasing in some areas, with both social and environmental consequences evident, particularly in remote areas. A strong focus on generational renewal, including young farmers, new entrants and qualified farm workers, especially those already working on the farm, as well as on facilitating retirement, are essential ingredients in a reshaped CAP.

*Women in Agriculture*

3.9 Women play a very important role in the agriculture sector: they undertake a lot of work on farms and carry an increasing share of the bureaucratic burden. In many cases women are under-represented in terms of farm ownership status. Women also make a huge contribution to the viability of the farm enterprise through the income they earn outside the farm, through salaried work or acting as independent entrepreneurs. In cases where both spouses work full time on the farm, this contribution should be reflected and incentivised in farm ownership.

*Migration*

3.10 Farming and the agri-food sector can play an important role in incorporating immigrants into the work force as well as assisting underprivileged groups through social programmes.

*Simplification*

3.11 Modernising and simplifying the CAP are essential in reshaping the policy for the future. Previous reforms have identified the need for simplification but the practical reality is that the CAP has become much more complicated and bureaucratic at farm level. This is particularly the case in terms of the inspection and audit process and the application of the eligibility and cross compliance under the statutory management requirements (SMRs) and Good Agricultural and Environmental Conditions (GAEC).

*Trade and globalisation*

3.12 The EESC recognises the significant benefits and employment created by agricultural trade and exports. However, the challenge arising from globalisation and trade deals could seriously damage agriculture and endanger the EU high level of food safety and quality standards. It is essential that the right balance is found between opening new markets and opportunities, and protecting sensitive sectors and areas as well as EU standards. In addition, the principle of Community preference and food sovereignty needs to maintain a territorial balance <sup>(6)</sup>.

*Price volatility and strengthening farmers' position in the food chain*

3.13 There is a major imbalance of power in the food supply chain between large retailers and processors and the farmer, resulting in downward pressure on prices often below the costs of production. The farmer's position in the food chain must be strengthened by means of well-functioning marketing cooperatives. A European legal framework should be

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<sup>(6)</sup> Opinion on Role of agriculture in multilateral, bilateral and regional trade negotiations in the light of the Nairobi WTO Ministerial meeting (OJ C 173, 31.5.2017, p. 20).

put in place to tackle the unfair trading practices of food and retail chains. In addition, with reduced EU market supports and greater exposure to world markets and geopolitical crisis such as the Russian ban, price and income volatility has become a significant challenge for EU farmers. The work of the EU Agricultural Market Task Force in this area is to be commended and must be advanced. Unfair trading practices and below cost selling must be tackled.

#### *Balanced territorial development*

3.14 Farming, agriculture and forestry are fundamental to economic and social development in rural areas. They also play an important role in other rural-related economic enterprises and services like rural tourism, employment or cultural activities. A reshaped CAP with a strong Pillar 2 component is essential to tackle the rural development challenges of rural areas and keep farming and agriculture strong in every region of the EU. The objective must be to maintain the maximum number of farmers.

### **4. Proposals for an upgraded modernised and simplified CAP**

4.1 A reshaped CAP, which strongly supports the EU model of agriculture, must remain true to the core objectives set out in the Common Agricultural Policy laid down in the Treaty of Rome in 1957. New goals involving the commitments under the SDGs and COP21 should be incorporated. Article 39 TFEU sets out the specific objectives of the CAP as:

- 1) To increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour;
- 2) To ensure a fair standard of living for farmers;
- 3) To stabilise markets;
- 4) To ensure the availability of supplies;
- 5) To ensure reasonable prices for consumers.

4.2 A reshaped CAP must also accommodate the critical challenges of environmental protection, climate change mitigation and biodiversity protection.

4.3 These essential objectives are best fulfilled by retaining the current structure of the two pillar model of the CAP, with CAP Pillar 1 based on direct payments to active farmers supported by market management measures and CAP Pillar 2 based on Rural Development measures and adopting the policy to take on board the new demands on the delivery of public goods. Pillar 1 direct payments are essential in terms of supporting farm incomes and assisting with volatility, linked to cross compliance measures on food safety, animal and plant health and welfare standards, and environmental controls. CAP Pillar 2 measures provide essential additional economic, environmental and social support programmes.

4.4 The CAP budget post 2020 must be sufficient to address the additional financial demands resulting from the Brexit decision, farm income pressures and the increase in demand for public goods.

4.5 On the basic payment model, it is proposed that countries that have adopted a model other than the flat basic payment system should be allowed to retain this model post 2020 as it better suits the circumstances in these countries. For some countries, the flat payment model fails to reflect differences in the level of investment, farming activity and delivery of public goods.

4.6 The level of direct aid paid to farmers in the individual EU Member States needs to be further harmonised, to take into consideration differences in conditions and so create a level playing field for farmers in all Member States and to ensure the balanced development of rural areas throughout the EU.

4.7 Direct payments should only be made to active farmers who provide public services and public goods.

4.8 To support and protect strong Pillar 1 direct payments for farmers, under a reshaped CAP an active farmer would work to an annual or multiannual programme, focusing on environment, climate change and biodiversity, which could include a carbon navigator, and nutrient management plan. This annual or multiannual programme would include measurable delivery of public goods and offer more flexibility to farmers. Measurability must build on objective and standardised criteria at EU level.

4.9 Pillar 1 direct payments should be capped at a fair and reasonable level for individual farmers, (e.g. equal to the comparable income of a qualified worker). Adjustments should be possible and account should be taken of partnerships, cooperatives, companies and the number of employees requiring insurance.

4.10 Coupled direct payments should be focussed on vulnerable sectors and regions. They should both prevent land abandonment and protect biodiversity, mainly by retaining livestock farming and sectors in decline.

4.11 In the current CAP, 30 % of the payment in the 1st Pillar is linked to greening and 70 % to 15 Statutory Management Requirements and five Good Agricultural and Environmental Conditions that have to be met to qualify. In order to facilitate a real simplification of the CAP it would be preferable to link the full Pillar 1 payment to the delivery of public goods. To achieve this goal, it is necessary to make the right evaluation of greening and the Statutory Management Requirements in order to keep the most efficient and achievable measures and also to introduce new targets, such as climate change and the need to increase carbon sequestration in soil.

4.12 These cross compliance SMR programmes would involve measurable deliverables around environmental protection, climate change mitigation and biodiversity protection based on the relevant current cross compliance implementation.

4.13 A reshaped CAP should embrace the concept of Smart Farming, which provides the double dividend of improving farm returns while delivering environmental benefits. It would involve using knowledge transfer and technology to aid precision farming with the aim of lowering inputs of water, energy, industrial fertiliser and other inputs such as pesticides, especially fungicides and insecticides.

4.14 Market measures including intervention and Aids to Private Storage (APS) should be retained. It is essential that the trigger levels for these supports are set at realistic levels so as to provide meaningful income support to producers when required.

4.15 The most effective protection against income volatility is secure and adequate Pillar 1 direct payments and market management instruments. However, in times of extreme price volatility, other tools are required and should be considered, including schemes aimed at reducing production. The option of using Pillar 2 funds for measures such as voluntary insurance schemes should be facilitated.

4.16 For the last 140 years, producers' cooperatives have clearly demonstrated that they are more resilient to turbulence in the agricultural markets and help avoid relocation of food production. Therefore further, even stronger, sector and region oriented promotion of cooperation between producers and existing cooperatives and POs, especially small ones, is vital. In particular, specific emphasis should be put on those sectors and regions where cooperation is low.

4.17 The key elements identified in the EU Agricultural Markets Task Force of improving the position of farmers in the supply chain, increased transparency, mandatory price reporting, risk management measures, addressing unfair trading practices and other issues all must be advanced. Regulations across these areas must be adopted and fully incorporated in a reshaped CAP. It is proposed that stronger regulation would be adopted to outlaw unfair trading practices, ban below cost selling and introduce mandatory price reporting covering producer, processor and retail levels. In addition, the position of farmers must be strengthened by supporting the establishment of strong producer organisations.

4.18 Maintaining an effective and properly functioning EU single market must be at the core of a reshaped CAP. The recent trends of renationalisation across the single market are a cause of great concern and resulting in greater price and market divergence. It is also essential to introduce rules, where they do not exist, on mandatory labelling of the origin of agricultural products and foodstuffs, something that is necessary to prevent fraud and enable consumers to make informed choices precisely so that such rules do not undermine or inhibit the free movement of goods in the EU single market.

4.19 Brexit is a major threat to the EU and will have a significant impact on the CAP and the single market. Any CAP budgetary shortfall as a result of Brexit must be made up in full by Member States. In addition, it is essential that the tariff free trade for agriculture products and food is maintained between the EU and the UK and equivalent standards on animal health, welfare, and the environment as well as the application of Common External Tariff for imports to both the EU and UK.

4.20 A fundamental objective of the CAP has to be Community Preference, with EU food for EU citizens. A key principle of this policy must be the maintenance and protection of EU standards on traceability, food safety, animal and plant health controls and environmental protection, as well as full protection for Protected Geographical Indications (PGIs). In any trade policy negotiations, it is essential for EU consumers that the EU requires that all imported food meet these same standards. In addition, in any future trade negotiations it is essential that the EU maintains strong and adequate tariff protection for sensitive sectors and vulnerable areas.

4.21 Generational renewal must be a key feature of a new reshaped CAP. It is proposed that the existing increase in CAP Pillar 1 payments to young farmers under 40 years of age should continue. It is proposed that the 5-year rule be re-examined to remove the inflexibilities denying young farmers access to higher payment levels. In addition, it is proposed that higher payment rates for young farmers under the general RDP scheme measures should apply. Payment levels for structural grant aid programmes for young farmers should be increased to 70 %. Such support should also be made available for young farmers and young professionals in partnerships, cooperatives, and companies. An effective national reserve to allow young farmers' and new entrants' access to supports on an ongoing basis is very important. The option to implement an effective retirement programme under Pillar 2 should be available. Member States should have flexibility to introduce additional measures for young farmers, especially women. A strong focus on education and improving skills is essential. To enhance the position of women in agriculture, similar incentives as those available to young farmers should be available to women to ensure equal access to land, credit, training and status.

4.22 Positive simplification under cross compliance/GAEC and SMRs could be introduced for farmers by moving away from the audit/inspection approach and adopting greater use of technology. The system should be adopted with a check list involving positive and negative points for compliance. Applicants who meet the main critical requirements and amass a threshold number of points would be cleared for payment without any penalties. This would be an extension of the new yellow card approach already introduced. The number of cross compliance and SMRs should be reduced by removing some SMR measures that are no longer appropriate or relevant. A good example of this would be to remove the necessity to check animal identification on farms and undertake the checks using technology at points of sale such as meat plants, assembly points and livestock marts.

4.23 The inspection regime under the cross compliance requirements should also provide a right to rectify in a close out approach within a designated time frame, without penalty. A more proportionate and fairer approach regarding penalties and tolerances should apply. Simplification should not bring about a decrease of the ambitions, especially not in environmental protection (greening) or SPS.

4.24 Inspections should not hold up payments and a policy of applying any penalties in the following year for all eligibility and cross compliance/SMR should apply.

4.25 A strong enhanced and more effective Pillar 2, which meets the economic, environmental and social demands of regions, is critically important to a new reshaped CAP focusing on rural viability, vitality and job creation. This should be based on the objectives set down in Cork 2.0. In addition, it is important that Member States adequately co-finance all RDP measures, including ANC payments.

4.26 With the increased challenges of meeting Europe's commitments set out in the UN SDG and COP21 targets, there is a need to expand, target and pay for increased environmental measures under CAP Pillar 2. While respecting the present budget allocation under Pillar 2, to allow for this, it is important that the future budget distribution between Member States reflects this ambition.

4.27 Increased CAP Pillar 2 environmental, climate change and biodiversity measures and payments could be targeted at the delivery of enhanced ecosystem services by farmers focused on the following:

1. Payments for the enhanced management of carbon sinks in soils covering grassland, forestry and peat lands.
2. Improved management of permanent grasslands to improve carbon sinks.
3. Payment to convert some tillage to grassland.
4. Option of set aside and minimum tillage programmes.
5. Option to reduce stocking rates on grassland, while maintaining a minimum stocking rate.
6. Payment for creation of habitats and nature corridors.
7. Buffer margins around water bodies.
8. Management of ditches and hedgerows.
9. Carbon navigation.
10. Payment to maintain peatlands.
11. Protection of landscape aesthetics and archaeological sites.
12. Payment for animal welfare measures.
13. Increased payments in Natura areas and for damage by wild fauna.
14. Measures to reduce desertification in dry areas.
15. Agroecology and organic production.
16. Payments for increasing soil organic matter content, limiting soil erosion and facilitating water retention in the landscape.

4.28 Payments under the ANC scheme are critical to farmers in the poorer and more isolated regions of the EU.

4.29 The provision of low cost finance is essential to drive growth in the agriculture sector, and especially to assist young farmers who are critical to generational renewal.

4.30 A reshaped CAP should be complementary to a comprehensive food policy bringing together sustainable agriculture, balanced territorial development, healthy diets, employment and trade. The importance of a healthy diet for consumers and the associated benefits to society in terms of quality of life, healthy living, tackling obesity and reduced health cost cannot be overemphasised. Increased resources and programmes are required to communicate this message to consumers along with programmes to eradicate food waste and encourage recycling.

4.31 To achieve the EU target of increasing the use of renewable energy to at least 27 % by 2030, measures to ensure stability and legal certainty should be adopted. Payments targeted at supporting investment in solar, biomass and wind power and energy efficiency and saving programmes must be adopted.

4.32 To maintain competitiveness, it is vitally important that the agriculture sector has the latest research and innovation and that this is made available at farm level. Effective knowledge transfer, education, best practice and advisory extension programmes and services must be available and supported.

4.33 With the increased use of technology in agriculture and particularly for smart farming and assisting simplification, broadband coverage is vital for all rural areas.

4.34 In the new smart farming economy, with greater use of technology, the protection of the farmers' individual data and confidentiality is very important. In addition, it is essential farmers retain full ownership of all the individual data held in respect of their business.

4.35 The circular economy can play a major role in reducing waste in all sectors. Traditional farming models are the epitome of zero waste, resource-efficient, circular economies. Agriculture has a positive role to play in the reuse, recycle sector, including the economical management of soil, water and air.

4.36 There is a need for a reasonable transition period from 2020 for the introduction of a new reshaped CAP, particularly to take account of budgetary issues around Brexit and other political decisions <sup>(7)</sup>.

Brussels, 1 June 2017.

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

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<sup>(7)</sup> Opinion on *Factors that influence CAP post 2020* (OJ C 75, 10.3.2017, p. 21).

## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

526TH EESC PLENARY SESSION OF 31 MAY AND 1 JUNE 2017

**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Europe’s next leaders: the Start-up and Scale-up Initiative’**

*(COM(2016) 733 final)**(2017/C 288/03)*Rapporteur: **Erik SVENSSON**Co-rapporteur: **Ariane RODERT**

|                                  |                                                                    |
|----------------------------------|--------------------------------------------------------------------|
| Consultation                     | European Commission, 27.1.2017                                     |
| Legal basis                      | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible              | Single Market, Production and Consumption                          |
| Adopted in section               | 4.5.2017                                                           |
| Adopted at plenary               | 31.5.2017                                                          |
| Plenary session No               | 526                                                                |
| Outcome of vote                  | 194/0/0                                                            |
| <i>(for/against/abstentions)</i> |                                                                    |

**1. Conclusions and recommendations**

1.1 The EESC welcomes the European Commission’s (EC) Start-up and Scale-up Initiative and the actions proposed which aim to remove key barriers, but stresses that not all high-growth enterprises are high-tech enterprises and that action is needed across sectors.

1.2 The EESC is of the opinion that an updated relaunch of the Small Business Act which would gather all initiatives into one agenda would be more relevant and would improve visibility and consistency.

1.3 The EESC calls for a coordinated policy approach for start-ups and scale-ups which takes into account the diversity of enterprise models, and welcomes the specific actions for social economy enterprises. However any initiative must strive towards an overall improvement of the entrepreneurial climate, enabling risk-taking and experimentation as part of the innovation process.

1.4 Administrative burdens and red tape continue to be a key barrier for start-ups and scale-ups. The EESC therefore urges the EC to fully implement and enforce initiatives taken in this area.

1.5 The EESC stresses the importance of the structural involvement of social partners as well as the importance of enforcing compliance with EU rules on working conditions, labour laws and collective agreements.

1.6 The EESC welcomes the proposed actions on innovation but calls for simplification of the rules and conditions given the limited resources of SMEs and micro-companies.

1.7 Strengthening partnerships and building communities of resources is a key success factor. The EC should promote networking, including the formation of intermediaries, facilitators, accelerators and incubators.

1.8 In order to unleash the growth potential of start-ups and scale-ups, it is essential to develop tailored financing with access to both equity and debt capital solutions, ensure access to procurement contracts and improve the fiscal environment. The EESC has explored suitable actions in its opinions.

1.9 Skills development is crucial, which is why focus must be placed on educational entrepreneurship programmes at all levels and at an early stage of the educational system. In addition, mentoring, on-the-job-training, and informal and non-formal learning programmes must be encouraged and promoted.

1.10 Action is needed to reduce the current high level of risk aversion in the EU by reviewing the second chance principle and providing development support such as financial literacy/education.

1.11 The EESC calls on the EC to bring together all the current and new initiatives to support social economy enterprises by issuing a communication with an Action Plan for the Social Economy. This is in line with the Council Conclusions 'The promotion of the social economy as a key driver of economic and social development in Europe' (7 December 2015).

## 2. Background

2.1 The Communication on Europe's next leaders: the *Start-up and Scale-up Initiative* states:

- High-growth firms create many more new jobs compared to other firms <sup>(1)</sup>. Start-ups scaling up into bigger firms form a large share of these businesses. They increase EU innovation and competitiveness, strengthening the economy. Such 'scale-ups' can also provide social benefits, including offering more flexible and modern working arrangements. In its Single Market Strategy, the Commission announced that it will look at how to make the Single Market more efficient for start-ups and scale-ups.
- According to the results of a public consultation <sup>(2)</sup> by the Commission earlier in 2016:
  - start-ups looking to scale-up still face too many regulatory and administrative barriers especially in a cross-border situation;
  - for both start-ups and scale-ups, too few opportunities exist to find and engage with potential partners in finance, business and local authorities;
  - accessing finance is one of the biggest barriers to scaling up.

2.2 In its Communication, the Commission proposes a number of actions to be taken to reduce and/or eliminate these obstacles.

2.2.1 Removing barriers:

- Single Digital Gateway to provide easy online access to information,

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<sup>(1)</sup> According to Henrekson and Johansson, 2010, 4 % of firms generate 70 % of new jobs. See also: <http://www.kauffman.org/blogs/policy-dialogue/2015/august/deconstructing-job-creation-from-startups>

<sup>(2)</sup> [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8723](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8723)

- create a Single VAT Area,
- realisation of the Common Consolidated Corporate Tax Base (CCCTB),
- second Chance Regime and restructuring framework in Member States,
- better access to public procurement.

#### 2.2.2 Help connecting with right partners:

- connecting with universities, research centres, investors and partners,
- accessing opportunities, finding people with the right skills, enhancing innovation opportunities — especially social start-ups.

#### 2.2.3 Access to finance:

- The European Fund for Strategic Investments (in addition to the Capital Markets Union).

### 3. General comments

3.1 This opinion is a reply to the European Commission (EC) Communication on 'Europe's Next Leaders: the Start-up and Scale-up Initiative', which proposes measures to unleash the full potential of high-growth enterprises. However, the EESC has chosen to broaden the opinion's scope and reflect on these actions from the perspective of all forms of start-ups, including potential start-ups and scale-ups.

3.2 The EESC welcomes this initiative and the effort to remove key barriers. The EESC would like to highlight the extensive work done in previous opinions that aimed to create an enabling environment for diverse forms of enterprise in the EU <sup>(3)</sup>, as well as its previous call for more action on the entrepreneurial agenda <sup>(4)</sup>.

3.3 Since the Start-up and Scale-up Initiative is a development and extension of the Small Business Act, the EESC is of the opinion that it would be more efficient to consider an updated relaunch of the Small Business Act rather than continuing to launch separate measures. The EESC welcomes and supports this and other initiatives aiming to support start-ups and scale-ups, but it is difficult to gain an overview of the full agenda without gathering the different initiatives into a joint and comprehensive policy agenda.

3.4 The EESC underlines the need for a general effective policy package which takes into account the diversity of enterprises and therefore supports the EC's goal of promoting a coordinated approach across EU policies.

3.5 The EESC draws the EC's attention to an opinion being drawn up by the EESC, which includes a number of recommendations very relevant to start-ups and scale-ups:

- a single one-stop-shop network for all EU SMEs,
- make 'think small first' and 'once only' legally binding,
- respond more appropriately to the variety of SMEs.

3.6 Furthermore, in the December 2016 opinion <sup>(5)</sup>, the EESC encourages the EC to promote high growth firms by:

- monitoring and achieving synergies between innovative policies delivered by different DGs;
- reinforcing the clusters and ecosystems in which innovative start-ups are created;

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<sup>(3)</sup> OJ C 318, 23.12.2009, p. 22.

<sup>(4)</sup> OJ C 271, 19.9.2013, p. 61.

<sup>(5)</sup> OJ C 75, 10.3.2017, p. 6.

— encouraging an academic agenda focusing on jobs for the future.

3.7 It is, in particular, important to recognise the great potential in existing micro-companies, many of which are family businesses, as well as the development opportunities in the social economy enterprise sphere. In addition, the EESC urges the EC to consider the fact that not all high-growth enterprises are in the high-tech sector and that sectors such as the service sector, the fashion industry and e-commerce, as well as other innovative sectors, also need focus and support.

3.8 The EESC also urges the EC to ensure that any initiatives also take into account the new business phenomena emerging, such as the collaborative economy <sup>(6)</sup>. All these share similar and additional obstacles when starting up and expanding in the single market.

3.9 The EESC welcomes the action to introduce a Single Digital Gateway to improve access to information, but is of the view that this tool will have limited impact on reducing the burdensome rules and regulations. The EESC also suggests that an internet portal on research and development should be included in this Single Digital Gateway. Structural cooperation with intermediary organisations is a very effective means of improving information for start-ups.

3.10 The EC addresses some of the most urgent barriers, especially in the areas of regulatory, tax and administrative burdens. The EESC wishes to stress that SMEs, including micro-companies, and family or social economy enterprises, often have little or no in-house competence to manage the very complex and bureaucratic regulations and administrative burdens, which is why simplification is key.

3.11 The EESC supports the proposed peer reviews to share good practices and identify differences between Member States, with the aim of better harmonising initiatives. To be effective, the peer reviews' findings must be transparent and disseminated among stakeholders.

3.12 The EESC also supports the EC's decision to expand the Enterprise Europe Network's (EEN) advisory service with dedicated start-up and scale-up advisors, advising on national and European rules, funding opportunities, partnering and access to cross-border public procurement. Here again the EESC wishes to highlight the importance and benefits of more structural cooperation with intermediary bodies and involved organisations, also within the social economy.

3.13 The EESC supports the EC's intentions to include start-ups and scale-ups in international trade agreements, since an increasing number of start-up and scale-up companies must reach a global market rapidly (often in a very limited segment).

3.14 The EESC acknowledges and supports the EC's commitment, expressed in this initiative, to enforce compliance with EU rules on working conditions, labour laws and collective agreements and to aim for high-quality jobs.

3.15 The EESC wishes to respond to the following wording in the EC communication: 'including offering more flexible and modern working arrangements'. This statement may give rise to misunderstanding and potential abuse.

3.16 The structural involvement of social partners is crucial and should be encouraged so as to guarantee fair competition amongst enterprises and to avoid the risk of social dumping, as the EESC has emphasised in several opinions <sup>(7)</sup>.

3.17 The EESC wishes to address the present process on geo-blocking <sup>(8)</sup>. This could be a big new obstacle for start-ups and scale-ups that have no capacity to enter several countries with different languages at the same time. It is crucial to communicate the difference between active and passive sales! Adherence to national legislation is only required for the countries which are actively targeted.

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<sup>(6)</sup> OJ C 75, 10.3.2017, p. 33.

<sup>(7)</sup> OJ C 161, 6.6.2013, p. 14; OJ C 303, 19.8.2016, p. 54; OJ C 13, 15.1.2016, p. 2.

<sup>(8)</sup> COM(2016) 289 final.

3.18 The EESC supports the proposal to improve SMEs', especially scale-ups', access to Horizon 2020 programmes. The European Innovation Council and the Innovation Radar can be effective instruments, provided they are not too burdensome, and can indeed reach the intended SME targets. Furthermore, the EESC recommends that these initiatives pay specific attention to social innovation, which often drives new business models.

3.19 The EESC also welcomes the specific mention of action to start up and scale up the social economy and social enterprise, an area where the EESC has specific expertise and has issued opinions <sup>(9)</sup>.

3.20 The EESC notes with satisfaction that the EC recognises that SMEs have great difficulties defending their intellectual property rights. The cost is extremely high for a small company, and enforcement costs are equally high, meaning that hardly any start-up or scale-up company can afford it. The EESC calls on the EC to find a workable solution to address this

#### 4. Specific comments

##### 4.1 *Partners, clusters and ecosystems*

4.1.1 A general positive entrepreneurial climate is a cornerstone of growth and innovation. The EESC is of the view that this EC initiative can only succeed if it strives for an overall improvement of the entrepreneurial climate, allowing for risk-taking and experimentation as part of the innovation process.

4.1.2 The EESC agrees with the EC that it is very important for start-ups and especially scale-ups to connect with the right partners. Since the European market is generally more traditional in terms of risk-taking, as well as primarily national, it is necessary to divide the effort along two main lines:

- 1) The EU and the Member States, in permanent cooperation with intermediary organisations and bodies, can play an important role in facilitating clusters with universities, research centres, etc.
- 2) To find investors and business partners, only the market can play a role, not underestimating European programmes or the role of the EIB/EIF. However these programmes must be stepped up and better coordinated.

4.1.3 The EESC supports the EC's plan to reinforce the current Start-up Europe initiative and to coordinate EU work to connect clusters and ecosystems across Europe.

4.1.4 The EESC supports the fact that the EC highlights the creation of communities with partnerships and tailored ecosystems as key factors for successful start-ups and scale-ups. In this context, the EESC welcomes the fact that the EC pays specific attention to the social economy enterprise, recognising its specific features and contributions to European societies. The EESC therefore once again <sup>(10)</sup> urges the EC to bring together all current and new initiatives into a coherent EU Action Plan for the Social Economy, with the aim of improving visibility and the interconnection between the various initiatives.

##### 4.2 *Procurement opportunities*

4.2.1 The EESC strongly supports the EC's intention of improving the procurement opportunities for start-ups and scale-ups. In addition to the actions proposed, the EESC calls on the EC to closely monitor the transposition and application of the procurement directive at Member State level. This is key to ensuring that Member States take full advantage of the provisions available for improving the procurement opportunities for SMEs, including social economy enterprises. The EESC refers to its earlier opinion on procurement <sup>(11)</sup>.

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<sup>(9)</sup> <http://www.eesc.europa.eu/?i=portal.en.social-entrepreneurship-make-it-happen>

<sup>(10)</sup> EESC Contribution to the EC Work Programme 2017, <http://www.eesc.europa.eu/?i=portal.en.publications.40059>

<sup>(11)</sup> OJ C 191, 29.6.2012, p. 84.

4.2.2 The EESC welcomes the fact that the Communication pays specific attention to innovation procurement and the Innovation Partnership. However, this requires a simplified set of regulations. Innovation procurement, as described in the directive, appears to be better suited for large companies. Participation in innovation partnerships requires identification of a separate unit, which prevents start-ups and scale-ups from being eligible, since start-ups normally do not have a specifically dedicated department.

4.2.3 The EESC wishes to highlight that the introduction of the EC tool (self-declaration using the European Single Procurement Document (ESPD)) aimed at helping SMEs to take part in public procurement, has in many cases had the opposite result and is perceived as a barrier to participation in procurement. Start-ups and scale-ups struggle to gather all the necessary information and forms required. This is why support is necessary and should be promoted by intermediary organisations (SME organisations and other related organisations).

### 4.3 *Skills*

4.3.1 The EESC agrees that the New Skills Agenda for Europe, with its dual focus on quality and skills relevant to the labour market, addresses some of the most important challenges. However, this will only be successful if the initiatives reach the most important target groups, which requires implementation, monitoring and follow-up to ensure effectiveness.

4.3.2 The EESC highlights that the New Skills Agenda for Europe, and in particular the forthcoming initiative on the Digital Skills and Job Coalition, will be extremely important and can be a cornerstone for the future.

4.3.3 Social economy enterprises develop responses to new or inadequately addressed social needs. They are pioneers in social innovation. Therefore, in addition to digital skill initiatives, social economy (and other) entrepreneurs are expressing a need for action in other skill areas, such as business development and investment readiness. These skills are equally important to a successful start-up.

4.3.4 The EESC urges the EC to encourage and assist Member States to set up educational schemes for entrepreneurs but also to facilitate best practices between Member States and stakeholders. It is advisable to adopt such programmes early in the education system since this has been proven to have a greater effect.

4.3.5 Furthermore, incubators and one-stop-shop services (such as development, mentoring and financial support) are often crucial in the early and scale-up stages. The EC should promote and share best practices in this field.

### 4.4 *Taxation*

4.4.1 The EESC shares the EC's concern that taxation can constitute a considerable obstacle for start-ups and scale-ups. Key points to address are the high compliance costs, in particularly those caused by varied national tax schemes.

4.4.2 The EESC calls on the EC to consider the possibility of placing no limit in terms of size or time on the carry-forward of losses that are incurred when initially starting and scaling up enterprises.

4.4.3 The EESC also welcomes the possibility for SMEs of being able to opt into the system of a Common Consolidated Tax Base, as outlined in the EC Communication.

4.4.4 Furthermore, consumption taxation within the VAT system is very complex for SMEs. In addition, there is an extra burden on start-ups in identifying the applicable VAT rate for each particular good or service in Member States, resulting in high costs, which ultimately discourage cross-border trade. The EESC therefore supports the EC's intention to create a Single VAT Area and the VAT simplification package for SMEs, including start-ups, which will address a serious barrier to micro-companies.

4.4.5 The taxation of investment income at the individual level in many Member States also discourages investment in start-ups and scale-ups, in particular if other investment alternatives face a lower tax burden or no taxation at all. Taxation of stock options may in this respect need special attention. The EESC therefore supports the continued monitoring by the EC of Member States' tax schemes/incentives for investments in start-ups/scale-ups.

4.4.6 Social economy enterprises must have a fiscal environment that enables them to reach their full economic potential while taking into account their environmental and social objectives and in accordance with the principles of free competition on equal terms. A variety of measures are possible:

- mapping the various existing tax incentives associated with financing social economy enterprises, in order to spread best practice;
- promoting social innovation through:
  - tax credits for donations or lower return investments in social innovation that addresses societal priorities;
  - opening up refundable tax credits for research and development to non-profit enterprises, with a view to developing innovation that has a positive social impact and improving productivity in services for individuals and local services.

#### 4.5 Access to finance

4.5.1 Start-ups and scale-ups rely on access to equity and debt capital. The EESC has in earlier opinions <sup>(12)</sup> noted that access to venture capital is considerably lower in the EU than in the USA, the main reason being the highly fragmented EU venture capital industry (concentrated in certain Member States). The EESC acknowledges that the EC addresses this issue by creating the pan-European Venture Capital Fund, and calls on the EC to take note of the EESC's proposals <sup>(13)</sup> and closely monitor its uptake and effects.

4.5.2 In the same opinion we pointed to the insufficient involvement of private investors, and recommended incentives for public-private partnerships, where asymmetric funds could be considered (they already exist in Finland, the UK, Greece and the Netherlands). The EESC now welcomes a similar solution allowing privately owned investment funds to benefit from public guarantees of investments in start-ups and scale-ups.

4.5.3 The EESC also welcomes the proposal to increase the budget for EFSI and COSME to provide additional financing for an effective policy for start-ups and scale-ups, taking into consideration their diversity.

4.5.4 However, it is important to underline that the majority of start-ups are funded by bank loans tied to personal and family guarantees. 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.

4.5.5 The EESC encourages the EU Member States, with the support of the EC, to promote and search for alternative legal forms of doing business, for example the Simple Joint Stock Company with high innovation potential for growth, typical of start-ups (France and Slovakia).

4.5.6 The EESC also encourages the Member States, with the support of the EC, to simplify and harmonise bankruptcy laws, including the implementation of the 'second chance principle' proposed in the EESC opinion on business insolvency <sup>(14)</sup>.

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<sup>(12)</sup> OJ C 75, 10.3.2017, p. 6.

<sup>(13)</sup> OJ C 75, 10.3.2017, p. 48.

<sup>(14)</sup> OJ C 209, 30.6.2017, p. 21.

4.5.7 In the insolvency procedure and legislation, the challenge is to value the assets of failing start-ups appropriately. In many cases, the main asset is know-how rather than fixed assets, as the EESC has previously pointed out <sup>(15)</sup>.

4.5.8 In previous opinions the EESC fully explored the financial ecosystem <sup>(16)</sup> required for social economy enterprises. In common with other start-ups, there is a need to provide blended capital solutions with a guarantee element, as well as innovative instruments for second-stage financing and financial education including investment readiness. A particular feature of investments in and financing of social economy enterprises is that the return on investment also includes the social impact. The EC should support the Member States in ventures in this direction.

## 5. Specific considerations for social economy enterprises and newly emerging forms of enterprise

5.1 The EESC welcomes the fact that the Communication in particular highlights specific action for the social economy enterprise sector, as well as exploring further measures for emerging business models.

5.2 In this context it is crucial to mention the link between social innovation and the start-up of social economy enterprises and new business models, which the EESC has explored previously <sup>(17)</sup>. Understanding that social innovation builds on a different innovation process based on specific criteria and principles is central. Any action to support social economy enterprises start-ups and new business models must therefore recognise the key underlying values such as measuring social and environmental impacts, shared value and open source aspects which are linked to social innovation <sup>(18)</sup>. Only then can social economy enterprises and these new emerging forms of social enterprise take advantage of support measures, be sustainable and scale up successfully.

5.3 It is also important to understand how and whether social economy enterprises and these new forms of enterprises scale up (they may instead choose to share a good idea rather than to scale-up themselves). As stressed by the EESC previously, the key is to fully mainstream the logic of these diverse enterprise models into any start-up and scale-up initiatives and to tailor support instruments appropriately. Support mechanisms are often based on the traditional company model, which is today the norm, rather than on these social economy or newly emerging economic models.

## 6. Further needs identified

6.1 The EESC has continuously stressed the need to increase the visibility, recognition and promotion of diverse forms of enterprise. This includes better collection of statistics and research into the various business models and their specific logics which exist in the EU today.

6.2 A database of good practices regarding measures to promote start-ups and scale-ups in all their diversity could be very useful. The EC is well placed to facilitate this exchange of best practices from Member States.

6.3 The values, principles and *raison d'être* of social economy enterprises should be promoted, since they can be inspirational to entrepreneurs. Experiences and methods from this sector can easily be transferred to other enterprise models, such as principles of partnership and affiliation based on co-creation across sectors and stakeholders, licensing agreements, capacity-building, piggybacking which allows for leveraging the scale of other companies, open source for the rapid diffusion of solutions, smart networks building on shared and collective value and setting new standards such as movements aimed at policy change. An example of the latter is that social innovation usually leads to social policy innovation. In the same way, conventional enterprises can inspire social economy enterprises, for example in marketing, sales and business management, again demonstrating the value of best practice exchange.

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<sup>(15)</sup> OJ C 75, 10.3.2017, p. 6.

<sup>(16)</sup> OJ C 13, 15.1.2016, p. 152.

<sup>(17)</sup> OJ C 303, 19.8.2016, p. 28.

<sup>(18)</sup> Social Innovation Index developed by Europe Tomorrow and OJ C 458, 19.12.2014, p. 14.

6.4 The EESC is well placed — representing European civil society — to actively participate in promoting and enhancing entrepreneurial development in the EU for the benefit of employment, social welfare and growth. We therefore offer our capacity and capabilities to the EC for further initiatives for SMEs, including social economy enterprises.

Brussels, 31 May 2017.

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

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union’**

[COM(2016) 799 *final* — 2016/0400 (COD)]

(2017/C 288/04)

Rapporteur: **Jorge PEGADO LIZ**

|                                              |                                                                                                                              |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Referral                                     | European Parliament, 13.3.2017<br>European Council, 13.3.2017                                                                |
| Legal basis                                  | Articles 43(2), 91, 100(2), 114, 153(2)(b), 168(4)(b), 172 and 192(1) of the Treaty on the Functioning of the European Union |
| Section responsible                          | Section for the Single Market, Production and Consumption                                                                    |
| Adopted in section                           | 4.5.2017                                                                                                                     |
| Adopted at plenary                           | 1.6.2017                                                                                                                     |
| Plenary session No                           | 526                                                                                                                          |
| Outcome of vote<br>(for/against/abstentions) | 156/0/1                                                                                                                      |

## 1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) regrets that the Commission has not followed up points made in previous EESC opinions and has had to resume negotiations with a view to adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny (RPS) to Articles 290 and 291 TFEU.

1.2 It points out that its previous opinions set out the approach which it deemed best able to safeguard the fundamental values at stake in this exercise in terms of legal certainty, respect for fundamental rights, and effective, balanced and democratic use of the institutions’ powers.

1.3 The Committee believes that these principles should guide the new procedure to align legal acts that are still subject to the RPS with the new regime of delegated and implementing acts set out in Articles 290 and 291 TFEU.

1.4 Without prejudice to a more specific analysis when reviewing each measure submitted to it for an opinion, the EESC here summarises the observations it considers should be made with regard to each of the legislative proposals announced in the proposal.

## 2. Commission proposal

2.1 In its proposal, the Commission notes that a significant number of basic legislative acts that are subject to the rules of Council Decision 2006/512/EC (‘Comitology Decision’) still need to be adapted to Articles 290 and 291 TFEU, in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (‘Comitology Regulation’).

2.2 It had pledged to adapt them by 2013, and to this end proposed three horizontal alignments in 2013: ‘Omnibus I, II and III’.

2.3 After a long discussion with the EP and many amendments to these proposals, the Council refused to support this automatic and collective alignment of all RPS acts to delegated acts, due to the absence of a guarantee that Member States' experts would be systematically consulted during the preparatory phase of delegated acts. This caused the proposals to get bogged down in institutional issues, and the Commission withdrew them.

2.4 After the revision of the Interinstitutional Agreement on Better Regulation (IIA) and the adoption of the Common Understanding on Delegated Acts appended to that agreement, the Commission presented a new proposal addressing the Council's objections. This new proposal takes into account the changes introduced by the new interinstitutional agreement as regards the consultation of Member States' experts when preparing delegated acts and simultaneous consultation with the EP.

2.5 The proposal is structured around the 13 chapters found in the annex, which lists the 168 acts in chronological order. The Commission groups them into four tables:

Table 1 — Overview of acts for which alignment to implementing acts is proposed for certain empowerments;

Table 2 — Overview of acts for which deletion of certain empowerments is foreseen;

Table 3 — Proposals adopted by the Commission;

Table 4 — Acts for which proposals are planned.

### 3. Background — EESC opinions and reports

3.1 In July 2013 the EESC adopted a very detailed information report that aimed 'to highlight the realities of the delegated legislative procedure introduced by the Lisbon Treaty'.

3.2 It noted that 'the precise legal nature of delegated acts remains somewhat undefined; the concept of "non-essential" measures is interpreted by the Court in a variety of ways depending on the areas concerned; and the Commission's leeway seems to be quite extensive since it is up to the Commission to propose the scope and duration of delegations'.

3.2.1 The EESC stated that 'there are [...] a number of [...] questions about the transparency of the prior consultation system originating in a document which is not legally binding, entitled *Common Understanding on practical arrangements for the use of delegated acts* of 4 April 2011'.

3.2.2 It further noted that 'the implementation of TFEU Article 290 is provided for in a Communication from the Commission to the European Parliament and the Council of 9 December 2009, an act which is not legally binding, while the rules on exercising implementation powers flow from a regulation of the European Parliament and the Council on 16 February 2011, a legal act of general application, all elements of which are mandatory and of direct application'.

3.2.3 The information report concluded that 'there are still doubts as to the simplicity of the procedure, how the European public really perceives what is at stake here, the "correct" usage of this procedure and the effectiveness of the control mechanisms'. Thus the EESC proposed drawing up an own-initiative opinion on the subject to enable it to express a position on the observations and conclusions arrived at in all objectivity in the report, with a view to possibly improving the EU's legislative process.

3.3 In July and September 2013, two proposals for regulations were referred to the EESC: on 'adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny' [COM(2013) 451 final] and on 'adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny' [COM(2013) 452 final]; on 18 November and 10 December, yet another proposal for a regulation was referred to the Committee: on 'adapting to Article(s) 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny' [COM(2013) 751 final]. These regulations were called Omnibus I, II and III.

3.3.1 In its opinions of 16 October and 2 January, the EESC stressed in particular that this collective alignment of 165 legal instruments (regulations, directives and decisions) in 12 different areas, although necessary, raised a number of legal and practical issues.

3.3.2 Thus, 'some aspects of the delegation procedure are still far from clear [...] the concept of "non-essential elements"' has yet to be defined. A precise evaluation of how the mechanism actually works in practice also needs to be carried out.'

3.3.3 It also noted that 'some proposals for regulations contain options which misinterpret the framework established by the basic legislative acts, going so far as to allow for delegation to be exercised for a period of unspecified length or setting very short deadlines for scrutiny by the Parliament and the Council'.

3.3.4 After a systematic analysis of all the proposals, the EESC advised the Commission 'to tailor this collective alignment more closely to the individual contents of some of the basic legislative acts' and advised 'the Council and the Parliament to exercise maximum vigilance and to conduct a detailed evaluation of all the acts included in this alignment'.

3.3.5 If the exercise was to go ahead as proposed by the Commission, the EESC stressed the importance of:

- fully involving the EP in the process;
- streamlining and simplifying the comitology procedures;
- providing more information, both with regard to delegations to committees and to the relevant measures at all stages of the procedure;
- making the information fully accessible to the public and to civil society.

3.3.6 Finally, the Committee called for the impact of the new regulatory framework to be assessed and for a periodic report to be presented to the European Parliament, the Council and the Committee itself regarding effectiveness, transparency and the dissemination of information.

3.4 In the meantime, as part of the 'Better Regulation' package, the Commission issued a proposal for a binding interinstitutional agreement, based on Article 295 TFEU, which addressed delegated acts in two specific annexes.

3.4.1 In its opinion of July 2015, the EESC stated that it 'is [...] pleased to note the Commission's efforts to achieve a fair balance between the fundamental values of respect for the rule of law, democratic participation, transparency, proximity to the public and the right to wide-ranging information on legislative procedures, on the one hand, and legislative simplification, more flexible rules that are better geared to the interests involved, and simplified procedures for updates and revision, on the other'.

3.4.2 In the same opinion, it also welcomed the fact that 'the Commission is committed "to gathering, prior to the adoption of delegated acts, all necessary expertise [...] through the consultation of experts from the Member States and through public consultations" and that it is proposing the same method of consultation for the adoption of implementing acts'.

3.4.3 The EESC nevertheless feared that all these consultations could cause the time taken to prepare acts to be prolonged excessively and unnecessarily.

3.4.4 It was not in favour of the case-by-case approach to distinguishing between matters that should be subject to delegated or implementing acts, as the criteria used were ambiguous and left too much room for discretion in interpretation.

3.4.5 The EESC particularly objected to:

- a) the absence of prior information on Member States' experts and their technical competence;

- b) the absence of an appropriate timeframe for consulting experts, stakeholders, the European Parliament and the Council, except in urgent cases;
- c) the fact that consulting and sending meetings schedules to the EP and stakeholders was optional;
- d) the inconsistency of the information relating to the adoption of delegated acts, which should be systematic, automatic, up-to-date and online;
- e) the principle of an unlimited timeframe for delegations: the EESC called for a precise duration, potentially renewable for the same duration, except in duly justified exceptional cases.

3.4.6 The EESC wanted guidelines to provide explicitly for all aspects of the delegations to be clearly defined, in terms of:

- a) their stated objectives;
- b) their precise content;
- c) their exact scope;
- d) a strictly defined duration.

3.4.7 It considered that 'the wording of Articles 290 and 291 TFEU is less than perfect and that, in the event of a treaty change, it should be improved. The framework within which they are applied should also be improved so as to prevent decisions on the choice of legal instrument from being more political than technical.'

3.5 The lack of agreement between the Parliament and Council regarding the collective alignment procedure meant that the Commission had to withdraw its proposals and submit the proposal in hand.

#### 4. General comments

4.1 In light of its previous opinions, the EESC questions whether a delay of over four years in such a sensitive area is justified.

4.2 Indeed, it had clearly set out the following guidelines:

- a) the use of delegated acts should be the exception rather than the rule;
- b) where there is doubt as to the essential nature of the elements concerned, or in the case of a 'grey area', the Commission should refrain from proposing delegated acts and legislate within the basic legislative act;
- c) where there is doubt as to the type of measure to be taken, the Commission should preferably adopt implementing acts rather than delegated acts.

4.3 The Committee also disagreed with the Commission on the principles set out in point 3.3.5 above.

4.4 Many of these negative aspects have been rectified in this proposal. However, there continue to be some points where the EESC would disagree:

- a) The Commission is insisting on an unlimited duration for delegated acts. The EESC considers that the duration of the delegation should, as a rule, always be fixed, with the possibility of renewal, except in duly justified exceptional cases;
- b) The EESC is still concerned that the Parliament and the Council will have no real possibility to exercise timely and effective scrutiny of the content of delegated acts;
- c) It continues to be dubious about the clear distinction between implementing and delegated acts, in particular with regard to 'essential and non-essential measures' relating to fundamental rights;

- d) Finally, the EESC reaffirms that rewording Articles 290 and 291 TFEU could resolve all the ambiguities that are at the root of the current problems once and for all.

## 5. Specific comments

A detailed analysis of each of the 168 proposals in the Annex enables us to raise the following concerns:

Table 1

### Overview of acts for which alignment to implementing acts is proposed for certain empowerments

| Number Annex | Title Act <sup>(1)</sup>                                                                       | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2            | Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009         | <p>Article 12a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> in 2013, both the Council and the European Parliament had favoured a fixed duration of five years with automatic renewal following a Commission report to be presented before the expiry of the delegation. Here, the Commission believes that an indeterminate duration of the empowerment is justified because the legislator has the possibility to revoke an empowerment in all cases and at any time (see p. 7 of the Commission proposal COM(2016) 799 final).</p>                                                                                                                                                                                                                                                                                                                                        |
| 6            | Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008          | <p>This decision concerns the implementing powers conferred on the Commission.</p> <p><u>Comment:</u> regarding the choice between delegated and implementing acts empowerments, the Commission assumes that the 2013 evaluation (Omnibus proposals) remains valid, since neither the negotiations on those proposals, nor the case-law on this topic, nor the outcome of the IIA resulted in new criteria that would have called for a global reassessment (see pp. 4-5 of Commission proposal COM(2016) 799 final).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 53           | Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 | <p>The new Article 17(3) does not set out the duration of the Commission's empowerment to adopt delegated acts.</p> <p>The new Article 48a specifies that the power to adopt delegated acts referred to in Article 17(3) and Article 48 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Omnibus.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The new Article 17(3) stipulates that <u>appeals procedures</u> against decisions taken as a result of the evaluation of the EMAS Competent Bodies will be adopted via empowerment. This appears to come under the right to an effective remedy and access to an impartial tribunal as set out in Article 47 of the Charter of Fundamental Rights. However, the Commission cannot be empowered to adopt provisions relating to the protection of fundamental rights or the exercise thereof via delegation.</li> </ol> |

| Number Annex | Title Act <sup>(1)</sup>                                                                       | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 58           | Council Regulation (EC) No 530/1999 of 9 March 1999                                            | The new Article 10a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.<br><u>Comment:</u> See box 2 of the table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 59           | Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 | The new Article 5b stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 60           | Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003  | The new Article 3(1)(1) states that each Member State shall collect statistical data. The new Article 5 on the accuracy of statistics requires the collection of data to be based on ' <u>complete returns</u> '. Finally, Article 10a on the exercise of the delegation states that this will continue for an indeterminate period of time from a date to be decided later.<br><u>Comment:</u> the EESC notes that the concept of 'complete returns' can be applied to personal data as defined in Article 8 of the Charter of Fundamental Rights, and emphasises that the Court of Justice of the EU has ruled that this data cannot be subject to the delegation procedure (see Case C-355/10, Parliament v Council, and the EESC opinion in OJ C 67/104 of 6.3.2014). |
| 61           | Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003  | The new Article 11a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.<br><u>Comment:</u> See box 2 of the table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 64           | Regulation (EC) No 1552/2005 of the European Parliament and of the Council of 7 September 2005 | The new Article 13a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.<br><u>Comment:</u> See box 2 of the table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 67           | Regulation (EC) No 716/2007 of the European Parliament and of the Council of 20 June 2007      | The new Article 9a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.<br><u>Comment:</u> See box 2 of the table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 69           | Regulation (EC) No 1445/2007 of the European Parliament and of the Council of 11 December 2007 | The new Article 10a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.<br><u>Comment:</u> See box 2 of the table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Number Annex | Title Act <sup>(1)</sup>                                                                       | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 70           | Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008  | <p>The new Article 15a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p>The new Article 8a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 73           | Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008     | The new Article 6a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 74           | Regulation (EC) No 453/2008 of the European Parliament and of the Council of 23 April 2008     | <p>The new Article 8a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the new Article 7 states that the Commission is empowered to adopt delegated acts [...] for the establishment of a series of feasibility studies [...] undertaken by those Member States that have difficulties in providing data.</li> </ol> <p>It wonders whether the nature of data on human health focuses on the health of job applicants, in which case this would constitute personal data that cannot be included in the delegation procedure (see Case C-355/10 cited above).</p> |
| 89           | Directive 2006/42/EC of the European Parliament and of the Council                             | <p>The new Article 21a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 99           | Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 | <p>The new Article 31a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 104          | Council Directive 97/70/EC of 11 December 1997                                                 | <p>The new Article 8a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| Number Annex | Title Act <sup>(1)</sup>                                                                        | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 114          | Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004      | <p>The new Article 10a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 143          | Directive 2002/46/EC of 10 June 2002                                                            | <p>The new Article 12a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that Directive 2002/46/EC harmonises the rules on food supplements in order to protect consumers from potential health risks and to ensure that the information on these products does not mislead consumers. It therefore relates to the application of Article 38 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must, therefore, be as extensive as possible.</li> </ol> |
| 144          | Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003           | <p>The new Article 27a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the directive sets standards of quality and safety for the collection of human blood and blood components for therapeutic purposes. It therefore contributes to implementing the fundamental right to health care as set out in Article 35 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must, therefore, be as extensive as possible.</li> </ol>                     |
| 147          | Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 | <p>The new Article 34 stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the regulation states that 'A high level of protection of human life and health should be ensured in the pursuit of Community policies'. It therefore relates to the application of Article 35 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must be as extensive as possible.</li> </ol>                                                                              |

| Number Annex | Title Act <sup>(1)</sup>                                                                       | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 151          | Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 | <p>The new Article 13a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the regulation aims to 'ensure the detection and control of Salmonella at every stage, particularly during primary production (in this context, the breeding and raising of poultry and other livestock) and in animal feed, to reduce its prevalence and the risk to public health'. It therefore relates to the application of Article 35 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must be as extensive as possible.</li> </ol>                          |
| 152          | Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004            | <p>The new Article 28a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the directive relates to the protection of health as set out in Article 35 of the Charter of Fundamental Rights, and that it delegates to the Commission the power to adopt acts in accordance with Article 290 TFEU to supplement the directive with traceability requirements. The EESC is of the view that this delegation is too broad and that it risks affecting essential elements. It therefore appears to infringe the case-law of the Court of Justice of the EU (see Case C-355/10 cited above).</li> </ol> |
| 158          | Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 | <p>The new Article 24a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the regulation relates to the application of Articles 35 and 38 of the Charter of Fundamental Rights and that the delegation encompasses 'measures determining the foods or categories of foods for which nutrition or health claims are to be restricted or prohibited'. The EESC believes that the terms used are liable to include essential measures which cannot be the subject of a delegation under Article 290 TFEU.</li> </ol>                                                                                |

| Number Annex | Title Act <sup>(1)</sup>                                                                      | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 159          | Regulation (EC) No 1925/2006 of 20 December 2006                                              | <p>The new Article 13a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the regulation relates to the application of Articles 35 and 38 of the Charter of Fundamental Rights and that it aims to improve consumer protection by setting additional labelling rules.</li> <li>3. In this regard, scrutiny by Member States' experts and the European Parliament in connection with amendments to Annexes I and II to this regulation must be as extensive as possible.</li> </ol>                                                            |
| 165          | Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009       | <p>The new Article 24a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> <li>1. See box 2 of the table.</li> <li>2. The EESC notes that the regulation relates to the application of Article 35 of the Charter of Fundamental Rights and that the delegation encompasses the Commission's power to adopt rules on actions in case of confirmed presence of a prohibited non-authorised substance. This delegation seems to be too broad and risks affecting essential elements. It therefore appears to infringe the case-law of the Court of Justice of the EU (see Case C-355/10 cited above).</li> </ol> |
| 166          | Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009     | <p>The new Article 27a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 167          | Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 | <p>The new Article 51a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

<sup>(1)</sup> For these acts, alignment to implementing acts of some provisions was already proposed in 2013.

Table 2

**Overview of acts for which deletion of certain empowerments is foreseen**

| Number Annex | Title Act <sup>(1)</sup>                                                               | EESC comments                                         |
|--------------|----------------------------------------------------------------------------------------|-------------------------------------------------------|
| 2            | Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 | Article 12a OK. Against indeterminate period of time. |

| Number Annex | Title Act <sup>(1)</sup>                                                                      | EESC comments                                                                                     |
|--------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 7            | Council Regulation (EC) No 1257/96 of 20 June 1996                                            | OK.                                                                                               |
| 36           | Council Directive 98/83/EC of 3 November 1998                                                 | Article 11a OK. Against indeterminate period of time.                                             |
| 54           | Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009  | OK. Against indeterminate period of time.                                                         |
| 57           | Council Regulation (EC) No 1165/98 of 19 May 1998                                             | NO. The delegation is too broad and affects essential elements.                                   |
| 66           | Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007    | OK. Against indeterminate period of time.                                                         |
| 92           | Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009           | OK. Against indeterminate period of time.                                                         |
| 133          | Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 | NO. The definition of infringements and of the loss of good repute falls under individual rights. |
| 168          | Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008       | OK.                                                                                               |

<sup>(1)</sup> For these acts, deletion of some provisions was already proposed in 2013.

Table 3

**Proposals adopted by the Commission**

| Field | Instrument                                                                            | Reference of the Proposal | EESC comments                                                                                                                                                                                                              |
|-------|---------------------------------------------------------------------------------------|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CLIMA | Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 | COM(2015) 337             | New Article 23. Too many delegations in sensitive and essential areas — review. Against indeterminate period of time.                                                                                                      |
| CNECT | Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002    | COM(2016) 590             | New Article 109 with reference to Articles 40, 60, 73, 102 and 108. Too many delegations in sensitive and essential areas, even in the annexes — review. Systems with different durations (Article 73(7) and Article 109). |

| Field | Instrument                                                                                | Reference of the Proposal | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------|-------------------------------------------------------------------------------------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CNECT | Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002        | COM(2016) 590             | New Article 109 with reference to Articles 40, 60, 73, 102 and 108. Too many delegations in sensitive and essential areas, even in the annexes. Systems with different durations (Article 73(7) and Article 109).                                                                                                                                                                                                                                                                                                                                                                                                                               |
| CNECT | Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002        | COM(2016) 590             | New Article 109 with reference to Articles 40, 60, 73, 102 and 108. Too many delegations in sensitive and essential areas, even in the annexes — review. Systems with different durations (Article 73(7) and Article 109).                                                                                                                                                                                                                                                                                                                                                                                                                      |
| ENER  | Directive 2008/92/EC of the European Parliament and of the Council of 22 October 2008     | COM(2015) 496             | Article 10. Delegation OK. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| GROW  | Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 | COM(2014) 28 final        | <p>The Commission wishes to use delegated acts (about 10) in accordance with Article 290 TFEU, which amounts to reducing the practical content of the regulation.</p> <p>Some of the issues in the proposal where delegated acts are planned concern vehicle emissions and limits on these emissions. These issues — precisely because they are so important — have always been decided by the co-legislators.</p> <p>In its opinions, the EESC has repeatedly raised the issue of excessive use of delegated acts. It questions the transparency of the system, the correct use of procedures and the effectiveness of control mechanisms.</p> |
| GROW  | Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007    | COM(2016) 31 final        | Article 88. Too many delegated acts touching on essential points. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| GROW  | Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997      | COM(2014) 581 final       | Article 55. Delegations and the period of five years OK.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

| Field | Instrument                                                                                 | Reference of the Proposal        | EESC comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------|--------------------------------------------------------------------------------------------|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GROW  | Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007  | COM(2014) 28 final               | <p>New Article 15a. The Commission wishes to use delegated acts (about 10) in accordance with Article 290 TFEU, which amounts to reducing the practical content of the regulation.</p> <p>Some of the issues in the proposal where delegated acts are planned concern vehicle emissions and limits on these emissions. These issues — precisely because they are so important — have always been decided by the co-legislators.</p> <p>In its opinions, the EESC has repeatedly raised the issue of excessive use of delegated acts. It questions the transparency of the system, the correct use of procedures and the effectiveness of control mechanisms.</p> |
| ENV   | Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008     | COM(2015) 595                    | New Article 38a. Delegations OK. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| ENV   | Council Directive 1999/31/EC of 26 April 1999                                              | COM(2015) 594                    | Opposed to the delegation. New Article 16 is too vague. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| ENV   | European Parliament and Council Directive 94/62/EC of 20 December 1994                     | COM(2015) 593                    | OK.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| ENV   | Council Regulation (EC) No 338/97 of 9 December 1996                                       | COM(2012) 403                    | Implementing acts and delegated acts (Articles 19 and 20) OK. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| ESTAT | Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 | Repeal proposed by COM(2016) 551 | Repeal OK.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| MOVE  | Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006     | COM(2013) 622                    | NO to delegations. Concept of technical and scientific progress is too vague. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| MOVE  | Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002        | COM(2011) 828                    | Article 12. Delegations OK. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| MOVE  | Council Directive 96/50/EC of 23 July 1996                                                 | COM(2016) 82 final               | Delegations (Article 29) OK. Against indeterminate period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

| Field | Instrument                                                                                 | Reference of the Proposal | EESC comments                                                               |
|-------|--------------------------------------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------|
| MOVE  | Council Directive 91/672/EEC of 16 December 1991                                           | COM(2016) 82 final        | Delegations (Article 29) OK. Against indeterminate period of time.          |
| MOVE  | Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009           | COM(2016) 369             | Delegations and indefinite period OK, on an exceptional basis.              |
| MOVE  | Council Directive 1999/35/EC of 29 April 1999                                              | COM(2016) 371             | Article 13. Delegations and indefinite period OK, on an exceptional basis.  |
| MOVE  | Council Directive 98/41/EC of 18 June 1998                                                 | COM(2016) 370             | Article 12a. Delegations and indefinite period OK, on an exceptional basis. |
| SANTE | Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 | COM(2014) 557             | Delegations (Article 87a) OK. Against indeterminate period of time.         |

Table 4

**Acts for which proposals are planned**

| Field | Instrument                                                                                     | EESC comments                                                               |
|-------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| AGRI  | Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008   | No comments on any of these instruments due to the texts being unavailable. |
| CLIMA | Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009            |                                                                             |
| ENER  | Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009      |                                                                             |
| ENER  | Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009      |                                                                             |
| ENER  | Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009             |                                                                             |
| ENV   | Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004     |                                                                             |
| ENV   | Council Directive 86/278/EEC of 12 June 1986                                                   |                                                                             |
| ESTAT | Regulation (EC) No 1166/2008 of the European Parliament and of the Council of 19 November 2008 |                                                                             |
| ESTAT | Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003      |                                                                             |

Brussels, 1 June 2017.

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

**Opinion of the European Economic and Social Committee on:**

**(a) ‘Proposal for a Directive of the European Parliament and of the Council on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System’**

*(COM(2016) 821 final — 2016/0398 (COD))*

**(b) ‘Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions’**

*(COM(2016) 822 final — 2016/0404 (COD))*

**(c) ‘Proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation ... (ESC Regulation)’**

*(COM(2016) 823 final — 2016/0402 (COD))*

**(d) ‘Proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities’**

*(COM(2016) 824 final — 2016/0403 (COD))*

*(2017/C 288/05)*

Rapporteur: **Arno METZLER**

Co-rapporteur: **Stefano PALMIERI**

|                           |                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Consultation              | <p>(a) Council, 30.1.2017<br/>European Parliament, 19.1.2017</p> <p>(b) Council, 10.2.2017<br/>European Parliament, 1.2.2017</p> <p>(c) European Parliament, 1.2.2017<br/>European Commission, 31.5.2017</p> <p>(d) Council, 20.2.2017<br/>European Parliament, 1.2.2017</p>                                                                                   |
| Legal basis               | <p>(a) Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union</p> <p>(b) Articles 46, 53(1) and 62 of the Treaty on the Functioning of the European Union</p> <p>(c) Articles 53(1) and 62 of the Treaty on the Functioning of the European Union</p> <p>(d) Article 114 of the Treaty on the Functioning of the European Union</p> |
| Section responsible       | Section for the Single Market, Production and Consumption                                                                                                                                                                                                                                                                                                      |
| Adopted in section        | 4.5.2017                                                                                                                                                                                                                                                                                                                                                       |
| Adopted at plenary        | 31.5.2017                                                                                                                                                                                                                                                                                                                                                      |
| Plenary session No        | 526                                                                                                                                                                                                                                                                                                                                                            |
| Outcome of vote           | 152/3/7                                                                                                                                                                                                                                                                                                                                                        |
| (for/against/abstentions) |                                                                                                                                                                                                                                                                                                                                                                |

## 1. Conclusions and recommendations

1.1 The EESC appreciates and supports the efforts of the European Commission to unleash the full potential of the single market in regard to the services sector. However, the EESC would like to draw attention to the fact that — in the current political situation in many Member States — any kind of EU ‘interventions’ relating to the strict remit of Member States’ competencies can lead to political controversies. So even in cases where it is legally possible to apply stricter compliance enforcement measures it might not be sensitive in the serious political crisis. The EESC thus recommends following a positive approach enforcing best practices and consultation instead of enforcement measures wherever possible.

1.2 The EESC fully shares the Commission’s aim of fostering dialogue between EU and the Member States at an early stage in any legislative process in order to prevent the adoption of legal acts on national level that hinder the European integration process. The EESC recommends to broaden this dialogue and not to focus on compliance with the Services Directive only but also with primary EU law, and in particular with the Charter of Fundamental Rights so as to guarantee a fair balance between workers’ rights and consumers’ protection on one side and economic freedoms on the other side. The composition of the body responsible for compliance control should be specified and would need to be composed in a way that ensures full compliance with the above-mentioned laws and principles.

1.2.1 The EESC suggests choosing a positive approach and establishing the principle that only the positive outcome of a consultation procedure has an effect in form of the award of a ‘compliance guarantee’ for the draft measure. For cases without a positive compliance evaluation the Commission’s decision should not be binding and the already available post-adoption procedures should be applied.

1.3 The EESC welcomes the introduction of a detailed and thorough proportionality test available to the Member States and based on the case law of the EU Court of Justice. The EESC believes that this concept could improve national proportionality procedures. The EESC stresses that the proportionality check will require a close cooperation of Member States authorities and professional organisations.

1.3.1 The EESC believes that an obligation to use the test before any new professional regulation is not the best approach for enforcing effective and engaged application of such a test. It thus recommends introducing the test only in the form of an offer of services for national regulators.

1.4 The EESC welcomes the effort to promote mobility of service providers and believes that research and meeting national requirements for service provision in another Member State can still be difficult for service providers. However, the approach of shifting the main responsibility for the procedure to the home Member State authorities is in conflict with the established host Member State principle whereby enterprises’ and workers’ activities are regulated by the law of the country in which they are performed.

1.4.1 The EESC stresses that it is necessary to ensure that the country of origin principle is not introduced in any form. It thus underlines that the services e-card would introduce several elements based on this principle by allowing service providers to deal exclusively with the home Member State as an intermediary and requiring host Member States to accept home Member State decisions on the authenticity of documents thereby limiting control mechanisms and thus harmonising the exchange of data based on the country of origin principle.

1.4.2 The EESC stresses that it has to be guaranteed that host Member States remain fully in charge of deciding what procedures to follow in order to register secondary establishment, including aspects of professional recognition. The fully electronic procedure combined with limited possibilities for host Member States to verify the information provided to the home Member State through the services e-card will make it easier to establish letterbox companies for reasons of tax evasion and social dumping.

1.4.3 In order to ensure that information contained in the service e-card is always up-to-date and to prevent the creation of a data graveyard, the EESC recommends reconsidering the once-only principle and introducing time limits on the validity of a services e-card.

1.4.4 The EESC also recommends removing restrictive revocation procedures, and in particular the necessity for a final decision by the courts, so that each Member State can conduct effective control on the economic activities performed on its territory.

1.4.5 The proposal sets tight deadlines for checking the validity of information provided by an applicant for a services e-card. This should be reconsidered to allow authorities as much time as necessary to process applications.

1.4.6 The legislative proposal should mention the need to introduce effective and dissuasive sanctions, both for the Member State and for the applicant company, for abuse of the European service e-card.

1.4.7 The EESC recommends stating more clearly that the Professional Qualifications Directive has preference over any aspects of professional recognition in regard to the new e-card. It has to be made explicitly clear that a services e-card cannot be issued for professionals practising a profession that is regulated in the home and/or the host Member State, no matter if the profession is practised in the form of self-employment or of a company.

1.4.8 In order to avoid abuse of the e-card by bogus self-employed persons, the EESC believes that the e-card should not be issued to natural persons that do not have an organised grouping of persons and of assets enabling the exercise of economic activity.

1.4.9 The EESC would like to raise doubts if the existing IMI system in its current form that is based on standardised multilingual questions/forms and manual data exchanges at the request of Member States and relies on optimal cooperation between Member States is up to date with current developments in electronic data sharing. The EESC therefore believes that the IMI system needs to be evaluated with a view to guaranteeing the best possible performance, compatibility and complementarity with existing national and/or social partner data exchange schemes including sectoral initiatives such as Social ID cards.

1.4.10 The proposal introduces a harmonised European prior notification system for posted workers based on a voluntary opt-in by Member States that would pave the way for a mandatory expansion at a later point, which is neither desirable nor compatible with the provisions of Directive 2014/67 EU <sup>(1)</sup>. Therefore the EESC suggests to reconsider the implementation of such a system.

1.4.11 Based on the raised concerns and on the fact that the mentioned guarantee requirements might not be attainable using the data exchange system as it stands, the EESC believes that the application of the e-card in the current form could lead to negative effects outlined in this opinion that might not be proportionate and outweigh its benefits. Therefore the EESC suggests consulting in more detail the configuration of this system with involved stakeholders and adjusting it so as to guarantee effective cooperation between Member States before continuing with the procedures. The EESC could be asked to start a discussion with the aim of finding an alternative solution for the services e-card in order to include already existing registration and qualification systems more effectively.

1.5 The EESC would like to stress that differences between regulatory concepts do not in themselves indicate a need for reform. It welcomes the new restrictiveness indicator designed by the European Commission as it permits a higher standard of analysis than the OECD PMR. However, it should be made explicitly clear, that the restrictiveness indicator is neutral without any statement on value or justification of regulations.

1.6 The EESC notes that the Services Package does not offer an approach for electronic services but believes that this is a new and emerging business field requiring special attention. Given that the potential for mobility is extremely high in this sector, the verification of qualifications and fulfilment of legal requirements and minimum quality requirements is especially difficult to estimate for consumers and might require special tools. An initiative focusing on the internal market for electronic services would therefore be welcome. New elements are needed on which to build personal trust without knowing the service provider in person.

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<sup>(1)</sup> OJ L 159, 28.5.2014, p. 11.

1.7 With regard to the problem of mutual trust that is an important aspect of the discussion on the Services Package and the services e-card in particular, the EESC suggests evaluating existing systems for the registration of professionals and businesses and related accreditation and quality assurance mechanisms. As the internal market for services still raises considerable concerns within the Member States, the EESC would welcome an initiative to gather more information on the impacts of increased cross-border activities. This initiative would consider economic effects, but would chiefly focus on other issues such as employment, working conditions and consumer protection. If problems were identified objectively, they could be tackled in order to increase Member States' confidence in the long run. Without sufficient mutual trust, the internal market for services will never be implemented effectively.

## 2. Overview of proposed measures

2.1 Services represent two thirds of the EU economy and account for 90 % of newly created jobs. A package of measures focusing on making it easier for companies and professionals to provide services to a potential customer base of 500 million people in the EU shall boost the services sector in order to exploit its full potential.

### 2.2 *Notification procedure for authorisation schemes and requirements related to services*

2.2.1 Stricter requirements for the notification procedure for measures related to the Services Directives shall prevent Member States adopting discriminatory, unjustified and disproportionate national authorisation schemes or requirements related to services.

The procedure broadens the scope of the notification procedure under the Services Directive and defines it more clearly. It establishes a consultation period that provides for a dialogue between the notifying Member State, the European Commission and the other Member States on the compliance of a draft national measure with the Services Directive.

### 2.3 *Proportionality test before adoption of new regulation of profession*

2.3.1 Member States often have good reasons for professional regulation, based on the need to protect essential public interest objectives. It is for the Member State to assess on a case-by-case basis whether it is necessary to place restrictions on the access to, and conduct of, professional activities.

2.3.2 To prevent a negative impact on the provision of services and the mobility of professionals caused by uneven proportionality assessment of the regulation of professions across the EU, a proportionality test is introduced, to be used by Member States before adopting or amending national regulations on professions.

2.3.3 The directive sets out the main criteria which have to be considered for the assessment, such as for example the nature of the risks, the scope of the reserved activities, the link between qualification and activities, the economic impact of a measure, and so on.

2.3.4 The Treaties specify that regulation must be proportionate; however, beyond this choice as to whether and how to regulate a profession remains the competence of the Member States.

### 2.4 *European services e-card*

2.4.1 The e-card is a new, fully electronic procedure for self-employed people and companies in a number of areas such as the construction sector, cleaning and business services. It shall replace administrative formalities in different languages, since the service provider follows a procedure in the home country language and with the home country administration.

2.4.2 The e-card procedure shall rely on cooperation between home and host Member States, implemented via the existing Internal Market Information System (IMI). It shall not alter the substance of the applicable rules on the posting of workers under Directives 96/71/EC<sup>(2)</sup> and 2014/67/EU<sup>(3)</sup>.

2.4.3 The European services e-card is similar to the European professional card (EPC). But while the EPC facilitates provision of services through the recognition of professional qualifications for natural persons as workers or self-employed service providers, the e-card addresses a much wider range of requirements.

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<sup>(2)</sup> OJ L 18, 21.1.1997, p. 1.

<sup>(3)</sup> OJ L 159, 28.5.2014, p. 11.

### 2.5 *Reform recommendations for regulation in professional services*

2.5.1 As the regulation of professional services is a prerogative of the Member States there are different regulatory models in force. Irrespective of the model applicable in each country or region, the aim of the communication is to assist Member States with the removal of specific unjustified substantive restrictions, and to create a 'virtuous' regulatory awareness on the part of Member States.

2.5.2 The reform recommendations address a broad range of requirements and provide a detailed analysis of the regulations which apply to architects, civil engineers, accountants, lawyers, patent agents, real estate agents and tourist guides. Not all of them are regarded as violation of Union law by the European Commission.

2.5.3 The European Commission has designed a new indicator on the restrictiveness of occupational regulation in order to support qualitative analysis of barriers. It covers the aspects of regulatory approach, qualification requirements, other entry requirements and exercise requirements.

## 3. General comments

3.1 The EESC appreciates and supports the efforts of the European Commission to unleash the full potential of the single market in regard to the services sector. The interlocking measures of the services package undoubtedly provide a solid approach towards this aim. However, the EESC would like draw attention to the fact that — in the serious political crisis in many Member States — any kind of EU 'interventions' relating to the strict remit of Member States' competencies can lead to political controversies. Both legislative powers — which might seem to be affected by the new notification procedure and the obligatory proportionality test — and longstanding traditional systems of national professional regulation are often regarded as foundations of national systems and must therefore be treated as sensitive issues. Even if it is legally possible to apply stricter compliance enforcement measures it might not be sensitive in the current situation. A positive approach enforcing best practice or following a consultant approach could prove to be more effective.

3.1.1 The EESC underlines the need to pay due attention to the quality and safety of the services provided in the European Union.

3.1.2 Moreover, the EESC wishes to flag up the particular sensitivity attached to the areas of health and patient protection. If the action taken by the Commission can be complementary to that of the Member States, their full responsibility must be respected, as well as the possibility of putting in place more stringent measures for the protection of patients, as provided for in Articles 168 of the TFEU.

3.2 Given that it is essential to ensure that the key stakeholders adhere to the new regulations of their profession, in order to ensure that the regulation is sound and effective the EESC proposes to consult stakeholders such as professional organisations, social partners, consumer protection institutions and civil society organisations on the practical application of the measures planned.

3.3 We must be aware that the introduction of new obligations and enforcement measures in this context could give the impression that Member States are generally seen as insufficiently capable of understanding the requirements of the Services Directive and the Professional Qualifications Directive, whereas in fact legislative tools such as proportionality tests are basic requirements of any national legislative procedure in the vast majority of Member States.

3.4 Many provisions in the Service Package risk blurring the distinction between freedom to provide services and freedom of establishment. The EESC thus stresses the importance of keeping this distinction — clearly defined by both the Services Directive and the Professional Qualifications Directive, as well as by the ECJ jurisprudence — when assessing the results of a proportionality test applied to new national regulations of professions and when implementing the regulation and directive on the European services e-card. Therefore, in order to guarantee fair competition between enterprises, discriminatory measures should be prohibited and working conditions established by laws and collective agreements in the host country as well as consumer rights and health and safety regulations should be respected.

3.5 The EESC notes that the growth of the service sector should not entail social dumping and fraud<sup>(4)</sup>. Therefore, the EESC underlines the lack of sufficient safeguards to keep workers' rights and consumer protection at a high level in all Member States and the risk of introducing the country of origin principle that would violate the fundamental rules according to which enterprises' and workers' activities are regulated by the law of the country where they are performed.

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<sup>(4)</sup> OJ C 125, 21.4.2017, p. 1.

3.6 The EESC shares the opinion of stakeholders in the sectors targeted by the proposal for a European services e-card and questions the added value of the legislative initiative and its usefulness.

3.7 Unfortunately, the proposed internal market package does not address real life issues faced by some of the sectors targeted by the proposals. The EESC considers it important to reduce the potential for fraud and abuse of the internal market by disreputable firms in order to create a level playing field and mutual trust between Member States and different stakeholders.

#### 4. Specific comments

##### 4.1 *Notification procedure for authorisation schemes and requirements related to services*

4.1.1 The EESC shares the Commission's aim of fostering dialogue between itself and the Member States at an early stage in the legislative process in order to prevent the adoption of standards that hinder the single market. It should even be considered to broaden this dialogue and not focus on compliance with the Services Directive only but also with primary EU law, and in particular with the Charter of Fundamental Rights of the European Union as this would guarantee a fair balance between workers' rights and consumers' protection on one side, and economic freedoms on the other side. The composition of the body responsible for compliance control should be clarified and would need to be composed in a way that ensures full compliance with the above-mentioned laws and principles as well as its representativeness and independence.

4.1.2 However, the EESC wishes to draw attention to the fact that the direct impact of the proposal on national legislative procedures appears considerable.

4.1.3 The proposal broadens the scope of the notification procedure regulated by the Services Directive and is also quite complex. Combined with a standstill period it thus hinders the ability of national legislators to undertake reforms within a short space of time, even in cases of small legislative amendments.

4.1.4 Enforcement measures such as the standstill period, the alert mechanism and the Commission's decision requiring the Member State to refrain from adopting the draft measure considerably slow down national legislative processes and become considerable restrictions on the national legislator's freedom. In order to guarantee a democratic legislative procedure, it is necessary to fully preserve the legislative power of the national parliaments. The EESC very much doubts if it is proportionate — or sensitive — to interfere in national legislative procedures by introducing stricter enforcement measures even in matters covered by the subsidiarity principle when perfectly adequate post-adoption procedures are available.

4.1.5 Negative decisions regarding the compliance of draft national laws, regulations or administrative provisions should not be binding. The EESC suggests that only the positive outcome of a consultation procedure would have an effect in form of the award of a 'compliance guarantee' for the draft measure. Such a positive approach would bring considerable benefits for Member States and would be a motivation to fully engage in the foreseen consultation procedure and to accept the related efforts. For cases without a positive compliance evaluation the already available post-adoption procedures should be applied.

4.1.6 The EESC underlines that, as established by the Services Directive, the notification procedure will not affect the right to negotiate, conclude and enforce collective agreements.

##### 4.2 *Proportionality test before adoption of new regulation of profession*

4.2.1 The EESC welcomes the introduction of a detailed and thorough proportionality test available to the Member States and based on the case law of the Court of Justice of the European Union. It believes that this concept could improve national proportionality procedures.

4.2.2 The EESC stresses that the proportionality check which focuses on professional requirements will require close cooperation of Member State authorities and professional organisations with competencies for quality assurance of the regulated profession in question. It should also provide for the right of social partners and consumer protection organisations to be consulted in order to assure full compliance with workers' and consumers' rights. The structures of these organisations must remain strictly in the hands of the Member States.

4.2.3 However, the EESC doubts whether a directive implementing an obligation to use the test before any new professional regulation is the best way of enforcing this test. For this reason it would prefer the introduction of guidelines that would enable Member States to adapt the test to best fit into their legislative systems.

4.2.4 Many of the proportionality proposed criteria that need to be considered are quite broad and open, allowing for various answers depending on the chosen testing approach, testing persons/bodies and so on. As such, they are usable as supporting guidelines, but less so as an obligatory procedure with a considerable impact on the whole legislative process. Additionally, to avoid the impression that the mentioned criteria are regarded as obstacles in general it should be guaranteed that the list is neutral without any statement on value or justification of regulations. In any case, wherever possible the criteria should be as concrete and objective as possible in order to function as landmarks.

4.2.5 Proportionality tests are already basic requirements in any national legislative procedure in the vast majority of Member States. Harmonising proportionality criteria would interfere in national legislative competences and could lead to the creation of disproportionate obligations in some Member States and further distortions in the market.

4.2.6 The directive only addresses *ex ante* regulation (such as title protection, compulsory registration, qualification requirements and so on), even though *ex post* regulation (such as professional certification schemes, local regulations or building permissions) can impose significant restrictions in regard to service provision. For this reason an objective comparison of regulatory systems appears difficult.

4.2.7 The obligation to provide proportionality reports based on the rather complex — and in part even scientific — test system could considerably slow down or even hinder any reforms in regard to professional regulation.

4.2.8 Although the European Commission stresses that the choice as to whether and how to regulate professions remains in the Member States, this freedom is very theoretical. Should the obligatory test be negative, it will hardly be possible for the legislator to argue the compliance with the Services Directive anyway. In addition, the proposal has to be seen in connection with that for a new notification procedure under the Services Directive because where professional regulations are concerned measures would often fall under the scope of both directives. The leeway of the legislator is virtually zero, since the notification obligation also requires the provision of information demonstrating compliance with the Services Directive, which would — for such overlapping measures — mean the results of the proportionality test.

4.2.8.1 The EESC therefore doubts that the negative impacts of implementing an obligation to apply a harmonised proportionality test would have in terms of restricting the national legislator — especially seen in the framework of the proposed stricter notification procedure — could be justified by its benefits. It believes that non-obligatory guidelines or a consultancy offer might lead to similar effects without the negative impacts.

#### 4.3 European services e-card

4.3.1 The EESC welcomes the effort to promote mobility of service providers and believes that researching and meeting national requirements for service provision in another Member State can still be difficult for service providers.

4.3.2 However, the approach of shifting the main responsibility for the procedure to the home Member State authorities is in conflict with the established host Member State principle. The service e-card should not prevent or hinder controls that the host Member State must conduct on economic activities performed in its territory. Therefore, the proposed services e-card shall not include elements of the country of origin principle. However, the EESC expresses its support for initiatives to increase confidence between Member States, inter alia by clear engagements on adequate and correct data exchange and control systems.

4.3.3 There is reason to believe that some features of the services e-card such as the 'once only' principle for submitting information, its indefinite validity period, the obligation for the Member States to use information contained in the services e-card without the possibility of requesting proof of the validity of information provided at a later stage, as well as restrictive revocation procedures that may require a final decision by the courts could significantly endanger the control of compliance with national laws and the enforcement of workers' rights and consumers' rights.

4.3.4 The EESC also stresses the importance of ensuring that the use of the IMI system does not alter the substance of the applicable rules on the posting of workers under Directive 2014/67/EU and that the revision of the Posting of Workers Directive, currently examined by the European Parliament and the Council, clearly states the principle of 'equal pay for equal work in the same place', respecting working conditions established by laws and collective agreements in the host Member State, health and safety and consumer and environmental protection.

4.3.5 It is unclear what the impact of the proposal for a European services e-card would be on existing sectoral social ID cards that are initiated by national authorities or social partners, and how they would interact with the proposed extension of the IMI system. Furthermore, there is evidence, including a Special Report of the European Court of Auditors, suggesting that the current IMI system has some shortcomings that need to be addressed, for example due to the associated workload and the lack of clarity of the responses to requests <sup>(5)</sup>. The EESC therefore believes that the IMI system needs re-evaluation and is currently not yet ready to guarantee an optimal cooperation between Member States. Improvements to the IMI system should be made with a view to facilitating better controls in the country where the economic activity is carried out and complementarity with existing systems, and taking account of the possibilities of real-time data sharing (direct access to data banks) in addition to the manual exchange of data that is currently possible under the IMI system.

4.3.6 The EESC is concerned that the country of origin principle could be introduced 'through the back door'. The services e-card would introduce several elements based on the country-of-origin principle by allowing service providers to deal exclusively with the home Member State as an intermediary, requiring host Member States to accept home Member State decisions on the validity of documents and the veracity of their content, thereby limiting control mechanisms and thus harmonising the exchange of data based on the country-of-origin principle.

4.3.7 The fact that — as is proposed — a coordinating authority has to check national requirements in the shortest time possible seems particularly problematic. Such time limits should be reconsidered as the competent authority in charge of the services e-card has to coordinate each case with the other relevant competent authorities regarding different aspects of the legal requirements. Additionally it should be stated more clearly that the Professional Qualifications Directive has precedence for any aspects of professional recognition in regard to the new e-card.

4.3.8 The fully electronic procedure combined with limited possibilities for host Member States to verify the information provided to the home Member State through the services e-card will make it easier to establish letterbox companies for purposes of tax evasion and social dumping. The EESC therefore believes that the procedure needs further adjustments in order to guarantee that such developments can be prevented.

4.3.8.1 Moreover, the proposal does not clarify which elements should be assessed by the home State to declare that a service provider is legally established in the State. In particular, there is no reference to the factual elements listed by Directive 2014/67/EU for determining whether an undertaking genuinely performs substantial activities in the Member State.

4.3.9 Verification of identities and detailed examination of original documents are key to preventing disreputable and criminal undertakings from gaining entrance (a similar discussion blocked the SUP Directive <sup>(6)</sup>). Therefore, the host Member State must be fully in charge of the procedure to release a European service e-card.

4.3.9.1 Host Member States must be in charge of deciding what procedures to follow in order to register secondary establishments, including aspects of professional recognition. Involving home Member States as intermediaries in a procedure for establishing a branch will add an additional administrative burden to the authorities of home and host Member States and could prevent detailed checks in the country where abuses, for instance of workers' and consumers' rights, would manifest.

4.3.10 Although the proposed regulation states that prior notification systems for posted workers are excluded from its scope, the proposal introduces a harmonised European prior notification system for posted workers based on a voluntary opt-in by Member States. This would pave the way for a mandatory expansion at a later point, which is neither desirable nor compatible with the provisions of Directive 2014/67 EU. In the course of the political discussions on Enforcement Directive 2014/67 it was clearly agreed that the host Member State was the competent national authority to set up enforcement tools (Article 9 Directive 2014/67).

4.3.11 The procedures for cancelling the services e-card can require a final court decision to take effect and provide service providers with several mechanisms for continuing their services in the meantime. This prevents effective *ex post* controls by the host Member State, hindering the enforcement of workers' rights and existing legislation. Moreover, the legislative proposals include no dissuasive penalties — either for the Member State or for the applicant company — for abuse of the European services e-card.

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<sup>(5)</sup> European Court of Auditors, 2016 special report, *Has the Commission ensured effective implementation of the Services Directive?* p. 25.

<sup>(6)</sup> COM(2014) 212 final and OJ C 458, 19.12.2014, p. 19.

4.3.12 The regulation entitles natural persons to apply for a services e-card. There is a significant risk in some sectors that the card will be abused, thereby facilitating bogus self-employment.

4.3.13 Given that whether a person qualifies as self-employed or an employee depends on how the activity is performed, the issuing home Member State authority cannot issue an e-card that declares that a person operates as self-employed according to the host Member State rules.

4.3.14 In some cases revocation of the services e-card for the self-employed requires a final decision by a court. This would prevent swift cancellation in cases of abuse and could enable bogus self-employed persons to continue their activities until a final court decision has been reached. This would create a major loophole that would frustrate efforts to combat undeclared work such as the European Platform tackling Undeclared Work.

4.3.15 The EESC would like to draw attention to the fact that at EU level a similar procedure of issuing PD A1 forms related to the posting of workers has already indicated potential pitfalls involved in relying exclusively on the home Member State to validate data on incoming service providers, especially in the case of bogus self-employment. Here, the Impact Assessment accompanying the proposal amending Directive 96/71/EC concerning the posting of workers suggests: 'The accuracy of the information contained in PD A1 documents cannot be guaranteed due to the lack of formal controls by the authorities in the sending countries, among other things <sup>(7)</sup>.'

4.3.16 The proposal introduces a harmonised tool for providing information about insurance coverage. However, since this will be linked to the services e-card, the information will only have to be provided once, which will make inspections and controls in the host Member States potentially less effective.

4.3.16.1 Furthermore, insurers will be compelled to calculate premiums based on the track record in the home Member State, which would interfere with the right and responsibility of insurance companies to evaluate risks.

4.3.17 The Commission reserves a wide range of implementing powers to design the content and technical parameters of the services e-card. However, harmonisation in this area may limit the capacity of Member States to carry out efficient controls of incoming service providers on health and safety workers' rights.

#### 4.4 *Reform recommendations for regulation in professional services*

4.4.1 The EESC would like to stress that differences between regulatory concepts do not in themselves indicate a need for reform. Many regulations are based on traditions and experience. They are important to customer protection and must be preserved. The principle of 'equivalence' is based on the fact that these different systems exist. The EESC takes into consideration the fact that national professional systems are based on long traditions. The research project shows quite different results in regard to the benefits of deregulation measures.

4.4.2 The EESC welcomes the new restrictiveness indicator as it permits a higher standard of analysis than the OECD PMR. There are still details worth reconsidering (e.g. listing Continuing Professional Development as a negative restriction seems inappropriate). The EESC would like to stress that in order to provide a non-discriminatory view of different regulatory systems it would be necessary to include not only *ex ante* regulation (e.g. title protection, qualification requirements) but also *ex post* regulation (e.g. requirements in building codes and planning permission). Additionally it should be made explicitly clear, that the restrictiveness indicator is neutral without any statement on value or justification of regulations.

Brussels, 31 May 2017.

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

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<sup>(7)</sup> SWD(2016) 52, p. 8.

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold’**

(COM(2016) 811 final — 2016/0406 (CNS))

(2017/C 288/06)

Rapporteur: **Giuseppe GUERINI**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | European Council, 25.1.2017                                        |
| Legal basis               | Article 113 of the Treaty on the Functioning of the European Union |
| Plenary Assembly decision | 13.12.2016                                                         |
| Section responsible       | Economic and Monetary Union and Economic and Social Cohesion       |
| Adopted in section        | 6.4.2017                                                           |
| Adopted at plenary        | 31.5.2017                                                          |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 142/1/1                                                            |
| (for/against/abstentions) |                                                                    |

## 1. Conclusions and recommendations

1.1 The EESC supports the measures that the European Union has put in place to tackle all forms of tax fraud and takes the view that the reverse charge mechanism for collecting value added tax (VAT) may be a useful tool in countering carousel fraud and VAT evasion.

1.2 However, the use of the reverse charge mechanism, which is a derogation from the established principles on VAT, must not be allowed to harm the internal market and it must be temporary and properly assessed by the Commission in relation to the possible negative effects on the internal market. The EESC is worried about the risk of a possible fragmentation of the VAT system deriving from the proposed measures, also considering the steps envisaged in the first stage of the Commission's VAT Action Plan, which is currently supposed to apply only to certain supplies of goods and not to services <sup>(1)</sup>.

1.3 In particular, it will be necessary to assess whether the benefits brought about when tackling fraud are offset by the possible adverse effects on the cohesion of the single market. For this reason, the Commission should constantly monitor the functioning of the Generalised Reverse Charge Mechanism (GRCM), retaining the power to intervene in the event of adverse effects.

1.4 The EESC recommends focusing particular attention on the proportionality principle, as the cost of compliance for small and medium-sized enterprises (SMEs) related to introducing a reverse charge mechanism could be considerable and may have an impact on cash flow with the risk that SMEs in particular may experience liquidity problems induced by the GRCM.

1.5 The EESC draws attention to studies <sup>(2)</sup> that have shown that reverse charge and split payment mechanisms have, where implemented so far, often caused cash flow problems for tax compliant enterprises. In other words, attempts to combat tax fraud by a small number of dishonest businesses have caused major operational problems for tax-abiding economic operators, which create jobs and wealth in the internal market.

<sup>(1)</sup> OJ C 389, 21.10.2016, p. 43, point 1.3.

<sup>(2)</sup> See the study of Italian association of craftsmanship: CNA, Reverse Charge e Split Payment: in Fumo la Liquidità delle Imprese, 2015.

1.6 The EESC emphasises that solutions adopted to combat VAT fraud should not impose excessive and disproportionate burdens on tax compliant businesses, particularly SMEs. Indeed, as stated earlier by the EESC with regard to the Commission VAT Action plan, *bona fide* enterprises should be protected and no new excessive measures should be imposed on them<sup>(3)</sup>.

1.7 The EESC notes that the national dimension of the fight against tax fraud requires that all Member States take full responsibility for the functioning of their own tax systems and that they provide instruments to tackle VAT fraud that do not damage or influence the functioning of tax systems in other Member States.

1.8 Overall, for the EESC, the proposed measures should not affect negatively the objectives set out in the VAT Action plan, nor hinder or delay its complete and timely realisation. The Committee believes that now is time to take a qualitative step forward (a 'quantum leap') in this field to support the single market and contribute to employment, growth, investments and competitiveness. Furthermore, in the Committee's view, it is important to implement all parts of the Action Plan as an indivisible whole<sup>(4)</sup>.

1.9 To ensure that this legislative proposal functions correctly and to reduce any future need to use additional derogations relating to the established principles and rules on the VAT system in the EU, Member States requesting the application of the GRCM should impose specific and tangible electronic invoicing requirements to ensure that payments are fully traceable.

## 2. Commission proposal

2.1 In its communication of 7 April 2016, the European Commission presented its Action Plan on VAT. A legislative proposal to reform and modernise the current European rules on VAT will follow in 2017.

2.2 Both the Commission's Action Plan and the future legislative proposal scheduled for 2017 seek, inter alia, to close the 'VAT gap' — the difference between expected and actual VAT revenue — by minimising fraud associated with VAT.

2.3 Pending completion of the reform of the European VAT system and at the behest of some national governments, the Commission has recognised the urgent need to allow some Member States to introduce Generalised Reverse Charge Mechanisms (GRCM) on a temporary basis.

2.4 The Commission has developed the GRCM in the proposal for a Directive (2016/0406 — CNS) amending Directive 2006/112/EC, which forms the subject of this opinion.

2.5 Given that the GRCM derogates from one of the fundamental principles of EU VAT legislation, fractioned payments, the Commission has decided to allow Member States to apply it only under specific conditions.

2.6 Specifically: a) the Member State must have a VAT gap exceeding the EU median VAT gap by 5 percentage points; b) carousel fraud must account for more than 25 % of the Member State's VAT gap; c) it must be established that other control measures are not sufficient to combat fraud on the Member State's territory.

2.7 To prevent the generalised application of the reverse charge mechanism resulting in the fragmentation of the internal market, a possibility which has been highlighted by some Member States, the Commission has provided for the option of reviewing the application of the mechanisms where they are shown to have an adverse impact on the internal market, in conflict with the overarching objectives of the EU.

## 3. General comments

3.1 VAT evasion is a European epidemic which must be combated. The most troubling form of VAT fraud is 'carousel fraud', which the VAT reverse charge mechanism seeks to prevent.

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<sup>(3)</sup> OJ C 389, 21.10.2016, p. 43, point 1.9.

<sup>(4)</sup> OJ C 389, 21.10.2016, p. 43, points 1.1 and 1.2.

3.2 For this reason the EESC welcomes the introduction of appropriate mechanisms to tackle tax fraud, while noting that any derogation from the unitary nature of the European VAT system should be temporary, proportionate and adequately assessed in order to determine the possible negative effects on the internal market. This is especially the case in view of the fact that Article 113 of the Treaty, which underpins the Commission's legislative proposal, provides the possibility of taking action in the area of taxation through harmonisation measures which aim to guarantee the proper functioning of the internal market and to ensure that competition is not distorted.

3.3 Overall, the proposed measures should not negatively affect the objectives set out in the VAT Action plan, nor hinder or delay its complete and timely realisation. Now is the time to take a qualitative step forward (a 'quantum leap'), in order to support the single market and contribute to employment, growth, investment and competitiveness.

3.4 Furthermore, it is important to strive to implement all parts of the Action Plan as an indivisible whole, as this would also allow the lion's share of VAT frauds to be addressed in a comprehensive manner.

3.5 Compliance with the principle of proportionality referred to in the Commission's legislative proposal must therefore be ensured, and proper consideration given to the various public interests to be reconciled, including the general interest in not jeopardising the harmonisation of national VAT systems, with a view to fully consolidating the single market.

3.6 In view of the above, it should be acknowledged that tax evasion policy, including harmonised taxes, largely falls to the Member States and that tax authorities are highly domestic in character. Similarly, both statistical understanding of this issue and the practices and forms of evasion and of combating evasion have strong national ties.

3.7 From this point of view, an anti-tax evasion mechanism activated by the Member State and derogating from EU rules is consistent with the role and responsibilities entrusted to the national governments in the fight against tax fraud. In this regard, the Commission proposal complies with the principle of subsidiarity, enabling the Member States to take action at national level to combat illegal activity in the tax domain.

3.8 However, the EESC notes that the national dimension of the fight against tax fraud requires that all Member States take full responsibility for the functioning of their own tax systems and that they provide instruments to tackle VAT fraud that do not damage or influence the functioning of tax systems in other Member States.

3.9 The derogation provided for in the Commission proposal through the reverse charge mechanism is not a generalised measure, but instead is subject to specific conditions. Member States may request that this derogation be applied under specific conditions, but it remains entirely optional.

3.10 Member States requesting the derogation via the reverse charge mechanism must have a VAT gap exceeding the EU median by 5 percentage points. If we consider that the EU median is 14 %, a further 5 percentage points would appear to constitute sufficient and substantial grounds for the adoption of extraordinary measures to reduce the VAT gap <sup>(5)</sup>.

3.11 Similarly, the Commission's proposal for a provision requiring that carousel fraud account for more than 25 % of the Member State's VAT gap would appear to be supported by preliminary evidence, if we compare that figure to the EU average (24 %) <sup>(6)</sup>.

3.12 The EESC also supports the general provision whereby the Member State must be experiencing administrative difficulties in combating VAT fraud, as this condition shows that a GRM is the most effective and proportional method for meeting the objective of reducing the VAT gap, in line with the public interest of both the EU and the Member States.

3.13 The Commission proposal stipulates that the reverse charge mechanism is applicable to transactions worth more than EUR 10 000. We consider this *de minimis* rule to be acceptable, given the varied and often diametrically opposed interests which need to be considered simultaneously in combating tax evasion, harmonising tax systems and simplifying the administrative burden related to fiscal duties.

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<sup>(5)</sup> SWD(2016) 457 final, p. 18.

<sup>(6)</sup> SWD(2016) 457 final, p. 15.

#### 4. Specific comments

4.1 The regulatory impact assessment carried out by the Commission shows that the adoption of a GRCM does not necessarily resolve all possible cases of fraud: on the contrary, new forms of fraud, or fraud in Member States other than those most affected at the present time may arise. The Commission should therefore monitor the functioning of the GRCM properly, retaining the power to intervene in the event of adverse effects on the functioning of the European single market.

4.2 If the legislative proposal under examination in the present opinion is to function correctly and reduce any future need to use additional derogations relating to the established principles and rules on the VAT system in the EU, Member States requesting the application of the GRCM should impose specific electronic invoicing requirements upon taxable persons to ensure that payments are fully traceable.

4.3 In this regard, the EESC would like to emphasise in particular the possibility of limiting or eliminating reverse charge and split payment mechanisms where electronic invoicing for the certification of sale proceeds is used widely and correctly. This invoicing method would make it possible to verify the correct payment of VAT in real time, thereby preventing harmful financial repercussions for many tax compliant businesses.

4.4 Tackling VAT fraud is without doubt an objective to be pursued vigorously and through the development of appropriate legislative measures by the Member States. Nevertheless, it should be noted that the application of reverse charge mechanisms in B2B relationships between private entities and split payment mechanisms in relationships between businesses and public administrations may heavily penalise tax compliant businesses.

4.5 Firstly, as has been shown by the regulatory impact assessment proposed by the Commission, the compliance costs linked with the use of the reverse charge mechanism on SMEs will be very high for domestic transactions and even higher for cross-border transactions. According to the Commission impact assessment, the reverse charge mechanism implies a 43 % increase in compliance costs for businesses <sup>(7)</sup>. Although a generalised reverse charge is expected to generate less compliance costs than a reverse charge limited to a certain sector, this still shows that compliance costs will increase dramatically.

4.6 Secondly studies <sup>(8)</sup> have shown that reverse charge and split payment mechanisms have, where implemented so far, often caused cash flow problems for many tax compliant businesses.

4.7 In other words, attempts to combat tax fraud by a small number of dishonest businesses have caused major operational problems for tax-abiding economic operators, which create jobs and wealth in the internal market.

4.8 For this reason, the EESC reminds the Commission and the Member States that the principle of proportionality must be upheld within the Commission proposal and in the individual national legal systems, ensuring that the measures adopted are proportional to the need to combat VAT fraud without damaging the internal market. At the same time, in line with the very same principle, the solutions adopted should tackle illegal activities without imposing excessive and disproportionate burdens on honest businesses, particularly SMEs.

4.9 The above considerations are further arguments in favour of the transitional basis of the generalised mechanism. Otherwise, we will witness an unacceptable worsening of the administrative burden, particularly for SMEs, and at the same time a distortion in the dynamics of the European single market, as there is a serious risk of differentiated cash flow operations for companies located in different Member States.

Brussels, 31 May 2017.

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

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<sup>(7)</sup> COM(2016) 811 final, p. 43.

<sup>(8)</sup> OJ C 389, 21.10.2016, p. 43, point 1.9.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work'**

(COM(2017) 11 *final* — 2017/0004 (COD))

(2017/C 288/07)

Rapporteur: **Marjolijn BULK**

|                                              |                                                                    |
|----------------------------------------------|--------------------------------------------------------------------|
| Consultation                                 | European Parliament, 19.1.2017<br>Council, 16.2.2017               |
| Legal basis                                  | Article 304 of the Treaty on the Functioning of the European Union |
| Plenary Assembly decision                    | 24.1.2017                                                          |
| Section responsible                          | Employment, Social Affairs and Citizenship                         |
| Adopted in section                           | 3.5.2017                                                           |
| Adopted at plenary                           | 31.5.2017                                                          |
| Plenary session No                           | 526                                                                |
| Outcome of vote<br>(for/against/abstentions) | 149/0/3                                                            |

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the opening of the process to revise the carcinogens directive and is willing to contribute to this important debate.

1.2 The EESC urges the Commission to carry out an impact assessment of a possible extension to the scope of application of the Carcinogens and Mutagens Directive (CMD) to substances which are toxic to reproduction.

1.3 The Committee strongly recommends that the revisions of the CMD and amendments planned for 2018 pay greater attention to occupational carcinogenic exposures affecting women.

1.4 The EESC considers it important for the Commission to improve upon a common methodology for the adoption of binding occupational exposure limit value (BOELs) in the CMD, in consultation with social partners, Member States and other stakeholders.

1.5 BOELs must be defined on the basis of scientific and statistical evidence, taking into account different factors such as feasibility and the possibilities for measuring exposure levels. A risk-based approach is used in the Netherlands and Germany and helps to define BOELs by taking into account the level of risk as the primary determinant of a social compromise.

1.6 The EESC considers it necessary to set up programmes to propose life-long health surveillance for all persons that have been exposed to workplace carcinogens in the framework of national social security or public health systems.

1.7 The EESC stresses that in order to improve the protection of workers 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 supports the common position of Europe's social partners and recommends that a BOEL be adopted for formaldehyde.

1.9 The EESC recommends that when establishing a legal definition of diesel engine exhausts (DEE), the Commission take into account the SCOEL finding regarding DEE.

## 2. Background of the proposal

2.1 Cancer is the main cause of mortality due to working conditions. In 2013, there were an estimated 1,314 million cancer deaths in the EU. More than 100 000 deaths in the EU resulted from occupational-related cancer. It is the first cause of work-related deaths in the EU. Around twenty million EU workers are exposed to carcinogens at work. A study published in 2015 by the Dutch National Institute for Public Health and the Environment <sup>(1)</sup> estimates the annual cost of these occupational cancers at EUR 334 billion.

2.2 Workers' protection legislation deals with occupational cancer in a number of directives. The general obligations of the framework directive <sup>(2)</sup> of 1989 apply to all the risks and define general measures which have to be implemented in the workplace. The chemical agents directive <sup>(3)</sup> applies to all dangerous chemicals. The asbestos directive <sup>(4)</sup> takes into account some specific needs for the prevention of asbestos-related diseases. The most important specific piece of legislation is the carcinogens directive adopted in 1990.

2.3 The CMD sets general minimum requirements. Employers must identify and assess risks and must prevent exposure where risks occur. Substitution to a non or less hazardous process or chemical agent is required where this is technically possible. Where substitution is not technically possible, chemical carcinogens must again as far as it is technically possible be manufactured and used in a closed system to prevent exposure. Where this itself is not technically possible, worker exposure must be reduced to as low a level as is technically possible.

2.4 In addition to these general minimum requirements, the CMD sets occupational exposure limit values (OELs) for particular carcinogens and mutagens as an integral part of the mechanism for protecting workers. Concrete BOELs for specific chemical agents are laid down in Annex III to the CMD. Currently, this annex has defined BOELs for only three substances or process-generated exposures. These BOELs cover only a small percentage of workers exposed to CMRs.

2.5 In 2016, the European Commission announced that the CMD would be revised in three phases. It adopted an initial proposal in May of that year which is now being discussed in the European Parliament and the Council of Ministers. A second proposal was adopted in January 2017 and a third is scheduled for 2018.

2.6 The revision of the CMD is an ongoing process. The first proposal revised two existing BOELs and adopted eleven new ones. In its Ulvskog report <sup>(5)</sup>, the European Parliament supported the CMD revision process and called, among other things, for the broadening of its scope to include reprotoxic substances, the introduction of stricter occupational exposure limit values for six of the substances and the setting of a transitional limit value so as to give employers additional time for implementation. The European Parliament also stressed the point that the 2017 and 2018 revisions of Annex III to Directive 2004/37/EC should include but not be limited to substances, mixtures and processes such as diesel engine exhaust, formaldehyde, cadmium and its compounds, beryllium and its compounds, nickel compounds, arsenic and its compounds and acrylonitrile. A very large majority of political groups supported the compromise proposed by the European Parliament.

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<sup>(1)</sup> Dutch National Institute for Public Health and the Environment (RIVM), *Work related cancer in the European Union. Size, impact and options for further prevention*, 2015.

<sup>(2)</sup> Measures to improve the safety and health of workers at work, Council Directive 89/391/EEC (OJ L 183, 29.6.1989, p. 1).

<sup>(3)</sup> Protection of the health and safety of workers from the risks related to chemical agents at work, Council Directive 98/24/EC (OJ L 131, 5.5.1998, p. 11).

<sup>(4)</sup> Protection of workers from risks related to exposure to asbestos at work, Directive 2009/148/EC of the European Parliament and of the Council (OJ L 330, 16.12.2009, p. 28).

<sup>(5)</sup> Ulvskog report

2.7 The main aim of the second proposal is to adopt five new BOELs. Although complex PAH (polycyclic aromatic hydrocarbon) mixtures and used engine oils appear in the annex defining the directive's scope of application, no limit values have been set for these two carcinogens. Drawing on its own analysis, the Commission decided that no action should be taken at this stage on five carcinogens <sup>(6)</sup>.

### 3. General comments

3.1 The scope of application of the CMD is at present limited to carcinogens and mutagens; a possible extension to substances which are toxic to reproduction should be considered. According to EU-OSHA: 'The effects of occupational exposure on the reproductive system of men and women may become manifest as alterations in sex hormone levels, diminished libido and potency, menstrual disorders, premature menopause, delayed menarche, ovarian dysfunction, impairment of semen quality, and reduced male and female fertility. Toxic exposures can cause direct cell damage in the developing sperm and eggs. Maternal exposure during pregnancy may disturb foetal development (...). Toxic exposures can induce many wide-ranging effects, e.g. foetal death, intrauterine growth retardation, preterm birth, birth defects, postnatal death, disturbances in cognitive development, and changes in immunological sensitivity, or childhood cancer. The mother's exposure at work to chemicals may also cause contamination of her breast milk. Some chemicals with hormonal activity, known as endocrine disrupters, may alter the function of the endocrine system and consequently cause adverse reproductive effects, e.g. poor semen quality and damaged reproductive tissues in men and some gynaecological medical conditions in women.'

3.1.1 Under REACH and several specific pieces of legislation (on cosmetic products, biocides and pesticides), carcinogens, mutagens and reprotoxic substances are treated in an umbrella group of substances of very high concern. They share some common characteristics, amongst which are their acute health impact, the difficulty of risk perception (since the consequences of exposure often appear after a long latency period), the difficulty of risk management and problems linked with 'cocktail effects' that is, exposure to two or more different substances or processes. The national legislation in several Member States has adopted such an approach with the support of social partners at national level. The EESC urges the Commission to carry out an impact assessment on a possible extension of the scope of application of the Carcinogens and Mutagens Directive (CMD) to substances which are toxic to reproduction.

3.2 The EU strategy against work-related cancers should pay more attention to women.

3.2.1 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.

3.2.2 The Committee strongly urges the Commission to give more systematic consideration to occupational carcinogenic exposures affecting women in the revision of the Directive and amendments planned for 2018. Many types of work in which women are concentrated (health, cleaning, hairdressing and so on) involve exposures to carcinogenic substances that are neglected. There is a need to define criteria for the identification and classification of endocrine disruptors which contribute to some cancers. Prevention should be strengthened in the use of cytostatic products (i.e., chemotherapeutics) in the health professions. Although ionising radiations do not fall within the scope of the present opinion, the EESC strongly urges the need to strengthen other directives and in particular Directive 2013/59/Euratom.

3.3 There is broad agreement among stakeholders about the role and the importance of BOELs. BOELs are important because they help to reduce the risk, even when there is no safe level of exposure. They must be set at an adequate level, taking into account the scientific evidence and feasibility aspects.

3.3.1 However, there is no uniform methodology in the EU for deriving BOELs. Presently, the Commission operates on a 'case-by-case' basis. Transparency and consistency could for the most part be improved. Some BOELs are good, while others provide insufficient protection. The EESC considers that where health and human lives are concerned, ambitions must be up to the challenge.

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<sup>(6)</sup> Beryllium and inorganic beryllium compounds, Hexachlorobenzene (HCB), Diesel engine exhaust (DEE), Rubber process dust and fumes (RPDF) and 4,4'-Methylene-bis-(2 chloraniline) (MOCA).

3.3.2 Another factor is that Member States have different approaches. Some of them have defined BOELs for more than a hundred different CMRs, others for fewer than ten. The level of these BOELs can differ from one country to another. This creates difficulties for companies operating in different countries with variable standards and could in some cases result in unfair competition.

3.3.3 The EESC considers it important, therefore, for the Commission to define a methodology for the adoption of BOELs in the CMD. Such a process should involve a broad consultation with the social partners, Member States and other stakeholders, including NGOs. National experience helps to define good practices. For the EESC, two elements should be particularly considered:

3.3.3.1 Firstly, the consistency of BOELs, in order to avoid a situation in which workers exposed to certain substances might be at a much higher risk of cancer than workers exposed to other substances. In Germany and the Netherlands, there is support among social partners for a risk-based approach. This helps to define BOELs by taking into account the risk level as the primary determinant of a social compromise;

3.3.3.2 Secondly, BOELs must be defined on the basis of scientific evidence. They must take into account different factors, such as feasibility and the possibilities for 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.

3.4 In most cases, there is a long latency period between exposure and cancer. The EESC considers it necessary, therefore, to protect exposed workers or workers who are at risk of exposure by offering life-long health surveillance set up in the framework of social security or national health systems for all exposed workers.

3.5 The EESC recommends that more efforts should be focused on the fields of scientific and statistical studies. Occupational cancer may also be caused by: stress; work organisational factors e.g. shift work, etc. More attention and funding should be paid to researching the consequences and potential synergy of combined exposure to different factors such as chemicals and biological or physical agents, chemicals and work organisation, etc.

3.6 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 new provisions. They should strengthen their cooperation with the European Agency for Safety and Health at Work, which has developed different tools that might improve the quality of workplace prevention. One of those tools is OIRA (Online Interactive Risk Assessment), a web platform that enables the creation of sectoral risk assessment tools in any language in an easy and standardised way.

#### 4. Specific comments

4.1 The second CMD proposal introduces BOELs for five additional carcinogenic substances.

4.1.1 *Epichlorohydrine (ECH)* is a non-threshold carcinogen. The number of exposed workers in the EU stands at 43 813. The Commission proposes a BOEL of 1,9 mg/m<sup>3</sup>. Fifteen Member States will need to introduce (7) or update (8) their OEL to bring it down to 1,9 mg/m<sup>3</sup>. Around 69 % of exposed workers are estimated to work in those fifteen Member States and would consequently benefit from improved legal protection as a result of the introduction of this BOEL. The EESC considers that the proposed BOEL would contribute to reducing the work-related cancer burden.

4.1.2 *Ethylene dibromide (EDB)* is a genotoxic carcinogen without a threshold. Fewer than 8 000 EU workers are estimated to be potentially exposed to 1,2-dibromoethane. The Commission proposes a BOEL of 0,8 mg/m<sup>3</sup> (0,1 ppm). Twenty Member States will need to introduce (11) or update (9) their OEL to bring it down to 0,8 mg/m<sup>3</sup>. 81 % of exposed workers are estimated to work in those twenty Member States and would consequently benefit from improved legal protection as a result of the introduction of this BOEL. The additional costs for companies (among them micro- and small enterprises) are expected to be very low. The EESC considers that the proposed BOEL would contribute to reducing the work-related cancer burden.

4.1.3 *Ethylene dichloride (EDC)* is classified as a carcinogen 1B according to CLP. Fewer than 3 000 workers are potentially exposed in Europe <sup>(7)</sup>. The Commission proposes a BOEL of 8,2 mg/m<sup>3</sup> of 2 ppm. Twenty-three Member States will need to introduce (5) or update (18) their OEL to bring it down to 2 ppm, so it is expected that a large proportion of exposed workers could benefit from improved legal protection. The EESC considers that the proposed BOEL would contribute to reducing the work-related cancer burden.

4.1.4 *4,4'-methylenedianiline (MDA)* is a genotoxic carcinogen. It is estimated that approximately 70-140 people are exposed to airborne MDA in the chemical industry. The number of people affected by dermal exposure is considerably higher and expected to be in the range between 390 000 and 3,9 million workers <sup>(8)</sup>. The Commission proposes a BOEL of 0,08 mg/m<sup>3</sup>. Twenty-three Member States will have to introduce (12) or update (11) their OEL to bring it down to 0,08 mg/m<sup>3</sup>. The EESC considers that the proposed BOEL would contribute to reducing the work-related cancer burden.

4.1.5 *Trichloroethylene (TCE)* is classified as a group 2A carcinogen by the International Agency for Research on Cancer (hereafter: IARC) and as a Category 1B carcinogen in the EU under CLP. It is estimated that approximately 74 000 workers in the EU are potentially exposed to TCE. The Commission proposes the combination of a BOEL of 54,7 mg/m<sup>3</sup> of 10 ppm and a short-term exposure limit (hereafter: STEL) of 164,1 mg/m<sup>3</sup> of 30 ppm. Of the twenty-two Member States which already have a national BOEL for TCE in place, sixteen have also adopted a STEL. Seventeen Member States will have to introduce (6) or update (11) their BOEL to bring it down to 54,7 mg/m<sup>3</sup> (10 ppm). Nearly 74 % of exposed workers are estimated to work in those seventeen Member States and would consequently benefit from improved legal protection thanks to the introduction of the OEL. The EESC notes that a lower BOEL for trichloroethylene has been implemented in a number of Member States and is supported by employers' organisations and trade unions. At EU level, a lower BOEL should be envisaged in order to reduce the work-related cancer burden.

4.2 Although complex *polycyclic aromatic hydrocarbon (PAH)* mixtures and used engine oils appear in the annex defining the scope of application of the directive, no limit values have been set for these two carcinogens.

4.2.1 *Complex polycyclic aromatic hydrocarbon (PAH)* mixtures with benzo[a]pyrene as an indicator. PAHs are a large class of organic compounds. The EESC considers that the proposed measure would contribute to reducing the work-related cancer burden.

4.2.2 *Mineral Oils as Used Engine Oils*. Exposure to mineral oils as used engine oils may cause skin cancer. The number of workers exposed is estimated at 1 million, employed mostly in maintenance and repair of motor vehicles. The EESC considers that the proposed measure would contribute to reducing the work-related cancer burden.

## 5. Further substances or processes to be added

5.1 *Formaldehyde (FA)*. The Commission has not proposed a BOEL for formaldehyde (FA). In 2009, the IARC concluded there was sufficient evidence in humans of a causal association of formaldehyde with myeloid leukaemia. The available information for FA is adequate for deriving a health-based OEL, 8-hour time-weighted average (TWA) and STEL. Based on the available data, SCOEL derives an Occupational Exposure Limit Value of 0,3 ppm (8h TWA) with a STEL of 0,6 ppm. Following this, the Advisory Committee on Safety and Health at Work (ACSHW) also decided to recommend this limit value to the Commission. In 2016, European social partners asked the Commission to include the SCOEL's proposed health based values as a BOEL for this chemical <sup>(9)</sup>. The EESC supports this common position and considers that a BOEL should be adopted.

<sup>(7)</sup> 2009 data.

<sup>(8)</sup> Institute of Medicine (IOM, renamed HDM in 2016) Research project P937/9 on 4,4'-Methylenedianiline, May 2011.

<sup>(9)</sup> EPF, ETUC, EAMA, ETRMA, Formacare, and EPRA Request to include Formaldehyde in Annex III of the Carcinogens and Mutagens Directive 2004/37/EC, 15 July 2016.

5.2 *Diesel engine exhausts (DEE)*. In 2012, the International Agency for Research on Cancer (IARC) categorised all diesel engine exhaust emissions as Class 1 carcinogens (proven human carcinogens). According to the Commission, over three million workers in the European Union are exposed to diesel engine exhaust emissions at work. The total number of workers exposed to these fumes during at least part of their working career amounted to twelve million in 2010, potentially rising to twenty million by 2060. The Commission's Impact Assessment states that the lack of legislation prohibiting exposure to diesel engine exhaust at work will result in 230 000 deaths in the EU between 2010 and 2069.

5.2.1 The Commission's main argument for excluding DEE from Annex I and Annex III of the CMD is that it would be difficult to find a legal definition to distinguish between new engines and old engines. In the EESC's view, the aim of the CMD is not to define technical standards for engines, but to establish a legal definition of DEE as a carcinogenic process according to scientific evidence and the evaluation of the IARC. In the workplace workers might be exposed to diesel engine exhaust fumes from several engines complying with different exposure standards. Other factors play an important role in the characterisation of the exposure: combustion temperatures and maintenance and cleaning of the engines. A BOEL could be defined that takes into account the air concentration of elemental carbon. The EESC considers that the following finding from the SCOEL should be taken into account: 'Although toxicological data supports a threshold (possibly at 0,02 mg DEP/m<sup>3</sup> or below, corresponding to 0,015 mg EC/m<sup>3</sup>), epidemiological data suggests significant cancer risks already at and below these exposure levels. Therefore, an occupational exposure limit that would be adequately protective for workers cannot be established on the basis of the current available data and analysis. However, both toxicological and human epidemiological data are further gathered and evaluated' <sup>(10)</sup>.

Brussels, 31 May 2017.

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

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<sup>(10)</sup> SCOEL opinion No 403, 2016.

**Opinion of the European Economic and Social Committee on the 'European Defence Action Plan'**(COM(2016) 950 *final*)

(2017/C 288/08)

Rapporteur: **Christian MOOS**Co-rapporteur: **Jan PIE**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | 27.1.2017                                                          |
| Legal basis               | Article 304 of the Treaty on the Functioning of the European Union |
| Body responsible          | Consultative Commission on Industrial Change (CCMI)                |
| Adopted in CCMI           | 7.4.2017                                                           |
| Adopted at plenary        | 31.5.2017                                                          |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 104/1/7                                                            |
| (for/against/abstentions) |                                                                    |

**1. Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) is in favour of creating a European Defence Union (EDU) and supports the European Defence Action Plan, including the establishment of a common European Defence Fund.

1.2 The EESC calls for significant qualitative progress in European defence cooperation, as the EU's defence market and industry is overly fragmented and causes inefficient allocation of resources, overlapping remits, lack of interoperability and technological gaps.

1.3 The EESC supports the objective of strategic autonomy in identified critical capability and technology areas. NATO remains the foundation of European collective defence.

1.4 The EU should continue to pursue principally preventive and multilateral diplomacy. However, military capabilities are an important element for implementing the EU Global Strategy on Foreign and Security Policy.

1.5 The EESC states that a sine qua non for the development of common defence capabilities is to strengthen the European defence industrial and technological base including a highly skilled workforce.

1.6 The EESC strongly supports giving special attention to SMEs including in the area of research and development for defence purposes.

1.7 EU funds can foster innovation in technological fields where a clear distinction between military and non-military purposes have become difficult if not impossible.

1.8 However, the EESC rejects the opening up of existing funds that serve economic or social objectives for defence purposes *sensu stricto*. The EFSI Regulation objectives, the ESI Funds and the COSME programme as well as the EIB investments serve non-military purposes.

1.9 The EESC rejects a special provision for national budgetary resources allocated for defence under the Stability and Growth Pact. The latter must be viewed in the context of the deepening of the EMU and not in just one sector. Defence expenditure should not destabilise public finances.

1.10 The EESC supports the creation of a Defence Fund with separate windows for research and capabilities. However, the EU budget has to be increased, as the research window for defence must not be financed at the expense of research in other sectors. The EESC is in favour of the capability window being financed solely by national contributions. The procurement of defence products by Member States cannot be financed from the EU budget.

1.11 The EESC welcomes the creation of a coordination committee. The final decisions in this committee must be reserved for civilian political representatives.

1.12 The EESC supports the Commission's call for full application of the Directives <sup>(1)</sup> on public procurement and intra-EU transfers of defence products. Much more needs to be done to ensure in particular the best use of the Transfer Directive.

1.13 The EESC supports the development of common standards both for arms and dual-use items, while avoiding duplicating existing standards, in particular NATO standards.

1.14 Arms exports should be limited to strategic partners and allies and need close democratic scrutiny.

## 2. General comments

2.1 Europe is faced with a series of conflicts in its neighbourhood, such as the civil war in Syria, the direct consequences of which include the global population displacements of 2015/16. With Russia's annexation of Crimea and its involvement in the armed conflict in eastern Ukraine, the territorial integrity of an independent state has been infringed and, with it, international law. North Africa and the Middle East remain unstable regions and are at risk of state failure. At the same time, Europe and the Middle East no longer appear to be a key part of US security policy. Europe faces a growing risk of finding itself on the periphery of world affairs and viewed as a burden by its transatlantic partners.

2.2 In view of these geostrategic circumstances and security developments, Europe must strengthen its security and defence capabilities. It is essential to have a clear understanding of the Union's common strategic objectives which is still missing and urgently needs to be developed. This is the prerequisite for identifying the necessary joint and national capabilities that need to be underpinned by a sustainable European defence, technological and industrial base.

2.3 The EESC points to the requests <sup>(2)</sup> already set out in opinions CCMI/116 (2013) and CCMI/100 (2012). The EU Global Strategy <sup>(3)</sup> and the Implementation Plan on Security and Defence <sup>(4)</sup> also provide important approaches to that end. In the EESC's view, it is urgent that these be implemented consistently in accordance with the provisions of the Joint Declaration of the EU and NATO of July 2016 as well as the United Nation's principle of collective security.

2.4 The EESC considers the optimisation of European civil preventive and military defence capabilities to be a matter of urgency in order to guarantee freedom and peace in Europe, spread stability in Europe's neighbourhood reflecting EU values such as fundamental human rights, and to be able to successfully support the global peace-keeping measures of the UN.

2.5 The EESC therefore calls for the quality of European defence cooperation to be boosted. It is in favour of creating a European Defence Union (EDU), in the framework of the EU's 'permanent structured cooperation' mechanism provided for that purpose under Articles 42.6 and 46 of the EU Treaty, and welcomes the European Defence Action Plan, including the establishment of a common European Defence Fund, as an important step.

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<sup>(1)</sup> Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1); Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

<sup>(2)</sup> See also EESC opinions on *Defence industry: industrial, innovative and social aspects* (OJ C 299, 4.10.2012, p. 17), and on *Strategy to strengthen Europe's defence sector* (OJ C 67, 6.3.2014, p. 125).

<sup>(3)</sup> EESC opinion on The new EU strategy on foreign and security policy (own-initiative opinion) (OJ C 264, 20.7.2016, p. 1).

<sup>(4)</sup> European Council Conclusions on security and defence (14149/16), 14 November 2016.

2.6 The EESC agrees with the Commission's criticism of the excessive fragmentation of the market, which leads to the inefficient allocation of resources, duplicated structures, a lack of interoperability and technological gaps.

2.7 Most EU Member States are under pressure to consolidate their public budgets, meaning that the inefficient use of public funds can no longer be justified. The EESC therefore calls for the resolute implementation of collaborative approaches. In the EESC's view, increased cooperation in the priority areas mentioned by the Commission is only the first step.

2.8 The EESC supports the objective of strategic autonomy in identified critical industrial capacities. NATO remains the foundation of European security and common defence, as reiterated in the Joint Declaration of the EU and NATO. In this respect, it is important that all NATO members fulfil their requirements.

2.9 The EESC states that not all elements of the Action Plan are new but welcomes the establishment of the Defence Fund. However, this largely depends on the political will to contribute extra money from national budgets. The EESC is critical about a lack of willingness of some Member States to follow through. In addition, the Commission has to strengthen its efforts to develop a roadmap for a comprehensive EU-wide security of supply regime and ensure proper implementation of the two Defence Directives.

2.10 The Bratislava Roadmap<sup>(5)</sup> points in the right direction; however, it rehashes old plans in the area of defence. In particular, the roadmap lacks strategic consistency and is focused much too heavily on the current challenge posed by the migration crisis and EU external border protection. While large-scale population movements are indeed related to security challenges, once they have developed they cannot be resolved by military means.

2.11 A sine qua non for the development of common capabilities is to establish and develop a defence internal market. The EESC has the view that it is not possible to strengthen the European industrial base without also addressing the skills issue. Defence industries constantly work at the technological edge and therefore require a highly skilled workforce. The skills-initiative of the EC mentioned in the EDAP addresses this problem and is therefore highly welcome.

2.12 More investment and cooperation in this industrial sector also help safeguard jobs and create employment. However, the fight against unemployment in the EU should not be the driving force behind investment decisions in the field of defence. It must be reduced by means other than armaments. The strengthening of European defence capabilities should be guided exclusively by strategic considerations and a profound assessment of what is necessary to protect Europe and guarantee its alliance-building capacities. This must not jeopardise public finances. In particular, the EU should continue to pursue principally preventive and multilateral diplomacy. However, military capabilities are essential to implement the security and defence priorities in the EU's Global Strategy.

2.13 The EESC shares the view that defence research can also have a positive impact on the development of civilian technologies and vice versa.

2.14 The strict distinction between military and non-military is more and more blurring in terms of cyber-attacks and also when looking at internal and external security that has become more and more interlinked.

2.15 The EESC underlines that research for instance in cyber-security technologies can have civilian as well as defence purposes and there would be more examples. Therefore, it goes without saying that such innovation and development can and must be funded also by existing European programmes like Horizon 2020. However, research in defence sensu stricto that is intended as such must be considered separately.

2.16 The EESC supports the creation of a more closely integrated defence industry and a common defence market in Europe. This aim should not be limited to the main producing countries. In implementing defence research and defence projects the existing capabilities of as many interested Member States as appropriate should be used in order to foster commitment to the common cause.

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<sup>(5)</sup> Work programme put forward by the European Council, the Presidency of the Council and president of the Commission at the meeting of the 27 Heads of State and Government on 16 September 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/09/16-bratislava-declaration-and-roadmap>

2.17 The EESC rejects the opening up of existing funds that serve economic or social objectives for defence purposes and about dealing with defence spending under the Stability and Growth Pact. The EESC supports the creation of a European Defence Fund that is restricted to defence research and the development and acquisition of military capabilities. At the same time, it should be clearly separated from the European Fund for Strategic Investments (EFSI) and does not include exceptions such as 'one-off measures', as referred to in the Stability and Growth Pact.

2.18 With regard to all aspects of a future defence union, the EESC calls for the full involvement of the European Parliament and a continuous dialogue between politicians, the military and civil society. As an EU consultative body and a representative of all major European civil society organisations, the EESC should act as a key partner in the area of defence policy.

### 3. Specific comments

#### 3.1 *Creation of a European Defence Fund*

3.1.1 The EESC supports the creation of a Defence Fund with a research window and a capability window, which are to be fully operational from 2020 onwards.

3.1.2 The EESC supports separate financing sources for both 'windows'. However, the research window for defence must not be financed at the expense of research in other sectors. The EESC is in favour of the capability window being financed solely by national contributions. As long as the Union does not have its own variable income, the procurement of the military capabilities of the armed forces remains the responsibility of the Member States. The EU budget should therefore not be used to cover procurement under the capability window of the planned Defence Fund.

3.1.3 The EESC welcomes the planned coordination committee. However, the decision making of this committee should only include political representatives. Military, industrial and civil society representatives can participate in an advisory capacity. The European Parliament must also have a seat and a voice in that committee.

3.1.4 The role of the Commission in co-funding projects should be limited to the research window and should also provide for a special, clearly separated EU defence research programme post-2020 to this end<sup>(6)</sup>. The EESC supports the idea of assigning the execution of the programme to the European Defence Agency (EDA).

3.1.5 The EESC supports pre-commercial procurement for cooperative procurement contracts, in order to reduce the high investment risks associated with the industry for the businesses concerned.

3.1.6 Possible synergies between civil and defence research should be exploited, but support for civilian research activities using EU funds (Horizon 2020) should not be geared towards military purposes at the expense of other sectors.

3.1.7 The EESC supports the pooling of national funds for the acquisition of new defence capabilities. It seems doubtful that the annual joint target of EUR 5 billion for the capability window will prove sufficient. The Committee believes it would be useful to carry out preparatory studies to examine this reference amount, as provided for in the Action Plan. In the EESC's opinion, the annual amount of common financing must be geared towards meeting the objectives of creating greater synergies, relieving budgetary pressure and successfully acquiring and securing defence capabilities.

3.1.8 The EESC supports the design of the capability window outlined by the Commission, i.e. the umbrella structure for the framework, as well as the rules on common financing and the second level comprising specific projects of cooperating Member States. It makes sense for the individual projects to be clearly defined in terms of quality and quantity and for them to be financially independent of each other.

3.1.9 The development of a permanent capital structure for the capability window is supported. Liability must lie with the Member States as shareholders. The EESC rejects a special provision for national budgetary resources allocated for this purpose under the Stability and Growth Pact.

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<sup>(6)</sup> Report of the European Parliament on the European Defence Union (2016/2052(INI)).

3.1.10 The EESC underlines that in accordance with Article 41 TEU the EU budget cannot be used to finance military operations. Departing from this principle would also conflict with the specific character of the security and defence policy of particular Member States (Article 42(1) TEU).

### 3.2 *Stimulating investment in supply chains in the area of defence*

3.2.1 The EESC strongly supports giving special attention to SMEs including in the area of research and development for defence purposes. The EFSI, the ESI Funds and the COSME programme should not be prioritised for arms spending. However, the EFSI Regulation objectives, the ESI Funds and the COSME programme as well as the EIB investments serve non-military purposes. What is more, the use of these funds for military purposes would risk further duplication and fragmentation in the defence market.

3.2.2 As the EU needs a sound and sustainable defence, industrial and technological base, the challenge is to balance the EU's readiness to finance this base without unwanted export dependence. Arms exports should be limited to strategic partners and allies, and should not be driven by other economic considerations which potentially contribute to fuelling conflicts in other parts of the world. Currently there are even serious concerns as regards some allies. Therefore, arms exports need close democratic scrutiny.

3.2.3 The promotion of regional clusters of excellence is supported. This should also be done through the research window and the special EU programme that is to be set up.

### 3.3 *Expanding the internal market for defence items*

3.3.1 The EESC calls for a well-designed European industrial policy for the defence sector with its specific characteristics of government requirements and public funding. It therefore supports the Commission's call for full application of the Directives<sup>(7)</sup> on public procurement and intra-EU transfers of defence products.

3.3.2 Under Article 346 TFEU, Member States are able to exempt defence and security contracts from the rules if necessary to protect their essential security interests. With the two Directives 2009/81/EC and 2009/43/EC, it is now possible to reduce this exemption to a strict minimum. The EESC agrees with the criticism of the fact that a very significant portion of the procurement of military items is still not carried out under EU public procurement rules, and sees potential for making savings here, which could be invested more efficiently under the Defence Fund.

3.3.3 The EESC supports a simplified authorisation process by means of general authorisations for transferring military items within the single market. The Committee therefore welcomes the interpretation guidance and recommendations that have been announced. However, much more needs to be done to ensure in particular the best use of the Transfer Directive.

3.3.4 The EESC also welcomes studies on the security of supply of raw materials in the framework of the Raw Materials Strategy, as well as on the substitution of critical raw materials. At the same time, it deplores that the European Commission has given up on its mandate of December 2013 to develop a roadmap for a comprehensive EU-wide security of supply regime, which could also drive a politically ambitious implementation of the Transfers Directive.

3.3.5 The EESC shares the view that a well-functioning single market for defence items must be a key objective of the action plan. A defence union is inconceivable without cross-border market access and open supply chains. In particular, SMEs, which are responsible for major innovations in the sector, must be able to access calls for tender.

3.3.6 The EESC supports the development of common standards and the achievement of full interoperability both for arms and dual-use items, while avoiding duplicating existing standards, in particular NATO standards. A corresponding roadmap had already been envisaged for 2014<sup>(8)</sup>.

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<sup>(7)</sup> Directive 2009/43/EC of the European Parliament and of the Council simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1); Directive 2009/81/EC of the European Parliament and of the Council on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (OJ L 216, 20.8.2009, p. 76).

<sup>(8)</sup> European Council Conclusions of 19/20 December 2013 (EUCO 217/13).

3.3.7 The EESC supports the development of reliable, secure and cost-effective satellite communications services for EU and national authorities, along with investment in European space travel.

3.3.8 The EESC is aware of the unclarified relationship between civilian and military use of the Copernicus system, and also of the fact that the military is a key partner of the European Space Agency (ESA), both as a co-developer and a user. Useful synergies could develop here. The use of Copernicus must however be evaluated collectively from a political, scientific and military standpoint. Military use must not place a burden on EU space policy or affect civil use of the system.

3.3.9 The EESC strongly supports boosting capabilities in the area of cyber security and defence, as well as civil/military cooperation on the basis of the EU Cybersecurity Strategy <sup>(9)</sup>.

3.3.10 The EESC supports common approaches to promoting maritime security both in the civil and the military fields, as well as the optimisation of interoperable maritime surveillance capabilities.

Brussels, 31 May 2017.

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

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<sup>(9)</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace JOIN(2013) 1 final; Council conclusions on the Commission and the High Representative of the European Union for Foreign Affairs and Security Policy Joint Communication on Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace (11357/13).

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a multi-annual plan for small pelagic stocks in the Adriatic Sea and the fisheries exploiting those stocks’**

(COM(2017) 97 final — 2017/0043 (COD))

(2017/C 288/09)

Rapporteur: **Emilio FATOVIC**

|                                              |                                                                                       |
|----------------------------------------------|---------------------------------------------------------------------------------------|
| Referral                                     | European Parliament, 01/03/2017<br>Council, 04/04/2017                                |
| Legal basis                                  | Articles 43(2), 114(1) and 304 of the Treaty on the Functioning of the European Union |
| Plenary assembly decision                    | 24/01/2017                                                                            |
| Section responsible                          | Agriculture, Rural Development and the Environment                                    |
| Adopted in section                           | 17/05/2017                                                                            |
| Adopted at plenary                           | 31/05/2017                                                                            |
| Plenary session No                           | 526                                                                                   |
| Outcome of vote<br>(for/against/abstentions) | 187/0/2                                                                               |

## 1. Conclusions and recommendations

1.1 The EESC agrees with the GFCM-FAO <sup>(1)</sup> on the need to act to protect stocks of small pelagic species that are distressed due to over-exploitation, and supports the overall aim of urgently implementing a sustainable fisheries system and achieving maximum sustainable yield <sup>(2)</sup> in accordance with the common fisheries policy <sup>(3)</sup> (PCP).

1.2 The Committee supports the Commission's decision to opt for a regulation as the legislative instrument for introducing a multiannual plan to protect stocks of small pelagics in order to standardise the rules in force and strengthen governance processes.

1.3 While agreeing with the environmental protection and biodiversity objectives, the EESC considers that the Commission's proposal is incomplete and contradictory in many areas. These problems are the natural consequence of a series of contradictions in the CFP that the Committee has already pointed out in previous opinions <sup>(4)</sup>. More specifically, the EESC is highly concerned that if suitable additions and readjustments are not made to the present proposal, it may jeopardise the attainment of these objectives and prove highly prejudicial to the sector's businesses and workers <sup>(5)</sup>.

<sup>(1)</sup> General Fisheries Commission for the Mediterranean.

<sup>(2)</sup> Maximum sustainable yield (MSY) indicates the maximum quantity of fish that may be caught over an unspecified period of time without damaging stocks. This principle is one of the cornerstones of the common fisheries policy (CFP).

<sup>(3)</sup> Regulation (EU) No 1380/2013.

<sup>(4)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183).

<sup>(5)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183), point 1.17: 'The EESC is disappointed that the proposal does not address the social dimension, which is taken into account throughout the fisheries and aquaculture sector (production, processing and marketing), and puts forward no concrete measures to improve working and living conditions and believes that the participation of the social partners at the appropriate level should be promoted'.

1.4 The Committee considers that the management model proposed by the Commission, based on the Council setting annual fishing possibilities, cannot be brought into line with the biological characteristics of small Adriatic pelagics and the mix of species<sup>(6)</sup> it contains, the types of vessel and gear (small-scale fisheries)<sup>(7)</sup> or the number and size of ports. For all these reasons, the Committee considers that the MEDAC<sup>(8)</sup> proposal to step up measures concerning fishing efforts via a 'traffic light' approach is best suited in terms of both substance and method, as it stems from broad agreement by organised civil society as a whole.

1.5 The EESC is surprised to note that the Commission's proposal is not based on a detailed economic and social impact assessment<sup>(9)</sup>. This shortcoming is aggravated by the fact that the fisheries sector throughout the Mediterranean has been in crisis for more than 20 years<sup>(10)</sup> and new, drastic rules that are not properly thought out could deliver the final blow to the sector. The EESC also notes a total lack of measures to provide financial support for and/or convert businesses and workers to accompany the proposal to reduce catches of sardine and anchovy although these are a crucial economic resource for the small local (and often island) communities and ancillary sectors<sup>(11)</sup>.

1.6 The Committee therefore advocates prompt involvement by the DG for Employment and the launch of a sector-based social dialogue, consulting the EU Sectoral Social Dialogue Committee — Sea Fisheries (EUSSDC) to identify the most appropriate measures to compensate the economic and social impact. In this respect, the EESC views the EMFF as the most appropriate financial instrument for supporting businesses and working in the transition to sustainable fisheries. The EESC also considers that converting businesses to fishing tourism (Blue Economy<sup>(12)</sup>) or aquaculture<sup>(13)</sup> can certainly offer a valid alternative, but cannot under any circumstances replace the for the principle that traditional fishing, primarily due to the biological characteristics of fish (e.g. their need for space), cannot be rescaled or abolished.

1.7 Given the significant environmental, economic and employment-related consequences of the provision, the Committee considers that the new fisheries management plan cannot be implemented by means of delegated acts, and calls on the Commission to immediately make this absolutely clear, in the interests of all the relevant stakeholders<sup>(14)</sup>.

<sup>(6)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183), point 1.6: 'The EESC supports the proposal to establish multiannual plans with the aim of restoring and maintaining, as far as possible, all fish stocks above levels which can produce the MSY by 2015. Though laudable, this objective is difficult to apply in the case of mixed fisheries, and the EESC therefore calls upon the Commission to provide practical solutions to resolve any problems which may arise in those forms of fishery'.

<sup>(7)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183), point 1.19: 'The EESC believes that a definition of small-scale fishing based solely on vessel length is too simplistic and results in a large proportion of the small-scale fleet falling into the category of industrial fishing'.

<sup>(8)</sup> MEDAC is a consultative body bringing together European and national civil society organisations representing the fisheries sector operating in the Mediterranean area. The role of MEDAC is to prepare opinions on fisheries management and socio-economic aspects relating to fisheries conservation in the Mediterranean, which are submitted to the Member States and the European institutions in order to facilitate the achievement of the objectives of the CFP, providing technical solutions and suggestions at the request of the Member States.

<sup>(9)</sup> EESC opinion on *Reform of the common fisheries policy* (Green Paper) (OJ C 18, 19.1.2011, p. 53), point 3.1.2.2: 'Socio-economic impact assessments should be carried out alongside the process of improving fisheries resources and maintaining them at sustainable levels, with financial support measures to boost employment and encourage businesses to invest in innovation and development and provide professional training. Fishermen also need to be guaranteed a decent wage while stocks are recovering'.

<sup>(10)</sup> According to the STECF (2016), more than 10 000 jobs were lost in the Mediterranean between 2008 and 2014, with a reduction in vessels of 14 % and job losses of 8 %. If 'small scale' fishing (vessels of less than 12 metres), which accounts for more than 50 % of the sector, is taken separately, the reduction in the number of vessels was of 16 % and jobs fell by 13 %. It should also be borne in mind that if not properly thought out, the plan could have a devastating impact on the countries directly affected — in Croatia, for example, small pelagics account for 90 % of fishing. In Italy between 2004-2015 fishing fleet capacity fell by 17 % in terms of numbers of vessels, with job losses at time of more than 20 %.

<sup>(11)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183), point 3.3.6: '... the Committee considers that the application of measures to maintain or restore fish stocks above levels which can produce maximum sustainable yield by 2015 will have an impact on the fishing capacity of Member States' fleets (...). The Commission should therefore provide for adjustment measures by offering social and labour-related alternatives for the fisheries sector to prevent the current loss of jobs due to the poor state of fish stocks'.

<sup>(12)</sup> EESC opinion on *The European Union Strategy for the Adriatic and Ionian Region* (OJ C 458, 19.12.2014, p. 27), points 3.3, 3.4 and 3.5.

<sup>(13)</sup> EESC opinion on *Removing obstacles to sustainable aquaculture in Europe* (OJ C 34, 2.2.2017, p. 73).

EESC opinion on *Innovation in the Blue Economy* (OJ C 12, 15.1.2015, p. 93), point 1.7.

<sup>(14)</sup> EESC opinion on *Delegated acts* (OJ C 13, 15.1.2016, p. 145), point 1.8.

1.8 The Committee emphasises that all environmental protection measures may prove ineffective unless the problems of unfair competition and illegal fishing are tackled upstream, stepping up controls, imposing heavier penalties and introducing a full 'sea-to-table' <sup>(15)</sup> traceability system with exhaustive health checks both at the borders and the point of origin. The Committee considers it essential in particular to relaunch cooperation between all the countries around the Mediterranean Sea, on the basis of the programme and the objectives laid down in the Ministerial Declaration signed in Malta on 30 March 2017 <sup>(16)</sup>.

1.9 The Committee considers that the MSY objective should be met within a reasonable timescale. The deadline of 31 December 2020 does not appear feasible. This proposal is based on an awareness of the natural repopulation times of small pelagic fish stocks and for control authorities, businesses and workers to adjust to the new legislative provisions (especially in the event that these are drastically amended by a shift from effort to quotas). Further, the EESC considers that the possible use of safeguard clauses is not a valid option due to the excessive impact they would have in social and economic terms.

1.10 The Committee urges the Commission to define the operational aspects of regionalisation more clearly, linking from the outset the sustainability objectives for fish stocks with the actual costs levels borne by businesses, in order to ensure their survival.

1.11 In the interests of European consumers, the EESC calls for a detailed impact assessment to be made as soon as possible on the price trends for protected species, covering both fish for direct sale and fish for processing. The Committee also urges the Commission to devise 'sustainable fish' quality certification schemes, in order to increase consumer awareness and generate added value for businesses <sup>(17)</sup>.

## 2. Introduction

2.1 The Adriatic <sup>(18)</sup> is a sub-region of the Mediterranean which is very rich in fish stocks and small pelagic species <sup>(19)</sup>, principally anchovy and sardine <sup>(20)</sup>, are among the most profitable. According to recent data from the GFCM-FAO <sup>(21)</sup> and STECF <sup>(22)</sup>, stocks of anchovy and sardine are distressed as a result of over-exploitation and require greater protection.

2.2 The majority of catches are made by Italy and Croatia, in the northern part of the Adriatic. Slovenia takes part marginally (less than 1 %), together with Albania, Bosnia and Herzegovina and Montenegro, who account for an equally residual share (approximately 1 %) <sup>(23)</sup>.

2.3 The existing management framework is based on limitation of fishing effort <sup>(24)</sup>, coupled with additional measures such as spatio-temporal closures and minimum landing sizes. These measures have not however been implemented in a coordinated, continuous and uniform way by States (especially during fishing biological recovery periods <sup>(25)</sup>), leading to confusion among operators and hampering reconstitution of stocks.

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<sup>(15)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183), point 1.21.

<sup>(16)</sup> IP/17/770, European Commission secures 10-year pledge to save Mediterranean fish stocks.

<sup>(17)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183), point 4.5.

<sup>(18)</sup> The Adriatic corresponds to GFCM Geographical Subareas 17 and 18.

<sup>(19)</sup> These are small-sized species that live close to the surface (e.g. mackerel, herring, horse mackerel, blue whiting, boarfish, anchovy, argentine, sardine, sprat, etc.).

<sup>(20)</sup> In Croatia, small pelagics account for 90 % of total catches.

<sup>(21)</sup> The General Fisheries Commission for the Mediterranean was established in 1949 within the FAO. The main task of the GFCM is to promote the development, conservation and proper management of living marine resources.

<sup>(22)</sup> The Scientific, Technical and Economic Committee for Fisheries was set up in 1993; it is a consultative body reporting directly to the European Commission. It comprises a pool of experts who are asked to submit opinions to the Commission on fisheries management.

<sup>(23)</sup> GFCM, *The State of Mediterranean and Black Sea Fisheries*, 2016, p. 25.

<sup>(24)</sup> Fishing effort management combines restrictions on fleet capacity with the amount of time they can remain at sea.

<sup>(25)</sup> Fishing is banned in specific areas during the biological recovery periods. It is an instrument that the EU has been using for 30 years to conserve marine fish stocks, fostering the natural reproduction of the most heavily fished species. Stopping fishing for a certain number of days effectively means giving fish time to complete their reproductive cycle undisturbed, thereby conserving fish stocks.

2.4 In keeping with its mandate, MEDAC has drawn up an opinion on small pelagics in the Adriatic including operational proposals drawing on a two-year consultation among all relevant stakeholders (entrepreneurs, workers, cooperatives, environmentalists, consumers), published on 11 March 2016 <sup>(26)</sup>.

### 3. Gist of the Commission proposal

3.1 In order to protect stocks small pelagic species in the Adriatic Sea, sardine and anchovy in particular, the European Commission has drawn up a regulation intended to establish a multi-annual plan to tackle this environmental emergency. The ultimate aim is to achieve maximum sustainable yield <sup>(27)</sup> (MSY) by 2020, as set out in the common fisheries policy (CFP). The multi-annual plan as a whole should be evaluated every five years.

3.2 The proposal for a regulation breaks with all management measures so far applied in this geographical area, introducing a single governance system, limiting national derogations (closed biological recovery periods and control methods in particular) and, most importantly, stipulating that the management system be based on limiting catches <sup>(28)</sup> (TACs) and no longer on reducing the fishing effort.

3.3 The proposal, which is modelled on the approach and content of the multi-annual plan for certain fish stocks in the Baltic Sea <sup>(29)</sup>, is founded on the STECF opinion and is, at the same time, at loggerheads with the MEDAC opinion based on a more restrictive adjustment of the fishing effort (traffic light system <sup>(30)</sup>).

3.4 More specifically, the Commission proposes setting conservation reference points, expressed in tonnes of spawning stock biomass and fishing mortality ranges. When scientific advice states that any of the stocks is below the reference point, catches for that stock must be reduced. The Commission points to delegated acts as the means for the entire practical implementation of the new management system.

3.5 The proposal envisages regional cooperation between Member States for adopting specific conservation measures. Particular technical measures (e.g. mesh sizes, fishing gear characteristics) may also be amended by means of 'regionalisation'.

3.6 The proposal also enables the competent authorities to identify, locate and systemically control the activity and catches of all vessels of or above eight metres, by means of the relevant digital instruments (e.g. electronic logbooks). Moreover, all ports must be equipped with digital instruments capable of checking the catches of all vessels once unloaded. To this end, all vessels must notify the competent authorities of their arrival in port at least four hours in advance.

### 4. General comments

4.1 In the light of the scientific studies published on the question, the EESC agrees that it is necessary to take action to protect small pelagic stocks in the Adriatic that are currently distressed.

4.2 The Committee also agreed on the need to opt for a regulation as the legal instrument in order to strengthen governance and make the rules uniform and binding for all relevant countries and stakeholders, so as to resolve environmental impact problems in fisheries, caused principally by uneven and uncoordinated application of the current management measures.

4.3 In line with the CFP and with its previous opinions, the EESC maintains that the priority is to reach maximum sustainable yield (MSY) in order to protect environmental, food-related, economic and productive requirements jointly <sup>(31)</sup>.

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<sup>(26)</sup> MEDAC, Medac advice on LTMP for small pelagics in GSA 17 (Northern Adriatic), Prot. 94/2016, March 2016.

<sup>(27)</sup> Maximum sustainable yield (MSY) indicates the maximum quantity of fish that may be caught over an unspecified period of time without damaging stocks.

<sup>(28)</sup> Total allowable catches or TACs are catch limits for specific fish stocks, expressed in tonnes. The Commission lays down these limits on the basis of scientific opinions on the state of stocks, provided by advisory bodies such as ICES and STECF.

<sup>(29)</sup> Including cod, herring, sprat and salmon.

<sup>(30)</sup> MEDAC, Medac advice on LTMP for small pelagics in GSA 17 (Northern Adriatic), Prot. 94/2016, March 2016, pp. 7-8.

<sup>(31)</sup> EESC opinion on the *Common Organisation of the Markets in Fishery and Aquaculture Products* (OJ C 181, 21.6.2012, p. 183).

4.4 The EESC however considers that the Commission proposal is incomplete and contradictory in many key sections, and fears that these shortcomings may both jeopardise the attainment of the environmental sustainability objectives and be excessively prejudicial to workers, businesses and local communities.

## 5. Comments

### 5.1 *Need for adequate economic and social impact assessment and measures to offset the effects of the multi-annual plan on businesses and jobs*

5.1.1 In contrast with the wishes of the GFCM-FAO and MEDAC, an in-depth assessment of the socio-economic impact is lacking <sup>(32)</sup>. This aspect is of crucial given that the fisheries sector in the Mediterranean has been in crisis for a number of years <sup>(33)</sup> and that a poorly thought-out reform could be harmful to businesses and workers.

5.1.2 It is also pointed out that the Commission has issued its proposal without waiting for the outcome of the GFCM-FAO working group, set up under paragraph 14 of Recommendation 40/2016/3 and tasked with assessing the impact of a series of measures including catch limitations and fishing effort regime for the sustainable management of the fishing of small pelagic stocks in the Adriatic Sea.

5.1.3 The EESC further considers that the proposed measures cannot be cost-free given a 30 % reduction in catches, a 25 % reduction in revenue for businesses and the loss of 10 % of jobs. In addition to the previously mentioned problem with the data collection method, the Commission fails to introduce any measures to cushion the effects of the regulation, transferring the economic and social cost of the multi-annual plan to the Member States alone.

5.1.4 The EESC points out that the Commission has not fully assessed the impact on the ancillary sectors, local (often island) communities traditionally involving in fishing, the probable increase in prices and the questionable quality and sustainability of products necessarily imported from non-EU countries (primarily North Africa) to meet internal demand.

5.1.5 The regulation introduces no mechanism to support businesses financially or convert them (e.g. aquaculture), and there are no measures to supplement income, provide training and/or find new jobs for workers (fishermen or in ancillary sectors) who will lose their employment.

### 5.2 *Biological characteristics of the Adriatic*

5.2.1 The EESC considers that the successful model offered by the multi-annual plan for fish stocks in the Baltic is unsuitable for the Adriatic. As highlighted by the GFCM-FAO, the Baltic is a single-species sea in which it is easy to carry out targeted fishing because few types of fish coexist there and in which it is consequently easy to set catch limitations. In contrast the Adriatic, like the rest of the Mediterranean, is a multi-species sea in which many species of fish can be found together in the same area <sup>(34)</sup>. The only precedent for catch limitations in the Mediterranean concerns bluefin tuna, a proposal supported in principle by the EESC <sup>(35)</sup>, since it related to species whose characteristics (mainly size) and fishing methods are very different those of small pelagics.

5.2.2 The EESC also notes that fishing in the Adriatic is traditionally carried out with very different methods to those in the Baltic. Adriatic fisheries are family businesses using small vessels (8-12 metres). Owners are often fishermen themselves, with average crews of three people. Fish are therefore landed in many small ports, but have for centuries been an important economic factor for the (often island) communities concerned.

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<sup>(32)</sup> SWD(2017) 63 final.

<sup>(33)</sup> Ministry for Agricultural, Food and Forestry Policy, National Fisheries Plan 2017-2019. In Italy between 2004-2015 fishing fleet capacity fell by 17 % in terms of numbers of vessels, 26 % in terms of tonnage and 21 % in terms of engine power (kW). Downsizing of fishing capacity was particularly significant between 2010 and 2012, due in part to the economic crisis and in part to the spontaneous withdrawal of numerous vessels, encouraged by the permanent cessation measure proposed by the EFF.

<sup>(34)</sup> GFCM, *The State of Mediterranean and Black Sea Fisheries*, 2016, p. 26.

<sup>(35)</sup> EESC opinion on *A multiannual recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean* (OJ C 24, 28.1.2012, p. 116), point 1.1: 'The EESC endorses the European Commission's proposals and acknowledges the efforts that both the Member States and fishermen are making to comply with the International Commission for the Conservation of Atlantic Tunas (ICCAT)'s tough bluefin tuna recovery plan. The plan is now yielding results, but its implementation is having serious socio-economic effects, which should be taken into account'.

### 5.3 Management system and delegated acts

5.3.1 The new catch-based management system is not clearly and precisely detailed in the body of the proposal, which simply puts forward a legislative framework to be fleshed out subsequently via delegated acts. Since this is a highly sensitive issue on account of the environmental, economic and employment aspects involved, this would be a major constraint for businesses when planning the fishing activity on which their own survival depends.

### 5.4 Need for a timescale commensurate with the maximum sustainable yield (MSY) objective

5.4.1 The regulation in force for the Baltic, adopted in 2016, allowed businesses — and fish stocks — five years (until 2020) to reach sustainable fisheries levels, corresponding to the end of the CFP. In contrast, for the Adriatic, the Commission plans to impose a far stricter road map, of less than two years (2019-2020), with the sole aim of coinciding with the end of the CFP, without taking account of the natural reproduction cycles of small pelagics (variable due to many factors) or the time required for businesses and local authorities to adjust to more restrictive management measures that are completely different from those in force over the last 30 years. This entails a very real risk of failing to meet the pre-determined environmental objective and destroying a sector (along with its ancillaries) on which hundreds of coastal communities depend.

### 5.5 Unfair competition from third countries and illegal fishing

5.5.1 The fisheries sector in the Mediterranean, including the Adriatic, has been in crisis for more than twenty years for a variety of reasons, including unfair competition from third countries (principally from North Africa where fishing and sales are not subject to any controls) and illegal fishing (behind which illegal employment is also often to be found). At present, the majority of legal businesses are already only just hanging on<sup>(36)</sup>, and it is only the strong personal and family ties between owners and their small crews that has prevented the sector's final collapse.

5.5.2 The EESC therefore considers that the sole effect of moving from an effort-based system to one based on catches (reduced by 30 %), without appropriate arrangements to offset unfair or illegal practices, would be the immediate closure of a very high number of businesses operating legally, together with loss of jobs, without necessarily solving the environmental problems.

### 5.6 Regionalisation

5.6.1 The proposal makes no detailed provision for 'taxation'. This loophole could create a serious problem of competition between States due to the different costs for businesses from country to country, arising from factors such as pay, social and welfare charges and markets.

5.6.2 The EESC notes in particular that if regionalisation is defined solely in terms of protection of fish stocks, the EU would have to manage new and sharp conflicts in which company profits would vary according to business costs rather than the product of fishing.

### 5.7 Technological provision and controls

5.7.1 The EESC agrees with the need to make controls more effective by adopting digital technologies, although it would point out that, unlike the Baltic, the Adriatic coast features a large number of small ports (FAO-AdriaMed lists 238 fisheries ports between Italy, Slovenia and Croatia<sup>(37)</sup>) and many small vessels. The relevant authorities and businesses (already in crisis) will therefore need time and resources to adjust to the new legislative plan.

5.7.2 In contrast to the Commission's argument, the EESC considers that selecting between ports for landing fish (ruling out the smaller ones) would be highly damaging for local communities. The Committee also considers that the economic impact on this measure on smaller vessels should be examined in greater detail, since under the regulation it would apply to vessels of eight metres or more.

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<sup>(36)</sup> The average income per fisherman is EUR 18-20 000 per annum, compared to EUR 60-80 000 per annum in the Baltic and North Seas.

<sup>(37)</sup> Number of ports broken down by individual countries: Croatia 147; Italy 89; Slovenia 3 ([www.faoadriamed.org](http://www.faoadriamed.org)).

## 5.8 Quality certification

5.8.1 The proposal makes no provision for quality certification/labelling mechanisms to support the economic sector affected by the reform. This aspect would be highly appreciated by consumers, who are constantly looking for healthy, high-quality and sustainable products. Such a measure would also be effective in tackling illegal practices and unfair competition.

## 5.9 Price variation

5.9.1 The Commission does not take sufficient account of the adoption of measures designed to counter the natural increase in the prices for small pelagics due to reduced catches, the main effect of which will be for these species to be bought by third countries lacking adequate controls and guarantees, particularly in environmental terms.

## 5.10 involvement of organised civil society

5.10.1 The EESC is surprised that the MEDAC opinion, summarising the views of all the relevant stakeholders (entrepreneurs, workers, cooperatives, environmentalists and consumers), published on 11 March 2016<sup>(38)</sup> and representing more than two years' work, has not been taken into sufficient consideration, to the extent that the Commission's proposal appears radically different and in some areas in absolute opposition.

Brussels, 31 May 2017.

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

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<sup>(38)</sup> MEDAC, Medac advice on LTMP for small pelagics in GSA 17 (Northern Adriatic), Prot. 94/2016, March 2016.

**Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021’**

(COM(2017) 54 final — 2017/0017 (COD))

(2017/C 288/10)

Rapporteur: **Thomas KROPP**

|                           |                                                                                 |
|---------------------------|---------------------------------------------------------------------------------|
| Consultation              | Council, 21/02/2017<br>Parliament, 13/02/2017                                   |
| Legal basis               | Articles 192 (1) and 304 of the Treaty on the Functioning of the European Union |
| Bureau decision           | 21/02/2017                                                                      |
| Section responsible       | Agriculture, Rural Development and the Environment                              |
| Adopted in section        | 17/05/2017                                                                      |
| Adopted at plenary        | 31/05/2017                                                                      |
| Plenary session No        | 526                                                                             |
| Outcome of vote           | 192/0/2                                                                         |
| (for/against/abstentions) |                                                                                 |

## 1. Conclusions and recommendations

1.1 Although the amendments proposed by the Commission will have the effect of maintaining a regulatory framework specific only to airlines operating intra-EEA flights beyond 2017, the suggested amendments pave the way for EU-led support and implementation of the non-distortive global scheme Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)<sup>(1)</sup> as of 2020.

1.2 The Committee endorses the Commissions’ proposal (Proposal) with some reservations. If adopted, the environmental ambitions of the EU ETS would be lower than the full scope of the EU ETS and such a scheme could be somehow detrimental to the EU’s domestic climate targets and international commitments; but at the same time, the EU would credibly demonstrate its support for the global measure so that the global mitigation impact can be pursued.

1.3 Enlarging the scope of the current EU ETS for aviation to cover all incoming and outgoing flights to/from the EEA would create the risk of international trade disputes about the validity of a unilateral extra-territorial application of EU goals, and delay the consensus-building process to secure uniform implementation of a multilaterally agreed scheme.

1.4 EU action is required to avoid distortions to competition within the single market in aviation when implementing the global market-based measure in the European Union, while making sure that CORSIA’s environmental integrity is as high as possible based on the experience of the ETS. The political debate on the functionality of a stand-alone EU-specific way forward has to take into account the development of CORSIA and whether it eventually meets its objectives.

<sup>(1)</sup> The Plenary of ICAO’s 39th Assembly recommended adoption of a final resolution introducing the Carbon Offset and Reduction Scheme for International Aviation.

1.5 There is a need for urgency in the legislative process. The adoption of the Proposals is required before the end of 2017 so that the preparatory measures for implementing CORSIA can be undertaken as of beginning 2018. EU-specific regulations should only be seen and amended to promote global market-based measures. The Committee urges the Council and European Parliament to maintain momentum for the timely implementation of CORSIA in a uniform and non-distortive manner.

1.6 The Committee supports the balanced approach as advocated by the Commission, which maintains the leverage which the Commission has built up with the EU ETS, but addresses a global issue globally, and thereby reduces the continuing risk of carbon leakage and competitive disadvantages for Europe. The Commission is requested to inform the consumer that the emissions stemming from international aviation are a global issue. If dealt with appropriately by all International Civil Aviation Organization (ICAO) Member States, CORSIA will lead to carbon-neutral growth which decouples traffic growth from the growth of emissions, irrespective of where air travel takes place.

1.7 The Committee has decided to organise a public EESC conference with the participation of all relevant stakeholders to give them the opportunity to express the views of organised civil society concerning the political, social, economic and environmental consequences of this regulatory initiative.

## 2. Background

2.1 The EU's Emission Trading Scheme (EU ETS) was introduced in 2005; it capped the emission of industrial sectors within the EEA. The cap consists of allowances which, in their totality, equal the amount of tonnes of CO<sub>2</sub> which can be emitted under that cap. The general cap is reduced every year by 1,74 %, thus benefitting industries which need less allowances and obliging pollutant industries to buy more allowances. The scheme requires governments to determine how the overriding emission reduction targets can be achieved, so that the totality of the EU's CO<sub>2</sub> emissions will be reduced.

2.2 In 2008, the EU agreed to include aviation as a sector in its ETS as of 2012. For the first time, a sector was tasked with adhering to emission reduction targets, as opposed to Member States. The aviation emissions were provisionally capped below their average level between 2004 and 2006. The cap on aviation permits was separate from the cap on the overall EU ETS emissions. According to the ETS for aviation, as from 2012, aircraft operators were obliged to submit emission allowances for every tonne of CO<sub>2</sub> emitted for flights to or from an airport within the EEA. In order to cope with traffic growth and thus the need for aviation growth, airlines were granted the right to purchase additional supplies of allowances in auctions where other sectors made permits available. The cap for aviation allowances was reduced from 97 % of historical emissions (between 2004-2006) in 2012 to 95 % of that base in the phase from 2013-2020. During this time-frame, 82 % of the allowances are allocated free of charge to aircraft operators and 15 % are auctioned.

2.3 The inclusion of aviation into an emissions trading scheme has been the object of highly controversial discussions. The difficulties are inherent in the very nature of aviation as an international service industry, the CO<sub>2</sub> emitters of which are mobile, thus rendering the task of allocating CO<sub>2</sub> emission in a given airspace to a national government difficult. Several basic issues are, however, internationally undisputed:

2.3.1 Aviation accounts for at least 2 % of global emissions, and international aviation represents 1,3 %.

2.3.2 No sector should be exempted from mitigating the effects of the emissions on climate change, thus the maritime and aviation sectors should be included in global schemes to mitigate the impact of CO<sub>2</sub> on climate change.

2.3.3 Over time, consensus emerged that the disadvantages of taxes on CO<sub>2</sub> emissions outweighed the advantages of market-based measures. Taxes are paid in their totality from day 1, whereas schemes such as the ETS envisage free allowances upfront as an incentive to be as efficient as possible and — by trading unused allowances — turn a cost into a revenue source. Furthermore, taxes are by definition not objective-driven, but are paid into the treasury of national governments, whereas market-based mechanisms can be coupled with offset measures to directly compensate for the emissions.

2.4 The main dispute about the inclusion of aviation into the EU ETS centred around the issue of applying the scheme internationally. The EU Commission argued that climate change as a global phenomenon cannot be tackled effectively through regional measures alone. It therefore sought implementation of the EU ETS for aviation for all airlines flying to/from airports in the European Union irrespective of whether these are registered in a Member State. However, the unilateral imposition of such a mechanism on third countries flies in the face of the sovereignty of each nation world wide. In the absence of a bi- or multilateral international agreement on the inclusion of a market-based measure on services between sovereign nations, it remained doubtful according to which legal basis the European Union could impose any such scheme on third countries. The legality of the EU to cover flights to/from third countries was decided by the European Court of Justice in 2016 <sup>(2)</sup>. Apart from the legal challenge <sup>(3)</sup>, the EU faced the threat of retaliatory trade sanctions from larger trading nations.

2.5 Several large trading nations, such as China, Brazil, the USA, India and Russia coordinated efforts to oppose the unilateral implementation of the scheme. On 12 November 2012, under international pressure, the Commission issued a proposal to 'stop the clock' for one year on the aviation ETS. The 'stop-the clock' proposal was formally adopted by Council and the European Parliament in April 2013, just before airlines were required to surrender allowances for 2012; it reduced retroactively the scope of the aviation ETS to intra EEA flights.

2.6 In March 2014, the Regulation (EU) No 421/2014 of the European Parliament and of the Council <sup>(4)</sup> was adopted which extended the 'stop-the-clock' intra EEA scope until the end of 2016 with a full snap back to the original scope of the ETS (all flights to and from airports in the EEA) unless the 2016 ICAO Assembly provided for sufficiently robust progress towards a global scheme.

2.7 Although questioned by several NGOs as to whether the Agreement was sufficient to serve a useful purpose, it is widely held that the Paris Agreement of the United Nations Framework on Climate Change signed on 12 December 2015 <sup>(5)</sup> in Paris was a major breakthrough towards international consensus on the need for further internationally coordinated action to mitigate the impact on climate change. The Agreement served as a catalyst for collective action at all levels. An increasing number of governments signed the Agreement in the months that followed its publication <sup>(6)</sup>.

2.8 The Paris Agreement builds upon the Convention and — for the first time — brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so. As such, it charts a new course in the global climate effort <sup>(7)</sup>.

2.8.1 The Paris Agreement's central aim is to strengthen the global response to the threat of climate change by keeping the global temperature rise well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1,5 degrees Celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change. To reach these ambitious goals, appropriate financial mechanisms, a new technology framework and an enhanced capacity building framework will be put in place, thus supporting action by developing countries and the most vulnerable countries, in line with their own national objectives. The Agreement also provides for enhanced transparency of action and support through a more robust transparency framework <sup>(8)</sup>.

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<sup>(2)</sup> Document 62015CJ0272 — Judgment of the Court (Fourth Chamber) of 21 December 2016, Case C-272/15.

<sup>(3)</sup> Subsequent to the decision in 2008 to include aviation in the EU ETS scheme as from 2012, US carrier litigated in the UK arguing that the ETS was illegal under international law.

<sup>(4)</sup> OJ L 129, 30.4.2014, p. 1.

<sup>(5)</sup> [http://unfccc.int/documentation/documents/advanced\\_search/items/6911.php?prirf=600008865](http://unfccc.int/documentation/documents/advanced_search/items/6911.php?prirf=600008865).

<sup>(6)</sup> 43 Parties of 197 Parties to the Convention have ratified. On 5 October 2016 the threshold for entry into force of the Paris Agreement was achieved. The Paris Agreement entered into force on 4 November 2016. The first session of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA 1) took place in Marrakech, Morocco from 15-18 November 2016.

<sup>(7)</sup> Text taken from UNFCCC website.

<sup>(8)</sup> Further information on key aspects of the Agreement can be found here.

2.8.2 The Paris Agreement requires all Parties to put forward their best efforts through 'nationally determined contributions' (NDCs) and to strengthen these efforts in the years ahead. This includes requirements that all Parties report regularly on their emissions and on their implementation efforts <sup>(9)</sup>. In 2018, Parties will take stock of the collective efforts in relation to progress towards the goal set in the Paris Agreement and to inform on the preparation of NDCs. There will also be a global stocktake every 5 years to assess the collective progress towards achieving the purpose of the Agreement and to inform further individual actions by Parties.

2.9 It is widely believed that the Paris Agreement delivered the momentum for an outcome at the ICAO Assembly in 2016 specifically for civil aviation <sup>(10)</sup>. After three years of negotiations since the ICAO 38th Assembly in 2013, the ICAO Member States agreed on 6 October to implement a Global Market Based measure to compensate for post-2020 emissions growth of international aviation. The Plenary adopted a Resolution introducing the Carbon Offset and Reduction Scheme for International Aviation (CORSIA) <sup>(11)</sup>. This scheme requires airlines to offset some of their emissions, but not necessarily reduce their own emissions.

2.10 According to the Assembly resolution, the average level of CO<sub>2</sub> emissions from international aviation covered by the scheme between 2019 and 2020 represents the basis for carbon neutral growth from 2020 against which emissions in future years are compared. In any year from 2021, when international aviation CO<sub>2</sub> emissions covered by the scheme exceed the average baseline emissions of 2019 and 2020, this difference represents the sector's offsetting requirements for that year.

2.11 ICAO has decided upon a phasing-in of the implementation to accommodate special circumstances and respective capabilities (SCRC) of the contacting States. The scheme will be voluntary from the beginning followed by participation of all States except certain exempted States.

The ICAO has decided to follow a route based approach, to minimize the competitive impact of CORSIA on operators. Routes affected by exemptions will be exempted for each airline operating on these routes.

2.12 The Pilot Phase (2021-2023) and First Phase (2024-2026) apply to States that have volunteered to participate. As of 12 October 2016, 66 States intend to volunteer to participate in the global MBM from the beginning. The Second Phase (2027-2035) applies to all States except the exempted States, unless these volunteer to participate. The EESC welcomes the agreement; however, due to the voluntary nature of it, other sectors might have to make up the difference to comply with EU climate targets.

2.13 CORSIA's cornerstones, which need to be agreed and published by ICAO, are the methodology for monitoring, reporting and verification of individual operators' emissions (MRV), the Emissions Unit Criteria (EUC), and the registries. However, ICAO will provide the resources for all States to put in place the necessary infrastructure <sup>(12)</sup>. The details of these aspects have not yet been agreed upon; they will be critical for the environmental effectiveness of CORSIA, which should be in line with ambitious standards.

2.14 The airlines will be able to fulfil their offsetting requirements by purchasing offset credits from carbon markets. The emissions unit (one unit equals 1 tonne CO<sub>2</sub>) will therefore be reduced outside of the international aviation sector. EUCs are yet to be worked out. It will be crucial to ensure that a tonne of CO<sub>2</sub> emitted by an aircraft operator will really equal a tonne of CO<sub>2</sub> saved in another sector.

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<sup>(9)</sup> Further information on NDCs can be found here.

<sup>(10)</sup> There is no equivalent international UN sub-organisation dealing with emissions from military aircraft. The EU ETS likewise does not deal with emissions from military aircraft. Although clearly with the exception of flights on official mission, the study group expressed interest in evaluating the impact of military training flights on CO<sub>2</sub> levels. No public information has been collected on emissions from military aircraft regionally, nationally or globally.

<sup>(11)</sup> CORSIA is one element in a bundle of measures, addressing technology of aircrafts and engines, operations and sustainable alternative fuels as new energy sources.

<sup>(12)</sup> A list of all requirements in detail is appended hereto under Appendix 1.

2.15 In view of the discussions within ICAO for well over a decade, the Agreement reached in 2016 has been credited as being historic. It caters for the differences which have in the past repeatedly led to failure to achieve a consensus. The differences of opinions of the ICAO Member States are due to the different economic maturity of the nation concerned, as well as in their economic clout and general policy on environmental issues. The large number of States prepared to be involved from the beginning in CORSIA will generate a momentum for other States to likewise join the scheme. However, as yet, CORSIA is in need of agreement by 1 January 2019 on the MRV, on the EUC by 2018, on the implementation of a regulatory framework by 2020, as well as on the implementation of the registries by January 2021.

### 3. Assessment of the Proposal

3.1 If no changes are made to Regulation (EU) No 421/2014, the text as it stands will have the effect of reverting the EU ETS for aviation to its original scope, and thus cover all international flights to/from airports in the EEA. This would mean that aircraft operators would have to surrender allowances for their full emissions to and from third countries by 30 April 2018 <sup>(13)</sup>. As outlined above <sup>(14)</sup>, Regulation (EU) No 421/2014 was suspended until an assessment of the outcome of the 2016 ICAO Assembly will have been made. The Commission in its Assessment <sup>(15)</sup> deems that the ICAO Resolution on the principles of a Global Market Based Mechanism (GMBM) is in line with the EU's aspirational goals and policies. Therefore the text of Regulation (EU) No 421/2014 needs to be amended to again avoid an implementation of an EU instrument despite EU consensus on a GMBM. The Commission's proposal is based upon the following considerations:

#### 3.1.1 *The format*

In view of the limited time for the legislative process to be completed, the Commission proposes that the measure should take the form of a Regulation which would apply directly in all Member States and be binding in its entirety, so that the amendments can be applied and implemented by all Member States in a uniform fashion before the compliance deadlines come into effect in March and April 2018.

#### 3.1.2 *The Impact Assessment* <sup>(16)</sup>

The Commission favours a continuation of the status quo, i.e. a continuation of the current application of the EU ETS for intra-EEA flights between 2017-2020 (and thus no snap back to the original scope for international flights as from 2017). The Commission confirms that the EU ETS in its current intra-EEA scope has contributed to approximately 17 million tonnes of CO<sub>2</sub> reductions per year and therefore aviation does contribute to climate change goals, as do other sectors. Furthermore, the Commission confirms that maintaining the intra-EEA scope would be welcomed by third countries, and enable a focus on implementation of the necessary steps to implement the GMBM in a timely and harmonised fashion.

#### 3.1.3 *Deadlines*

The Commission proposes to extend effectively the 'stop the clock' approach beyond 2016, applying it in the same manner as of 2017 as in 2016, and give ICAO an opportunity to establish the necessary tools to effectively apply the GMBM. The Commission would then carry out further assessments and review the EU ETS for the post-2020 period. No expiry dates are set for this new revision of the Regulation.

3.1.4 Article 28(a) is modified so that derogations for international flights to/from airports in the EEA are extended from after 2016, whereas flights within the EEA remain covered.

3.1.5 A new Article 28(b) is introduced to prepare for the introduction of a GMBM. This article links the implementation of the GMBM to reporting requirements of the Commission to the European Parliament on the status of implementation and the degree to which the EU ETS requires modifications for it to be fully applicable in the EEA as well <sup>(17)</sup>.

3.1.6 Article 28c empowers the Commission to adopt MRV mechanisms for the purposes of implementing the GMBM.

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<sup>(13)</sup> As referred to in Directive 2003/87/EC of the European Parliament and of the Council (OJ L 275, 25.10.2003, p. 32).

<sup>(14)</sup> See para. 2.6.

<sup>(15)</sup> Explanatory Memorandum to Proposal for Regulation 0017/2017 (COD).

<sup>(16)</sup> See Explanatory Memorandum page 6.

<sup>(17)</sup> This article reflects the fact, that flights within the EEA are international flights and that CORSIA should be the only market based measure for international aviation according to the ICAO resolution from 2016.

3.1.7 As a technicality, Annex 1 is amended to extend the exemption for non-commercial aircraft emitting less than 1 000 tonnes CO<sub>2</sub> per year from 2020-2030. These represent only 0,2 % of all emissions and their inclusion would constitute a disproportionate administrative burden.

3.2 The discussion in diverse fora, and as reported by the Commission <sup>(18)</sup>, reveals potential controversy on three issues:

3.2.1 The need for more stringent provisions in the EU ETS Directive for the 2017-2020 period. Apart from issues of practicability, this gives rise to the question of whether such a controversial discussion at a time when the focus should be on the implementation of a GMBM is helpful, or even not detrimental for the competitiveness of the industry, and for the position of the EU in international negotiations on the technicalities of the GMBM; furthermore, it is doubtful whether modifications to the EU ETS at this stage would provide sufficient added value in terms of CO<sub>2</sub> reduction to warrant global economic, political and trade risks. At the very least, such deliberations, appear premature until such a time as greater clarity has been established about the perspectives presented by CORSIA.

3.2.2 The need to put a time-limit on the new revision of the EU ETS. This is understandable in as much as repeated stop-the-clock amendments cannot become a final regulatory way forward. At the same time, the final form of CORSIA is not yet known and Europe's integration of CORSIA into EU policy will need to be reassessed closer to 2020. The inherent risk is, however, that planning stability suffers if the stakeholders know that a regulation is time-limited, but do not know if a new regulation will replace the old one, or whether a snap-back provision kicks in which would re-activate international trade disputes which many stakeholders do not wish to see repeated. The absence of a time-limit has the distinct advantage that the Commission can finalise its impact assessments and reviews before presenting an amendment to the EU ETS Directive.

3.2.3 The need for rapid consensus between the European Parliament and the Council. Both EU institutions should not be drawn into protracted discussions about the past effects of the EU ETS, but focus their political discussions on the best way to promote the harmonised and timely implementation of a GMBM. The deliberations on the EU Commission's proposal should be finalised before the end of 2017, so as to avoid a snap-back.

4. Given its unique composition and expertise, the EESC is ideally positioned to inject into the political discussion the views of organised civil society concerning the political, social, economic and environmental consequences of this regulatory initiative. Thus the EESC has decided to follow this opinion with a conference organised with the participation of all relevant stakeholders.

Brussels, 31 May 2017.

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

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<sup>(18)</sup> Executive Summary of Impact Assessment accompanying document amending Directive 2003/87/EC.

**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Accelerating Clean Energy Innovation’**

(COM(2016) 763 final)

(2017/C 288/11)

Rapporteur: **Christophe QUAREZ**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | European Commission, 17.2.2017                                     |
| Legal basis               | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible       | Transport, Energy, Infrastructure and the Information Society      |
| Adopted in section        | 16.5.2017                                                          |
| Adopted at plenary        | 1.6.2017                                                           |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 173/2/7                                                            |
| (for/against/abstentions) |                                                                    |

## 1. Conclusions and recommendations

1.1 The European Economic and Social Committee welcomes the fact that the Commission reaffirms its ambition to speed up the transition towards a competitive low-carbon economy with a comprehensive strategy on incentives for private investments, tailored financial instruments and financing towards research and innovation.

1.2 In its communication <sup>(1)</sup> the Commission presents a wide range of financial instruments and funding options to support low-carbon innovation. The EESC backs the Commission's intention to stimulate additional investment throughout the entire innovation value chain.

1.3 The EESC is nevertheless concerned about the complexity and variety of such aid. It therefore welcomes the Commission's intention to set up a one-stop advisory service to guide project promoters and investors, but asks that an effort be made to simplify the financing options. These subsidies are, in the Committee's view, too numerous and difficult to access for very small enterprises (VSEs) and local authorities.

1.4 The EESC suggests that the Commission encourage the Member States to pool their resources for carrying out large-scale projects on low-carbon innovation in order to improve the cooperation between key European research stakeholders. This will speed up the coordination of these stakeholders, making them more competitive.

1.5 The EESC notes that EU climate policies must use investment and innovation to stimulate the transformation of these sectors and certainly not trigger their decline. On no account can the relocation of production substitute a policy to combat climate change.

1.6 The best conduit for low-carbon innovation, in the EESC's view, is a regulatory framework that makes carbon expensive (it currently stands at around EUR 7/tonne) in order to send a very clear signal to investors that carbon technologies will lose their present position in Europe in the medium term.

1.7 The EESC acknowledges that the European Union is one of the global leaders and largest public funders of clean energy research and innovation with over EUR 10 billion in funding in this area. Research and innovation are key to supporting Europe's global competitiveness and leadership in advanced energy technologies and energy efficiency solutions.

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<sup>(1)</sup> COM(2016) 763 final.

1.8 The EESC welcomes the emphasis given to both ends of the innovation chain, where Horizon 2020 plays a key role with its bottom-up approach to fund ground-breaking fundamental research through the European Research Council as well as with the anticipated creation of a European Innovation Council whose aim is to help industries — in particular small and medium-sized enterprises (SMEs) — to create new markets.

1.9 The EESC would like to understand better the plans of the Commission to explore new approaches for mission-driven research and innovation. In particular the processes for identifying and selecting such projects have to be described in more detail.

1.10 The EESC calls for the participation of civil society in the new energy-research platform the Commission wants to put in place to bring together energy specialists from the social sciences and humanities and technical fields.

## **2. Gist of the Commission communication**

2.1 The Commission reaffirms its ambition to speed up the transition towards a competitive low-carbon economy.

2.2 To this end, it is putting forward a legislative package centred on three major objectives:

- making energy efficiency a priority;
- making Europe a global leader in the renewable energy sector;
- fair treatment for consumers.

2.3 Within these parameters, the Commission sets out a comprehensive strategy detailing the main policy levers the EU can use to stimulate private investment in clean energy innovation:

- creating strong, joined-up incentives for private investment in clean energy research and development;
- deploying tailored financial instruments to lessen the risk entailed in private investment in clean energy technologies or untested but promising business models, especially where these involve scientific, technological or market-related uncertainties;
- steering European Union (EU) financing towards research and innovation (under Horizon 2020, for example);
- moving the regulatory framework towards Member State energy subsidies going to carbon-free forms of energy rather than fossil fuels.

2.4 The Commission's communication sets out four priority technology areas:

- decarbonisation of the EU building stock by 2050 — buildings account for 40 % of energy demand and almost 75 % of EU building stock needs renovation to improve energy efficiency;
- strengthening EU leadership in the renewable energy sector and maintaining its dominant position in the world in such technologies;
- developing affordable means of energy storage, in particular helping to relaunch the production of battery cells in Europe;
- promoting electromobility through the development of cheaper, longer-life batteries and faster charging methods.

2.5 The Commission also proposes to facilitate coordination of clean energy innovation endeavours with cities, regions and Member States.

### 3. General comments

3.1 On 30 November 2016, the European Commission presented a very concentrated package of measures entitled 'Clean energy for all Europeans', which consists of a set of proposals designed to reconfigure the energy market — renewables in particular — in order to comply with the commitments made by signing up to the Paris climate agreement.

3.2 This agreement included a pledge by the EU to cut its greenhouse gas emissions by 40 % by 2030. In October 2014, however, the EU also established its own framework on climate and energy for 2030, with two further objectives: 20 % of renewables in electricity production in 2020 and at least 27 % in 2030, and from 20 % to at least 27 % for energy savings in the same time frame.

3.3 The EESC has in numerous opinions endorsed the need to accelerate the transition towards a competitive low-carbon European economy, while respecting the positions and proposals expressed by civil society.

3.4 In calling for a 'fair transition', the EESC has always refused to pit employment against environmental protection. These two goals must be pursued with equal resolve.

3.5 As far as the EESC is concerned, EU climate policies must use investment and innovation to stimulate the transformation of these sectors and certainly not trigger their decline. On no account can the relocation of production substitute a policy to combat climate change.

3.6 So far, the EU's energy innovation policy has primarily stressed technological development, neglecting what is really important for the public, which is meeting their energy needs — such as heating, mobility and lighting.

3.7 In its communication the Commission now accepts the position of consumers at the centre of the energy system as producers of decentralised energy networks or by virtue of their calls for competitive low-carbon solutions.

3.8 The EESC welcomes this development, since an innovation strategy for citizens starts with an analysis of their needs and their energy behaviour.

3.9 In its communication the Commission presents a wide range of financial instruments and funding to support low-carbon innovation. The EESC backs the Commission's intention to stimulate additional investment throughout the entire innovation value chain, but is concerned about the complexity and variety of such aid, which make it difficult for very small enterprises or local and regional authorities, in particular, to access.

3.10 This is why the Committee welcomes the Commission's intention to set up a one-stop advisory service to guide project promoters and investors, but asks that an effort be made to simplify the financing options.

3.11 It is, in fact, difficult to navigate among the following: the SET Plan, the Innovation Fund of the ETS, the 2020 European Fund for Energy, Climate Change and Infrastructure, InnoEnergy, InnovFin, Horizon 2020, the European Fund for Strategic Investments and the European Investment Bank (EIB) <sup>(2)</sup>.

3.12 In its opinion on *Energy Technologies and Innovation* <sup>(3)</sup>, the EESC noted that major innovations had not come from the big industry sectors and companies that dominated the market, but from 'specialists' from, for example, some small and medium-sized enterprises (SMEs).

### 4. Specific comments

4.1 The EESC welcomes the Commission's intention to reduce the oil and coal subsidies of some Member States, but reiterates the need to anticipate industrial change and propose alternatives in terms of training and employment to the workers, especially in mining.

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<sup>(2)</sup> OJ C 268, 14.8.2015, p. 27.

<sup>(3)</sup> OJ C 67, 6.3.2014, p. 132.

4.2 Public backing for the energy transition, in terms of jobs, is essential for the political support of the Member States.

4.3 The best conduit for low-carbon innovation, in the EESC's view, is a regulatory framework that makes carbon expensive (it currently stands at around EUR 7/tonne) and thus sends a very clear signal to investors that carbon technologies will lose their present position in Europe in the medium term.

4.4 There is little mention of carbon capture and storage (CCS) technology, even though the Commission considers it indispensable to achieving the 2050 targets.

4.5 The Committee is surprised, in this connection, that the Commission does not explain why the tools put in place since 2008 to encourage the deployment of carbon capture and storage technology in Europe have not worked.

4.6 The EESC supports the Commission's intention of decarbonising the EU's building stock by 2050. This alone is responsible for over 40 % of the Union's final energy demand.

4.7 The challenge of renovation to make the building stock more energy-efficient is a considerable one, but the Committee fails to see the tools and financial support to achieve this in the Commission's communication.

4.8 The technical methods (insulation, renewable energy for heating and hot water) exist for new buildings, often as a result of specific energy-efficiency regulations in Member States, but subsidies for such renovation of old buildings are known to be inadequate, even though it is often the most disadvantaged families that live in energy-inefficient housing.

4.9 When it comes to another carbon intensive sector, transport, the EESC supports the Commission's objectives, but wonders about some aspects:

- It is indeed essential to further electromobility by producing battery cells in Europe and making storage part of electricity systems, but the EESC wonders about the communication's lack of regulatory or financial arrangements for developing electric charging stations on the Union's roads and motorways, despite the fact that these are needed to ensure the promotion of electric vehicles.
- In order to complement the measures on technological innovation to decarbonise the transport sector, the EESC calls on the Commission to investigate road haulage, promoting intermodal systems by developing road-rail transport and freight on inland waterways. The modal shift from private cars to public transport should also be encouraged.

4.10 In terms of financing innovation, the EESC sees a key role here for crowdfunding. This is a sector that is really taking off (and soon to be more important than venture capital) and enables people to get directly involved in the innovation process for clean energies.

4.11 The EESC calls on the Commission to promote crowdfunding and to channel such funds to the four technology areas that it considers priorities (renewable energy, electromobility, storage methods, positive-energy housing).

Brussels, 1 June 2017.

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

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**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility’**

[COM(2016) 766 final]

(2017/C 288/12)

Rapporteur: **Stefan BACK**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | European Commission, 27.1.2017                                     |
| Legal basis               | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible       | Transport, Energy, Infrastructure and the Information Society      |
| Adopted in section        | 16.5.2017                                                          |
| Adopted at plenary        | 31.5.2017                                                          |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 150/0/0                                                            |
| (for/against/abstentions) |                                                                    |

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the Commission Communication on a European Strategy on Cooperative Intelligent Transport Systems [COM(2016) 766] (the Strategy) and its ambitious aim to implement a first set of services (Day 1 services) in 2019 to be followed by the development of a second set of services (Day 1.5 services).

1.2 The EESC takes note of the numerous potential benefits following the implementation of the Strategy, including more efficient passenger and goods transport, on the Trans-European Transport Network as well, higher energy efficiency, reduced emissions and reduced risk of accidents in the field of road transport. The Strategy is an important milestone toward the development of C-ITS and, ultimately, automated mobility. The EESC endorses this project and takes note of the high level of cooperation between different sectors such as transport, energy and telecommunications necessary to implement digital transport systems including infrastructure, vehicles and innovative services.

1.3 The EESC appreciates the added value for mobility of the Day 1 and Day 1.5 services in particular for passenger transport and goods transport including distribution systems and takes note of several ongoing test projects in European agglomerations that go beyond the Strategy and that already involve testing of automatic vehicles for passenger transport. The EESC in this context also notes the importance that the Strategy attaches to avoidance of rebound effects such as increased traffic and emissions through measures to integrate connected, cooperative and automated vehicles in sustainable mobility and logistics planning and promotion of public transport.

1.4 The EESC also takes note of the favourable effects on IT competence level, development of new skills, and improved competitiveness of the EU data, automotive and transport industries, particularly in a long term perspective.

1.5 The EESC also draws attention to the importance of privacy and data protection, which was already raised in its opinion on the ITS Directive <sup>(1)</sup>. It underscores that C-ITS data should be used for C-ITS purposes only and not be kept or used to other ends, except with the consent of the user. The EESC considers that it is vitally important to make this clear through legally binding provisions as a means to create confidence in the system and in accordance with EU legislation, including Article 8 of the EU Charter of Fundamental Rights <sup>(2)</sup>.

1.6 The EESC underlines the importance of common standards and cross border interoperability as a matter of implementing the internal digital market and to ensure efficient crossborder transport.

1.7 The EESC underlines that it is important that the implementation of the Strategy leaves room for local and/or company specific solutions, also, when duly justified and proportionate, at the expense of the general guarantee of interoperability and transparency requirements, whenever such solutions carry added value. Likewise, standardisation and transparency requirements must not be implemented in a way that hampers innovation.

1.8 The EESC draws attention to the importance of high standards of security to prevent hacking and cyber-attacks, high data protection standards and efficient compliance assessment. For the same reasons, dedicated security solutions will often need to be kept confidential.

1.9 Implementation of the Strategy may be a highly demanding process where the coordination method chosen will require constant communication, monitoring and follow up on the part of the Commission. Confidence building both among partners to the implementation process and with respect to the general public, including consumers, may be decisive for successful implementation. The EESC in this context draws attention to the rights of the handicapped to integration, as provided in the 2006 UN Convention on the Rights of Persons with Disabilities. The EESC recalls that its links with civil society could make it a useful partner in establishing a dialogue on implementation.

1.10 Regarding the legislative measures mentioned in the Strategy, the EESC underlines that it is important to avoid being too prescriptive. Interoperability and common standards must not therefore become an aim in itself, but should apply only where they serve a purpose that brings added value and do not hamper innovation and the need to resolve specific problems locally or at company level.

1.11 The Strategy addresses a first step in the implementation of C-ITS with comparatively limited effects on employment and working conditions (Day 1 and Day 1.5 services). It appears likely that it will be followed by deployment of automated vehicles with more significant effects on the workforce. For that reason, and to create a climate of mutual confidence, the EESC considers it important to start a social dialogue at an early stage to address possible issues concerning employment and working conditions.

1.12 The EESC underscores the urgency of advancing toward the next step in implementing C-ITS, that is, developing systems that also include vehicle-to-vehicle communication and traffic management. Testing projects and legislative planning appears to be well under way in Member States with an automotive industry and in the opinion of the EESC time is therefore of the essence if the EU wishes to play a significant part in promoting a European effort.

1.13 The C-Roads Platform set up in October 2016 is intended to play a significant role in implementing the Strategy. It has so far not been adhered to by all Member States. The EESC considers it urgent that all Member States adhere to this body.

1.14 The EESC appreciates the willingness of the Commission to support implementation through financial support. In this context the EESC also draws attention to the need to provide room for adequate planning of implementation measures at company level, bearing in mind, i.a., the financial constraints in the road haulage sector.

1.15 The EESC regrets the absence of a clear time planning for Day 1.5 services and beyond. The EESC also regrets the absence of an impact assessment. The reporting of the C-ITS platform contains elements that enable an evaluation of certain aspects of the Strategy, but in the opinion of the EESC this is not sufficient.

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<sup>(1)</sup> Directive 2010/40/EU of the European Parliament and of the Council (OJ L 207, 6.8.2010, p. 1) and OJ C 277, 17.11.2009, p. 85.

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31, OJ L 119, 4.5.2016, p. 1 and OJ C 229, 31.7.2012, p. 90

## 2. Background

2.1 The Commission Communication on a European Strategy on Cooperative Intelligent Transport Systems (C-ITS) [COM(2016) 766] (the Strategy) is closely linked to the Commission's political priorities, in particular its Agenda for Jobs, Growth and Investment, the Digital Single Market, and the Energy Union Strategy. It was presented as part of the so called energy 'Winter Package' comprising mainly proposals on electricity internal market design, energy efficiency and renewable fuels.

2.2 The Strategy does not directly address energy issues. It primarily addresses development, and practical and legal aspects of the development of cooperative transport systems, including connected cars/automatic vehicles and infrastructure. It is also linked to the implementation of the Digital Internal Market and the European Strategy for Low-Emission Mobility.

2.3 The Strategy underlines the potential of C-ITS development to boost the competitiveness of European industry with a big market and employment creation potential. The added value of action at EU level follows from higher volumes in a bigger market with common standards. C-ITS development is a first step toward automated vehicles. C-ITS services are to be based on common standards and to be implemented by 2019 and beyond. They are based on vehicle-to-vehicle and vehicle-to-infrastructure communication and do not dispense with the need for a driver.

2.4 The Strategy defines a number of C-ITS services that can be deployed at once (Day 1 C-ITS services list) and further services that would be deployed in a second phase as full specifications or standards might not be ready for deployment by 2019 (Day 1.5 C-ITS Services list). The Day 1 list covers hazardous location notifications and signage applications and the Day 1.5 list covers functions such as information on fuelling and charging stations, parking management and information (on and off street), park and ride information, connected and cooperative information in and out of a city, traffic information and smart routing.

2.5 The Strategy emphasises the cross sectoral character of C-ITS implementation which concerns all modes of transport, industry and telecommunications. The facilitation of transport following from the implementation of the Strategy must not lead to increased transport and more emissions.

2.6 A number of specific actions are set out to implement the Strategy. They cover the following eight areas.

- Large scale implementation in 2019 of at least Day 1 services through action by Member States, local authorities, vehicle manufacturers, road operators and the ITS industry with funding assistance (CEF, EFSI, ESIF). Day 1.5 services and further C-ITS development are not yet mature and development will be supported by the Commission through the Horizon 2020 programme and ESIF, where possible and the list of services updated through a continued C-ITS platform process.
- A common security and certification policy will be pursued through cooperation between the Commission and all relevant stakeholders. It will also be a foundation for addressing a higher service level (vehicle to vehicle, vehicle to infrastructure). Roles and responsibilities of a C-ITS European Trust Model and a possible governance role of the Commission to be analysed by the Commission.
- C-ITS service providers should offer clear and understandable terms to end users. The Commission will publish a first set of guidance on privacy protection in 2018 and C-ITS deployment initiatives should inform and create trust among end users, demonstrate the added value of use of personal data and consult with EU Data Protection Authorities to develop a data protection assessment template.
- Measures by the Commission and relevant stakeholders to ensure functioning communications on a frequency band provided by the Commission.
- Making use of the C-Roads platform to coordinate C-ITS implementation at operational level, including testing and validation. Further Member States are encouraged to join the platform.

- Development and publication by C-ITS initiatives of a compliance assessment process for Day 1 services. The Commission will develop a template for this process.
- The Commission will by 2018 in accordance with the ITS Directive adopt delegated acts on the continuity and security of C-ITS services, on practical implementation of the General Data Protection Regulation regarding C-ITS, on a hybrid communication approach, and on interoperability on the compliance assessment processes.
- The Commission will develop international cooperation in the C-ITS area.

### 3. General comments

3.1 The EESC welcomes the Strategy and takes note of the numerous potential positive effects of its successful implementation such as more efficient transport, both of goods and passengers, improved energy efficiency and reduced emissions, improved road safety and development of the digital economy.

3.2 The Strategy interlinks with several important ongoing strategies, namely the Digital Single Market, the Energy Union Strategy and the European Strategy for Low Emission Mobility, all of which have been welcomed by the EESC. The EESC also supports the cross-sectoral approach of the Strategy, and the new dimension this adds to transport policy.

3.3 The EESC in this context takes note of the link to the Digitising European Industry Strategy with respect to cooperative, connected and automated vehicles as a priority topic for boosting the competitiveness of European industry and an estimation of the market potential of such vehicles at 'dozens of billions of euro annually and job creation into hundreds of thousands'. The EESC finds it appropriate in this context to repeat its statement in its TEN/574 opinion on the Digital Single Market Strategy that invoking possible results of this kind might be an unnecessary risk and, at worst, negatively affect confidence, in particular in a case like this where successful implementation of the Strategy largely depends on the interest of Member States, local authorities, the automotive industry and other stakeholders.

3.4 The EESC likewise draws attention to the importance of the Strategy for efficient mobility, including urban mobility and the last and first mile of goods and passenger transport.

3.5 The EESC also attaches importance to the crossborder interoperability of the services to be implemented in order to help ensure smooth traffic flow on crossborder links. Both the services readily available now (Day 1 services) and those almost ready to deploy and ready for starting deployment from 2019, though not completely ready for large scale employment (Day 1.5 services) will be very helpful for the efficient implementation of the TEN-T, in particular the TEN-T Core Network Corridors.

3.6 Bearing in mind that the Strategy is presented as part of the Winter Package energy policy, the EESC would have appreciated not only a repetition of the well-known figures of road transport's share of emissions, but also some indication of the Strategy's expected effects in the form of improved energy efficiency and reduced emissions.

3.7 The Strategy to a great extent is to be implemented through a collaborative method, involving the Commission, Member States, local authorities and industry. The Commission intends to use the C-Roads platform set up in October 2016 and currently with an adherence of 12 EU Member States to coordinate implementation of deployment of C-ITS Services, testing and validation to ensure interoperability and to develop system tests. The Commission will support the development by deployment of a compliance assessment process. The EESC agrees that a coordination function is indispensable for a successful implementation process but regrets that not all Member States have joined the C-Roads platform which appears to have a considerable shortcoming in its capacity to act as an efficient coordination forum (currently eight Core Member States and four Associated Member States). The EESC would therefore suggest that the Commission urgently brings political level pressure to bear on Member States to ensure full adherence to the platform.

3.8 The EESC appreciates that the Commission intends to take measures to ensure coherence on a number of important points. It will for instance publish 'guidance' regarding the European C-ITS Security and certificate policy in 2017 and guidance regarding data protection in 2018. The Commission will also reserve the frequency band currently used for safe European Telecommunication Standard <sup>(3)</sup> Services for C-ITS Services. The EESC also takes note, however, that the Commission will also consider, where appropriate adopting delegated acts under the ITS Directive 2010/40/EC in 2018 on ITS security, data protection, the communication approach and interoperability. On top of that, legislation on continuity of ITS Services and compliance assessment may be adopted. The EESC regrets that there is nothing to indicate on what grounds the Commission will decide whether to legislate or stop at guidelines that are not legally binding. With respect to the Commission plans to adopt delegated legislative acts under Directive 2010/40/EU on ITS, the EESC repeats the point made already in its opinion on that Directive that the limits for such acts drawn by Article 290 TFEU must be observed. The EESC also underscores the urgency of prolonging the seven-year limit of the mandate to adopt delegated acts under Directive 2010/40/EU as the mandate to adopt such acts expires in August 2017.

3.9 The EESC approves the aim to achieve a cross sectoral and multi-layer implication of those concerned by the deployment of the C-ITS Services, that is, Member States, local authorities, vehicle manufacturers and transport operators. Success in implicating those elements in the implementation activities could provide a possibility to create confidence in the new services and give them a good start. The EESC in this context points to the rights of the handicapped to integration as provided in the UN Convention on the Rights of Persons with Disabilities (CRPD) adopted on 13 December 2006.

3.10 The EESC approves the importance attached to clear and understandable language in all relations with end users, highlighted as an important means to gain confidence in the proposed services. Legislation should respect the principles of the better legislation programme.

3.11 The EESC also underlines the importance of avoiding being over prescriptive in implementing the Strategy. It is important that there is room for parallel or dedicated solutions for specific purposes or for innovation. Too detailed and inflexible requirements may be a hindrance here and therefore prove contra-productive.

3.12 The EESC takes favourable note of the importance attached to financing and the willingness on the part of the Commission to make financial resources from EU funding such as CEF, EFSI and ESIF available for deployment of C-ITS services already operationally available and Horizon 2020 financing available for services still at development stage. The EESC underlines the importance of assessing the added value of projects, to ensure the best possible use of limited resources. The EESC in this context also draws attention to the strong competition in the road haulage sector, which is particularly highlighted in the Strategy, and which necessitate previsibility and room for long-term planning of investments needed to install or upgrade C-ITS components.

3.13 The introductory part of the Strategy pays a lot of attention to the development of automatic driving, that is vehicles that do not require driver intervention to move. The EESC nevertheless understands that the Strategy stops at implementation of vehicle-to-vehicle and vehicle-to-infrastructure communication. The Day 1 services, to be developed in 2019, will deal with hazardous location identification and signage applications whereas the Day 1.5 services deal with road planning, information on fuelling/charging stations, parking information etc. Hence, in the EESC's opinion, the important issues of responsibility for system errors or malfunctions or the important social issues that appear when employees are replaced by robots do not occur here, since the services addressed by the Strategy will be operated and supervised by human beings. Still, already in this context, the EESC wants to underscore that when developing C-ITS systems, including fully automated vehicles, particular attention should be paid to the needs of people with disabilities.

3.14 The EESC takes favourable note of the coherence envisaged in the deployment of the Strategy through the cross sectoral vision taken of the role of the C-ITS in the transport system through the synergies between modes and the improved possibilities of mobility/logistic planning enabled by certain C-ITS services and by the development of various skills.

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<sup>(3)</sup> Commission Decision 2008/671/EC (OJ L 220, 15.8.2008, p. 24).

3.15 The EESC also takes note of the cost/benefit analysis presented in January 2016 in the Final Report of the C-ITS Platform and anticipating a possible result of successful deployment of Day 1 services over a period from 2018 to 2030 where benefits would significantly outweigh costs on an annual basis by a ratio of to 3:1 when evaluated over the whole period. The analysis also concludes that benefits would start to accumulate between five and ten years after initial investments and that the result hoped for depends on a strong uptake of the services. The EESC nevertheless regrets that no cost/benefit analysis of the Strategy seems to have been carried out by the Commission.

3.16 The EESC again underlines the importance of active and continuous pressure being maintained on the implementation process in order to avoid a repetition of the so far unsuccessful implementation of the European Electronic Road Tolling System, decided on originally in 2004, and still not implemented, in spite of repeated efforts.

#### **4. Specific comments**

4.1 The EESC takes note of the mention of the connection between connected cars and the European satellite navigation systems, EGNOS and GALILEO, and underlines that the capacity of vehicles to communicate with satellite navigation systems must be technology-neutral and therefore all satellite navigation systems should be connectible, although where possible preference should be given to the European systems.

4.2 The EESC underlines the importance of opening a dialogue with the social partners at an early stage, in order to establish an atmosphere of transparency and confidence. In the EESC's opinion, this is already of paramount importance at the present stage of C-ITS implementation where it appears that the effects on social and/or employment conditions would be insignificant or none, in order to establish a climate of confidence in view of the much more significant effects that will follow from the introduction of automatic cars. The EESC also in this context draws attention to the importance of privacy and the need to ensure that data that concern privacy are not used for other than C — ITS purposes without consent. A clearcut and legally binding framework on this matter should be developed.

4.3 The EESC takes favourable note of the attention given to security, including the risk of hacking and cyber-attacks. In the EESC's opinion, this is a highly important issue and it is extremely important that equally high standards of security are applied in all Member States and in possible cooperation arrangements with third countries. The EESC draws attention to the fact that an obligation to give publicity to security related measures may undermine the very purpose of such systems.

4.4 The EESC underscores the importance of continuity when implementing communication systems in order to avoid, as far as possible, lost investments.

Brussels, 31 May 2017.

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

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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 on the internal market for electricity (recast)**

*(COM(2016) 861 final — 2016-379-COD);*

**Proposal for a Regulation of the European Parliament and of the Council on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC**

*(COM(2016) 862 final — 2016-377-COD);*

**Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast)**

*(COM(2016) 863 final — 2016-378-COD);*

**Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast)**

*(COM(2016) 864 final — 2016-380-COD)*

*(2017/C 288/13)*

Rapporteur: **Alfred GAJDOSIK**

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|---------------------------|----------------------------------------------------------------------------|
| Consultation              | European Parliament, 16.1.2017<br>Council of the European Union, 19.1.2017 |
| Legal basis               | Article 194(2) of the Treaty on the Functioning of the European Union      |
| Section responsible       | Transport, Energy, Infrastructure and the Information Society              |
| Adopted in section        | 16.5.2017                                                                  |
| Adopted at plenary        | 31.5.2017                                                                  |
| Plenary session No        | 526                                                                        |
| Outcome of vote           | 185/2/2                                                                    |
| (for/against/abstentions) |                                                                            |

## 1. Conclusions and recommendations

1.1 The EESC welcomes the Commission's proposal for a new market design, a risk preparedness regulation and the new organisation of the energy regulators' cooperation. They mark a further step from national regulated markets towards a market-based approach to electricity in the EU that guarantee security of supply at the lowest possible costs which meets the main interests of all European electricity consumers, including industrial, commercial and residential entities. However, this objective will only be achieved if there is a shift towards greater electrification of the economy, which is the most efficient and flexible way to implement it.

1.2 In accordance with previous opinions, the Committee highlights that well-functioning electricity markets are a precondition for fulfilling the goals of the Energy Union <sup>(1)</sup>. The EESC agrees with the Commission's view that for the market to function well, significant changes in the market design are necessary, particularly due to the increasing use of variable renewable electricity <sup>(2)</sup>. The integration of renewable energy in the existing market will not help. A new market is

<sup>(1)</sup> OJ C 383, 17.11.2015, p. 84; OJ C 264, 20.7.2016, p. 117.

<sup>(2)</sup> See also opinion TEN/626 'State of the Energy Union 2016' (see page 100 of this Official Journal).

needed. The Committee considers the general outline of the market design package to be a good answer to the need for these changes, paving the way to a cost-effective and financially viable energy transition.

1.3 The EESC appreciates the general approach of the market design package, especially the goals of putting consumers at the heart of the energy market, of increasing electricity supply and strengthening regional cooperation. The respective adaption of the market rules and the regulatory framework is an important step towards a stable supply of clean energy to all European consumers at the lowest possible prices. This notwithstanding, on some points there is still room for further improvement. In particular, more specific rules are needed <sup>(3)</sup>.

1.4 Decarbonisation is one of the strategic objectives of the Energy Union and therefore the aim of boosting investment in decarbonising the electricity market is to be supported. However, the best way to drive this forward are equal and fair market conditions, beneficial for both consumers and the green transition. The full internalisation of the external costs of conventional electricity generation that includes climate change related damages and damages to human health is crucial for efficient and effective decarbonisation. Appropriate taxation is the best approach to steer investments towards green electricity.

1.5 The EESC strongly supports stipulating that all consumers, including industry, commercial enterprises and private households, have a right to generate, store and trade energy themselves and that local energy communities have a right to support, develop or rent community networks. More specific rules are needed, however, to make it possible to assert these rights and overcome existing obstacles (grid access, unfair and inappropriate grid charges, legal and administrative barriers etc.).

1.6 Furthermore, the objective must be for European consumers to get the opportunity to fully participate in the entire electricity market, and thereby in the trade and supply of electricity. Specific rules to put in place the necessary conditions for this are missing in the Commission's proposals. Decentralised trading venues and trading structures that open up possibilities for directly trading even small energy units need to be developed. While decentralisation of energy electricity supply and trading is a prerequisite for full integration of consumers in the market, decentralisation does not mean a fragmentation of European electricity market.

1.7 While the Commission correctly addresses the aim to strengthen short term markets, in the long run this will not be enough to base investment in renewable electricity on market mechanisms. For this, renewable electricity must get the chance to also be traded by means of forward and future trade on decentralised markets which will only become possible if balancing products are traded using flexibility options.

1.8 Since the problem in many European countries today is not lack of generating capacity but capacity surplus, capacity mechanisms for conventional electricity generation should only be used as a short-term solution if balancing products cannot provide the needed security of supply bearing in mind investment stability for all market participants.

1.9 The EESC recalls that the problem of energy poverty needs to be taken into account for the future policy towards a low-carbon society. Prosum can be one approach to tackling this problem as long as vulnerable consumers are enabled to get access to the necessary capital by public loans or the help of municipalities, regions or other entities such as NGOs.

1.10 The EESC highlights that given the typical smaller scales of electricity generation from renewable energy and from cogeneration in block power and heat plants, well-functioning, modern and smart distribution grids are becoming increasingly important. National regulation must allow and encourage grid operators to undertake the necessary investments. Also, investments in improving the interconnection of national electricity grids are necessary. Both will help to secure energy supply and will create new workplaces in Europe.

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<sup>(3)</sup> See also opinion TEN/624 'Clean Energy for all Package' (not yet published in the OJ).

1.11 The EESC highlights that the objective of ensuring a high level of security of electricity supply, in a market environment where consumers play a central role, demands the intensive use of Information and Communication Technologies (ICTs), new planning methods and new tools for operating the electricity system, which together will enable the real-time identification of consumer and network needs and require strong investment in research, development and innovation (see point 3.13).

1.12 In terms of flexibility, electromobility, storage and other balancing options, the EESC supports the Commission's position to grant a prerogative to independent market actors to develop these important markets before grid operators are allowed to assume a role as manager or operator of the respective installations.

## **2. Content of the Commission communication**

2.1 In its proposed package, the Commission points out: Achieving the objectives of the Energy Union presumes a thorough reform of the electricity market. The integration of renewable energy in the existing market will not help. A new market is needed.

2.2 The European Commission orients its new market policy around two principles:

- New market rules that reflect the main characteristics of renewable energy — decentralisation and flexibility — and that contribute to increasing security of supply and cost effectiveness must be deployed.
- Consumers should be at the centre of the new energy market.

2.3 The Commission's proposal also focuses on the question of how to strengthen security of supply through a risk preparedness approach.

2.4 A fourth aspect is a reform of regulatory oversight redefining the role and competences of the Agency for the Cooperation of Energy Regulators (ACER).

As a sectoral opinion, this opinion will primarily evaluate the legislative texts according to the extent to which they fulfil the principles outlined in point 2.2. In the EESC's view, since this question is mainly settled in the documents on the internal market for electricity (COM(2016) 861 final and COM(2016) 864 final), this opinion focuses in particular on these two documents.

## **3. General comments on market design**

3.1 For a decarbonisation of the whole energy system, including the heating and mobility sector, a correspondingly high proportion of renewable energy in electricity production is needed. Against this backdrop, the Commission's approach is fundamentally right: the European electricity market must be developed so as to be compatible with renewable energy. The EESC appreciates this clear approach as an important step for accomplishing a European electricity market that helps overcome the existing hurdles such as physical constraints due to the lack of interconnections, and regulatory and tax diversity between Member States.

3.2 An important initial consideration is that variable renewable energy is, by its very nature, decentralised; in other words:

- Wind onshore and photovoltaics facilities are, on average, considerably smaller than conventional generation units.
- Energy from wind onshore and solar radiation is available virtually everywhere.
- It can be planned in a way that is attuned to consumption if the right market incentives are in place as even if renewable sources cannot be controlled, it is possible to predict their availability with high precision.

The same characteristics often hold true for other technologies such as cogeneration in block heat and power plants which will play an important role as flexibility and balancing options in the future energy markets thanks to their high efficiency.

3.3 On the one hand, these characteristics give rise to specific advantages, which the European Commission mentions to some extent in its proposals for the new market design. However, the Commission's proposal could be more coherent and concise when it comes to orient the market rules around these advantages. In this context, attention is drawn to the EESC's respective views formulated in the opinion 'Revision of the Renewable Energies Directive (TEN/622)' <sup>(4)</sup>. The fact that renewable energy and other decentralised technologies contribute to significantly increasing market liquidity is of particular importance to market design.

3.4 The new energy market will be characterised, as the Commission rightly emphasises, by much more generation units compared to the conventional generation structure that is characterised by very few power plants. As a consequence, there will be a significant increase in the variety of players involved in generating electricity. Making consumers more active participants plays a vital role here. Renewable electricity generation and cogeneration enable consumers to become producers, as the Commission has acknowledged in its proposal.

3.5 It is important to note that the idea of 'making consumers active consumers' is to refer to all categories of consumers, including commercial and industrial energy consumers that can achieve considerable cost savings through investments in decentral generation technology designed for self-consumption. Activation of consumers will thus not only lead to more liquid electricity markets, but also to further economic impulses: Small and big enterprises can gain from competitive advantages, added value will be generated locally, new employment can be stimulated. On the other hand, many private households do not have the financial means that are needed for becoming a prosumer. Consumer-friendly loans and the active aid of municipalities and regions may help here.

3.6 However, the activation of consumers is hindered by three elements.

3.6.1 First, almost none of the external costs of coal-fired and nuclear power plants are internalised. Amongst these costs those for health damages and climate change caused damages in particular are to be considered. The non-internalisation of these costs puts renewable energy that does not cause comparable external effects at a significant competitive disadvantage. Given that it is above all renewable energy that allows consumers to become more active, we have to conclude that the limited participation of consumers must be politically desirable, or at least willingly tolerated. No effort is made in the entire winter package to rectify this distortion in the market. The distortion is even bigger since non-internalising the external costs of conventional electricity increases the need to massively subsidise renewable energy.

3.6.2 There is another reason why the decentral technologies such as renewable energy or block power and heat plants are at a systematic disadvantage compared to conventional power plants. The existing design of wholesale markets favours large scale generation units. As the average renewable energy generation and block power and heat facilities are of considerably smaller scale and thus do not have the necessary economies of scale, they suffer from a competitive disadvantage.

3.6.3 Finally, many smaller players are unable to access the energy trading market due to legal restrictions, administrative rules, licensing and bureaucratic requirements. This affects private households as much as commercial and even industrial consumers.

3.7 With the political will to do so, these three shortcomings of the current electricity market could be rectified immediately. However, the EESC fears that the respective rules proposed by the Commission are not sufficiently clear.

3.8 Accurate taxation of CO<sub>2</sub> emissions, which constitute one of the most striking problems of the above mentioned external costs, is the least that needs to be done if the market distortion in favour of conventional electricity generation, as described in point 3.6.1, is to be eliminated. The EESC has called for this several times <sup>(5)</sup>.

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<sup>(4)</sup> Not yet published in the OJ.

<sup>(5)</sup> OJ C 82, 3.3.2016, p. 13.

3.9 The electricity market should be opened up for more decentralised structures, especially with regard to trading in order to compensate for the disadvantages mentioned in points 3.6.2 and 3.6.3.

3.10 Decentralisation must not mean fragmentation of the European electricity system. The Commission's assumption that electricity should be allowed 'to move freely to where it is most needed' is fundamentally correct. However, strong investments are necessary to improve the interconnections of national grids and a refinancing model that does not burden consumers too much has to be developed.

3.11 Demand oriented electricity generation — also with the aid of flexibility and balancing options like battery storage, power-to-heat, power-to-gas and vehicle-to-grid — is the best approach to keep grid expansion costs to a minimum. This explains why prosum, direct transactions between electricity generators and consumers, and strengthening balancing responsibility as proposed by the Commission are important tools that help to provide security of supply.

3.12 The European Commission's proposal generally reflects these mechanisms. The EESC endorses this approach that will have a positive impact especially on under-developed electricity markets that suffer from heavy over-regulation in some Member States.

3.13 In this context, the Commission's proposal, however, widely ignores the potential of digitalisation. Digitalisation enables consumption and production data to be recorded electronically at a granular level, down to the smallest units (i.e. individual kilowatts). Recording specific and individual consumer profiles by means of smart meters — and, in future, via the internet of things — in conjunction with the variety of participants in energy generation — give, literally speaking, each consumer the opportunity to become his own balancing manager. Education and training programmes are important for empowering as many consumers as possible to fulfil this role and thus removing the structural disadvantage (namely limited market liquidity) of decentralised forms of trade, like peer-to-peer transactions.

3.14 As a first step, the rules for balancing electricity (Articles 4 and 5 of the proposal for a Regulation COM(2016) 861 final) should be adapted so that energy measurement units can be recorded with a high degree of time precision. Specific short-term markets for trading these smallest quantities of energy should be established. Articles 6 and 7 of the proposal for a Regulation COM(2016) 861 final should be amended accordingly.

3.15 Regrettably, the European Commission has not proposed any initiative in this regard. Instead, Article 3 of the proposal for a Regulation COM(2016) 861 final states that market participation of consumers and small businesses is to be enabled by means of aggregators. Aggregators are mainly justified by portfolio effects and transaction costs. However, these would disappear if electricity trading were to be decentralised. Then electricity consumers and small businesses would have the chance to fully and directly participate in the electricity market if they want to play an active role and are capable to do this. It is telling that the European Commission makes no reference to the trade in electricity when it speaks of an 'equal footing' in Article 3(1)(i).

3.16 In this context, direct transactions between generators and consumers seem to be particularly economically promising, because in one price signal they can reflect various price components that — in contrast to the current situation in many Member States — are largely shaped by the market. For example, the price signal of direct transactions can reflect a variety of factors, such as:

- a flat-rate contribution to funding network infrastructure;
- a dynamic, transaction-specific contribution that reflects the use of ancillary services necessary for the specific transaction in the electricity grid;
- a capacity premium to fund electricity generation, storage and conversion installations, subject to negotiation between the parties to the transaction.

3.17 Business models for decentralised trade in electricity are not just being developed in some Member States (e.g. the Netherlands and Estonia); there are in fact very ambitious models that are already being used in several markets outside Europe, for example in the United States and in Australia. This is clearly a global trend. Europe can only make the most of its export opportunities in global energy markets if European businesses develop convincing models for decentralised, digitalised electricity trading. But the European Union should also give its companies the opportunity to initially put these models into practice on their domestic markets.

#### **4. Specific comments on particular aspects of the proposal for a Directive COM(2016) 864 final, as well as on the proposals for a Regulation COM(2016) 861 final, COM(2016) 862 final and COM(2016) 863 final**

4.1 The EESC welcomes the European Commission's clear commitment to decarbonising the electricity market. Given the reasoning put forward in point 3.6, however, the restriction of priority dispatch, as set out in Article 11 of the proposal for a Regulation COM(2016) 861 final, makes it more difficult to attain this goal at least as long as there is no full internalisation of external costs from conventional electricity generation. While it is principally correct to set up technology neutrality as a basic rule for dispatch management, this presumes a level playing field. Due to the non-internalisation of the external costs of conventional electricity generation, there is no level playing field. Before seeking to seriously curtail priority dispatch as envisaged in the Commission's proposal, a full internalisation of external costs must be achieved.

4.2 It should therefore be stipulated that for a limited period priority dispatch should be retained in all Member States with a proportion of renewable energy of below 15 %. Member States with a higher proportion should submit a corresponding dispatch framework to the European Commission for consideration. This dispatch framework should not distort the free market mechanism for low-carbon and cost effective flexibility options. The European Commission should examine this framework to assess whether it is able to support decarbonisation.

4.3 In any case, for an aligned policy, the de minimis values set out in Article 11(3) of the proposal for a Regulation COM(2016) 861 final should be replaced by the respective numbers provided (marginal notes 125 and 127 of the Guidelines on State aid for environmental protection and energy <sup>(6)</sup>) in order to allow small market participants to continue to have a chance of fair competition.

4.4 The rules on redispatching and curtailment according to Article 12 of the proposal for a Regulation COM(2016) 861 final constitute a further obstacle to the goal of decarbonisation. Since coal-fired power plants, in particular, have relatively high start-up and shutdown costs, operators of these power plants will factor these costs into their redispatching offers. Wind and solar energy installations do not have these costs. The result is that wind and solar energy installations are more frequently taken off the grid, which represents a setback for Europe in terms of decarbonisation. Therefore, market-based redispatching should be limited to non-renewable energy.

4.5 The EESC endorses the European Commission's view that market distortions are to be avoided in the interests of consumers. It encourages the European Commission to do more to prevent current and future market distortions. Capacity mechanisms for conventional power stations, as set out in Regulation COM(2016) 861 final, could lead to additional serious market distortions, as the European Commission admits itself. Capacity mechanisms must thus be seen as the last option for securing security of supply and as a short-term solution. There is an urgent need for much more specific rules governing when capacity mechanisms are permissible.

4.6 It must be borne in mind that renewable electricity from intermittent sources (wind and solar radiation) as such cannot simply participate in capacity mechanisms and also cannot be traded on futures markets. While it is therefore correct to strengthen day-ahead and intraday trading, the specific cost structure of solar and wind energy (i.e. zero marginal costs) means that this will not lead to a refinancing of investments and renewable energy. Renewable electricity must get the chance to become tradable on the futures markets. The only foreseeable way to achieve this is if renewable energy is linked with balancing and flexibility options. As well as battery storage, this mainly includes technical options such as power-to-heat and power-to-gas <sup>(7)</sup>.

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<sup>(6)</sup> OJ C 200, 28.6.2014, p. 1.

<sup>(7)</sup> OJ C 82, 3.3.2016, p. 13.

4.7 However, there are in fact significant regulatory barriers at Member State level and, as a result, balancing products are currently not finding business models. The legislative texts on market design offer no solutions in this regard. At a minimum, text should be added to Article 3(1)(f) of the proposal for a Regulation COM(2016) 861 final to the effect that market rules and the dispatch framework to be set up by Member States should provide an incentive for the use of flexibility options. This can also help to resolve/avoid bottlenecks.

4.8 In this context, the EESC calls for clear priorities to be set. It should only be possible to make use of capacity mechanisms for conventional power plants if Member States are able to show that capacity bottlenecks cannot be rectified by means of balancing renewable electricity with the help of flexibility options. This obligation should be incorporated into Article 8 of the proposal for a Directive COM(2016) 864 final, and Article 14 of the proposal for a Regulation COM(2016) 861 final should be amended accordingly.

4.9 Such balancing concepts have two additional advantages. Because they make renewable electricity tradable on the futures market, they are currently the only option that promises that investments in renewable energy installations can be refinanced on the market. Secondly, they are locally oriented, making use of the fact that renewable energy is available virtually everywhere (see point 3.2) and thereby increasing the local added value of renewable energy.

4.10 Decentral production of electricity can discharge the grid if the right market based incentives are available. However, this is not the case. The calculation of network charges (Article 16 of COM(2016) 861 final), at least, should be amended so as to provide an incentive for generation in close proximity to consumers that reflect actual use. In general, the specific network costs of individual generation and consumption transactions can be ascertained by using smart meters; the principle of reflecting actual use suggests that they should be the basis for the calculation of network charges.

4.11 Electricity generation that is attuned to consumption is also facilitated by means of precise price zones. The EESC thus fully supports the views on the subject set out in Recital 14 and Article 13 of the proposal COM(2016) 864 final. But if the call made in point 4.10 is not implemented, the efficiency gained thanks to more precise price zones could be cancelled out and lost due to network charges being set in a way that does not reflect actual use. A European benchmark for energy taxation that strengthens price signals would be of additional help.

4.12 More precise price zones should not be misunderstood as a turn away from the need of a well interconnected European grid network which is the best way to achieve high security of supply in a cost-efficient way.

4.13 As pointed out in 3.14, opening up the trade in electricity for consumers and prosumers is important for full participation in the energy market. Article 3 of the proposal for a Directive COM(2016) 864 final should therefore be clarified. Consumer participation, which is limited in Article 3(1) to generation, storage, and electromobility, must also include trading in electricity. In Article 3(2), the barriers to market entry should be defined more clearly. Following point 3.6.3 of this opinion, these barriers mainly comprise economies of scale and administrative hurdles.

4.14 One way of mitigating these obstacles is for Member States to establish special trading structures for small producers, consumers and prosumers. The Agency for the Cooperation of Energy Regulators should be responsible for monitoring the implementation of this requirement. Moreover, simplified accounting rules for small consumer-producer associations could be incorporated into Article 4 of the proposal for a Regulation COM(2016) 861 final. Finally, the word 'trade' should replace the word 'sell' in Article 15(1)(a) of the proposal for a Directive COM(2016) 864 final.

4.15 In terms of energy poverty (Recital 14 and Article 5 of the proposal for a Directive COM(2016) 864 final and Articles 28 and 29 of the proposal for a Regulation COM(2016) 861 final): the EESC has clearly stated several times that it is the problem of energy poverty that needs to be solved and that future policy actions towards a low-carbon society must take this problem into account. As such, the EESC supports the position that the Committee has pronounced in its previous opinion on this issue<sup>(8)</sup>. In this regard the EESC also supports the position of the Commission and specific proposals. However, the EESC highlights the view set out in previous opinions<sup>(9)</sup> that renewable energy and prosumption in particular can, in some circumstances, be a sustainable method to prevent lasting energy poverty if public loans and better access to capital with the help of local authorities such as regions or municipalities or private actors such as NGOs are provided to vulnerably consumers. The importance of the rules on active consumers and local energy communities set out in Articles 15 and 16 of the proposal for a Directive COM(2016) 864 final should also be understood in this context. Prosum as a potential way to avoid energy poverty should be specifically mentioned in Article 5(2) of the proposal for a Directive COM(2016) 864 final.

4.16 With regard to consumers' rights: the EESC welcomes the fact that consumer empowerment and protection has its own dedicated chapter in the proposal for a Directive COM(2016) 864 final. Article 10 should also explicitly state that consumers must have the right both to state specific preferences regarding their electricity supply and to ensure that such preferences are respected. Text should be added to Article 15(1)(b) to say that network charges must be specific, such that consumers can only be charged the specific network costs that have been caused by their own individual activity, i.e. due to electricity generation, storage, consumption or trade. Also, the network charges system should incentivise activities that are 'grid friendly' such as load shifting, self-consumption or storage. Member States must show how this calculation of network charges according to actual use is worked out. In this context, predictability is key for consumers in order to make the respective investments.

4.17 The EESC welcomes the fact that Article 16 of the proposal for a Directive COM(2016) 864 final defines local energy communities and grants them corresponding rights. The Committee itself called for this in its opinion 'Prosumer Energy and Prosumer Power Cooperatives'<sup>(10)</sup>. That said, the charges referred to in Article 16(1)(d) need to reflect actual use — i.e. according to the same principle as set out in point 4.16 of this opinion in relation to Article 15 of the proposal for a Directive COM(2016) 864 final.

4.18 While approving that energy community are entitled to operate their own networks, the EESC argues that energy communities shall also be entitled to operate as a basic supplier. In those cases all respective duties shall be applied to them.

4.19 Articles 15 and 16 of the proposal for a Directive COM(2016) 864 final merit a warning: making consumers more active and creating local energy communities require renewable energy to be used. If the problems described in point 3.6 and the shortcomings in the Renewable Energies proposal<sup>(11)</sup> are not remedied, the process of making consumers more active, as well as local energy communities, will be considerably weakened — even jeopardised.

4.20 With regard to data from smart metering: as detailed in point 3.13 of this opinion, digitalisation represents a major opportunity. Meanwhile, it brings certain risks in terms of data protection and security. The EESC welcomes the fact that the European Commission tackles this in Articles 19-23 of the proposal for a Directive COM(2016) 864 final.

4.21 The EESC approves that the Commission grants the appropriate relevance to effective protection of the data that are generated in smart meters and that the EU-standard for data protection shall also apply to electricity consumption related data. However, data management, data ownership and open data are neglected. Article 23 should therefore guarantee that without any prejudice to data protection and privacy the data is made available to all interested parties in an anonymised and sufficiently aggregated form. For activating the whole potential of digitalisation, education and training that address digital illiteracy and consumers' exclusion are needed.

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<sup>(8)</sup> OJ C 341, 21.11.2013, p. 21.

<sup>(9)</sup> OJ C 198, 10.7.2013, p. 1; OJ C 34, 2.2.2017, p. 44; OJ C 82, 3.3.2016, p. 13.

<sup>(10)</sup> OJ C 34, 2.2.2017, p. 44.

<sup>(11)</sup> See also opinion TEN/622 'Revision of the Renewable Energies Directive' (not yet published in the OJ).

4.22 Regarding the role of network operators: Decentralisation generally means that distribution networks will gain strategic importance as does the interconnection of national grids. It is of crucial importance that Member States develop a framework that gives network operators effective and efficient incentives for investments in improving the European electricity networks. This will also stimulate economic growth and generate additional workplaces. Against this background, the EESC endorses the Commission's proposal to strengthen the competencies of the ACER that should oversee national policies with this regard.

4.23 Article 32, 33 and 36 of the proposal for a Directive COM(2016) 864 final gives distribution system operators conditional rights regarding the operation of flexibility options and recharging points for electric cars. While the EESC welcomes swift progress in terms of flexibility, electromobility and the market penetration of storage facilities, it is important that the prerogative for independent market players proposed by the Commission's proposal takes actual effect and is respected by distribution system operators and the national regulators. The same is true of the operation of storage by transmission system operators (Article 54 of the proposal for a Directive COM(2016) 864 final).

4.24 The establishment of a European organisation for distribution system operators (EU DSO entity), as set out in Article 50 of the proposal for a Regulation COM(2016) 861 final, should not result in an autonomous setting of network codes, as this will further strengthen the potential market power of distribution system operators. Competencies to develop an appropriate framework should be given to ACER and national regulators should be strengthened in this regard.

Brussels, 31 May 2017.

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

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**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, the Committee of the Regions and the European Investment Bank — Second Report on the State of the Energy Union**

(COM(2017) 53 final)

**Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions — Renewable Energy Progress Report**

(COM(2017) 57 final)

(2017/C 288/14)

Rapporteur: **Tellervo KYLÄ-HARAKKA-RUONALA**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | European Commission, 17.2.2017                                     |
| Legal basis               | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible       | Transport, Energy, Infrastructure and the Information Society      |
| Adopted in section        | 16.5.2017                                                          |
| Adopted at plenary        | 31.5.2017                                                          |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 190/0/1                                                            |
| (for/against/abstentions) |                                                                    |

## **1. Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) welcomes the Second Report on the State of the Energy Union as part of the process of monitoring the implementation and development of the Energy Union strategy. The EESC reiterates its call for a close Energy Dialogue with civil society at EU, national, regional and local level, in order to facilitate and boost tangible measures for a strong Energy Union.

1.2 The EESC has always considered the idea of the Energy Union to be of extreme importance for the success of the European Union. Therefore, progress should be assessed not only in terms of the elements of the Energy Union itself, but also in terms of its benefits for citizens and businesses, including SMEs.

1.3 The EESC thus calls on the Commission to monitor progress from different angles, namely: economic benefits, jobs development, progress in citizens' every-day lives, the energy system itself, political and societal drivers, and the use of policy instruments.

1.4 The EESC calls for the smooth adoption of initiatives launched up to now and — first and foremost — their timely implementation at EU level and in the Member States. The national plans are of key importance, and Member States have to take into account the inevitable implications of their measures on other countries.

1.5 The EESC points out that despite the progress made there are still considerable shortcomings as far as energy infrastructure and energy markets are concerned. Sufficient and reliable energy infrastructure and production capacity, well-functioning energy markets and energy efficiency are the key contributors to energy security. To this end, regional cooperation initiatives have to be continued, along with the development of domestic sources of energy and the geographical diversification of imported energy.

1.6 The EESC underlines the importance of continuing to ensure positive development in the area of renewable energy. The significant changes to the power system caused by a rapid increase in variable and decentralised renewable energy require special attention and have to be successfully managed.

1.7 The EESC welcomes the second phase of the European Fund for Strategic Investments (EFSI) as an opportunity to enhance public-private investment. As for private investment, market incentives are weak at present, largely due to incoherent policies. To encourage private investors, it is imperative to ensure a predictable investment environment, where the long-term and stable character of political decisions and legislation is of crucial importance.

1.8 The EESC calls on the Commission to make a comprehensive assessment of the current low-carbon policy instruments, in order to make sure that proper tools are used to achieve the objectives in the most efficient way. More focus should be given to tackling problems relating to taxes and charges that raise consumer prices, as well as subsidies that distort energy markets and investment signals.

1.9 Social benefits can be derived from the Energy Union through job creation and the direct and indirect use of energy by citizens in everyday activities. However, the attainment of a low-carbon energy system is a huge challenge which has to be managed in a way that ensures a fair transition.

1.10 With regard to global leadership of the clean energy transition, the EU should strive to maximise its positive global 'carbon handprint', instead of focusing solely on its own emissions. This entails highlighting the role of innovation and trade and investment policies, as well as the need to promote global carbon pricing.

## **2. Background**

2.1 This opinion addresses the Commission's Second Report on the State of the Energy Union and its Appendices, as well as the Commission Report on the Renewable Energy Progress. These documents illustrate the progress made in different areas of the Energy Union and highlight issues and areas where more action is needed.

2.2 The main report assesses the state of the Energy Union from the following points of view: the transition to a low-carbon and energy-/resource-efficient economy, consumer empowerment, future-proof infrastructure, the investment challenge and the external dimension of a strong Energy Union. It also evaluates the situation with regard to the five pillars of the Energy Union, i.e. energy security, the internal energy market, energy efficiency, decarbonisation and research, innovation and competitiveness.

2.3 The report also outlines the prospect of a new Energy Union tour by the Commission to the Member States. The tour is related to the preparation of the national energy and climate plans, and it also aims to address local actors.

2.4 The separate report on renewable energy progress describes the situation in the Member States and in different sectors, i.e. in electricity, heating and cooling, and transport sectors. It also addresses the administrative barriers to the introduction of renewable energy projects and discusses the sustainability of biofuels and bioenergy.

2.5 As for the future, the reports refer to the measures proposed by the Commission in its 'Clean Energy for All Europeans' package of November 2016. The main report also includes an updated roadmap for the Energy Union, based on the original roadmap from the Energy Union Framework Strategy 2015.

## **3. Comments on the main idea of the Energy Union**

3.1 The EESC has always considered the idea of the Energy Union to be of extreme importance for the success of the European Union. To this end, the Energy Union should respond to the needs of European citizens and businesses.

3.2 One of the basic ideas behind the Energy Union is to maximise the benefits by means of cooperation between Member States. Political coherence and unity is an essential and crucial prerequisite of achieving meaningful progress. This holds true both for the development of the single energy market and for external energy relations.

3.3 This is even more important now that the EU faces a lot of uncertainties, risks and threats at global level. At the same time nationalism and protectionism have emerged at domestic level and could threaten the progress of the single energy market. At its best, the Energy Union could have an important role in increasing the overall unity — and the consequent global strength — of the EU.

3.4 In the field of energy itself, internal and external developments have rendered the Energy Union increasingly relevant. Internally, the interdependence of Member States and the repercussions of their energy decisions on each other are clearly visible in everyday life, while the external energy scene is ever more unpredictable.

3.5 The EESC agrees with the Commission's note that the Energy Union is more than energy and climate alone. The Energy Union is one of the basic components of economic development, job creation and citizens' welfare. All in all, it is a matter of the sustainability of the EU in terms of economic, social and environmental benefits.

3.6 The Energy Union can generate economic benefits in several ways: through economic activities that create added value by using energy as a factor in production, through the energy sector itself, and through economic actors who provide energy and climate solutions, be they technologies, services or new business models. To make this happen, the Energy Union has to provide a stable and favourable environment for European companies and enterprises, including conditions for cost-competitiveness and innovative differentiation. This should be done with a view to enabling and encouraging them to invest and employ, paying special attention to the potential of SMEs.

3.7 Social benefits are brought about by generating jobs and through the direct and indirect use of energy by citizens in a wide variety of everyday activities. However, the attainment of a low-carbon energy system is a huge challenge which has to be managed in a way that ensures a fair transition and the generation of decent jobs, particularly in regions that have been dependent on carbon-intensive activities. The EESC highlights the need to include adaptation measures in the national plans and calls on the Commission to facilitate these efforts.

3.8 The availability of and physical access to affordable energy are the key to avoiding energy poverty, a problem that also hinders citizens from making the shift to low-carbon solutions. The Energy Poverty Observatory should also finally begin its activities. As stated in the EESC opinion on the First Report on the State of the Energy Union, 'Europeans will gauge the success of the Energy Union using very practical criteria, particularly prices, network accessibility, security of supply and consumer information about the equipment they use'.

3.9 With regard to climate benefits, the energy and climate targets are often considered to be objectives in themselves. However, they must be seen as a means of achieving the ultimate goal: meeting the needs of citizens and generating economic welfare in a way that simultaneously contributes to climate change abatement, in accordance with the requirements set by the Paris Agreement. In addition, the Energy Union contributes to reducing air pollution and thus brings about positive health impacts.

3.10 The EESC agrees with the Commission in saying that the Energy Union cannot be separated from other key European policies such as those on digitalisation, capital markets and investment, skills, the circular economy and security. The EESC also highlights the close connection between the Energy Union and transport policies. The energy and climate aspects of transport should not be dealt with in isolation from transport market issues.

3.11 All in all, the EESC emphasises that it is companies, workers, consumers and citizens at large who make changes in practice. The EESC therefore reiterates its call for a close energy dialogue with civil society. This should take place at all levels: in relation to policymaking at EU level, when preparing energy and climate plans at national level and, finally, when facilitating measures at local level.

#### 4. Comments on the State of the Energy Union and follow-up steps

##### 4.1 Implementation

4.1.1 The European Commission has defined 2016 as the year of delivery. Most of the planned Energy Union initiatives have already been published by the European Commission. However, most of these numerous initiatives are still waiting to be adopted and implemented. The EESC calls for the smooth adoption of these initiatives and — first and foremost — the timely implementation of measures at EU level and in the Member States.

4.1.2 The national energy and climate plans are an essential part of the Energy Union strategy's implementation process. Taking into account the different circumstances in Member States, preparation of national plans is a rational approach. The plans should be prepared in a participatory and cooperative manner. Simultaneously, it is important to build up a proper governance mechanism, in order to ensure not only that these plans are implemented, but that they are coherent and in line with the common objectives. We should also ensure that the roles and responsibilities of the Member States, the EU and other actors are made clear.

4.1.3 The decisions being made under the Energy Union framework are long-term and partly irreversible. This is why, the EESC stresses that long-term goals have to be kept in mind throughout the process. At the same time, sufficient flexibility has to be ensured both at national and EU level, given that the practical measures do not continue in a linear manner from year to year and that changing conditions require agile reactions.

4.1.4 The implementation of political targets and legislation should not be the sole focus when assessing the State of the Energy Union; instead the main focus should be on the real-life situation at EU level and in the Member States. This is particularly relevant given the complexity of the Energy Union's many objectives, pillars and numerical targets. In the next report on the progress of the Energy Union the EESC expects the Commission to describe the practical progress made and give examples on projects that have been successfully concluded, as well as on plans for the next steps in contributing to increased interconnectivity, better functioning markets and social adaptation to the transition.

4.1.5 As the EESC has recently prepared opinions on the different aspects of the 'Clean energy for all Europeans' package, it refers here to these opinions, which offer a more detailed view on governance and the different areas of the Energy Union.

##### 4.2 Infrastructure, investment and markets

4.2.1 The energy system itself, which is the core of the Energy Union, must function and develop properly. It has to fulfil the three basic objectives — energy security, reasonable costs and prices, and climate change mitigation — from the point of view of both citizens and businesses.

4.2.2 Energy security remains a crucial objective because the modern economy and modern society cannot function, even for a while, without energy. Sufficient and reliable energy infrastructure and production capacity, well-functioning energy markets and energy efficiency are the key contributors to energy security. Energy security should not be considered to be a synonym for energy self-sufficiency. As is the case with other commodities, cross-border exchange both internally and externally actually improves the security of supply, while helping to keep prices at a competitive level. It does not exclude the fact that there are political reasons to avoid high dependency on imported energy. Developing domestic energy sources is also important from the point of view of job creation.

4.2.3 According to the Commission, the dependency on imported energy has decreased in several Member States, while in some others it has increased due to declined indigenous fossil fuel production. Most Member States can now satisfy their gas demand through alternative channels thanks to new interconnectors and LNG terminals. However, there is still a need for investment in infrastructure, as well as for energy diplomacy, which is one of the original mechanisms available to help strengthen energy cooperation. The EESC refers here to its previous opinions on these issues.

4.2.4 As for the single energy market, there are still regulatory and infrastructure bottlenecks that hinder sound competition and the free flow of, in particular, electricity. The power system is undergoing fundamental changes, mainly due to the rapidly increasing introduction of variable and decentralised renewable energy sources. Regional cooperation and an adequate common regulatory framework are necessary to meet accruing challenges, since measures carried out in one Member State have tangible implications — at least in neighbouring countries. Regional cooperation initiatives such as BEMIT (Baltic Energy Market Interconnection Plan) and CESEC (Central and South Eastern Europe Gas Connectivity) are key to addressing regulatory and infrastructure bottlenecks.

4.2.5 The development of the digital economy has a fundamental effect on energy systems as well. In addition to energy infrastructure, advanced digital infrastructure has to be built up. This includes smart metering that will enable smart energy grids. The digitisation of energy systems must also be accompanied by measures to enhance cybersecurity and to ensure adequate personal data protection, privacy and digital literacy.

4.2.6 With regard to investment in the energy system, there is a huge need to invest in energy infrastructure but also in energy efficiency, notably by renovating buildings. The EESC acknowledges the opportunities provided by the European Fund for Strategic Investments (EFSI) and welcomes its second phase, which aims to enhance public-private cooperation. Correspondingly, Member States also have to allocate public finances on energy-related investments.

4.2.7 As for private investment, market incentives are weak at present, largely due to incoherent policies. In order to encourage private investors, it is imperative to ensure a stable and predictable investment environment. The EESC therefore emphasises the crucial importance of long-term, stable political decisions and legislation.

4.2.8 The EESC highlights the growing role of citizens in relation to the energy markets, including increasing prosumerism and local cooperation. Measures aimed at enabling consumers to behave more consciously and to become prosumers have to be encouraged and strengthened. The EESC has considered these measures in several previous opinions.

4.2.9 To this end, adequate and easily understandable information on energy issues (e.g. energy efficiency labelling) must be delivered to citizens of all ages. Furthermore, fair access to the energy market and financing for small-scale projects need to be improved. Simplifying energy-related legislation under the REFIT initiative should bring tangible benefits to energy consumers. More focus should be given to tackling problems relating to taxes and charges that — despite the level of wholesale energy prices — raise consumer prices and thus contribute to energy poverty.

### 4.3 *Renewable energy and decarbonisation*

4.3.1 The EESC welcomes the Commission's separate Renewable Energy Progress Report and largely agrees with the analysis and challenges presented. As for recommendations, the Committee refers to its views on different aspects of renewable energy put forward in a number of previous and recent opinions.

4.3.2 According to the report, the EU as a whole is on track to achieve the 2020 target although extra efforts are still needed. The EESC once again underlines the importance of continuing positive development in this area. The EESC draws attention to the fact that heating and cooling is the largest sector in terms of absolute renewable energy deployment. The EESC also highlights the decisive role of transport in achieving the challenging long-term emissions targets and endorses the development of renewable electricity and advanced biofuels with a view to decreasing transport emissions.

4.3.3 The report points out that there are still remarkable administrative barriers to setting up renewable energy projects. They relate to one-stop shops, online applications, time limits for procedures, facilitating small-scale projects and identifying proper sites. The EESC calls for prompt measures to tackle these obstacles, which are common in other fields too.

4.3.4 The EESC welcomes the Commission's conclusion that the EU is also on track to achieve the 2020 energy efficiency and greenhouse gas emissions targets. As regards the policy instruments that aim to facilitate a move towards a low-carbon economy, the improper use of subsidies (including green certificates), emissions trading schemes and taxes has resulted in inefficient action and suboptimal results, due to the lack of market signals to encourage investment in low-carbon energy.

4.3.5 The EESC therefore calls on the Commission to make a comprehensive assessment of the current low-carbon policy instruments, in order to make sure that proper tools are used to achieve the objectives in the most efficient way, and without undue burden on energy users.

4.3.6 The EESC endorses the objective of ensuring global leadership of the clean energy transition and thereby creating business opportunities and jobs. Here the EU should strive to maximise its positive global 'carbon handprint', instead of focusing solely on its own emissions. This can be achieved by developing and exporting climate solutions and products that are produced with fewer emissions than those made by competitors outside the EU, while recognising that global competition is fierce.

4.3.7 Global leadership requires increased investment in innovation, particularly by the public sector whose share has decreased. The EESC also emphasises the role of trade and investment policies in delivering energy and climate solutions. A global carbon pricing system is needed to boost the introduction of low-carbon solutions in a neutral and efficient way. The EESC calls on the Commission to actively strive for this kind of mechanism, which would level the playing field for European companies in the export markets and with regard to imported goods.

## 5. Comments on the monitoring mechanism and indicators

5.1 Because the State of the Energy Union evaluation is based on certain key indicators, it is important to make sure that the indicators are the most relevant ones. The EESC welcomes the Commission's plans to develop the indicators further, for example indicators measuring consumer empowerment. In its opinion on the First Report of the state of the Energy Union, the EESC called on the Commission to include social aspects among the criteria for evaluating the Energy Union and the impact of energy transition.

5.2 Currently, monitoring is primarily based on the five pillars of the Energy Union and the corresponding political and regulatory targets. Bearing in mind that 'you get what you measure', the EESC highlights the need to monitor the progress made towards achieving the Energy Union's fundamental objectives, i.e. the benefits it brings about for citizens and businesses, and consequently for the future of the EU.

5.3 The EESC thus calls on the Commission to follow the development of energy-related economic activities, in order to outline the economic value of the Energy Union. Correspondingly, the progress made on energy-related jobs should be monitored. This should also include the assessment of possible investment and job 'leakage'.

5.4 To bring the Energy Union closer to citizens, the EESC considers it important to monitor and communicate about progress from the point of view of consumers' every-day lives. This includes taking into account: energy bills, energy-related product information, the deployment of local, decentralised energy production, smart metering, e-vehicle charging stations, financial assistance for prosumers and energy efficiency incentives for renovation of houses, etc.

5.5 In order to track societal drivers, changes in the perception of energy issues could be monitored, including: rising concerns about air pollution, growing interest in energy-related employment opportunities, the implications of technological developments, and the emergence of new players.

5.6 It would also be useful to assess measures taken by Member States in terms of whether they promote coherence or divergence in the internal market and in external relations. The most significant issue in this regard is to assess the consequences of Brexit on the Energy Union.

5.7 Finally, ensuring the quality of data is an essential part of improving the monitoring mechanism. Data should be timely, accurate, comparable and reliable, and this will require the continuous development of data collection and processing methods.

Brussels, 31 May 2017.

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

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC’**

(COM(2017) 8 final – 2017/0002 (COD))

(2017/C 288/15)

Rapporteur: **Mr PEGADO LIZ**

|                           |                                                               |
|---------------------------|---------------------------------------------------------------|
| Consultation              | European Commission, 26/04/2017                               |
| Legal basis               | Article 16(2) TFEU                                            |
| Section responsible       | Transport, Energy, Infrastructure and the Information Society |
| Adopted in section        | 16/05/2017                                                    |
| Adopted at plenary        | 31/05/2017                                                    |
| Plenary session No        | 526                                                           |
| Outcome of vote           | 161/0/2                                                       |
| (for/against/abstentions) |                                                               |

## 1. Conclusions and recommendations

1.1 The Commission proposal under examination provides a concrete response — in a generally correct and adequate manner from a strictly technical and legal point of view — to the need to adapt the current rules under **Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>(1)</sup> and Decision No 1247/2002/EC of the European Parliament, of the Council and of the Commission<sup>(2)</sup> on the protection of personal data by the Union institutions, bodies, offices and agencies** in line with the new General Data Protection Regulation (GDPR)<sup>(3)</sup>, which will be applicable throughout the EU from 25 May 2018 onwards.

1.2 This does not preclude the EESC from recalling the substance of its comments and recommendations on the now adopted proposal for a GDPR, or from expressing its regret that the final version has not taken them fully into account. Moreover, in view of the speed of technological progress in this domain, it also fears that its late adoption and entry into force may compound the risks of unauthorised appropriation of data and irregularities in data processing and marketing, and that it may become obsolete before it is even implemented. Given that the proposal under consideration is an adaptation of the GDPR to the way the EU institutions operate, the same concerns are relevant here, *mutatis mutandis*, particularly as regards the impenetrable language, which is difficult for the man in the street to understand.

1.3 Furthermore, the EESC is of the view that what happens in the EU institutions should serve as a model for Member State procedures, and therefore believes that special care is called for in drafting the proposal.

1.4 To this end, the EESC considers that issues such as aligning the wording of the proposal on that of the Staff Regulations of Officials of the European Union, procedures for dealing with harassment, cyberbullying and whistleblowing in the EU institutions, its application to the Internet of Things, Big Data and the use of search engines for the purpose of accessing, creating or using personal data, and the placing of personal information published on the websites of the institutions on social networking sites (Facebook, Twitter, Instagram, LinkedIn, etc.) should have been addressed explicitly.

<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(2)</sup> OJ L 183, 12.7.2002, p. 1.

<sup>(3)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council (OJ L 119 of 4.5.2016, p. 1).

1.5 In the same way, the EESC would like the proposal to have set out both the terms for the security of the IT systems that will support data processing and the guarantees against cyber-attacks and breaches or leaks of such data, ensuring technological neutrality rather than relying purely on the internal regulations specific to each department, and would also like to have better clarification of the connection between data protection and the combating of crime and terrorism without needing to resort to disproportionate or excessive surveillance measures — measures that should in any case always be subject to checks by the European Data Protection Supervisor (EDPS).

1.6 The EESC would also like the proposal to have provided a common definition of the competences, training and suitability criteria required in order to be designated data protection officer, data controller or processor in the EU institutions — again, subject to checks and monitoring by the EDPS.

1.7 The EESC is also of the view that, on account of the specific nature of the data collected and the fact that they have a direct bearing on the privacy of the data subjects — particularly as regards health — tax and social data should be limited to that which is strictly necessary for the purpose, and that the maximum protection and guarantees should be ensured in the processing of particularly sensitive personal data, drawing on international law and the most advanced legislation and best practice to be found in some Member States.

1.8 The EESC highlights the need for the proposal to expressly provide for increased resources for the EDPS, ensuring sufficient staffing and recruitment of people with high levels of knowledge and technical competence in the field of data protection.

1.9 The EESC reiterates, yet again, that the data of legally constituted, collective subjects (undertakings, NGOs, commercial companies, etc.) also need to be afforded protection in the area of data collection and processing.

1.10 Finally, the EESC includes in its specific comments a list of amendments to various provisions which, if adopted, would help to provide more effective protection of personal data in the EU institutions, not only for EU officials but also for the thousands of members of the public with whom they come into contact. It therefore urges the Commission, as well as the EP and the Council, to take these amendments into consideration when drafting the final version of the proposal.

## 2. Reasons for and objectives of the proposal

2.1 As stated by the Commission in the explanatory memorandum, the aim of the proposal is to **repeal Regulation (EC) No 45/2001** <sup>(4)</sup> **and Decision No 1247/2002/EC** relating to the protection of personal data by the Union institutions, bodies and offices, with the twin objectives of:

- protecting the fundamental right to data protection;
- guaranteeing the free flow of personal data throughout the EU.

2.2 After a lengthy and difficult process of incubation, the Council and the Parliament finally adopted the General Data Protection Regulation (GDPR) <sup>(5)</sup>, which will become applicable throughout the EU on 25 May 2018. The regulation requires a number of legislative instruments <sup>(6)</sup> to be adapted, including Regulation (EC) No 45/2001 and Decision No 1247/2002/EC referred to above.

2.3 The Commission also takes extensive account of the results of surveys and stakeholder consultations, and the evaluation study on the application of the regulation over the past 15 years, and reaches the following specific conclusions:

- Regulation (EC) No 45/2001 could be better enforced through the use of sanctions by the European Data Protection Supervisor (EDPS);
- increased use of the latter's supervisory authority powers could lead to better implementation of data protection rules;

<sup>(4)</sup> The EESC adopted an opinion on this proposal (OJ C 51, 23.2.2000, p 48).

<sup>(5)</sup> Regulation (EU) 2016/679 of 27.4.2016 (OJ L 119, 4.5.2016, p. 1).

<sup>(6)</sup> COM(2017) 10 final, COM(2017) 9 final.

- the regime of notifications and prior checks needs to be simplified in order to increase efficiency and reduce red tape;
- data controllers should adopt a risk management approach and perform risk assessments before carrying out processing operations in order to better implement data retention and security requirements;
- existing rules on the telecommunications sector are outdated and this chapter needs to be aligned on the ePrivacy Directive;
- some of the key definitions in the regulation need to be made clearer. These include the identification of data controllers in the Union institutions, bodies, offices and agencies, the definition of recipients and extension of the obligation of confidentiality to external processors.

2.4 In view of the nature and extent of the modifications to be made to the previous legal instruments, the Commission decided to repeal them in their entirety and replace them with the regulation currently under consideration, which is consistent with the majority of the other measures referred to and would thus enable them to enter into force at the same time as Regulation (EU) 2016/679, pursuant to Article 98 of the latter.

### 3. General comments

3.1 From a strictly technical and legal point of view, the EESC endorses in principle:

- the need for and timeliness of the initiative now under examination;
- a regulation as the choice of legal instrument;
- the decision to repeal the existing instruments in their entirety;
- the legal basis for adopting it;
- its proven compliance with the criteria of proportionality, subsidiarity and accountability;
- the clarity and structure of the provisions;
- the fact that some concepts, such as ‘valid consent’, are more clearly defined;
- the consistency shown with the other legal instruments with which it is interconnected, in particular Regulation (EU) 2016/679, proposed Regulation COM(2017) 10 final and the Commission’s own communication entitled Building a European Data Economy <sup>(7)</sup>;
- the decision to introduce, for the first time, explicit administrative fines for any infringements or failure to comply;
- the steps to strengthen the powers of the EDPS;
- the fact that this initiative is not part of the REFIT programme;
- the efforts made to ensure that the regulation is compatible with other fundamental rights, in particular those enshrined in the European Charter of Fundamental Rights on freedom of expression (Article 11); protection of intellectual property (Article 17(2)); the prohibition of any discrimination on grounds such as race, ethnic origin, genetic features, religion or belief, political opinion or any other opinion, disability or sexual orientation (Article 21); the rights of the child (Article 24); the right to a high level of human health care (Article 35); the right of access to documents (Article 42); and the right to an effective remedy and to a fair trial (Article 47).

<sup>(7)</sup> COM(2017) 9 final.

3.2 This is without prejudice to the substance of the EESC's comments and recommendations regarding the proposal for a GDPR <sup>(8)</sup>, now adopted <sup>(9)</sup>, which does not take them fully into account. Moreover, in view of the rapidity of technological developments in this domain, the Committee fears its late adoption and entry into force may further compound the risks of data being misappropriated and misused in processing and marketing, since it may become obsolete before it is even implemented. Given that the proposal under consideration is an adaptation of the GDPR to the way the EU institutions operate, the same concerns apply to it, *mutatis mutandis*, particularly as regards the impenetrable language, which is difficult for the man in the street to understand. It would have been better to present and discuss the two proposals at the same time.

3.3 Furthermore, given that the approach adopted by the EU institutions should serve as a model for Member State procedures, the EESC thinks that a number of issues should have been addressed in this proposal.

3.4 To begin with, it is not clear whether the proposal has taken due account of the Staff Regulations of Officials of the European Union (Regulation No 31 (EEC) <sup>(10)</sup>), given the lack of specific legal provisions guaranteeing more effective protection of the personal data of officials and other staff of the institutions regarding their recruitment, career, duration of contract and any subsequent renewals, as well as their appraisals.

3.4.1 If not in this text, measures of a general nature should be laid down containing rules on the health records of officials and their family members, the protection of data created or used by officials and their respective genetic data, the processing and protection of emails, whether sent by members of the public to EU bodies or sent or exchanged by officials of these bodies, either amongst themselves or with outside parties, and the content of these emails and the websites visited <sup>(11)</sup>.

3.4.2 Likewise, instances of harassment, cyberbullying and whistleblowing in the EU institutions warrant special treatment, notwithstanding the provisions of Article 68.

3.4.3 The EESC also queries the terms of application of the proposal under examination and of Regulation (EU) 2016/679 as regards the Internet of Things, Big Data and the use of search engines for the purpose of accessing, creating or using personal data, and putting personal information published on the websites of the institutions on social networking sites (Facebook, Twitter, Instagram, LinkedIn, etc.), regardless of whether the data subject has given their explicit consent.

3.5 In addition to the reference to the confidentiality of electronic communications in Article 34 of the proposed regulation, the EESC would like the Commission proposal to have set out both the terms for the security of the IT systems that will support the processing of data and the guarantees against cyber-attacks and breaches or leaks of such data <sup>(12)</sup>, ensuring technological neutrality rather than relying purely on the internal regulations specific to each individual department. It would also like to have better clarification of the connection between data protection and the combating of crime and terrorism without needing to resort to disproportionate or excessive surveillance measures — measures that should in any event always be subject to checks by the EDPS.

3.6 The EESC emphasises that the interconnection of personal data in the EU institutions cannot be left solely to the principle of accountability set out in recital 16, and to this end urges the Commission to introduce a specific rule stipulating that an interconnection can only be made with the authorisation of the EDPS, on request by the controller or jointly with the processor.

3.7 However, without prejudice to recital 51 of the preamble and Article 44(3) of the proposal, the EESC would also like the Commission to have provided a common definition of the competences, training and suitability criteria required in order to be designated data protection officer, data controller or processor in the EU institutions <sup>(13)</sup>. Any breaches of these functions should be subject to sanctions in the form of disciplinary, civil or criminal proceedings that are a genuine deterrent and are set out in the proposal — again, subject to checks and monitoring by the EDPS.

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<sup>(8)</sup> OJ C 229, 31.7.2012, p. 90.

<sup>(9)</sup> Regulation (EU) 2016/679.

<sup>(10)</sup> OJ 45, 14.6.1962, p. 1385/62, and subsequent amendments.

<sup>(11)</sup> An example of this is the collection of opinions and recommendations of the Belgian Privacy Commission in its brochure on privacy in the workplace (*Avis et Recommandations de la Commission de la Vie privée de la Belgique sur la vie privée sur le lieu de travail*), January 2013.

<sup>(12)</sup> As set out, for example, in the own-initiative recommendation on security measures to be complied with to prevent data leaks (*Recommandation d'initiative relative aux mesures de sécurité à respecter afin de prévenir les fuites de données*), Belgian Privacy Commission, 1/2013, 21 January 2013.

<sup>(13)</sup> As mentioned, for example, in the Guidelines on Data Protection Officers, WP 243 on Article 29, 13 December 2016.

3.8 Whilst recognising that this proposal raises the level of protection compared to that prevailing under Regulation (EC) No 45/2001 currently in force, the EESC is of the view that, on account of the specific nature of the data collected and the fact that such data have a direct bearing on the privacy of the data subjects — particularly as regards health — tax and social data should be limited to that which is strictly necessary for the purpose and that the maximum protection and guarantees should be ensured in the processing of personal data, drawing on international law and the most advanced legislation and best practice to be found in some Member States <sup>(14)</sup>.

3.9 Whilst cognisant of the fact that both Regulation (EU) 2016/679 and the proposal under consideration apply exclusively to data for which the subjects are individuals, it reiterates that the data of legally constituted, collective subjects (undertakings, NGOs, commercial companies, etc.), also need to be afforded protection in terms of collection and processing.

#### 4. Specific comments

4.1 Analysis of the text raises a number of doubts and reservations in the light of the fundamental principles of the right to privacy set out in the EU Charter of Fundamental Rights, the principle of proportionality and the precautionary principle.

##### 4.2 Article 3

Paragraph 2(a) defines the Union institutions and bodies as the Union institutions, bodies, offices and agencies set up by, or on the basis of, the TEU, TFEU or the Euratom Treaty. The EESC wonders whether the definition also includes working parties, advisory councils, committees, platforms, other groups, etc., as well as international computer networks in which the institutions participate, but do not own.

##### 4.3 Article 4

4.3.1 In view of the fact that the regulation currently under discussion applies to data processed within the EU institutions, the EESC would like the principle of non-discrimination to be expressly introduced, given the nature of the data being processed.

4.3.2 With respect to Article 4(1)(b) on processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, this should be subject to prior authorisation by the European Data Protection Supervisor, something which is not provided for in Article 58.

4.3.3 Finally, there should be an expressly worded provision that is the equivalent of Article 7 of Regulation (EC) No 45/2001, currently in force, concerning the transfer of data between the EU institutions.

##### 4.4 Article 5

4.4.1 It is not clear why Article 5(1)(b) of the proposed regulation is not subject to the requirement set out in paragraph 2 of that article, unlike indents (c) and (e) of Article 6, both of which are subject to the provision laid down in Article 3 of the GDPR.

4.4.2 The EESC considers that indent (d) ought to include a reference to the fact that consent should be subject to the principle of good faith.

##### 4.5 Article 6

4.5.1 Application of this article should always be subject to authorisation by the European Data Protection Supervisor.

4.5.2 In such cases, the data subject should always be informed prior to any data collection or at the moment of any new decision, and should possibly have the option of requesting rectification, the right to object, erasure or restriction of processing.

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<sup>(14)</sup> By way of example, see the Portuguese law on data protection (Law 67/98 of 26 October 1998).

#### 4.6 Article 8

4.6.1 In the EESC's view, the exception to the rule of the validity of consent for children under the age of 16 (between 13 and 16 years of age) — which is already an aberration in itself — is only admissible for Member States for cultural reasons of domestic law (Article 8 of the GDPR), but should not be admissible as a rule for the EU institutions, which establishes the age of consent at 13 years (Article 8(1)).

4.6.2 Furthermore, it has not been specified how in practice the EDPS is to address 'specific attention' to children, as referred to in Article 58(1)(b), particularly when it comes to the list of users referred to in Article 36 when data is publicly accessible.

#### 4.7 Article 10

4.7.1 Paragraph 1 should also include political affiliation (which is not the same thing as political opinion) and private life.

4.7.2 In paragraph 2(b), even where the purpose is to carry out the obligations and exercise specific rights of the data subject, the latter should always be given prior notice.

4.7.3 In paragraph 2(d), processing should only be carried out with the consent of the data subject.

4.7.4 Indent (e) should only constitute an exception when it can be legitimately surmised from the subject's statements that consent has been given to the processing of data.

#### 4.8 Article 14

Given that the EU institutions are not authorised to charge fees for the services provided, refusal to act on a request may only be adopted as a last resort.

#### 4.9 Articles 15, 16 and 17

4.9.1 With regard to further information, as referred to in Article 15(2), it should be added that the data subject should be informed as to whether the controller's reply to the request is of an obligatory or optional nature and of the possible consequences of failure to reply.

4.9.2 Where data is collected from open networks, the data subject must always be informed that their personal data may be circulated on networks without security measures, running the risk of being seen and used by unauthorised third parties.

4.9.3 The right provided for in Article 17(1) should be exercised freely and without restriction, at reasonable intervals, swiftly or immediately and at no cost.

4.9.4 The EESC would suggest that it should also be a requirement for the data subject to receive confirmation as to whether data regarding himself or herself are being processed or not.

4.9.5 The information referred to in Article 17(1) should be provided in an intelligible, clear and comprehensible manner, particularly as regards data to be processed and any information on the origin of such data.

#### 4.10 Article 21

Our understanding of the fact that provisions identical to those set out in Article 21(2) and (3) of the GDPR are to be excluded from the proposed regulation is that the data can never be processed for the purpose of direct marketing, which would be laudable. However, this interpretation is uncertain and the wording of the provision should make this quite clear.

#### 4.11 Article 24

4.11.1 The EESC believes that it should be added to paragraph 2(c) that consent only occurs after express information is provided of the repercussions of the legal effects of decisions on the data subject, as only then will the consent be duly informed.

4.11.2 As regards paragraph 3, the EESC is of the view that appropriate measures should be drawn up by the European Data Protection Supervisor and not by the data controller.

#### 4.12 Article 25

4.12.1 The EESC is concerned that the wording of Article 25 in the proposed regulation offers too broad an interpretation of Article 23 of the GDPR as regards restrictions on the application of the principles establishing the fundamental rights of the data subject. It would advise the Commission to subject it to a critical review, analysing the various paragraphs according to strict criteria, possibly setting out the scope of each indent, particularly in respect of the limitation of the right to confidentiality in electronic communications networks provided for in Article 7 of the Charter of Fundamental Rights, referred to in the ePrivacy Directive and retained in the proposed regulation being assessed in another EESC opinion.

4.12.2 The EESC is completely opposed to the possibility granted in Article 25(2) allowing EU institutions and bodies to restrict the application of limitations on the rights of data subjects to legal acts for which they have not given their express consent. The same applies to Article 34.

#### 4.13 Article 26

It should be made clear that personal data controllers, processors and persons who, in the exercise of their duties, gain knowledge of the personal data processed, shall be bound by professional secrecy, even after termination of their duties and for a reasonable period.

#### 4.14 Articles 29 and 39

Whilst it is evident that the provisions set out in Articles 24(3) and 40 et seq. of the GDPR have not been included in the proposed regulation (codes of conduct), as expressly pointed out in the recital of the preamble relating to Article 26, it does not seem appropriate that in Articles 29(5) and 39(7) of the proposed regulation it is accepted that mere adherence to a code of conduct referred to in Article 40 of the GDPR can be considered a sufficient guarantee of the performance of tasks by a processor that is not a Union institution or body.

#### 4.15 Article 31

The EESC believes that the mere 'possibility' provided for in Article 31(5) should rather be converted into an 'obligation' to keep records of processing activities in a publicly accessible central register.

#### 4.16 Article 33

The EESC further suggests that the controller and processor should exercise controls over data media and the inputting, use and transmission of data, in order to:

- prevent any unauthorised person from having access to installations used for the processing of such data;
- prevent the reading, copying, modification or removal of data media by unauthorised persons;
- prevent unauthorised input and unauthorised gaining of knowledge, modification or removal of personal data;
- prevent the use of automated data processing systems by unauthorised persons using data transmission equipment;
- ensure that it is possible to verify those bodies to which personal data may be communicated;
- ensure that authorised persons may only gain access to data covered by the requirement for prior authorisation.

#### 4.17 Article 34

The EESC hopes that this article will be in keeping with the provisions of the proposed ePrivacy Directive and that the EU institutions and bodies will be subject to the scrutiny of the EDPS regarding the confidentiality of electronic communications.

#### 4.18 Article 42

The EESC is concerned that the term 'following' in paragraph 1 may be understood to mean an obligation to consult only after adoption of the act, and that consultation will no longer take place even on an informal basis, as is the case today.

#### 4.19 Article 44

The EESC considers that in principle only officials should be appointed as data protection officers. If under exceptional circumstances this is not possible, data protection officers should in any event be recruited on the basis of the public procurement rules on service provision and be subject to the scrutiny of the EDPS.

#### 4.20 Article 45

4.20.1 If, notwithstanding the above and where the data protection officer is not an official, in view of the nature of his/her office, it should be possible to dismiss him/her at any time, a favourable opinion of the EDPS being sufficient for this purpose (Article 45(8) of the regulation).

4.20.2 It takes the view that the term of the mandate should be 5 years and should be renewable only once.

#### 4.21 Article 56

In the light of recent, well-known events involving top officials from the institutions, we would recommend establishing criteria on incompatibility and impediments for a reasonable period of time with regard to the performance of certain functions, particularly in private companies, after the term of office of the person concerned has ended.

#### 4.22 Article 59

In some languages, notably English, the term 'actions' used in paragraph 5 is too limited and should be replaced by the term 'proceedings' (the concept has been correctly translated in the Portuguese version).

#### 4.23 Article 63

With regard to paragraph 3, and in the light of the sensitivity of the subject matter of this proposal, the EESC considers that the principle of tacit rejection should be reversed, thereby obliging the European Data Protection Supervisor to reply explicitly to all complaints lodged with him or her. Failing this, they will be considered to be upheld.

#### 4.24 Article 65

As mentioned in its opinion on the original proposal for a regulation (Regulation (EU) 2016/679), the EESC would emphasise that, in addition to the terms of Article 67, provision should be made in the event of a breach of personal data for allowing a response in the form of a group action, without the need for an individual action, since generally speaking when such breaches occur, they affect not just a single individual but a sometimes indeterminate group of people.

4.25 The proposal for a regulation is riddled with expressions or concepts of an ambiguous nature. These should be revised and replaced. Examples include 'to the extent possible', 'if possible', 'without delay', 'high risk', 'due account', 'reasonable time limit' and 'particular importance'.

Brussels, 31 May 2017.

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

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers and Directive 2006/126/EC on driving licences’**

(COM(2017) 47 final – 2017/0015 (COD))

(2017/C 288/16)

Rapporteur: **Pasi MOISIO**

|                           |                                                                              |
|---------------------------|------------------------------------------------------------------------------|
| Referral                  | Council of the European Union, 20/02/2017<br>European Parliament, 01/03/2017 |
| Legal basis               | Article 91 TFEU                                                              |
| Section responsible       | Transport, Energy, Infrastructure and the Information Society                |
| Adopted in section        | 16/05/2017                                                                   |
| Adopted in plenary        | 31/05/2017                                                                   |
| Plenary session No        | 526                                                                          |
| Outcome of vote           | 185/0/0                                                                      |
| (for/against/abstentions) |                                                                              |

## 1. Conclusions and recommendations

1.1 The EESC recognises that despite certain shortcomings, the Directive on the qualification and periodic training of drivers of heavy goods vehicles <sup>(1)</sup> has had generally positive effects for the European road transport sector. Creating a harmonised training system has helped to improve professional drivers' ability to perform their job, developed a common level of service in the road transport sector, and enhanced the attractiveness of the sector to new entrants.

1.2 The EESC considers that the proposal under discussion <sup>(2)</sup> to amend this directive has the potential to further consolidate the EU principle of freedom of movement and to be a further step towards a healthier and more open EU transport market that is based on fair competition and can also be overseen more effectively and equitably.

1.3 The EESC endorses the objectives set in amending the Directive on the qualification and periodic training of drivers, namely to improve road safety in Europe, as well as professional drivers' health and safety at work. The Committee has pointed out in particular that excellent results have been achieved in the area of road safety over the past few years, and thus urges the Commission to continue with measures to reinforce the positive trend.

1.4 The EESC likewise welcomes the Directive's objective of harmonising and streamlining administrative procedures in the different Member States, so that driver training sessions and programmes run in any Member State under the Directive are recognised as such and are mutually approved without latitude for interpretation or separate additional requirements. However, we would point out that mutual recognition of training requires absolute uniformity in respect of the scope and quality of training organised in the different Member States. More effective oversight and closer cooperation between the European Commission and Member State authorities will be needed in order to ensure this.

<sup>(1)</sup> Directive 2003/59/EC of the European Parliament and of the Council (OJ L 226, 10.9.2003, p. 4).

<sup>(2)</sup> COM(2017) 47 final.

1.5 Falsified driver-specific cards showing existing professional qualifications and falsified certificates for training that has not actually been completed distort competition on the transport market and harm the interests of professional drivers operating within the rules. The EESC urges that a watertight system be created to ensure that driving licences and driver qualification cards are authentic. With reference to point 1.4 of our recommendations, the oversight of authorised training establishments operating in different countries should be enhanced in the future so that the scope and quality of training provided can be verified in each and every case.

1.6 Furthermore, it is of the utmost importance to enhance the concordance and consistency of EU legislation applying to a single target group and sector, in this case professional drivers of heavy goods vehicles. This increases both the legal protection of individuals operating within the scope of the rules and the general credibility of EU provisions.

1.7 The revision of the directive is intended to align it more closely with the latest broad trends that are highly relevant to transport, such as digitisation and decarbonisation. The EESC endorses this approach and notes that although transport is rapidly automating and robotisation is becoming prevalent in the sector, the central role of the human factor must also still be borne in mind. The growing need for digital skills must therefore be recognised in relation to training of drivers, as well as the importance of drivers' skills in achieving low-carbon targets.

1.8 A key challenge in the area covered by the directive is to ensure that periodic training in particular meets professional drivers' individual needs and to tailor its content so that it provides optimum support for the specific tasks of each driver. Thus the directive should allow flexibility and discretion, both in terms of the content of periodic training sessions selected and of the methods for delivering training.

1.9 The EESC emphasises that there should be a uniform opportunity during training to drive a vehicle even before having obtained the initial qualification. It is important to ensure that learners continue to enjoy the right to also drive vehicles used in commercial transport, which is necessary for instance to allow on-the-job learning in companies under guidance and supervision, and that this is accepted as being part of their initial qualification training. The revised directive should not take away this right. On the other hand, it should be ensured that the right to combine commercial transport operations and training does not trigger unhealthy competition in the transport sector or weaken the position of workers in the sector.

1.10 Although the Commission's proposal is in the main well-balanced and a step in the right direction, the EESC would nevertheless like to put forward certain specific changes, additions and suggestions which in our view would further enhance the way it is implemented in practice and applied to driver training. These proposals are presented in more detail in the general and specific comments below.

## 2. Background

2.1 Directive 2003/59/EC was implemented across the EU from 2007 to 2009. It requires all professional drivers of goods vehicles or buses and coaches in EU territory working for transport companies registered in the EU Member States, as well as self-employed drivers working as professional drivers in the commercial transport sector, to complete compulsory basic training in order to gain the required qualification.

2.2 Directive 2003/59/EC also established the principle of lifelong learning as part of a professional driver's work by laying down an amount of periodic training at regular intervals to maintain professional skills.

2.3 The European Commission estimates there to be a total of around 3,6 million drivers of goods vehicles or buses and coaches working for transport companies (2,8 million drivers of goods vehicles and 0,8 million bus and coach drivers) in the 28 EU Member States who fall under the scope of this directive <sup>(3)</sup>.

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<sup>(3)</sup> SWD(2017) 27 final — Commission Staff Working Document — Impact Assessment, 1 February 2017, p. 10.

2.4 The amount of basic training is 140 or 280 hours, depending on the driver's age and any previous qualifications. Every driver must complete at least 35 hours of periodic training per five-year period.

2.5 Several points were identified that needed revision based on the large number of broad-based reports and the impact assessment requested by the Commission in recent years. Problems and disparities were also noticed in the application and interpretation of the directive in different Member States.

2.6 In a public consultation carried out with a view to revision of the directive<sup>(4)</sup>, the Commission received almost 400 responses from professional drivers, transport companies and transport workers, as well as organisations representing their employers, in different Member States.

2.7 Both the consultation and the various reports yielded exactly the same findings about problems with the directive. The Commission believes that there is a general awareness of the problems noted in everyday practice, in the transport of both goods and passengers by road, and that they have been seen as a factor hindering uniform and equitable operations in the EU transport market.

2.8 The problems can be divided into three types<sup>(5)</sup>:

- There is not always mutual recognition of training.
- Training content does not always fully match the individual driver's training needs for their job profile.
- Disparities and problems exist with interpreting permissible exemptions from the scope of application of the directive, which has created legal uncertainty for professional drivers.

2.9 In addition to the issues listed above, serious inconsistencies and contradictions are apparent in relation to minimum age requirements between the directive on the initial qualification and periodic training of drivers and the general provisions on driving entitlements set out in the directive on driving licences. These have created real problems in the Member States and a solution must be found without delay.

2.10 The Commission considers a further argument for revising the Directive to be the objective of better and lighter regulation in accordance with the REFIT principles.

2.11 It is believed that revising the directive will make it clearer, improve consistency and create new jobs in the transport sector, which includes SMEs. By addressing the problems identified and revising the directive accordingly, the Commission believes it will also be possible to achieve considerable cost savings, both for drivers and for their employers.

### 3. General comments

3.1 At present the Member States have to choose between two alternative implementation approaches at national level with respect to initial qualification of drivers: (1) course attendance and a shorter test, or (2) a longer test only. To increase flexibility and choice, and drawing attention to the differences in individual qualification levels, the EESC recommends that the directive also be updated by incorporating into it an explicit right to apply both models in parallel<sup>(6)</sup>.

3.2 It is important in practical training for professional drivers to emphasise subject areas relating to transport and road safety and to health and safety at work, improvement of digital knowledge and skills, and the teaching of environment-friendly, fuel-efficient and anticipatory driving methods.

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<sup>(4)</sup> For the consultation conclusions, see: [https://ec.europa.eu/transport/road\\_safety/sites/roadsafety/files/pdf/consultations/cpc\\_main\\_conclusions.pdf](https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/consultations/cpc_main_conclusions.pdf).

<sup>(5)</sup> Commission Staff Working Document SWD(2017) 26 final, Executive Summary of the Impact Assessment accompanying the Proposal for a Directive amending Directives 2003/59/EC and 2006/126/EC.

<sup>(6)</sup> COM(2012) 385 final, Table 1, page 6.

3.3 When considering this issue, it is important to bear in mind the main shortcoming highlighted by professional drivers and other transport sector players in the consultations, namely that the content of training does not always match the driver's individual training needs for their job profile. The content of courses must therefore be tailored so that they are optimally adapted for each driver. The EESC points out that this will both enhance the attractiveness of training and motivate professional drivers to learn.

3.4 Thus if the new directive aims to make compulsory the inclusion of certain subject areas in initial qualification and/or periodic training programmes for professional drivers, these should be defined as flexibly, broadly and loosely as possible, while taking account of the EESC's views set out in point 3.1 above.

3.5 Since professional drivers of heavy vehicles are often required because of their work to complete other types of training under EU law, it would make sense for these training sessions to be more comprehensively approved as part of the periodic training provided for in the directive on qualification and training requirements for drivers. This would avoid overlaps in training, reduce red tape and save money, as well as boosting drivers' motivation to take part in training.

3.6 The revised directive provides the option of completing periodic training courses in the form of e-learning. The EESC sees this positively and regards it as an essential improvement in the training of professional drivers. This in itself enhances digital skills and is particularly helpful for operators in remote regions. E-learning brings training to the learner, who does not have to travel what may often be a long distance to receive traditional forms of instruction.

3.7 It is regrettable that the Commission has not made it possible to divide the seven-hour training day into parts, but that it still has to be conducted as one block session. This is a real problem for drivers and transport companies. Coordinating work and training, improving learning outcomes and providing e-learning options require more flexibility. What is essential for achieving the objectives of periodic training is to provide a total of 35 hours training, not to have 7-hour training sessions. This recommendation would also serve the REFIT objectives.

3.8 The skills attained are demonstrated with a separate driver qualification card or an indication of valid qualifications based on entering the EU code that proves them in the driving licence. These options are left to the Member States' discretion. Falsified documents have proved to be a growing practical problem. The EESC therefore recommends that a database be created as a matter of urgency at EU level where different parties could check in real time that the professional qualifications of a driver are actually valid. It might be possible to do this by including data on professional qualifications in the RESPER system<sup>(7)</sup>, which shares national driving licence information between the Member States. This would enable Member State authorities to simultaneously establish the validity of both driving entitlements and professional qualifications.

#### 4. Specific comments

4.1 The EESC urges that the contradictions concerning minimum age requirements between the EU driving licences directive<sup>(8)</sup> and the directive on the initial qualification and periodic training of drivers be eliminated without delay. To do this, it is proposed that an exemption be written into the driving licence directive whereby driving licences can be issued in accordance with the age limits provided for in Directive 2003/59/EC.

4.2 In the EESC's view it is essential to ensure that exemptions from the scope of application which are to be incorporated into the directive are also in all respects identical to the exemptions<sup>(9)</sup> relevant to drivers of heavy vehicles contained in the regulation on driving time and rest periods<sup>(10)</sup>. Although some progress has been made here with the current proposal for an amendment to the directive, disparities still remain between the exemptions set out in the above-mentioned rules. If the lists of exemptions are not fully harmonised, the inconsistencies and contradictions between these rules applying to professional drivers will not be completely eliminated either.

<sup>(7)</sup> <https://www.eucaris.net/kb/resper/>

<sup>(8)</sup> Directive 2006/126/EC of the European Parliament and of the Council (OJ L 403, 30.12.2006, p. 18).

<sup>(9)</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council (OJ L 102, 11.4.2006, p. 1).

<sup>(10)</sup> Regulation (EC) No 561/2006, Articles 3 and 13 (OJ L 102, 11.4.2006, p. 1).

4.3 Although the objective of improving road safety is very welcome, the EESC has reservations about the requirement in the current proposal for a directive that at least one subject relating solely to road safety be included in the periodic training (in practice on one of the five days of periodic training). Instead, the requirement could be framed, in line with the proposal in the directive <sup>(11)</sup> and also complementing it, by including in the periodic training at least one day of training 'with specific emphasis on road safety, health and safety at work, and the rationalisation of fuel consumption'. This would ensure that fuel-efficient and anticipatory driving methods are also included in any training programme for professional drivers in the EU. These areas are an integral part of road safety.

4.4 In several Member States on-the-job training is an essential part of initial qualification training for drivers. During on-the-job training the driver performs practical commercial transport duties under guidance and supervision. This possibility should be kept so as to ensure that drivers already become familiar with the work during their training and in this way fully guarantee that new entrants to the sector have professional skills. The EESC therefore strongly opposes the amendment contained in the proposal for a directive that would prevent drivers from engaging in commercial transport operations during the initial qualification training. However, we would emphasise that this right to engage in commercial transport operations must always be fully incorporated into training (under supervision), and should on no account lead to distortions of competition or social dumping.

4.5 The EESC welcomes the option provided in the amended directive to approve compulsory training courses based on other EU rules (e.g. additional training on disability awareness for the carriage of passengers, ADR training for driving of hazardous goods, and animal transport) lasting up to seven hours, or one day, as part of the periodic training. However, it is important to broaden this option to allow several training days in order to avoid training overlaps and reduce costs. Multiple training requirements are not consistent with the principles of better and lighter regulation, and they do not treat equally drivers working in different transport sectors, some of whom are regularly required to complete both periodic training under the Directive as well as other statutory training relevant to their duties.

4.6 The proposal amending the directive would still allow e-learning, as a method by which part of both the initial qualification and periodic training could be completed independently. This change is essentially very welcome, but the EESC considers that the maximum amount of e-learning should be laid down more precisely, so that the vague definition of 'partly' in the proposal does not lead to widely diverging interpretations and practices in different Member States.

4.7 In the EESC's view it absolutely must be made possible for the single periodic training day to be split into parts. Unfortunately the proposal for a directive does not provide for this, and there is a real risk that contradictions will result. Given that part of the training can be delivered via e-learning, there should be a flexible solution for instance to split one seven-hour training session on the same subject so that part of the training takes place on one day in classroom sessions or practical exercises, and the other part is continued on another day by e-learning. This is essential not least because necessary instruction facilities are often located in different places.

Brussels, 31 May 2017.

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

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<sup>(11)</sup> Directive 2003/59/EC, Article 7(1) (OJ L 226, 10.9.2003. p. 4).

**Opinion of the European Economic and Social Committee on the 'Joint Communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament and the Council: Towards an EU strategy for international cultural relations'**

(JOIN(2016) 29 final)

(2017/C 288/17)

Rapporteur: **Luca JAHIER**

|                           |                                                                    |
|---------------------------|--------------------------------------------------------------------|
| Consultation              | European Commission, 23.9.2016                                     |
| Legal basis               | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible       | External Relations                                                 |
| Adopted in section        | 2.5.2017                                                           |
| Adopted at plenary        | 31.5.2017                                                          |
| Plenary session No        | 526                                                                |
| Outcome of vote           | 165/0/0                                                            |
| (for/against/abstentions) |                                                                    |

## **1. Conclusions and recommendations**

1.1 Culture has an important role to play in the current global political environment, in which the respect of human rights, tolerance, cooperation and mutual solidarity are once more under threat. Thus the EESC welcomes the Joint Communication, which reveals a clear understanding of the impact of culture, constitutes an impressive compendium of existing programmes at EU and national level, and highlights potential areas of action in the field of international cultural exchange.

1.2 The EESC now calls for a step forward, from a text 'towards an EU strategy' to the adoption and subsequent implementation of a clear strategy and action plan. The action plan should respond to four structural necessities: providing clarity of governance at EU level; seeking to coordinate and offer subsidiary support at Member State level; clarifying financial aspects; and promoting networks of interrelated cultural players, representing a thriving cultural civil society.

1.3 So as to enable the full recognition of the importance of culture to sustainability, the EESC calls for culture to be recognised as a fourth pillar of sustainable development, on an equal footing with the economic, social and environmental pillars.

1.4 The EESC welcomes the fact that culture is acknowledged as a crucial foundation for peace and stability. Culture is therefore of key importance in furthering the main aim of the European Union: to 'promote peace, its values and the well-being of its peoples' (Article 3 TEU). The EESC therefore calls on the EU, based on Europe's own experience, to take its place as a global leader in the practice, protection and promotion of peace worldwide.

1.4.1 This could, for example, be promoted by developing experimental initiatives such as the new 'White Dove' initiative, based on the role of the EU in the Northern Ireland peace process, adding a much needed cultural and peace-building strand to conflict resolution strategies.

1.4.2 Promoting culture as a pillar for peace and stability goes hand in hand with drawing attention to the freedom of artistic expression as a human right and supporting global initiatives which protect artists' rights, as well as further developing such initiatives at European level.

1.4.3 The EESC is alert to the possible misuse and manipulation of culture to nourish an authoritarian, populist or other political agenda. EU exchanges allow for the views of multiple stakeholders and pluralistic approaches, with none of the element of control that is typical of propaganda. Based on the extraordinary richness of diversity, culture will inevitably combat populist tendencies and state-led cultural propaganda, build bridges between peoples and open up opportunities for closer cooperation and exchange.

1.5 The EESC underlines the importance of civil society as protagonists in a sustainable society and in the development of all initiatives in the field of culture. The EU should therefore invest in supporting the development of a structured civil society in the cultural field.

1.5.1 The EESC highlights the interest of programmes exploring culture's connections with economic, social and political development strategies, bringing culture from the margins to the centre of the political sphere.

1.5.2 The EESC encourages the development of study and exchange programmes in the field of culture in the wider sense, adapting the model of the successful Erasmus+ programme.

1.5.3 The EESC welcomes the call for the creation of a cultural civil society forum, including all relevant stakeholders. The EESC will commit to supporting such structured consultation and dialogue in the coming years.

1.6 The EESC recognises the importance of culture and the creative industries as a key factor in economic growth, job creation and sustainable development. The Communication highlights a number of aspects and programmes, which the EESC fully supports. The Committee therefore encourages adequate investment in this field.

1.6.1 Skills development in culture and the creative industries lays the groundwork to develop this potential.

1.6.2 The EESC supports the development of a 'capitals of culture' scheme on an international scale, in cooperation with the Council of Europe and Unesco, as well as the reinforcement of existing city networks in terms of their exchange on cultural issues.

1.7 The Committee underlines that a cultural perspective should be integrated into the core of all future international agreements, for example the new partnership with ACP countries after 2020.

1.8 The EESC believes that the positive dynamics of the upcoming 2018 European Year of Cultural Heritage should be used to give impetus to the adoption and subsequent implementation of an action plan for culture in international relations.

## **2. Overview of the Commission's and the High Representative's Joint Communication**

2.1 The Joint Communication describes approaches towards an EU strategy for international cultural relations in the framework of the EU's role as a global actor.

2.2 The Communication proposes three pillars for this strategy: (1) guiding principles for EU action; (2) three main strands for such action; and (3) a proposal for a strategic approach to cultural diplomacy.

2.3 The proposed guiding principles highlight the need to promote cultural diversity and respect for human rights as essential foundations for democracy, stability and sustainable development, including freedom of opinion and artistic expression, and the need to go beyond merely projecting the diversity of European cultures, underlining reciprocity and thus mutual respect and intercultural dialogue. Furthermore, the Communication highlights the need for complementarity and subsidiarity with regard to existing Member State efforts. It encourages a cross-cutting approach, going beyond arts in the strict sense of the term and including policies and activities in the fields of intercultural dialogue, tourism, education, research and the creative industries. Lastly, the Communication clarifies the need to avoid duplication, taking existing cooperation frameworks and financial instruments into account — i.e. specific thematic programmes and geographic cooperation frameworks already proposed by the EU.

2.4 The three proposed work streams for advancing cultural cooperation with partner countries are: (a) supporting culture as an engine for sustainable social and economic growth; (b) promoting culture and intercultural dialogue for peaceful intercommunity relations; and (c) reinforcing cooperation on intercultural heritage.

2.5 The stream to support culture as an engine for sustainable social and economic growth suggests helping other countries to develop cultural policies, strengthening cultural and creative industries and supporting the role of local authorities in partner countries.

2.6 The development of cultural policies can be supported by deepening policy dialogues and strengthening systems of governance, including via targeted exchange of experience.

2.7 The role of the cultural and creative industries in promoting smart, sustainable and inclusive growth is highlighted, showing that culture contributes 1,5-3,7 % of GDP in low- and middle-income countries (Unesco's Culture for Development Indicators). Therefore, the Communication proposes sharing expertise to further develop this sector, strengthen creative hubs and clusters, and develop relevant skills, as well as to build a sound regulatory framework to provide support for SMEs and territorial cooperation.

2.8 The importance of supporting culture in urban development is highlighted, underlining its impact in terms of growth and social cohesion; there is also mention of the need to make public space available for all, as well as the impact of audiovisual programmes and architecture.

2.9 The second work stream proposed in the Communication — promoting culture and intercultural dialogue for peaceful intercommunity relations — suggests supporting cooperation, dialogue and mobility among cultural operators and artists' works.

2.10 The capacity of intercultural dialogue to foster peace-building, with culture as a tool both for the prevention of conflict as well as reconciliation in post-conflict societies, is mentioned, and various existing instruments are enumerated.

2.11 The third strand proposed in the Communication is the reinforcement of cooperation in the field of cultural heritage as an important manifestation of cultural diversity and a tool for the promotion of tourism and economic growth. There are therefore suggestions to support research on cultural heritage, combat trafficking and contribute to international efforts, led by Unesco, to protect cultural heritage sites.

2.12 In the third pillar, the Communication proposes a strategic EU approach to cultural diplomacy, encouraging cooperation between all stakeholders to ensure complementarity and synergy: governments at all levels, local cultural organisations and civil society, the Commission and its High Representative, Member States and their cultural institutes. Diverse formats for enhanced cooperation are put forward.

2.13 Furthermore, the Communication highlights the importance of intercultural exchanges of students, researchers and alumni via existing and as-yet-undeveloped exchange schemes.

### 3. General remarks on the Communication

3.1 The EESC welcomes the Joint Communication proposed by the European Commission and High Representative. At the present time, when social fragmentation and populist tendencies are gaining ground, culture has an increasing role to play in reinforcing ties between civil society, promoting mutual understanding, encouraging diversity and exchange, and countering simplistic views.

3.2 The Communication reveals a clear understanding of the impact of culture, constitutes an impressive compendium of existing measures at EU and national level, and highlights different potential areas for action in the field of cultural exchange and diplomacy.

3.3 However, the Committee now stresses the need to take the strategy a step further. An action plan needs to define precise focal points and strategically relevant countries, allowing for a targeted approach and consistent assessment of a first phase of the strategy, taking into account the existing Development Cooperation Instrument (DCI 2014-2020). The relevance of the strategy in terms of cooperation with the EU's neighbourhood and enlargement countries should be emphasised.

3.4 Culture in external relations cannot be seen as neutral and independent of the political context of the countries involved. Both historic and present-day examples demonstrate the possible misuse and manipulation of culture to nourish an authoritarian, populist or other political agenda. Therefore, while culture in EU exchanges certainly serves an agenda, it is important to underline that, contrary to propaganda, EU exchanges allow for the views of multiple stakeholders and pluralistic approaches. The EU thus relinquishes the element of control typical of propaganda. In this sense, culture based on the extraordinary richness of diversity will inevitably combat populist tendencies and state-led cultural propaganda, build bridges between peoples, tear down walls that are increasingly being thrown up, repair growing prejudice, and open up opportunities for closer cooperation and exchange.

3.5 Cultural education based on creative processes and the valorisation of diversity, including intercultural exchange, can further develop people's awareness of and resistance to the use of culture in a populist sense.

3.6 The Committee also underlines that in view of the multiple directorates and stakeholders involved, a clear governance structure needs to be established to guide cooperation in order to produce clear proposals and output. This structure should nonetheless demonstrate flexibility so as not to add additional administrative burden. The lead administrator of available funds should be defined.

3.7 While culture should have a stand-alone value, the EESC also underlines the need to mainstream culture in neighbouring fields, allowing culture to promote goals and actions that have been agreed upon and acknowledging its importance to the European project. Currently, however, culture is missing in existing action plans, including the 2017 Commission Work Programme. Culture needs to be increasingly present in European Commission priorities and actions and first concrete actions have to be included in the 2018 European Commission Work Programme.

3.8 Culture is key to strengthening the EU's role as a global actor, including in the focus areas explicitly mentioned, notably the EU Strategy for Syria, the EU Global Strategy and the Africa-EU Partnership.

3.9 In view of the importance of culture and the creative industries, the EESC suggests that provisions be made to ensure that issues pertaining to the fields of culture and the creative industries are taken into account in all future negotiations at international level, starting from the next negotiation mandate for the new partnership with the ACP countries after 2020. This includes trade negotiations, in which the EU should take the necessary measures to support, protect and promote European cultural activities <sup>(1)</sup>.

3.10 The EESC should include the topic of culture in the permanent bodies that it manages, and in its ordinary work.

3.11 The EESC welcomes the acknowledgement of the importance of culture to the development of our societies and its impact on key policy issues. Nonetheless, the EESC underlines that arts and culture should not just be reduced to their strategic and material value, but should also be recognised for their intrinsic value as hallmarks of our joint humanity.

3.12 'Cultural rights' are mentioned briefly, but the strategy should reflect on this principle of European values as a foundation of cultural understanding, exchange and development. The strategy could also take note of the important work developed by the Special Rapporteur in the field of cultural rights (OHCHR) <sup>(2)</sup>.

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<sup>(1)</sup> In this regard, the EESC restates its support for the cultural exception as underlined in the EESC opinion on 'Creative and cultural industries — a European asset to be used in global competition' (OJ C 13, 15.1.2016, p. 83).

<sup>(2)</sup> <http://www.ohchr.org/EN/Issues/CulturalRights/Pages/SRCulturalRightsIndex.aspx>

3.13 While the Communication states that people frequently communicate across borders using digital tools, and that the demand for exchange and intercultural cooperation has increased in step with the digital revolution, there is insufficient focus on the implications and potential this digital shift has for international cultural relations. It is thus crucial to research and absorb the impact of the digital shift, taking into account, in particular, the impact on intercultural exchange between people, and examining both its potential as well as the risk of bias and misinformation. In this sense, cultural exchanges allow people to develop interests and encourage access to information and resources available online.

3.14 The mention of digital tools as a driver for this increasing exchange is questionable, as economic shifts and social challenges can be viewed as the dominant force in propelling global movements.

3.15 In the light of current events, the EESC suggests including interreligious dialogue as an element of intercultural dialogue in the Communication, including philosophical and non-confessional organisations, in line with the Preamble of the Treaty on European Union, which draws inspiration from the 'cultural, religious and humanist inheritance of Europe', and Article 17 TFEU. This could be promoted via experimental initiatives, such as facilities for students and scholars of faith-based universities and religious schools of learning in the framework of the Erasmus+ programme.

3.16 The Communication mentions the impact of culture for sustainable development as a sub-section of inclusive and balanced economic growth <sup>(3)</sup>. The EESC regrets that this issue is not emphasised further, taking into account ideas to make culture a stand-alone pillar supporting sustainability. In recent years, a growing number of organisations <sup>(4)</sup> have embraced this viewpoint, emphasising that culture needs to be considered as being just as important as other dimensions of development: the economy, social inclusion and the environment. The EESC actively supports this approach. This in turn is connected to regarding culture as a key component of inclusive community-building.

3.17 The EESC underlines the centrality of co-creation processes for artistic development and exchange, a factor not mentioned in the Communication. Co-creation not only enhances eye-level exchange and learning, but can also lead to innovative work that furthers both artistic development and growth, including economic and social development.

3.18 The Committee underlines that cultural exchange and dialogue should be based on objective data, allowing for the best possible fit of cultural and artistic relations with a given country or region. This calls for cultural practices, and strengths and challenges, to be studied, both in and with partner countries. One interesting initiative is the Council of Europe's Compendium of Cultural Policies and Trends in Europe.

3.19 Additionally, the long-term approaches that are needed call for continuous monitoring and revision, ensuring impact and mutual benefit from cultural exchanges and interactions.

3.20 Funding for translation and interpreting of exchanges should be taken into account when devising programmes promoting cultural exchanges.

3.21 When devising new programmes, the EESC underlines the need to communicate the programme both within the EU and to partner countries and their citizens, explaining the approach, promoting initiatives and providing knowledge about funding opportunities. Various existing channels (Euronews, cultural prize schemes) could be developed to support this effort.

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<sup>(3)</sup> See Resolution 70/214 on 'Culture and sustainable development' adopted by the UN General Assembly on 22 December 2015.

<sup>(4)</sup> See work undertaken by Agenda 21 for Culture and Culture Action Europe in the framework of the campaign entitled 'The future we want includes culture', focusing on the role of culture in the Sustainable Development Goals.

3.22 The Committee also stresses that the role of sub-national structures, regions and cities should be taken into account, as highlighted in the opinion adopted by the European Committee of the Regions on 7-8 February 2017.

3.23 The Committee underlines the vital importance of encouraging open exchange and the resolution of disagreements between states concerning the possession of artefacts that form part of national cultural heritage.

3.24 While the EESC welcomes this Communication and looks forward to the proposals being translated into specific action, it wishes to further elaborate on areas which lack sufficient emphasis in the proposal: (a) culture as a pillar for peace and stability; (b) culture and civil society; and (c) culture and the creative industries for sustainable growth and development.

3.25 In view of the importance and visibility of the upcoming European Year of Cultural Heritage, the EESC suggests that this framework and positive dynamic be used to develop and launch the action plan for culture in external relations in 2018.

#### **4. Culture as a pillar for peace, stability and security**

4.1 The EESC welcomes the fact that culture is acknowledged as a crucial pillar for peace and stability. Culture is therefore of key importance in furthering the main aim of the European Union, to 'promote peace, its values and the well-being of its peoples' (Article 3 TEU).

4.2 The European Union must take its rightful place as global leader in the practice, protection and promotion of peace worldwide. Its Nobel-Prize-winning model, which, in the aftermath of the world wars, has created the longest period of peace and prosperity in Europe, is a testament to its ability to lead the world in this field. The EU's track record in human rights and democracy, equality, tolerance, understanding and mutual respect is second to none in the international arena. The EU motto, 'United in Diversity', has greater resonance, given the global challenges of today's world, than at any other time in its 60-year history.

4.3 The EESC underlines the importance of exchange in the field of conflict prevention, resolution and post-conflict reconciliation. The space provided via culture and the arts allows for open exchange and the development of mutual trust. While culture in pre- and post-conflict situations is mentioned, this aspect needs to be expanded, particularly as cultural operators from third countries also have a wealth of expertise in this regard, allowing for mutually beneficial reflections. Respect for cultural human rights should be incorporated into peace agreements, which also enables cultural minorities in post-conflict areas to be respected <sup>(5)</sup>.

4.4 The EU's role in the Northern Ireland peace process is of interest as a possible basis for a peace-building strategy at global level. For example, a new 'White Dove' initiative could be inspired by the role played by the EU in the Northern Ireland peace process via its unique PEACE programme <sup>(6)</sup>. With a global reach, it could be all-inclusive, ensuring grassroots input from civil and political society. It could be connected with the new EC Solidarity Corps and emulate the Erasmus+ model, but it would not be exclusive to young people. It could interact with all EU measures in the field of defence, security and diplomacy, adding a much-needed cultural and peacebuilding strand to conflict resolution strategies. It would thus promote cross-cultural dialogue, mutual respect, tolerance and understanding through culture, education and media.

4.5 The EESC draws attention to the role of organised civil society, political foundations and local authorities in peace-building and reconciliation. Their expertise must be tapped into and their perspectives integrated and promoted.

4.6 The Committee stresses that in order to promote peace and stability, cultural initiatives and exchange must be developed in cooperation with local players and there must be efforts to reach out to local citizens, going beyond the circles usually targeted by cultural and artistic programmes.

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<sup>(5)</sup> See also 'Information presented by the Northern Ireland Human Rights Commission to the United Nations on the Derry/Londonderry Report on Upholding the Human Right to Culture in Post-Conflict Societies' (UNGA A/HRC/25/NI/5 on 27 February 2014).

<sup>(6)</sup> EESC opinion on 'The role of the EU in peace building in external relations: best practice and perspectives' (OJ C 68, 6.3.2012, p. 21).

4.7 On an intergovernmental level, the Council of Europe's initiatives are commendable. Cooperation with the CoE could be reinforced to draw upon its expertise regarding those countries within the organisation that neighbour the EU. The EESC draws attention, for example, to the Indicator Framework on Culture and Democracy, as well as the Youth Peace Camp initiative that allows young people and youth organisations from conflict-stricken regions to engage in dialogue and conflict transformation activities based on human rights education and intercultural learning. This programme could be a model for cultural dialogue between young people.

4.8 The EESC also draws attention to the impact of culture on safety and security issues in urban areas, as developed in its recent study on 'Culture, Cities and Identity in Europe' and suggests that exchanges on positive experiences in this domain should be promoted <sup>(7)</sup>.

4.9 Further understanding of the impact of culture — and the loss thereof — on the radicalisation of young people should be developed. The impact of cultural activities and heritage on social stability and cohesion must be underlined, and the misuse of culture and heritage as a means to promote a radical or nationalistic agenda prevented.

4.10 Promoting culture as a pillar for peace and stability must go hand in hand with calling attention to the freedom of artistic expression as a human right. Global initiatives to support persecuted artists exist at CSO level (e.g. Freemuse, Observatoire de la Liberté de la Création Artistique). Their development and their networking within the European CSO landscape should be promoted.

## 5. Culture and civil society

5.1 The EESC underlines the need for the development of an active civil society to promote participative and inclusive growth and cultural development. Civil society activities should be strengthened via cultural dialogues and exchanges and capacity-building activities <sup>(8)</sup>. Developing administrative capacity in CSOs is a key element to ensuring co-creation and eye-level exchange.

5.2 The EESC thus agrees with the aim of strengthening support for civil society organisations active in the cultural field in partner countries. The need to integrate cultural operators is rightly highlighted, and the EESC wishes to underline the importance of this effort not only for intercultural dialogue, but also for cultural diversity and cultural rights.

5.3 The EESC wishes to underline the need to involve non-governmental organisations and foundations, both in Europe and in partner countries, as valuable players and resources for successful exchange and dialogue. As such, national operators' programmes should be utilised and strengths pooled and learned from, e.g. the Robert Bosch Foundation's activities in international relations, and the projects of Interarts, such as its EU-funded 'Communities of practice for the public value of culture in the Southern Mediterranean — SouthMed CV' project (funded by DG NEAR's Euromed programme), which aims to bring culture from the margins to the centre of the public sphere, exploring its potential connections with economic, social and political development strategies.

5.4 It draws attention to the fact that (inter)cultural exchanges must not be limited to artists and cultural stakeholders, but should include a strong dimension of outreach to and participation of all citizens. Despite efforts to remedy this, cultural and artistic exchanges tend to address a restricted number of people with often similar social, cultural and educational backgrounds. Therefore, the explicit inclusion of exchange on participative cultural initiatives and the development of arts education should be part of cultural programmes. Only then can the potential of arts and culture to promote stability, peace and sustainable development be tapped into.

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<sup>(7)</sup> EESC-commissioned study on 'Culture, cities and identity in Europe', <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-europe-culture-cities-study>

Conclusions of the conference 'A hope for Europe: Culture, cities and new narratives' organised by the Various Interests Group of the EESC, Brussels 20-21 June 2016: <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-europe-culture-cities-conclusions>

<sup>(8)</sup> EESC opinion on the European Year of Intercultural Dialogue (OJ C 185, 8.8.2006, p. 42).

5.5 The EESC holds the Erasmus+ programme and its importance for exchange and mutual understanding and learning in high esteem. Similar initiatives for cultural operators and citizens active in culture and the arts are non-existent at EU level. The development of a specific exchange and mobility programme for the arts and culture in a broad sense could be considered.

5.6 Many exchange and study visit programmes for artists and cultural operators exist, funded on a bilateral basis via national cultural institutes. Increased synergy between these programmes needs to be examined, including non-governmental initiatives, such as the Roberto Cimetta Fund.

5.7 International cooperation and mobility needs to be recognised as an asset for the development of cultural identity at a time when demographic, social and economic transformations also point to a shortening of distances between and within countries. These shifts have an impact on cultural processes as well as creating more potential for cross-border cultural networking. If supported properly, this mobility, besides its positive impact on economic exchange, can contribute to the development of cultural identity, in turn promoting peace-building and social cohesion. This mobility must be carefully balanced with support ensuring the development of solid structures, guaranteeing a future for cultural and creative initiatives.

5.8 The EESC emphasises the ability of cultural networks to promote exchange between culture professionals, structure the cultural landscape and develop active cultural civil society. It therefore suggests that exchange be encouraged with European cultural networks, a line of funding in the Creative Europe programme. Links with existing networks at international level and the development of networks in different regions could be promoted.

5.9 Similarly, the EESC underlines the benefit of other strands of the current Creative Europe programme, and encourages all funding options to be examined in the light of their potential for cultural exchange at international level.

5.10 The EESC welcomes the call for the creation of a civil society forum to include all relevant stakeholders and to play a key role in developing the aforementioned action plan for international cultural relations. This could take the form of an annual forum based on horizontal exchanges and debates, with satellite meetings in different geographic regions, in and outside the EU.

5.11 The EESC will commit to supporting such structured consultation and dialogue with relevant stakeholders in the field of external relations in the coming years. The EESC will further reflect on how its role and working methods can make a specific and structured contribution to improving the development of the aforementioned action plan.

## **6. Culture and the creative industries for sustainable growth and development**

6.1 Culture should be fully recognised as the fourth pillar of sustainable development. This allows visions of culture — either as a tool for economic growth or as having an intrinsic value that should not be subjugated to economic priorities — to be reconciled.

6.2 The EESC underlines the importance of sustainability and of alternative measures of growth, such as greater well-being in societies.

6.3 The Communication highlights a number of important points concerning the contribution of culture and the creative industries, which are mainly SMEs<sup>(9)</sup>, to sustainable development, economic growth, and job creation, which the EESC clearly supports. As the Communication underlines, global trade in creative products more than doubled between 2004 and 2013<sup>(10)</sup>, with cultural and creative industries accounting for about 3 % of world GDP and over 30 million jobs<sup>(11)</sup>.

6.4 The need to invest in the development of relevant skills to harness the potential of growth in the creative sector must be underlined. Local markets need to be supported. Mobility schemes enhancing skills development should not reinforce a brain-drain effect that is detrimental to partner countries.

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<sup>(9)</sup> Eurostat 2013: Key size-class indicators for enterprises in selected cultural sectors, EU-28.

<sup>(10)</sup> 'The Globalisation of Cultural Trade: A Shift in Cultural Consumption — International flows of cultural goods and services 2004-2013', Unesco Institute for Statistics (UIS), 2016.

<sup>(11)</sup> 'Cultural Times', report by CISAC and Unesco, 2015.

6.5 The experience of the European Capitals of Culture has shown the impact of cultural development on economic and social development in urban areas. Exchange and capacity-building actions with other countries on challenges and strategies, which led to this growth, could be developed.

6.6 As a model of best practice, other transnational organisations and regions have taken up the concept of capitals of culture (e.g. the nomination of Islamic cultural capitals by Ilesco, the Islamic Educational, Scientific and Cultural Organisation). Possible cooperation and synergy should be explored to maximise mutual benefit and learning. An international capital of culture scheme or the twinning of towns within the framework of this programme could be considered.

6.7 Another example of links between places and cities is the Council of Europe's Cultural Routes. This programme could be explored and developed on an international level, developing its potential to increase cultural tourism and an understanding of joint international cultural roots.

6.8 The EESC underlines the need to encourage and facilitate collaboration and networking among cities in and outside Europe. Many European cities are experienced in cultural policy-making and its relation to other areas of sustainable development (e.g. economic growth, job creation, social inclusion, creative education, cultural tourism, etc.). This is an asset for long-term collaboration between Europe and the Global South and the EU could also play a role in facilitating collaboration and networking among cities in and outside Europe. In this connection, relevant initiatives are already in place and able to provide suitable contributions for long-term collaboration, including the Pilot Cities and Leading Cities programmes.

6.9 The existence of city networks that develop culture-related measures, such as Eurocities, Mercociudades, Africities, the Unesco Creative Cities Network, Les Arts et la Ville, Australia's Cultural Development Network or the Creative City Network of Canada should also be considered as a valuable asset in this regard.

6.10 The EESC regrets the lack of a gender focus in the proposed steps towards a joint strategy. While gender equality constitutes the backbone of our European values, studies show gender imbalances in artists receiving visibility and key positions. Similarly, Unesco has described biases in the benefits derived from cultural tourism and cultural development measures. The EESC therefore insists on this dimension being taken into account.

Brussels, 31 May 2017.

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

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council laying down management, conservation and control measures applicable in the Convention Area of the South Pacific Regional Fisheries Management Organisation (SPRFMO)’**

(COM(2017) 128 *final* – 2017/0056 COD)

(2017/C 288/18)

|                                              |                                                                              |
|----------------------------------------------|------------------------------------------------------------------------------|
| Consultation                                 | European Parliament, 03/04/2017<br>Council of the European Union, 10/04/2017 |
| Legal basis                                  | Article 43(2) of the Treaty on the Functioning of the European Union         |
| Section responsible                          | Agriculture, Rural Development and the Environment                           |
| Adopted at plenary                           | 31/05/2017                                                                   |
| Plenary session No                           | 526                                                                          |
| Outcome of vote<br>(for/against/abstentions) | 181/0/1                                                                      |

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 526th plenary session of 31 May and 1 June 2017 (meeting of 31 May 2017), by 181 votes to none with 1 abstention, to issue an opinion endorsing the proposed text.

Brussels, 31 May 2017.

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

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**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council fixing the adjustment rate provided for in Regulation (EU) No 1306/2013 for direct payments in respect of the calendar year 2017'**

(COM(2017) 150 final – 2017/0068 COD)

(2017/C 288/19)

|                           |                                                                      |
|---------------------------|----------------------------------------------------------------------|
| Referral                  | European Parliament, 06/04/2017                                      |
| Legal basis               | Article 43(2) of the Treaty on the Functioning of the European Union |
| Section responsible       | Agriculture, Rural Development and the Environment                   |
| Adopted at plenary        | 31/05/2017                                                           |
| Plenary session No        | 526                                                                  |
| Outcome of vote           | 177/0/0                                                              |
| (for/against/abstentions) |                                                                      |

Since the Committee had already set out its views on the contents of the proposal in question in opinion CESE 2942/2013, adopted on 25 May 2013 (\*), it decided at its 526th plenary session, held on 31 May and 1 June 2017 (meeting of 31 May 2017), by 177 votes to none with no abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned document.

Brussels, 31 May 2017.

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

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(\*) EESC opinion on the Proposal for a regulation of the European Parliament and of the Council on fixing an adjustment rate to direct payments provided for in Regulation (EC) No 73/2009 in respect of calendar year 2013, COM(2013) 159 final — 2013/0087 (COD) (OJ C 271, 19.9.2013, p. 143).



ISSN 1977-091X (electronic edition)  
ISSN 1725-2423 (paper edition)



**Publications Office of the European Union**  
2985 Luxembourg  
LUXEMBOURG

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